

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
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Elena Ruth Sassower, Coordinator

BY FAX: 518-463-3712 (12 pages)

March 11, 2002

Erin Sullivan, Metroland

RE: "Who's to Judge?" CONTINUED: Verifying the File
Evidence of the Corruption of the NYS Commission on
Judicial Conduct – and its Electoral Ramifications on the
Governor and Attorney General

Dear Erin:

Following up Mr. Stern's quoted remarks in "*Who's to Judge?*", enclosed is my March 6th letter to him, requesting, *inter alia*, that he identify who among the Commissioners will comment on my lawsuit against the Commission. Also enclosed is my March 8th letter to Mr. Stern, inviting his comment and that of the Commissioner to my now published Letter to the Editor.

As identified by my published Letter,

"Sullivan must continue to search among 'leaders', in government and out, for comment on the important evidentiary issues my lawsuit presents. Their refusal to comment is itself a mighty story."

Of course, you don't need "leaders" to tell you what you have already seen with your own eyes and understood with your own brain from the file evidence I discussed with you and left in your possession. Notwithstanding the editorial deletion from my proposed Letter of the sentence, "It took Sullivan, a non-lawyer, no more than a few minutes to recognize [the incompatibility of 22 NYCRR §7000.3 and Judiciary Law §44.1] for herself – and she told me it was 'simple' and 'easy'", you know the truth of this statement – and that I responded by telling you "that no one in a position of leadership, in government and out, was willing to say what she had so readily said." Likewise, you also know that you had no difficulty in recognizing that my judicial misconduct complaint against Rosenblatt, based upon his believed perjury on his publicly-inaccessible application for the Court of Appeals, is *facially-meritorious*. I believe the tape of our three-hour session would reflect as much.

As Managing Editor of a publication priding itself on "in-depth reporting", you know, without my telling you, that there was NO depth to your reporting of my important

March 11, 2002

lawsuit against the Commission -- and that you owe Metroland readers at least one follow-up story about what is only roughly sketched by my published Letter. This is especially so because the criminal ramifications of the lawsuit directly impact upon Governor Pataki and Attorney General Spitzer, each up for re-election -- a fact we discussed during our three-hour session.

It was my view, explicitly and repeatedly stated, that the story was too large and explosive to fit within a single article. Just as the Albany Times Union ran a five-part editorial series on the Commission and the Daily News has an on-going "*Judging the Judges*" editorial series, my hope was that Metroland would run a series of articles in the weeks leading up to "Law Day", May 1st -- when, additionally, the lawsuit would be before the Court of Appeals.

On Monday, March 4th, when you returned my call from the previous Friday, I believe you acknowledged that in writing "*Who's to Judge?*" it had become clear to you that you could not do it all in a single article. For this reason -- and because of my hope that you were sincerely intending to do a follow-up -- I did not request your immediate return of the evidentiary materials I had provided you -- which, as I had told you at the close of our three-hour session, I would otherwise want to pass on to other journalists

As discussed, apart from everything else, this explosive story offers a goldmine opportunity for you to demonstrate the invaluable role of alternative newspapers, like Metroland, in fearlessly exploring what mainstream media, including the Albany Times Union and Daily News¹, have wilfully covered up -- the enron-style breakdown of *all* safeguards to insure the integrity of the mechanisms for judicial discipline -- as well as for judicial selection. What more could an alternative newspaper ask for?

You can expect my complete cooperation and a treasure trove of documentary proof for such stories. If you cannot get comment from those in "leadership", whose names and numbers my February 25th letter to you itemized -- including the New York State Bar Association's 24-member Special Committee on Procedures for Judicial Discipline (whose very existence "*Who's to Judge?*" never reveals)², you

¹ Enclosed is my March 7, 2002 letter to the Daily News, prompted by its second full-page editorial on the Commission within two weeks, "*Get this Watchdog Some Teeth*" (3/7/02), whose serious and substantial errors could have been easily avoided had its editors sat down with me at a meeting, as had been indicated they would after the Daily News first full-page editorial on the Commission, "*Lax Discipline Lacks Effectiveness*" (2/25/02).

