

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station  
White Plains, New York 10605-0069

Tel. (914) 421-1200  
Fax (914) 428-4994

E-Mail: [judgewatch@aol.com](mailto:judgewatch@aol.com)  
Web site: [judgewatch.org](http://judgewatch.org)

Elena Ruth Sassower, Coordinator

BY FAX: 212-643-7828 (3 pages)

March 7, 2002

Michael Aronson, Editorial Board  
New York Daily News  
450 West 33<sup>rd</sup> Street  
New York, New York 10001

RE: Setting a Time and Date Certain for CJA to make an *Evidence-Based* Presentation as to the Corruption of the NYS Commission on Judicial Conduct, etc.

Dear Mr. Aronson:

Today's full-page editorial, "*Get This Watchdog Some Teeth*", on the NYS Commission on Judicial Conduct – a continuation of the "*Judging the Judges*" series -- is WRONG in material respects.

Firstly, you state that the Commission "is barred by law from starting its own inquiries". What are you talking about? LOOK AT JUDICIARY LAW §44.2, which is clear as a bell. It states:

"The commission may, on its own motion, initiate an investigation of a judge with respect to his qualifications, conduct, fitness to perform or the performance of his official duties. Prior to initiating any such investigation, the commission shall file as part of its record a written complaint, signed by the administrator of the commission, which complaint shall serve as the basis for such investigation."

Secondly, you are wrong when you state "[t]he law mandates that nine members of the 11-member commission be lawyers". Again, what are you talking about? LOOK AT §22b(1) OF THE STATE CONSTITUTION AND JUDICIARY LAW §41.1. The Governor must include two non-lawyers among his four appointments, but the four legislative leaders, with four appointments to the Commission between them, are free to appoint whomever they wish so long as they are not "judges or retired judges". In other words, they could appoint four non-lawyers, giving the 11-member Commission A MAJORITY OF SIX NON-LAWYERS.

Thirdly, you wrongly imply that Governor Pataki, Chief Judge Kaye, and the State Senate want to shine sunlight on the Commission's closed-door proceedings in a way that carries through on the third "principle" in the first paragraph of your editorial, *to wit*, that "the public that pays judges' salaries should be informed when judges are *accused* of ineptitude or unethical conduct". In fact, neither they nor the State Assembly are inclined to loosen the confidentiality that pertains to the "*accus[ations]* of ineptitude or unethical conduct", set forth in judicial misconduct complaints which tax-paying citizens file with the Commission. They are only willing to open disciplinary proceedings at the point where the Commission brings a formal complaint against a judge. This is a stage reached by only 1% of the more than 1400 complaints filed with the Commission last year. Indeed, Senator Lack's bill, which you tout, is nothing more than a sop to give an appearance of "openness" to a public relying on an all-too-gullible press.

As highlighted by my public interest lawsuit against the Commission, the real cover-up and scandal at the Commission is its dismissal, without investigation, of as much as 88% of the judicial complaints it receives [A-39, ¶FIFTY-SEVENTH]. This includes the very complaints the law REQUIRES it to investigate – that law being Judiciary Law §44.1 [A-37-40: First and Second Claims for Relief].

As I have stated to you over and again – including in my letters to you going back to last November -- the problem at the Commission is NOT in its "teeth". The problem is that it is verifiably CORRUPT. This corruption extends to Chairman Henry T. Berger – as to whom your today's editorial states "there's no suggestion Berger has ever done anything improper." This, notwithstanding I alerted you to Mr. Berger's misconduct – first in my phone call to you on February 25<sup>th</sup>, the same day as your prior full-page editorial on the Commission, "*Lax Discipline Lacks Effectiveness*", and then in the letter I thereupon sent you. Indeed, I believe it fair to say that *your* phone call to me on February 26<sup>th</sup> was essentially occasioned by your interest in what information I could provide about Mr. Berger, whose "bio" you told me you were then looking at on the Commission's website, and about Commissioners' recusals from disciplinary matters, including Mr. Berger's.

Finally, as to the assertion in today's editorial, "[t]he solution to these problems lies with the Legislature", you omit to mention that the Legislature has failed to hold any oversight hearing of the Commission in nearly 15 years – a material fact I discussed with you in our February 26<sup>th</sup> conversation. Indeed, I discussed with you what Senator David Paterson told me when I met with him last October as I sought his help in securing a legislative oversight hearing of the Commission, *to wit*, that early in the 1990's he had spent several years trying to get the Legislature to hold an oversight hearing -- this, after the Commission had dismissed a judicial misconduct complaint he had filed – but had gotten nowhere.

In each of our last week's conversations, you told me that Daily News editors were out sick with the flu – essentially using this as the reason for not giving me a date and time certain for a meeting at which I could make a presentation as to the three categories of *readily-verifiable evidence* of the Commission's corruption, embodied in my public interest lawsuit against the Commission. As I trust the various Daily News editors have now recovered – at least to the extent of assenting to today's editorial – please advise as to such date and time. Needless to say, the serious errors of fact and law in today's editorial, as in past "*Judging the Judges*" editorials, could easily have been avoided had this long ago requested meeting taken place.

Yours for a quality judiciary,

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

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

*Michael Aronson - Editorial Board  
Daily News*

TRANSMISSION VERIFICATION REPORT

TIME : 03/07/2002 14:14  
NAME : CJA  
FAX : 9144284994  
TEL : 9144211200

DATE, TIME	03/07 14:12
FAX NO. /NAME	12126437828
DURATION	00:01:43
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM