

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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CERTIFIED/RRR: 7000-1670-0007-0498-0768

March 23, 2001

Office of Professional Responsibility
U.S. Department of Justice
Room 3335
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

ATT: H. Marshall Jarrett, Counsel

RE: Complaint of Professional Misconduct:

(1) against Mary Jo White, U.S. Attorney for the Southern District of New York and the following attorneys under her supervision: (a) Andrew S. Dember, Chief of the Public Corruption Unit; (b) Alan R. Kaufman, Chief of the Criminal Division; and (c) Shirah Neiman, Deputy U.S. Attorney;

(2) against Loretta E. Lynch, U.S. Attorney for the Eastern District of New York and the following attorneys under her supervision: (a) Andrew Weissmann, Chief of the Criminal Division; (b) Timothy A. Macht, Assistant U.S. Attorney; and (c) Alan Vinegrad, Chief Assistant U.S. Attorney.

Dear Mr. Jarrett:

The Center for Judicial Accountability, Inc. (CJA) is a non-partisan, non-profit citizens' organization documenting the dysfunction, politicization, and corruption of the behind-closed-doors processes of judicial selection and discipline on federal, state, and local levels. A copy of CJA's informational brochure is enclosed for your information.

This letter is CJA's complaint of professional misconduct against Mary Jo White, U.S. Attorney for the Southern District of New York, and Loretta E. Lynch, U.S.

Attorney for the Eastern District of New York, arising from their handling of criminal complaints which CJA filed against high-ranking New York State officials and state agencies whose power and influence had insulated them from state prosecution for systemic governmental corruption. The professional misconduct of each of these U.S. Attorneys includes:

- (1) Violation of law, rules, and policy relating to conflict of interest and recusal, among them, 28 USC §528, "Disqualification of Officers and Employees of the Department of Justice"; 28 CFR §45.2, "Disqualification Arising from Personal or Political Relationship"; U.S. Attorneys' Manual, §3-2.170, "Recusals"; and the Justice Department's policy for "Recusals by United States Attorneys' Offices", as set forth in Annual Reports to Congress of the Public Integrity Section of its Criminal Division; and
- (2) Violation of law, rules, and policy relating to supervisory duties, among them, U.S. Attorneys' Manual, §1-4.100 "Allegations of Misconduct by Department of Justice Employees - Reporting Misconduct Allegations"; §3-4.430B(1) "Performance Management: Responsibilities - Performance Appraisal for Attorneys and Non-Attorneys"; §3-4.441 "Disciplinary Actions and Grievances; 5 CFR §2635.101(b)(11): "Employees shall disclose...fraud, abuse, and corruption to appropriate authorities"; and DR 1-104 of the Code of Professional Responsibility, "Responsibilities of a Partner or Supervisory Lawyer", promulgated as 22 NYCRR §1200.5 by the New York State Appellate Divisions¹.

Additionally, CJA requests that this letter be deemed a complaint of professional misconduct against staff attorneys who U.S. Attorneys White and Lynch failed and refused to supervise so as to restrain and prevent them from violating law, rules, and policy pertaining to conflict of interest/recusal, supervisory duties, and honesty². In the Office of U.S. Attorney White, these staff attorneys include Andrew S. Dember,

¹ Pursuant to 28 USC §530B(a), "An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State."

² As relates to honesty, see 5 CFR §2635.101 "Basic Obligation of Public Service", subdiv. (b)(5) and Executive Order 12731 (10/17/90): Part I "Principles of Ethical Conduct, §101(e): "Employees shall put forth honest effort in the performance of their duties."; New York's Code of Professional Responsibility; DR 1-102(a)(4), promulgated by the New York State Appellate Divisions as 22 NYCRR §1200.3(a)(4): "A lawyer or law firm shall not... Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

Chief of the Public Corruption Unit; Alan R. Kaufman, Chief of the Criminal Division; and Shirah Neiman, Deputy U.S. Attorney. In the Office of U.S. Attorney Lynch, these staff attorneys include Andrew Weissmann, Chief of the Criminal Division; Timothy A. Macht, Assistant U.S. Attorney; and Alan Vinegrad, Chief Assistant U.S. Attorney. With the exception of Mr. Macht, each of these attorneys holds upper echelon positions of highest responsibility and public trust³.