² Enclosed is my March 6, 2002 coverletter to the Committee's Chairman, asking whether it was "[his] view and that of [his] 23 other Committee members that [my lawsuit against the Commission] is not an important case and has no 'statewide significance'".

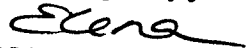
March 11, 2002

should endorse my invitation to lawyers among Metroland readers to come forward and assist in reviewing the evidentiary proof of the Commission's corruption, established by the file of my lawsuit. The results of their volunteer review could be released by Metroland in conjunction with "Law Day" – and would "rock" the state. For starters, the Legislative would be forced to hold a long-overdue "oversight" hearing of the Commission, which, assuredly, it will *not* otherwise do. It would also torpedo the re-election prospects of Attorney General Spitzer, for sure, and Governor Pataki, almost as surely, each of whom would ultimately face criminal prosecution for official misconduct and their corrupt and collusive acts.

I would be pleased to help in putting together a "verification session" for the lawyer-volunteers of Metroland. Among other things, we want to clock the speed with which they are able to verify that 22 NYCRR §7000.3 and Judiciary Law §44.1 are incompatible and the *facial merit* of my judicial misconduct complaint against Rosenblatt. There is no reason to believe that these lawyer-volunteers would not find it just as "simple" and "easy", as you did. As to the specific questions posed by my February 25th letter – to which no one in leadership would give you comment and as to which you told me two people hung up on you (which deserves to be included in a story), I don't think it would take more than a couple of hours to whip through them. Of course, we would welcome, and be grateful to, any lawyer-volunteer who chose to do a more thorough review of the file evidence, at his own pace.

As discussed, once I complete my motion papers for the Court of Appeals (to which I will be devoting myself over the next 6-8 weeks), I will turn my efforts to locating journalists who will examine the official misconduct of Governor Pataki and Attorney General Spitzer, documented by the file of my lawsuit, so that it may properly be placed before the voters during this important election year. I would be pleased if you would take advantage of this lead time and my offer of continued assistance so that Metroland could "lead the pack" on this powerful, electorally-explosive story.

Yours for a quality judiciary,



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

Enclosures

cc: Stephen Leon, Editor & Publisher/Metroland

[please share this fax with him]

P.S. As I have only internet copies of your "*Who's to Judge?*" article and the "*Sitting in Judgment*" Letters to the Editor, I would appreciate if you would send me "hard copies" from the printed Metroland issue. [2 of each: one for scrapbook purposes plus one for making reprints. Please include cover and table of contents] Thanks.

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BY CERTIFIED MAIL/RRR: 7001-0360-0002-6819-6337

March 8, 2002

New York State Commission on Judicial Conduct
801 Second Avenue
New York, New York 10017

ATT: Gerald Stern, Administrator and Counsel

RE: Press Comment: Superseding March 6th letter

Dear Mr. Stern:

Enclosed is a superseding version of my hand-delivered March 6th letter to you, which had misdated the issue of Metroland in which "*Who's to Judge?*" appeared and inadvertently dropped a sentence. This superseding letter also makes structural corrections for clarity, but no substantive changes.

Additionally, enclosed is my published Letter to the Editor in Metroland's current March 7th issue, responding to "*Who's to Judge?*". I invite your comment – and that of the Commissioners – for the benefit of Metroland readers.

Yours for a quality judiciary,



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

cc: Erin Sullivan, Metroland

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Elena Ruth Sassower, Coordinator

BY HAND

March 6, 2002

New York State Commission on Judicial Conduct
801 Second Avenue
New York, New York 10017

ATT: Gerald Stern, Administrator and Counsel

RE: Press Comment

Dear Mr. Stern:

In an article by Erin Sullivan entitled, "*Who's to Judge?*", in the February 28th issue of Metroland, you are quoted as saying about me and my lawsuit against the Commission:

"I know of Ms. Sassower extremely well," Stern says. "I'm not going to have any comment. I'm not sure which of her many, many lawsuits she's called to your attention. She has been barred from bringing complaints, from suing judges in the court system, and she's got a number of cases or appeals or whatever. But I think you can call any other state agency and they'll be familiar with her, too. I'm not going to make any comment."

