

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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BY CERTIFIED MAIL/RRR: 7001-0320-0004-7860-0428

December 22, 2003

Catherine O'Hagan Wolfe, Counsel
Judicial Institute on Professionalism in the Law
c/o Appellate Division, First Department
27 Madison Avenue
New York, New York 10010

RE: Being True to the March 3, 1999 Administrative Order that
Created the Judicial Institute on Professionalism in the Law

Dear Ms. Wolfe:

Following up our December 16th telephone conversation¹ -- and in preparation for the Center for Judicial Accountability's formal presentation to the Institute of matters for inclusion on the agenda of its next meeting, please advise as to what the Institute has been doing since it was established in March 1999, apart from the three convocations posted on the Institute's website (www.courts.state.ny.us/jipl) under "Latest News" and "Past Events", *to wit*, convocations on: (1) law school admissions, training, and placement: November 13-14, 2000; (2) the internet and the practice of law: June 18-19, 2002; (3) the first seven years of practice: November 11-12, 2002.

The Institute's website is not at all illuminating in this regard -- and you indicated that it has not been recently updated, including as to the Institute's current membership². Indeed, the "Projects" category -- which contains no dates other than that of the Institute's first meeting in April 1999 -- does not identify

¹ Our conversation together resulted from my calling (212) 340-0418—the second phone number listed on the Institute's homepage "For additional information".

² The website lists 21 members -- including Chairman Craco. Pursuant to ¶3 of the March 3, 1999 Administrative Order creating the Institute, its membership is supposed to be 18 members, plus the Chair.

how the four identified projects have been developed over these past several years. Two of these four projects: "Career Development and Morale" and "Accountability" are respectively identified as being "still in planning" and "still in development" – although the Institute's two convocations on law schools and the first seven years of practice would appear to fit within the "Career Development and Morale" rubric, thus putting that project beyond the "still in planning" stage.

As to the first identified project, "Core Values", the website states

"... The Institute expects to complete a white paper by the end of this year that discusses the essential, enduring beliefs that lawyers must uphold over time – irrespective of the pace and magnitude of societal change in order to preserve their unique character and value to society well into the future..." (emphasis added)

Surely, such "white paper" is a foundational document, underlying and informing all the Institute's work. As such, "the end of this year" being referred to should be 1999 – or, at the latest, 2000. Yet, no "white paper" is listed on the "Publications" page of the Institute's website. Indeed, only three documents are listed there: two being background reports underlying the Institute's establishment and only one representing any Institute "workproduct", namely, "Summary of Proceedings" from the Institute's November 2000 convocation.

As to the prominent assertion on the Institute's "homepage" that:

"The members of the Institute on Professionalism in the Law are meeting with ordinary New Yorkers across the State in an effort to learn about the perceptions and attitudes that different communities have about the legal system, and about the legal profession's responsiveness to their needs",

this assertion is repeated *verbatim* under "Public Forums" with no identification of a single public forum the Institute has held. This includes no identification of the "two-night public forum to gather information about the public's experience of lawyers and the legal process in New York", so-announced by a front-page notice in the March 18, 2002 New York Law Journal. As to "Links", there is

not a single "link" – but only the words, "Coming Soon".

All this – combined with the relative inaccessibility of the Institute's website, especially to "ordinary New Yorkers" who would be non-attorneys³, the failure of anyone to return the November 7th voice message I left on the (800) 401-6580 telephone number⁴ that the Institute shares with the Commission to Promote Public Confidence in Judicial Elections, the refusal of Sheila Murphy, whose (212) 428-2862 telephone number is the first listed on the Institute's website, to identify her connection with the Institute when I telephoned on December 11th⁵, and the "brush off" we received in March 2001 when we endeavored to have the Institute address matters germane to its most essential functions – contribute to a view that the Institute is not operating in a fashion that would achieve the important purposes delineated by the March 3, 1999 Administrative Order of Chief Judge Kaye that created it.