In substantiation of this professional misconduct complaint against two U.S. Attorneys and their culpable staff attorneys, enclosed are copies of CJA's October 21, 1999 criminal complaint to the U.S. Attorney for the Southern District of New York⁴ and CJA's September 7, 1999 criminal complaint and March 17, 2000 supplement to the U.S. Attorney for the Eastern District of New York, as well as CJA's correspondence based thereon⁵. These establish the *knowing and deliberate* nature of the violations committed by the U.S. Attorneys and staff – for which imposition of harshest discipline is not only warranted, but essential. Their professional misconduct, perpetuating the systemic governmental corruption which was the subject of CJA's *fully-documented* criminal complaints – with knowledge of the irreparable injury to the public resulting therefrom -- mandates that they be fired from the Justice Department. Indeed, steps must be taken to initiate their removal from the bar.

The threshold issues of conflict of interest and recusal – flouted by both U.S. Attorneys and their staff -- are set forth in CJA's criminal complaints themselves⁶. These criminal complaints particularize an array of personal and professional

³ According to the October 30, 2000 New York Law Journal (at p. 4), the U.S. Department of Justice honored both Mr. Macht and Mr. Weissmann in an October 27, 2000 awards ceremony.

⁴ CJA's October 21, 1999 criminal complaint also requested that the U.S. Attorney for the Southern District of New York intervene in a lawsuit against the New York State Commission on Judicial Conduct, sued for corruption.

⁵ Not enclosed is the voluminous documentation which accompanied CJA's criminal complaints and correspondence relating to the systemic governmental corruption for which CJA sought federal investigation and prosecution. CJA will provide copies, upon request, in the event you cannot obtain same from the U.S. Attorneys' Offices.

⁶ See CJA's October 21, 1999 criminal complaint to US Attorney/SDNY: pp. 1 (RE clause), 2-3, 19-20; CJA's September 7, 1999 criminal complaint to US Attorney/EDNY: p. 5; CJA's March 17, 2000 supplement: pp. 3-6.

relationships existing between the U.S. Attorneys' Offices and key players in the systemic governmental corruption for which the complaints sought prosecution. Among these key players: former high-ranking members of the U.S. Attorneys' Offices, former and present high-ranking members of New York State government who necessarily interface with the U.S. Attorneys' Offices on criminal justice, investigation and prosecution issues, and New York State and federal judges.

CJA's criminal complaints also set forth pertinent legal authority as to the **recusal** obligations of U.S. Attorneys and the important function of the Public Integrity Section of the U.S. Justice Department's Criminal Division in connection therewith. Cited was the Justice Department policy for "Recusals by United States Attorneys' Offices" – as published in the Public Integrity Section's Annual Reports to Congress – pertinent pages of which the criminal complaints annexed:

"...if the United States Attorney or a prosecutor in his or her office has had a significant business, social, political, or personal relationship with a subject or principal witness in a corruption investigation, it may be difficult, and often inappropriate, for that United States Attorney's Office to handle the investigation. Cases involving corruption allegations in which the conflict is substantial are usually referred to the Public Integrity Section for prosecution or direct operational supervision." [Exhibit "A-1" to CJA's October 21, 1999 criminal complaint to US. Attorney/SDNY; *See* also Exhibit "B-1" to CJA's March 17, 2000 supplement to US Attorney/EDNY]⁷.

Additionally, CJA's criminal complaints quoted from – and annexed copies of -- 28 USC §528: "Disqualification of Officers and Employees of the Department of Justice":

"The Attorney General shall 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

⁷ As reflected by each of these Exhibits, recusal/referral is also appropriate in matters involving judicial corruption:

"Allegations involving federal judges and other judicial officers almost always require local recusal, a procedure through which the local United States Attorney steps aside as primary prosecutor... Thus, as a matter of established Department practice, judicial corruption cases are generally handled by the Public Integrity Section."