Please advise whether this is what you stated to Ms. Sullivan – or at least what you stated in sum and substance. If it is, please identify why you refuse to "comment" about the lawsuit. You are certainly well able to "comment" since, as you know, I have consistently provided you with duplicates of my litigation papers. This, so that the Commissioners are fully aware of what is transpiring and will meet their ethical and professional responsibility to take corrective steps to restrain the Attorney General's violative defense conduct on their behalf. Moreover, if you are refusing to "comment" about the lawsuit, please identify who among the Commissioners may be contacted for "comment" – including as to such specifics as:

- (1) the merit of each of my six Claims for Relief [A-37-45];
- (2) the accuracy of my analyses of the FIVE fraudulent judicial decisions of which the Commission has been the beneficiary in three separate lawsuits, particularly my 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* [A-52-54; A-189-194]] and my 12-page analysis of Justice Lehner's decision in *Mantell v. Commission* [A-321-334; A-299-307],
- (3) the Appellate Division, First Department's one-sentence add-on in its affirmance decisions in my lawsuit and in Mr. Mantell's lawsuit that a complainant whose judicial misconduct complaint the Commission has dismissed lacks "standing" to sue the Commission – an add-on unsupported by *any* factual specificity or discussion of legal authority; and
- (4) the Attorney General's litigation misconduct, documented, *line-by-line*, in my sanctions motions – as to which neither Justice Wetzel nor the Appellate Division, First Department has made *any* findings.

Additionally, please identify what you are talking about when you refer to my "many, many lawsuits" and my "number of cases or appeals or whatever" and specify what you mean by stating that I have been "barred from bringing complaints, from suing judges in the court system".

If you are going to try to deflect reporters from their questions as to my meritorious lawsuit against the Commission by making *ad hominem* remarks about me, please be accurate. I have a single lawsuit, which is my first and only lawsuit against the Commission, now *en route* to the Court of Appeals. Further, the only "bar" of which I am aware is Justice Wetzel's due process-less filing injunction against me and the non-party Center for Judicial Accountability, affirmed by the Appellate Division, First Department. Such injunction is limited to "instituting any further actions or proceedings relating to the issues" in my lawsuit against the Commission [A-13].

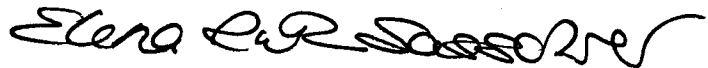
Gerald Stern, Administrator & Counsel

Page Three

March 6, 2002

As with all my communications, please bring this letter to the attention of each and every Commissioner.

Yours for a quality judiciary,

A handwritten signature in black ink, appearing to read 'Elena Ruth Sassower', with a stylized flourish at the end.

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

cc: Erin Sullivan, Metroland

DAILY NEWS

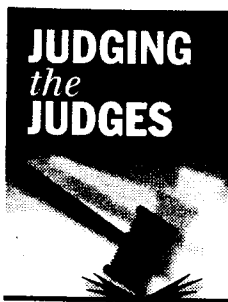
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Get this watchdog some teeth

Consider three principles: 1) Lawyers who argue cases before judges should not be charged with disciplining them. 2) The panel that monitors judges must be able to initiate investigations of judges. 3) The public that pays judges' salaries should be informed when judges are accused of ineptitude or unethical conduct.

Sounds perfectly reasonable, right? Unfortunately, it's not the way things work in New York. The state Commission on Judicial Conduct, the ultimate and only check on judicial abuses, has a bite even feebler than its bark.



