

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

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May 30, 2001

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

- RE:
- (1) Reconsideration by the Standing Committee on Judicial Independence of CJA's request for *amicus* and other assistance in the appeal of the public interest Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* (NY Co. #108551/99), to be argued in the Appellate Division, First Dept. in the September 2001 Term
 - (2) Invitation to CJA to participate in the Justice Initiatives' program of the ABA's Justice Center, including at the ABA annual meeting in August and at the Justice Initiatives' annual meeting in October.

Dear Mr. Bierman:

This responds to your May 3rd letter (Exhibit "A") which, *without reasons or other elaboration*, states that the ABA Standing Committee on Judicial Independence has "decided not to provide *amicus* or other support" in the above-entitled public interest appeal against the New York State Commission on Judicial Conduct.

Surely, the Standing Committee recognizes that the New York State Commission on Judicial Conduct is the *primary* mechanism for safeguarding against violations of judicial independence by New York State judges. How, then, can the Committee not come forth with ANY support – and fail to even offer comment or advice – when the uncontroverted appellate papers before it show that the Commission: (1) is unlawfully dismissing *facially-meritorious* judicial misconduct complaints, *without* investigation, in violation of Judiciary Law §44.1; (2) has survived three separate legal challenges by subverting the judicial process with fraudulent defense tactics of its

attorney, the New York State Attorney General; and (3) has been rewarded by New York judges with fraudulent judicial decisions, without which it would not have survived any of these three legal challenges? Does the Standing Committee dispute that this is what the uncontroverted appellate papers show or the significance of this showing insofar as judicial independence and rules of professional responsibility relating to attorney and judicial conduct?

The Standing Committee's website identifies that the Committee has "a particular focus on state and local judiciaries" (Exhibit "B", p. 2). As such, the appeal is squarely within the Committee's purview. The fact that the Committee is also "addressing judicial selection issues and developing Standards on Judicial Selection" only further underscores the inappropriateness of its disposition. This, because the appeal not only highlights the threat to judicial independence faced by judges with expiring or already expired terms, who are dependent on political powers, be it for re-election or reappointment, but because the appeal exposes the corruption of the so-called "merit selection" process to New York's highest state court¹ – a process the ABA actively promotes (Exhibit "C", pp. 60, 61).

¹ You are particularly familiar with the "merit selection" process to New York's Court of Appeals, having written a PhD dissertation, "Institutional Identity and the Limits of Institutional Reform: The New York Court of Appeals in the Judicial Process" (1994), with two important chapters on the subject (pp. 68-190). In addition to detailing that the legal establishment's support of "merit selection" resulted from their loss of control over the electoral process, you repeatedly describe "merit selection", in operation, as producing judges not dissimilar from those of the old electoral process:

"The Commission on Judicial Nomination, handpicked by and reflective of the political, legal and judicial elite, nominates people with qualifications and credentials acceptable to that establishment. Among the nominees, however, is a particular candidate who is the favorite because of particular characteristics or credentials. The governor and Senate, also among this professional elite, accede by appointing and confirming. In this way, the selection of New York Court of Appeals judges seems to have remained among the state's leadership elite, where it had reposed under the elective process." (at p. 94)

Such critical analysis of the operation of "merit selection", including of the New York State Senate Judiciary Committee's rubber-stamp confirmation hearings, makes all the more inexplicable your failure to identify the outright corruption of the Senate Judiciary Committee's "advice and consent" function, as exposed by CJA's direct, first-hand, experience in testifying, twice before the Senate Judiciary Committee, in September and December 1993, in opposition to the confirmations of Howard Levine and Carmen Ciparick, respectively. As your dissertation describes each of those hearings (at pp. 119, 121), you were presumably there or read transcripts thereof – either of which should have motivated you, as a scholar, to contact CJA as to the serious issues of candidate integrity and qualifications which CJA's document-supported opposition testimony presented – description of which your dissertation omits, as likewise the fraud upon the Senate and the People of New York, perpetrated by the Senate Judiciary Committee in connection with Justice Levine's confirmation, expressly identified in CJA's testimony at Justice Ciparick's confirmation hearing. As previously discussed, these two written opposition statements are posted on CJA's website [www.judgewatch.org].