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." [Exhibit "A-2" to CJA's October 21, 1999 criminal complaint to US. Attorney/SDNY; Exhibit "B-2" to CJA's March 17, 2000 supplement to US Attorney/EDNY].

Indeed, CJA's criminal complaints expressly requested each U.S. Attorney to supply a copy of the "rules and regulations" promulgated by the Attorney General pursuant to 28 U.S. §528⁸.

CJA's subsequent correspondence with the U.S. Attorneys' Offices underscores the *wilfulness* of the conflict-of-interest/recusal violations committed by staff attorneys handling the criminal complaints, as well as their actual disqualifying bias, reflected by their other dishonesty and disregard of supervisory duties – all unchecked by U.S. Attorneys White and Lynch.

As relates to the U.S. Attorney's Office for the Southern District of New York, this correspondence consists of the following:

- (1) A six-sentence December 30, 1999 letter from Andrew S. Dember, Chief of the Public Corruption Unit,⁹ which, *without* denying or disputing the existence of the disqualifying relationships particularized by CJA's October 21, 1999 criminal complaint or the applicability of the Justice Department's recusal policy and 28 USC §528 – and *without* supplying any rules promulgated pursuant thereto -- ignored and misrepresented the basis upon which CJA's twenty-page criminal complaint had invoked federal jurisdiction so as to dismiss it.
- (2) CJA's four-page March 17, 2000 letter to Mr. Dember, setting forth a demand – in bold-faced type (at p. 2) -- that he provide legal authority for purporting to dispose of CJA's criminal complaint, without addressing the conflict of interest/recusal issues it had particularized and further demanding – likewise

⁸ See CJA's October 21, 1999 criminal complaint to US Attorney/SDNY: fn. 2; CJA's March 17, 2000 supplement: to US Attorney/EDNY: p. 6.

⁹ Mr. Dember's December 30, 1999 letter is Exhibit "A" to CJA's March 17, 2000 letter to him.

in **bold-faced type** -- that Mr. Dember transmit CJA's October 21, 1999 criminal complaint to his immediate superior, Alan R. Kaufman, Chief of the Criminal Division, and, thereafter, that Mr. Kaufman transmit it to his superior, U.S. Attorney White, "for her direct attention and corrective action". This, so they could see "the flagrant manner in which [Mr. Dember] not only disregarded the 'appearance' of ... conflict of interest", but manifested his "actual conflict of interest by [his] dishonest disposition of the October 21, 1999 criminal complaint" (at p. 2).

- (3) CJA's four-sentence April 24, 2000 letter to U.S. Attorney White, asserting that CJA had received no response to its March 17, 2000 letter for her supervisory involvement -- and requesting that she obtain the March 17, 2000 letter -- and substantiating materials -- from Messrs. Dember and Kaufman, in the event they had not, as requested, forwarded them to her.
- (4) A four-sentence April 26, 2000 letter from Mr. Kaufman, Chief of the Criminal Division,¹⁰ which, *without* providing the requested legal authority for Mr. Dember's failure to address the conflict of interest/recusal issues presented by CJA's October 21, 1999 criminal complaint and by repeating Mr. Dember's distortion of the basis upon which the criminal complaint invoked federal jurisdiction, announced "Mr. Dember has engaged in no official misconduct".
- (5) CJA's eight-page August 9, 2000 letter to U.S. Attorney White, requesting her supervisory review of Mr. Kaufman's official misconduct, covering up Mr. Dember's official misconduct. Particularized was their *wilful* disregard of the threshold conflict of interest/recusal issues and distortion of the basis for federal jurisdiction. The letter advised U.S. Attorney White that absent her "appropriate review and corrective action", CJA would file a misconduct complaint against them and her with the Justice Department's Office of Professional Responsibility (at p. 1);
- (6) A five-sentence August 15, 2000 letter from Shirah Neiman, Deputy U.S. Attorney,¹¹ proclaiming, *without specificity*, that "this Office has fully and fairly reviewed your various complaints and responded appropriately to your letters" and providing the Office of Professional Responsibility's address and telephone

¹⁰ Mr. Kaufman's April 26, 2000 letter is also Exhibit "C" to CJA's August 9, 2000 letter to U.S. Attorney White.

