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Elena Ruth Sassower, Coordinator

BY FAX: 518-463-3712 (11 pages)

February 25, 2002

Erin Sullivan, Metroland

RE: Your Investigative Expose of the *Readily-Verifiable Evidence* of the
Corruption of the NYS Commission on Judicial Conduct;

- (a) Specific Questions for those in leadership;
- (b) Contact Information for those in leadership;
- (c) Today's full-page "Judging the Judges" Daily News editorial "*Lax Discipline Lacks Effectiveness*".

Dear Erin:

Thank you for the time you gave me on Friday to outline the *readily-verifiable* evidence of the corruption of the NYS Commission on Judicial Conduct – culminating in my public interest lawsuit against it.

As discussed, this lawsuit encompasses two other lawsuits against the Commission and CJA long ago provided copies of pertinent litigation papers to governmental leaders, bar associations, law professors, public interest organizations, and others *from whom leadership is expected*. This, so that they could meet their leadership responsibilities and take appropriate steps to protect the public.

There is NO reason why these public officers, associations, organizations, professors, etc. should not be able to provide you with meaningful comment as to the significance of my public interest lawsuit and the evidence it presents of the Commission's corruption. To keep them from dodging the issues and to minimize "spin", your questions to them should be specific and should include a request for comment as to:

(1) the merit of my Verified Petition's six Claims for Relief [A-37-45]:

As to the First Claim for Relief [A-37-38]: whether, as particularized, 22 NYCRR §7000.3 is facially inconsistent and irreconcilable with Judiciary Law §44.1 in converting the Commission's mandatory investigative duty to investigate *facially-meritorious* complaints into a discretionary option, unbounded by *any* standard;

As to the Second Claim for Relief [A-38-40]: whether my October 6, 1998 judicial misconduct complaint (alleging that then Appellate Division, Second Department Justice Albert Rosenblatt perjured himself in response to two questions on his *publicly-inaccessible* application for the Commission on Judicial Nomination) [A-57-58] is *facially*-meritorious – therefore requiring the Commission to investigate it, pursuant to Judiciary Law §44.1;

As to the Third Claim for Relief [A-40-42]: whether, as particularized, the Commission has wrongfully extended the confidentiality of Judiciary Law §45 to deprive complainants of basic information establishing the lawfulness and propriety of its dismissals of their complainants and as to the existence of procedures for review of such dismissals;

As to the Fourth Claim for Relief [A-42-44]: whether, as particularized, the Commission's disposition of judicial misconduct complaints by three-member panels, pursuant to Judiciary Law §§43.1 and 41.6 and 22 NYCRR §7000.11, is unconstitutional and/or unlawful;

As to the Fifth Claim for Relief [A-44-45]: whether the ten-year chairmanship of Henry T. Berger throughout the 1990's flouted the express limitation of Judiciary Law §41.2 restricting the chairmanship to a member's "term in office or for a period of two years, whichever is shorter";

As to the Sixth Claim for Relief [A-45]: whether Article VI, §22a of the New York State Constitution and Judiciary Law §44.1 impose upon the Commission a mandatory duty to receive and determine complaints – which the Commission violated in failing and refusing to receive and determine my February 3, 1999 judicial misconduct complaint against then Appellate Division, Second Department Justice Daniel W. Joy, then the Commission's highest-ranking judicial member [A-97-101].

- (2) **the accuracy of my 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-52-54] and of my 13-page analysis of Justice Lehner's decision in *Michael Mantell v. Commission* [A-321-334] – whose ACCURACY HAS NEVER BEEN DENIED OR DISPUTED BY ANYONE.**

In one fell swoop, verifying the accuracy of these two undisputed analyses [A-52-54; A-189-194] will establish that the Commission has been the beneficiary of FIVE fraudulent judicial decisions without which it would not have survived three separate lawsuits. These FIVE decisions are:

- (a) Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-189-194];
 - (b) Justice Lehner's decision in *Mantell v. Commission* [A-299-307];
 - (c) Justice Wetzel's decision in my lawsuit [A-9-14], where dismissal of my Verified Petition rests exclusively on the decisions of Justices Cahn and Lehner [A-12-13], with NO findings by Justice Wetzel as to the accuracy of my undisputed analyses of these two decisions in the record before him;
 - (d) the Appellate Division's affirmance in *Mantell*¹ – with NO findings by the Appellate Division as to the accuracy of my undisputed analysis of Justice Lehner's decision in the record before it;
 - (e) the Appellate Division's affirmance in my lawsuit² – with NO findings by the Appellate Division as to the accuracy of my undisputed analyses of the decisions of Justices Cahn and Lehner.
- (3) The Appellate Division's addition of "lack of standing" in its appellate decisions in *Mantell* and in my lawsuit to unlawfully insulate the Commission from future legal challenge.**

In *Mantell*, the Appellate Division's addition of "lack of standing" – a ground for dismissal NOT part of Justice Lehner's decision – was by a single ambiguous sentence, *unsupported by any facts or legal citation*. The fraudulence of this sentence is highlighted by pages 40-44 of my Critique of Respondent's Brief.