As the Standing Committee is purportedly “working with state and local bar associations to increase public awareness of the importance of an independent judiciary” – for which it is supported by the Open Society Institute (Exhibit “B”, p. 2)– the Committee should, at very least, have referred the appellate papers to New York bar associations, with a strong recommendation that they provide *amicus* and other support. Further, in light of the \$20,000 that the Open Society Institute gave the ABA for “distribution throughout the legal community” of its self-promoting 1997 report, “Promoting Professionalism” (Exhibit “D”, pp. 10, 14)² – the Standing Committee should have recognized its duty to take steps consistent with the report’s claim that “[t]he American Bar Association takes ethics seriously.” (Exhibit “C”, p. 9) This would have included providing copies of the appellate papers to the ABA’s Standing Committee on Ethics and Professional Responsibility (Exhibit “C”, at p. 9) and to its other committees and constituent entities of its ABA Center for Professional Responsibility having “leadership involvement” in “issues of professional ethics and integrity” (at p. 10). Among these, its Standing Committee on Professional Discipline which even has “a consultation program for state judicial disciplinary systems” (Exhibit “C”, pp. 18-19). Additionally, as ABA model codes of professional conduct, touted in “Promoting Professionalism” (Exhibit “C”, pp. 9, 11, 18), impose a mandatory duty to report to “appropriate authority” lawyers and judges whose violations of rules of professional responsibility “raise[] substantial question” as to their fitness³, the Standing Committee’s duty, consistent with those rules, was to report the evidence of the corruption of the New York State Commission on Judicial Conduct, the active complicity of New York’s Attorney General, and the cover-up of self-interested New York judges to “appropriate authorit[ies]” with disciplinary and criminal oversight.

Under such circumstances, and where, additionally, the Standing Committee’s disposition was without benefit of the Attorney General’s Respondent’s Brief and my critique thereof – although these materials and their significance were discussed with you and identified in CJA’s faxed April 25th letter⁴ – CJA requests reconsideration by the Standing Committee. In support thereof, enclosed are copies of the Respondent’s Brief and my critique, along with my May 3rd letter to the New York Attorney General concerning his obligations to withdraw the Respondent’s Brief,

² The Open Society Institute’s support of the distribution “in an effort to encourage bar associations and lawyers to take concrete steps to enhance professional values” is reported in its June 1998 newsletter (Exhibit “D”, p. 10) – the same newsletter as features, on its front cover, “Strengthening Judicial Independence and Access to the Court” as an important project of its Program on Law and Society (Exhibit “D”).

³ See, *inter alia*, Rule 8.3 of the ABA’s Model Rules of Professional Conduct, “Reporting Professional Misconduct”, as well as Rule 8.4 thereof, defining “Misconduct”; Canon 3D “Disciplinary Responsibilities” of the ABA’s Model Code of Judicial Conduct.

⁴ A hard copy of that fax and its enclosed April 18th letter to the New York State Attorney General are enclosed.

disavow his representation of the Commission, and support the appeal⁵ -- now scheduled for oral argument in September 2001⁶.

In connection with this reconsideration request, and because the Standing Committee's disposition raises serious questions as to whether it is yet another ABA facade 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, a copy of the materials that were before the Standing Committee when it rendered its disposition will be furnished to Dean Paul R. Verkuil. As identified by the Committee's letterhead (Exhibit "A"), Dean Verkuil chairs the Advisory Council. His review will be particularly fitting as the Standing Committee has no New York members and Dean Verkuil heads Cardozo Law School, located in New York.

On the unlikely possibility that Dean Verkuil has any doubt that the Standing Committee's disposition herein is 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" (Exhibit "C", pp. 9-10), he can turn to Cardozo Law School's Jacob Burns Ethics Center, whose presumed purpose is to advance the study and understanding of ethical and professional responsibility -- and which, along with New York's somnolent legal ethics community, has a special duty to uphold the rule of law in this transcendingly important public interest case which goes to the very heart of judicial independence, accountability, and ethical rules of professional responsibility. Inasmuch as I have already been in contact with the Ethics Center's Director, Ellen Yaroshefsky, a full copy of these appellate papers and correspondence will also be sent to her, with a request for assistance, including in building a coalition of support and involvement by members of New York's legal ethics community and, in particular by the professors of legal ethics and professional responsibility at New York law schools.

Finally, as the ABA's Standing Committee on Judicial Independence is a constituent part, along with the Office of Justice Initiative, of the ABA's Justice Center, of which you are the Director, this is to request that CJA be invited to participate in its various projects relating to promoting public trust and confidence in the legal system -- as to which its Justice Initiatives Program purports to involve "non-lawyers" and "the community". This would include an invitation to the Justice

⁵ Also enclosed is my May 3rd letter to Deputy Solicitor General Belohlavek.

⁶ Although New York's Appellate Division, First Department is a "court of record" (NYS Constitution, Article VI, §1b), it has no taping system, no audio camera, and not even a court stenographer. Consequently, for there to be a "record" of the September oral argument of my appeal, a special application will have to be made. By this letter, I request that the Standing Committee make such application on behalf of the public interest in the case -- or, at very least, that it support my application, to which I plan to append petition signatures, reflecting the public interest. A copy of the petition I am presently circulating is enclosed.

Center's programming at the ABA annual meeting in Chicago in August, as well as to the annual meeting of its Justice Initiatives in Washington, D.C. in October. As CJA will have to immediately book flight and hotel reservations for the ABA annual meeting in August, please promptly advise as to relevant programs being planned for that meeting.

Thank you.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosures

cc: Dean Paul R. Verkuil, Chair
ABA Advisory Council
Ellen C. Yaroshefsky, Director
Cardozo Law School's Jacob Burns Ethics Center

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