¹¹ Ms. Neiman's August 15, 2000 letter is also Exhibit "A" to CJA's September 6, 2000 letter to U.S. Attorney White.

number;

- (7) CJA's four-page September 6, 2000 letter to U.S. Attorney White, asking whether she had authorized and approved of Ms. Neiman's August 15, 2000 letter, whether she would take steps to discipline Ms. Neiman for the official misconduct the letter represented, and requesting that she provide a copy of the requested rules of the Attorney General pursuant to 28 USC §528, "as well as any other 'rules and regulations' which are supposed to guide the U.S. Attorney for the Southern District in matters involving conflicts of interest". This, so that CJA could incorporate that information in its complaint of official misconduct against her *personally*, to be filed with the Office of Professional Responsibility.

In the six and a half months since CJA's September 6, 2000 letter to U.S. Attorney White, CJA has received no response from her or anyone else in her Office.

As for the U.S. Attorney's Office for the Eastern District of New York, the exchange of correspondence relating to CJA's seven-page September 7, 1999 criminal complaint consists of the following:

- (1) CJA's nine-page March 17, 2000 letter to Andrew Weissmann, then Deputy Chief of the Criminal Division, complaining of his inaction on CJA's September 7, 1999 criminal complaint, which it expressly supplemented. Noting there was an "'appearance' - and, likely, an actuality that staff of the U.S. Attorney for the Eastern District of New York are conflicted by relationships" with individuals who are the subject of the criminal complaint, the letter requested -- in **bold-faced type** (at p. 6) -- that Mr. Weissmann advise as to how, if at all, he had addressed the conflict of interest issues and that he provide a copy of rules promulgated pursuant to 28 U.S. §528. CJA's March 17, 2000 letter further requested -- also in **bold-faced type** -- that he immediately forward CJA's September 7, 1999 criminal complaint to his immediate superiors, Jason Brown, Chief of the Criminal Division, and Alan Vinegrad, Chief Assistant to U.S. Attorney Lynch, in the event they were unaware of it and that, following their preliminary review, they then forward it to U.S. Attorney Lynch "so that she can personally determine the recusal issue and her responsibilities to ensure independent investigation and prosecution." (at p. 6).
- (2) CJA's three-sentence April 24, 2000 letter to U.S. Attorney Lynch, asserting that CJA has received no response to its March 17, 2000 letter for her

supervisory review of Mr. Weissmann's official misconduct in handling CJA's September 7, 1999 criminal complaint. The letter requested that in the event Mr. Weissmann and his two superiors had failed to forward the March 17, 2000 letter and September 7, 1999 criminal complaint to her, she obtain same from them.

- (3) A three-sentence June 20, 2000 letter from Timothy A. Macht, Assistant U.S. Attorney,¹² which, *without* addressing any of the issues presented by CJA's March 17, 2000 letter – including those relating to conflict of interest -- asserted “it is our office's practice not to comment on matters relating to ongoing criminal investigations being conducted by this office” and that the Office would “carefully review the materials... in order to determine what, if any, action is appropriate under the circumstances.” No copy of any rules promulgated pursuant to 28 USC §528 were enclosed.
- (4) CJA's six-page August 14, 2000 letter to U.S. Attorney Lynch, giving her an opportunity to “address issues which, if not addressed by [her], will be the subject of a complaint of official misconduct against [her] – and those under [her] supervisory authority – to be filed with the U.S. Justice Department's Office of Professional Responsibility.” (at p. 1) Specifically, the letter requested (at p. 5) that she clarify who had been conducting the “careful[] review” of CJA's September 7, 1999 criminal complaint and March 17, 2000 letter-supplement and “how the threshold conflict of interest questions have been resolved”. Additionally, it requested her supervisory review by firmly disciplining her culpable staff for wilful violation of conflict of interest rules in connection with CJA's criminal complaint and supplement, specifically asking that she investigate “the behind-the-scenes involvement of Messrs. Brown and Vinegrad so as to ascertain if they, like Mr. Weissmann and Mr. Macht, should be removed from their offices of public trust.” (at p. 5).
- (5) A three-sentence August 21, 2000 letter from Alan Vinegrad, Chief Assistant U.S. Attorney¹³, which, *without* specificity, declared that CJA's “allegations of official misconduct are entirely unfounded” as to “various members of the United States Attorney's Office”.

¹² Mr. Macht's June 20, 2000 letter is also Exhibit “D” to CJA's August 14, 2000 letter to U.S. Attorney Lynch.

¹³ Mr. Vinegrad's August 21, 2000 letter is also Exhibit “A” to CJA's September 6, 2000 letter to U.S. Attorney Lynch.

- (6) CJA's four-page September 6, 2000 letter to U.S. Attorney Lynch, asking whether she had authorized and approved of Mr. Vinegrad's August 21, 2000 letter, whether she would take steps to discipline him for the official misconduct his letter represented, the status of CJA's September 7, 1999 criminal complaint – as to which Mr. Vinegrad had provided no notice of disposition, and that she provide a copy of the requested rules of the Attorney General pursuant to 28 USC §528, as well as “any further ‘rules and regulations’ pertinent thereto promulgated by the U.S. Attorney for the Eastern District”. This, so that CJA could incorporate that information in its complaint of official misconduct against her *personally*, to be filed with the Office of Professional Responsibility.

In the six and a half months that have elapsed since CJA's September 6, 2000 letter to U.S. Attorney Lynch, CJA has received no response from her or anyone else in her Office.

The evidence of serious professional misconduct of staff attorneys, chronicled by CJA's aforesaid correspondence, warranted *personal* response from U.S. Attorneys White and Lynch. Their non-response – even in face of notice that CJA would be filing professional misconduct complaints against them *personally* with the Office of Professional Responsibility – suggests either that these two U.S. Attorneys do not take the Office of Professional Responsibility seriously or else that their personal and professional relationships with the politically-powerful individuals who are the subjects of CJA's criminal complaints or with their own misbehaving staff are so strong that they would sooner corrupt their Offices than address the evidence of professional misconduct and cover-up presented by that correspondence.

The only other explanation for the non-response of U.S. Attorneys White and Lynch is that they are ignorant of CJA's correspondence because their staffs collusively withheld it from them, notwithstanding such correspondence was addressed to the U.S. Attorneys, expressly requested that subordinates transmit it for the U.S. Attorneys' review, and gave notice that CJA's impending professional misconduct complaint would be against the U.S. Attorneys *personally*. This unlikely alternative would have required an impossible level of coordination not only between the two separate staffs, but with the many public officers and agencies that were indicated recipients of copies of the correspondence, any one of whom might otherwise “spill the beans” to the U.S. Attorneys. Obviously, to the extent that staff members diverted CJA's correspondence from U.S. Attorneys White and Lynch, without their knowledge, and/or failed to forward it to them, as expressly requested, such

is additional serious misconduct by them, warranting severe discipline in the circumstances of this case.

To expedite your handling of this professional misconduct complaint, copies of this letter are being sent to U.S. Attorneys White and Lynch – with copies, as well, for each of the subordinate attorneys herein identified as subjects of the complaint.

According to Candice Will, Assistant Counsel in the Office of Professional Responsibility, with whom I spoke on March 20th, even when complained-against attorneys leave the Justice Department, the Office of Professional Responsibility continues to investigate professional misconduct complaints against them – and to make findings thereon. This, so as to “vindicate the Department interest”. Obviously a complained-against attorney who no longer works for the Justice Department cannot be removed upon a finding of serious misconduct. However, according to Ms. Will, the Office of Professional Responsibility can take other steps, such as referring its final report to appropriate other authorities, including to attorney disciplinary committees.

Although the attorneys herein complained-against are all presently Justice Department employees, that may not be the case by the time the Office of Professional Responsibility concludes its investigation of this complaint. Last week, President George W. Bush requested three of the four U.S. Attorneys for New York to resign by the end of May, U.S. Attorney Lynch among them. Not included among those three was U.S. Attorney White, whose departure is expected once her Office concludes a terrorism trial and its investigation into the “midnight” pardons of former President William Clinton.