In my lawsuit, the Appellate Division added a single-sentence pertaining to my supposed "lack of standing to sue the Commission"

¹ The *Mantell* appellate decision, as printed in the New York Law Journal, is Exhibit "E-4" to my January 17, 2002 reargument motion.

² The appellate decision in my lawsuit, as printed in the New York Law Journal, is Exhibit "A-1" to my January 17, 2002 reargument motion.

is *unsupported* by citation to ANY facts in the record; does not directly cite ANY legal authority and discusses none; and does NOT address even identify ANY of my appellate arguments in support of my "standing to sue the Commission", set forth at pages 40-47 of my Critique of Respondent's Brief. The fraudulence of this sentence is highlighted in my January 17, 2002 reargument motion: Exhibit "B-2", pp. 15-16.

- (4) **The Attorney General's litigation misconduct and unlawful representation of the Commission, documented by my motions for sanctions against him and the Commission, as to which neither Justice Wetzel nor the appellate decision make ANY findings.**

* * *

CONTACT INFORMATION:

PUBLIC OFFICERS:

Governor George Pataki: who is the subject of fact-specific ethics and criminal complaints which CJA long ago filed with the NYS Ethics Commission³ and the US Attorney for the Eastern District of NY, based on his nonfeasance in the face of the Commission's corruption -- and which have never been dismissed -- has a copy of the lower court files in all three lawsuits against the Commission, and, as to my appeal, has had access to the copy of my Appellant's Brief, Appendix, Respondent's Brief, and my Critique of Respondent's Brief in the possession of the Senate Judiciary Committee. The Governor's telephone number, c/o his counsel, James McGuire, who is fully-familiar with this matter, is 518-474-8343 [Fax #: 518-486-9652].

Attorney General Eliot Spitzer: who is the subject of ethics and criminal complaints, which CJA long ago filed with the NYS Ethics Commission and the US Attorney for the Eastern District of NY -- based on his active complicity in the Commission's corruption -- and which have never been dismissed -- has complete files of ALL three lawsuits against the Commission. This includes duplicate copies of my sanctions motions against him personally based on his knowledge and complicity in his office's fraudulent defense tactics, which I provided for him. On three separate occasions I spoke with Attorney General, face-to-face on the subject of this misconduct. On January 27, 1999 at the City Bar, where our public exchange

is recorded by a transcript⁴; on April 18, 2001, at the Fair Trial-Free Press Conference at Columbia School of Journalism, where our public exchange is recorded by an audiotape; and on January 14, 2002 at the City Bar, where I gave Attorney General Spitzer, in-hand, my January 7, 2002 memorandum-notice, setting forth a line-by-line analysis of the fraudulent Appellate Division decision in my lawsuit. This analysis is Exhibit "B-1" to my January 17, 2002 reargument motion. My January 14, 2002 coverletter to the Attorney General is Exhibit "B-1" to my February 20, 2002 reply affidavit in support of my reargument motion.

Attorney General Spitzer's telephone number, c/o his counsel, David Nocenti, who is fully-familiar with this matter, is 212-416-8095 [Fax #: 212-416-8139]⁵.

Chief Judge Judith Kaye: has copies of the lower court files in the three lawsuits against the Commission. CJA transmitted these to her under a March 3, 2000 coverletter, calling upon her to appoint a Special Inspector General to investigate the Commission's corruption, including its corruption of the judicial process in these three lawsuits. For nearly the entire time, these files have been in the physical possession of Sherrill Spatz, Special Inspector General for Fiduciary Appointments. Chief Judge Kaye's telephone number is 212-661-6787. Inspector General Spatz' telephone number is 212-428-2110 [Fax #: 212-428-2119].

Senate Judiciary Committee⁶: has a copy of my Appellant's Brief, Appendix, Respondent's Brief, and my Critique of Respondent's Brief – which CJA transmitted to it under its June 17, 2001 letter to the Committee and requested that it obtain from the Governor's office the underlying file of my lawsuit. The Committee's telephone number is 518-455-2071. Its fax number is 518-426-6904.

⁴ See CJA's March 26, 1999 ethics complaint: Exhibit "C", pp. 13-14.

⁵ Peter Pope, Chief of the Attorney General's Criminal Division – and until relatively recently head of the Attorney General's bogus Public Integrity Unit –also has full familiarity [Tel. #: 212-416-8058 / Fax #: 212-416-8026]. Attorney General Spitzer's Public Integrity Unit is now headed by Mark Peters [Tel. #: 212-416-8242 / Fax #: 212-416-8026].

⁶ The Assembly Judiciary Committee has voluminous correspondence from CJA relative to the first lawsuit against the Commission, *Doris L. Sassower v. Commission*. Indeed, the Committee not only has a copy of the lower court file therein, but my 3-page analysis of Justice Cahn's fraudulent decision [A-52-54] is the first three pages of CJA's December 15, 1995 letter to it. The Assembly Judiciary Committee's telephone number is 518-455-4313. Its fax number is 518-455-4682.

Senator David Patterson & Assemblyman Keith Wright: have a copy of the bulk of the appellate papers in my appeal against the Commission. These were hand-delivered on October 17, 2001, in conjunction with CJA's meeting with Senator Paterson and a representative from Assemblyman Wright's office, requesting their assistance in securing a legislative oversight hearing of the Commission. This was recapitulated in CJA's October 26, 2001 letters to them. Senator Paterson's telephone numbers are 212-222-7315 and 518-455-2441 [Fax #: 212-678-0001; 518-426-6843]; Assemblyman Wright's phone numbers are: 212-866-5809 and 518-455-4793 [Fax #: 212-864-1368; 518-455-3890].

The Proposed Intervenors in my lawsuit against the Commission [A-16-17]: All have copies of the underlying lower court files of all three lawsuits against the Commission, which I provided them, together with massive correspondence calling for their participation, as well as their investigation of filed criminal and ethics complaints. Apart from the State Attorney General, these proposed intervenors are:

Manhattan District Attorney:

Leroy Frazer, Chief of the Special Prosecutions Bureau

Tel #: 212-335-8927 / Fax #: 212-335-8914

Dan Castleman, Chief of the Investigative Division

Tel #: 212-335-9817 / Fax #: 212-335-8999

U.S. Attorney for the Southern District of New York⁷:

Chief/Criminal Division (formerly Alan Kaufman)

Tel. #: 718-422-5426; Fax #: 718-422-1702

New York State Ethics Commission:

Paul Shechtman, Chairman

Tel. #: 212-223-0200 / Fax #: 212-223-1942

⁷ The U.S. Attorney for the Eastern District of New York can, likewise, comment on the factual and legal accuracy of my two *uncontroverted* analyses of the decisions of Justices Cahn and Lehner – as a copy of the lower court files was long ago provided to its Criminal Division [Tel. #: 718-254-6359; Fax #: 718-254-6324] (to Andrew Weissmann, its then Deputy Chief). This, in substantiation of CJA's criminal complaint against the Governor and against Mr. Shechtman, who also chairs the Governor's State Judicial Screening Committee. To date, more than two years after this criminal complaint was filed, it remains pending.

BAR ASSOCIATIONS:

New York State Bar Association has a full copy of the file of my appeal.

Contact: Rene Hollyer, Chairman, State Bar's Special Committee on
Procedures for Judicial Discipline:

Tel. #: 212-818-1110 / Fax #: 212-818-0494.

Also, Steven C. Krane, the State Bar President (with whom I
have had extensive correspondence): Tel. #: 212-969-3435 /
Fax #: 212-969-2900

The Association of the Bar of the City of New York has copies of the full
underlying file of all three lawsuits against the Commission and most of the
file on my appeal.

Contact: Alan Rothstein, General Counsel

Tel. #: 212-382-6623 / Fax #: 212-398-6634

Also, City Bar President Evan Davis (with whom I have had
extensive correspondence) Tel: 212-2000 / Fax # 212-225-3999

American Bar Association has a copy of the bulk of the file of my appeal.

