

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

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DATE: 3/8/02 TIME: 5<sup>50</sup> pm FAX #: 518-463-3712

TO: Elin Sullivan, Managing Editor  
Metroland

RE: "Who's To Judge?"

FROM: ELENA RUTH SASSOWER, Coordinator

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MESSAGE: \_\_\_\_\_

As discussed.

shall I e-mail

this to you, as well?

please advise —

Elena

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Elena Ruth Sassower, Coordinator

### "FINDING THE JUDGE"

Erin Sullivan's article, "*Who's to Judge?*" (2/28/02), about the New York State Commission on Judicial Conduct identifies that the Commission's operations are cloaked in confidentiality and that as far back as 1989 the State Comptroller was stymied as he attempted to "judge" whether the Commission was "wrongfully dismissing complaints against judges without cause and justification". This, because he was denied access to dismissed complaints, which are confidential.

Yet Ms. Sullivan does not identify that the Center for Judicial Accountability, Inc. (CJA), which she also does not identify as a non-profit, non-partisan citizens' organization, has pierced the confidentiality that has insulated the Commission from scrutiny by collecting, *directly from complainants*, duplicate copies of their dismissed complaints. In so doing, CJA has been proving, for over a decade, what the State Comptroller could not: that the Commission is unlawfully dismissing, *without investigation*, serious complaints of judicial misconduct – particularly when the complained-against judges are powerful and politically-connected.

Nor does Ms. Sullivan identify the further evidence of the Commission's corruption, which I, as CJA's co-founder and coordinator, detailed for her in a three-hour interview at Metroland. Indeed, the whole point of the interview, for which I traveled 2-1/2 hours from White Plains, was to acquaint Ms. Sullivan with three categories of evidence so that she could independently "judge" their significance – and find others to also "judge". That way, there would be no question as to the imperative for legislative oversight hearings of the Commission. Ms. Sullivan does not identify that it was I who alerted her to the fact that it has been almost 15 years since the Legislature last held an oversight hearing of the Commission and provided her with transcripts excerpts from the 1981 and 1987 hearings from which she quoted. Nor does she identify that CJA has been endeavoring, singlehandedly, to secure an oversight hearing based on these three categories of evidence.

What are the three categories of evidence which I discussed with Ms. Sullivan, but which her article does not identify? Beyond duplicate judicial misconduct complaints from CJA's archive – samples of which I left with Ms. Sullivan – is the law pertaining to the Commission. I reviewed the law with Ms. Sullivan, providing her copies. This was the

starting point of our interview, and it took Ms. Sullivan, a non-lawyer, only a few minutes to see, with her own eyes, that whereas the Legislature had passed a statute requiring the Commission to investigate complaints that are *facially-meritorious* -- that is, complaints whose allegations, if true, would constitute misconduct -- the Commission had undone the Legislature's command by promulgating a rule which gave itself complete discretion, unbounded by any standard, to do anything or nothing with complaints. Ms. Sullivan's words to me were to the effect that it was "simple" and "easy" to see that the Commission's rule, 22 NYCRR §7000.3, was contrary to the legislative statute, Judiciary Law §44.1 -- to which I responded that no one in a position of leadership, in government and out, was willing to say what she had so readily said.

Indeed, I thereafter showed Ms. Sullivan that in 1995, when CJA's co-founder, Doris L. Sassower, brought a lawsuit against the Commission to strike down §7000.3, a judge "protected" the Commission by concocting an argument to reconcile §7000.3 and Judiciary Law §44.1. It took no more than a minute for me to demonstrate for Ms. Sullivan that the judge's argument was not only untrue, but did *nothing* to reconcile the rule and statute -- and she both understood and agreed. I then showed Ms. Sullivan that I had embodied this demonstration in a written analysis of the judge's decision -- copies of which, since 1995, I had provided to a "who's who" of our state's leaders, in government and out, along with copies of the file of the lawsuit. This so that they could do what leaders are supposed to do: take steps to protect the public -- such as by securing an official investigation of the Commission, whose operations under a palpably unlawful rule was permitting it to dismiss, by its own statistics, more than 80% of the complaints it receives, *without investigation*.

The third category of evidence I discussed with Ms. Sullivan were files of lawsuits brought by complainants whose *facially-meritorious* complaints the Commission had dismissed, *without investigation*, in violation of Judiciary Law §44.1. I discussed three such lawsuits -- each evidencing the identical pattern, *to wit*, the Commission had NO legitimate defense, had corrupted the judicial process with litigation misconduct of its attorney, the State Attorney General, and was rewarded by a series of FIVE fraudulent judicial decisions -- without which it would *not* have survived.