CJA expects – and hereby requests – that U.S. Attorneys White and Lynch ensure that CJA’s document-supported criminal complaints and subsequent correspondence based thereon be made available to the Office of Professional Responsibility in conjunction with its investigation of this professional misconduct complaint. Further, CJA expects -- and hereby requests – that, absent recusal of their Offices prior to their departure, U.S. Attorneys White and Lynch personally present these document-supported criminal complaints and correspondence to their successor U.S. Attorneys for the Southern and Eastern Districts of New York as “unfinished business”.

March 23, 2001

Yours for a quality judiciary
and government integrity,



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

- Enclosures:
- (1) CJA's informational brochure with public interest ad, "Restraining 'Liars in the Courtroom' and on the Public Payroll", New York Law Journal, 8/27/97, pp. 3-4, letter to the editor "An Appeal to Fairness: Revisit the Court of Appeals", New York Post, 12/28/98
 - (2) CJA's criminal complaints and correspondence to the U.S. Attorneys for the Southern and Eastern Districts of New York [See annexed inventory]

cc: Mary Jo White, U.S. Attorney for the Southern District of New York
[Certified Mail/RRR: 7000-1670-0007-0498-0805] with copies for:
(1) Andrew S. Dember, Chief of the Public Corruption Unit
(2) Alan R. Kaufman, Chief of the Criminal Division
(3) Shirah Neiman, Deputy U.S. Attorney

Loretta E. Lynch, U.S. Attorney for the Eastern District of New York
[Certified Mail/RRR: 7000-1670-0007-0498-0799] with copies for:
(1) Andrew Weissmann, Chief of the Criminal Division
(2) Timothy A. Macht, Assistant U.S. Attorney
(3) Alan Vinegrad, Chief Assistant U.S. Attorney

**INVENTORY OF TRANSMITTED DOCUMENTATION SUBSTANTIATING CJA'S
MARCH 23, 2001 LETTER TO THE OFFICE OF PROFESSIONAL RESPONSIBILITY**

**CJA's CRIMINAL COMPLAINT & CORRESPONDENCE WITH THE U.S.
ATTORNEY, SOUTHERN DISTRICT/ NEW YORK:**

1. CJA's October 21, 1999 criminal complaint and intervention request to Andrew S. Dember, Chief, Public Corruption Unit
2. Mr. Dember's December 30, 1999 letter to CJA
3. CJA's March 17, 2000 letter to Mr. Dember
4. CJA's April 24, 2000 letter to U.S. Attorney Mary Jo White
5. April 26, 2000 letter of Alan R. Kaufman, Chief, Criminal Division, to CJA
6. CJA's August 9, 2000 letter to U.S. Attorney White
7. August 15, 2000 letter of Shirah Neiman, Deputy U.S. Attorney, to CJA
8. CJA's September 6, 2000 letter to U.S. Attorney White

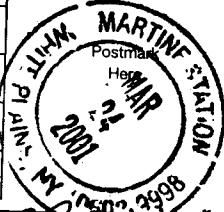
**CJA's CRIMINAL COMPLAINT & CORRESPONDENCE WITH THE U.S.
ATTORNEY, EASTERN DISTRICT/ NEW YORK:**

1. CJA's September 7, 1999 criminal complaint to Andrew Weissmann, then Deputy Chief, Criminal Division
2. CJA's March 17, 2000 letter/criminal complaint-supplement to Mr. Weissmann
3. CJA's April 24, 2000 letter to U.S. Attorney Loretta E. Lynch
4. June 20, 2000 letter of Timothy A. Macht, Assistant U.S. Attorney, to CJA
5. CJA's August 14, 2000 letter to U.S. Attorney Lynch
6. August 21, 2000 letter of Alan Vinegrad, Chief Assistant U.S. Attorney, to CJA
7. CJA's September 6, 2000 letter to U.S. Attorney Lynch

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