Contact: Luke Bierman, Director, Justice Center

Tel. #: 312-988-5102 / Fax #: 312-988-5709

New York Fellows of the American Bar Foundation had (but supposedly
discarded) my Appellant's Brief, Appendix, Respondent's Brief, and Critique
of Respondent's Brief

Contact: James Silkenat, Chair

Tel: 212-858-1322 / Fax: 212-858-1500

**PUBLIC INTEREST ORGANIZATIONS SPECIALLY FOCUSED ON
JUDICIAL ISSUES:**

Fund for Modern Courts: has a copy of my Appellant's Brief, Appendix,
Respondent's Brief, and my Critique of Respondent's Brief, as well as the
lower court record in *Doris L. Sassower v. Commission*

Contact: Steven M. Zeidman, Executive Director

Tel #: 212-541-6741 x 103/ Fax #: 212-541-7301

American Judicature Society: has a copy of my Appellant's Brief,
Appendix, Respondent's Brief, and my Critique of Respondent's Brief

Contact: Allan D. Sobel, Executive Vice President/Director

Tel. #: 312-357-8810 / Fax #: 312-558-9175

Brennan Center for Justice: has a copy of my Appellant's Brief, Appendix, Respondent's Brief, and my Critique of Respondent's Brief.

Contact: Burt Neuborne, Legal Director
Tel: 212-998-6172 / Fax: 212-995-4550

The Constitution Project: has a copy of my Appellant's Brief, Appendix, Respondent's Brief, and my Critique of Respondent's Brief

Barbara Reed, Counsel/Policy Director
[Tel. #: 202-299-9540 / Fax #: 201-299-9750]

GENERAL PUBLIC INTEREST ORGANIZATIONS:

New York Civil Liberties Union: has a copy of my Appellant's Brief, Appendix, Respondent's Brief, my Critique of Respondent's Brief, as well as my January 17, 2002 reargument motion.

Contact: Arthur Eisenberg, Legal Director
Tel: 212-344-3005 / Fax: 212-344-3318

Center for Constitutional Rights: had (but returned, without comment) my Appellant's Brief, Appendix, Respondent's Brief, my Critique of Respondent's Brief, as well as a copy of the lower court file in *Doris L. Sassower v. Commission* and of the lower court file and appellate file in *Mantell v. Commission*

Contact: William Goodman, Legal Director
Tel: 212-614-6427 / Fax: 212-614-6499

ACADEMIC INSTITUTIONS:

Government Law Center of Albany Law School: had (but returned, without comment) a copy of the lower court file in my lawsuit against the Commission

Contact: Patricia Salkin, Associate Dean and Director
Tel: 518-445-2329 / Fax: 518-455-2303

Cardozo Law School: Jacob Burns Ethics Center: has my Appellant's Brief, Appendix, Respondent's Brief, and my Critique of Respondent's Brief

Contact: Ellen C. Yaroshefsky, Director
Tel: 212-790-0386 / Fax: 212-790-0256

Fordham Law School: Stein Ethics Center: had (but returned, without comment) my Appellant's Brief, Appendix, Respondent's Brief, and my Critique of Respondent's Brief

Contact: Bruce Green, Director

Tel. #: 212-636-6851 / Fax #: 212-636-6899

PROFESSORS:

Professor Vincent Martin Bonventre, Albany Law School: has virtually all the appellate file in my lawsuit against the Commission, including my January 17, 2002 reargument motion and February 20, 2002 motion for leave to appeal to the Court of Appeals

Tel. #: 518-472-5856 / Fax #: 518-472-5878

Professor David Siegel, Albany Law School: IS AN EXPERT ON THE LAW AS TO "STANDING", as well as litigation standards and practice: Professor Siegel has my Appellant's Brief, Appendix, Respondent's Brief, and my Critique of Respondent's Brief

Tel. #: 518-445-2318 / Fax #: 518-472-5865

Professor Alan Dershowitz, Harvard Law School: has my Appellant's Brief, Appendix, Respondent's Brief, my Critique of Respondent's Brief, as well as my January 17, 2002 reargument motion

Tel. #: 617-495-4617 / Fax #: 617-495-7855

OTHERS:

Ronald Kuby, Esq.: had (but returned, without comment) my Appellant's Brief, Appendix, Respondent's Brief and my Critique of Respondent's Brief

Tel #: 212-529-0223 / Fax #: 212-529-0644

Former Bronx Surrogate Bertram R. Gelfand: has (and refused to return) a copy of the underlying lower court file in my lawsuit against the Commission

Tel. #: 914-948-3900 / Fax #: 914-948-7538

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February 25, 2002

Finally, enclosed is today's full-page Daily News' "Judging the Judges" editorial, "*Lax Discipline Lacks Effectiveness*". Such editorial, powerful as it is, is a continuation of the indefensible cover-up of the Commission's *readily-verifiable* CORRUPTION by mainstream newspapers – as may be seen from the copies of my correspondence with Daily News editor, Michael Aronson, that I provided you.