The fraudulent decision in Doris Sassower's 1995 case was the first. The second fraudulent decision was in a 1999 case brought by Michael Mantell, a New York City lawyer, where a second judge "protected" the Commission. He did this by pretending that the law relating to the Commission's receipt of a complaint from a complainant -- which is Judiciary Law §44.1 -- is the same as the law pertaining to the Commission's initiation of a complaint by its Administrator -- which is Judiciary Law §44.2. Ms. Sullivan was readily able to discern this judicial deceit as we reviewed together the different statutes relating to these two different types of complaints -- and because we also reviewed relevant caselaw, including that of the Court of Appeals, copies of which I gave her. Here, too, Ms. Sullivan saw I had set all this

forth in a written analysis of the *Mantell* decision -- and that I had also provided it to those in "leadership" positions, along with a copy of the substantiating case file.

From these two fraudulent decisions Ms. Sullivan knew -- without more -- that the decision by a third judge, Justice William Wetzel, in my 1999 lawsuit against the Commission was a fraud. This, because Justice Wetzel's dismissal of my lawsuit rested, exclusively, on those two decisions. Indeed, from the copies of the litigation papers I gave Ms. Sullivan, she could also see that Justice Wetzel did this notwithstanding I had provided him with my analyses of those decisions, detailing their fraudulence, as well as copies of the files of those lawsuits. Neither he, the Attorney General, nor the Commission denied or disputed the accuracy of these two analyses.

Having seen, with her own eyes, the fraudulence of the lower court decisions in *Mantell* and in my lawsuit, it was a small step for Ms. Sullivan to recognize that the Appellate Division, First Department's affirmances of those two decisions were necessarily fraudulent. Indeed, from those appellate affirmances -- each only a few sentences long -- she could see that the Appellate Division had taken a dramatic further step to "protect" the Commission: it had added something not part of the lower court decisions: a single sentence, unsupported by any factual findings or discussion of legal authority, that complainants whose complaints the Commission dismissed, lacked "standing" to sue. This, to unlawfully insulate the Commission from future legal challenge.

Despite the wealth of evidence I provided Ms. Sullivan of the Commission's corruption, covered up by a corrupted judicial process, she makes no assessment of it -- not of the law, not of the uninvestigated *facially-meritorious* complaints, and not of the lawsuits, which Ms. Sullivan never really presents as evidence. Indeed, to the extent "*Who's to Judge?*" presents facts from which an inference of evidence might be adduced, they are so incomplete, devoid of context, and even false, that their evidentiary significance is altogether lost. Reinforcing this eclipse of evidence is the unflattering way I am presented, which is not as a professional who has meticulously documented her every allegation of systemic judicial and governmental corruption -- and whose fully-documented public interest lawsuit against the Commission is now headed for the Court of Appeals.

Ms. Sullivan has yet to "put flesh" on my important lawsuit so that Metroland readers can understand how very explosive it is --and that it is for this reason that she could find no one in the legal establishment willing to comment on it. Indeed, the *facially-meritorious* judicial misconduct complaint, whose unlawful dismissal by the Commission, *without investigation*, triggered the lawsuit, involves the believed perjury of former Appellate Division, Second Department Justice Albert Rosenblatt on his publicly-inaccessible application to the Court of Appeals. As I detailed for Ms. Sullivan and as the litigation papers in her possession show, the Commission "sat" on this *facially-meritorious* complaint while Governor Pataki, who knew of it, appointed Justice Rosenblatt to the Court of Appeals -- and

continued to "sit" on it as the Senate Judiciary Committee rammed through Justice Rosenblatt's confirmation by an unprecedented NO-NOTICE, BY-INVITATION-ONLY confirmation "hearing" – at which NO OPPOSITION TESTIMONY WAS PERMITTED. Only then did the Commission dismiss the *facially-meritorious* complaint, *without investigation and without reasons*. It is the resulting lawsuit that New York State Bar President Steven Krane, who worked for Chief Judge Kaye at the Court of Appeals, pretends does not involve "matters of statewide significance" – and who returned to me the copies of the litigation papers I had provided him in "untouched by human hands condition".

Ms. Sullivan should continue to search among our "leaders", in government and out, for comment on the important evidentiary issues presented by the lawsuit. Certainly, their refusal to comment is a mighty story in and of itself – one which hopefully Ms. Sullivan will yet write. Yet, she need not be stymied in verifying the evidence. Among this state's 120,000 or so lawyers, there are surely at least a few who might volunteer, as a public service, to review the file and provide their professional opinion on the issues for Metroland readers. Indeed, these lawyers may themselves be Metroland readers. Let them be the "judge"!