Vested with disciplinary authority over all 1,300 full-time judges in the Empire State, the panel was created in 1974 as part of a nationwide court-reform movement. But it has been inadequate. With scandal rocking Brooklyn's elected bench — one judge charged with bribe-taking, two rebuked for ethics lapses, eight being investigated — that inadequacy can no longer be overlooked.

Having no advocates in Albany, the panel operates with scant resources: a \$2.1 million budget and 27 staffers (down from 63 in the 1970s) including just nine lawyers and six investiga-

tors. Worse, the commission is barred by law from starting its own inquiries. Probers may not, for example, observe a judge firsthand, no matter how inappropriate his behavior on the bench is reputed to be. They may respond only when a formal complaint is made. That's like ordering a cop not to react to a mugging until the victim files a report.

Adding to the absurdity is the narrow range of punishments the commission can mete out: public admonition, private admonition, censure or removal. The first three are meaningless written rebukes carrying no penalties whatsoever. As for the ultimate sanction — termination — only once has the panel booted out an elected Supreme Court justice in the city.

The solution to these problems lies with the Legislature. It should remove the restrictive rules limiting investigations. It also should widen the range of punishments to include fines, suspension or demotion. This would need a constitutional amendment, which is tough to achieve but necessary for true court reform.

Additionally, Albany must pass a bill sponsored by state Sen. James Lack to lift the shroud of secrecy from the disciplinary process. Currently, and disgracefully, when charges are argued and adjudicated, the process is closed by law to the public.

Gov. Pataki, Chief Judge Judith Kaye and the commission all want open hearings. Lack's bill passed the Senate but has long been stalled in the Assembly. Why is the Assembly afraid of sunlight?

When hearings are held behind closed doors and the public is kept in the dark, the commission's credibility is further undermined.

Ultimately, that erodes public confidence in the courts. Open hearings are the law in 35 states. Why not New York?

The panel also must be cleansed of any appearance of a conflict of interest. Take the case of Henry Berger, the panel chairman for 13 of the past 14 years. He is a top election lawyer who argues cases before judges whom he himself might later judge. While there's no suggestion Berger has ever done anything improper, his past involvement with two other judicial panels is cause for concern.

In the '70s, he served on a Manhattan Democratic judicial-screening committee reviewing candidates for the bench. And after joining the Commission on Judicial Conduct, he spent three years on the city Bar Association's committee that rates judge candidates. In other words, Berger evaluated judges whose fates he might later determine, though there's no evidence he has done so. The overriding point, however, is the potential for conflict.

Berger also handles clients from the city's political world, including, for instance, ex-Brooklyn Democratic boss and Beep Howard Golden, whose political committee contributes to judges' electoral campaigns. Thus, Berger sits in judgment of jurists who get funds from one of his private clients. Again, there's that potential problem.

There is also a clear potential remedy. The law mandates that nine members of the 11-member commission be lawyers. Fine. Legal expertise is necessary. But the law should be rewritten to prohibit appointment of practicing lawyers who appear before judges. Instead, tap law professors, retired judges or nonpracticing attorneys.

Open the hearing process. Unleash the investigators. Revise rules for panel membership. And let the panel mete out meaningful punishments. Only then will the Commission on Judicial Conduct morph from a Chihuahua to a pit bull.

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Elena Ruth Sassower, Coordinator

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

March 7, 2002

Michael Aronson, Editorial Board
New York Daily News
450 West 33rd 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 over 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 25th, 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 26th 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 26th 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.

March 7, 2002

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]

March 6, 2002

To: Rene Hillyer, Chairman
NYS Bar Association
Special Committee on
Procedures for Judicial
Discipline

Enclosed are my final
submissions to the Appellate
Division -

the A.G.'s opposition to my
motion for leave to appeal
to the Ct of Appeals
+ my reply affidavit.

Now it's up to the Ct of
Appeals in this important
public interest case -

or is it yw view + that
of yw 23 other committee
members that it is not an
important case + has no
"Statewide significance"?
Please advise.

Elena R. R. Sasser
Coordinator, CATH for Judicial
Accountability, Inc