Yours for a quality judiciary,



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

Enclosures

DAILY NEWS

450 W. 33rd St., New York, N.Y. 10001

MORTIMER B. ZUCKERMAN, *Chairman & Co-Publisher*FRED DRASNER, *Chief Executive Officer & Co-Publisher*LES GOODSTEIN, *President & Chief Operating Officer*EDWARD KOSNER, *Editor in Chief*MICHAEL GOODWIN, *Executive Editor*ROBERT SAPIO, *Senior Managing Editor*BILL BOYLE, JANE FREIMAN, MICHAEL KRAMER, LOU PARAJOS, *Managing Editors*RICHARD SCHWARTZ, *Editorial Page Editor* THOMAS P. RUIS, *Design Director*

Lax discipline lacks effectiveness

For six months, this page has been evaluating New York judges. But there exists a state agency whose job is to do the same thing — to investigate unethical behavior and incompetence on the bench. The Commission on Judicial Conduct is the ultimate check — indeed, the only check — on abuses by the judiciary. Unfortunately, it has had limited success in fulfilling its crucial mandate.

Created in 1974 as part of a national court-reform movement, the panel has oversight and disciplinary authority over all 1,300 judges in the state. Yet in its quarter-century history, it has all too frequently

given mere written rebukes to bad judges — no lost pay, no demotions, no penalties whatsoever. And rarely has it exercised the ultimate sanction: stripping the worst of them of their black robes.

How toothless is the watchdog? While some lower-level upstate judges have been fired, just once in 26 years has the commission removed an elected Supreme Court justice in the city. Just once. Only a fool could believe that, among the hundreds who have served, only one deserved removal.

Not all its failings are the panel's own fault. It operates with meager resources. Its disciplinary process is closed by law to the public. When its staff brings charges against jurists, it's done in secret. And it has only three punitive options: admonition, censure or removal. However, the very composition of the commission creates a conflict.

Since its inception, Administrator Gerald Stern has done yeoman's service running the panel. His commitment is unquestioned. But he faces daunting obstacles. His role is that of prosecutor, presenting cases against unfit jurists to the 11 commissioners, who act as judge and jury. And therein lies the problem. Since 1976, panel members have largely been lawyers who do very well by working within, not against, the system. It is not in their interest to shake things up, although that's precisely what the system needs.

Case in point: Henry Berger, the commission's chairman for 13 of the last 14 years, is also a top election lawyer. Among his many clients from the world of New York politics is the Committee for a Golden Future — the fund-raising arm of ex-Brooklyn Democratic boss and Borough President Howard Golden — which contributes to the electoral campaigns of judges. And most of Brooklyn's judges are picked by the machine that Golden ran for years.

There is no suggestion of improper behavior on Berger's part. But there is an appearance of a conflict of interest when a lawyer who earns fees from clients like Golden wears his public-policy hat to stand in judgment of judges anointed and/or funded by Golden.

In the six years Berger has worked for Golden's committee, it has contributed or loaned more than \$150,000 to the campaigns of at least seven judges or judicial candidates. It also made an interest-free, \$75,000 loan to the campaign war chest of state Senate Minority Leader Martin Connor of Brooklyn. And Connor, himself a top election lawyer for Brooklyn pols, is the one who appointed Berger to the Commission on Judicial Conduct. That commission is intended to be a sacred trust. The mere perception that it may be tainted by politics rightly troubles many in the legal community.

Also problematic: When the panel does punish judges, it does so halfheartedly. Take the case of Richard Huttner, an elected Brooklyn Supreme Court justice rebuked last month for using his position to influence a lawsuit involving his own co-op board. Although he should have been fired for a breach of ethics, he didn't even lose a day's pay. This pro forma wrist-slap was hardly adequate. Soon after, the state Office of Court Administration stepped in, but it had the authority only to transfer the judge. Huttner was sent to Queens. His commute is a little longer, but he's still commuting to a courtroom.

Ann Pfau, Brooklyn's new chief judge, deserves credit for shipping Huttner out. She also is shifting from Civil to Criminal Court Justice Edward Rappaport, who is being probed for failing to report a bribe solicited by another judge, Victor Barron. There are plenty of other benchwarmers Pfau can focus on. The Daily News analysis found 29 elected Brooklyn justices ranging from marginal to unfit.

The court system comprises one-third of the government. Yet it remains largely unaccountable. Accountability is supposed to be in the hands of the Commission on Judicial Conduct, but its grasp on accountability is very weak. True reform of a court system in crisis will not come until the commission is free of conflicts and is willing to administer tough justice to those who besmirch the judiciary.

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