Please, therefore, provide us with a copy of the Institute's "white paper" on "Core Values", as well as advise us as to the status of its "Accountability" project, described by its website as:

"address[ing] the accountability of the profession and individual lawyers, not only through the disciplinary system, but also through all the ways in which... the public gain a measured sense

³ To reach the Institute's website from the homepage of the Office of Court Administration (www.courts.state.ny.us), one has to know to press the sidebar category marked "Attorneys" and from there press the category marked "Resources". A person not knowing about the Institute -- and therefore unable to do a "search" – would have great difficulty in discovering it.

⁴ Such "800" number appears on the Institute's letterhead from March 2001.

⁵ In response to my question to Ms. Murphy as to her connection with the Institute, the phone became disconnected, as if she hung up. I thereupon called a second time. When, again, I asked Ms. Murphy what her connection with the Institute was, she responded "Have a nice day", and terminated the call. Such unprofessional conduct was in face of Ms. Murphy's knowledge of who I was, as I had introduced myself. Indeed, when I asked Ms. Murphy if she knew who I was, her comment to me was to the effect that everyone there knows who I am.

As I recollect, my only prior conversation with Ms. Murphy was on or about March 18, 2002 and pertained to the New York Law Journal announcement of the "two-night public forum to gather information about the public's experience of lawyers and the legal process in New York", which contained her name and phone number.

of the worth of lawyers as individuals and as a profession. Matters to be considered include evaluating the responsiveness, efficiency and transparency of the disciplinary system... what drives public perceptions and how do they affect the reality of professionalism; and examining whether there are any identifiable sources of misperception that can be addressed by remedial or public education measures.”

This would include the methodology by which the Institute is “collect[ing] information” to assess “the accountability of the profession” and the disciplinary system.

Additionally, please advise as to what “continuous, long-term attention” the Institute has given to two of the “Major Reforms” identified by the website as having resulted from the November 1995 “landmark report” of the Committee on the Profession and the Courts, chaired by Louis Craco, *to wit.*:

“Expanded court rules addressing frivolous conduct by attorneys, including replacement of the \$10,000-per-case limit on costs and sanctions with a \$10,000-per-incident limit”

“Standardization of grievance committee practices around the State to promote uniformity of practices and procedures among the Grievance Committees in the Four Departments.”

Specifically, has the Institute under Mr. Craco’s chairmanship undertaken any follow-up to confirm the actuality of these two “Major Reforms”. For example, what has it done to examine whether 130-1.1 of the Chief Administrator’s Rules pertaining to frivolous conduct – which looks formidable on “paper” – is, in fact, being enforced by the courts. And what methodology has it used to verify such enforcement? Has it solicited comment from the public and legal community on the subject – requesting them to provide copies of corroborating case file evidence? And what has the Institute done to examine critical grievance committee practices and procedures which, even “on paper”, the Four Judicial Departments have not yet standardized – where, additionally, case file evidence, provided and proffered EIGHT YEARS AGO as opposition comment to the Craco Committee’s recommendation to open attorney disciplinary

proceedings once formal charges are filed, establishes the unconstitutionality of New York's attorney disciplinary law, *as written and as applied?*

According to ¶4K of the March 3, 1999 Administrative Order, the Institute is supposed to "publish reports and report to the Chief Judge and Administrative Board of the Courts" at least biennially. We request a copy of these "at least" biennial reports to the Chief Judge and Administrative Board – particularly as they relate to the Institute's function of:

"Monitor[ing] and comment[ing] on the methods of enforcing standards of professional conduct for lawyers in the state including, without limitation, the procedures for imposing discipline or sanctions for misconduct and for compensating clients victimized by the misbehavior of lawyers within the state;"(¶4G) and

"recommend[ing] measures, including without limitation, proposed legislation, rules of practice, and modifications of the Code of Professional Responsibility, that in its judgment would improve the professionalism and ethical behavior of lawyers within the state" (¶4J).

Obviously, the Institute's operations require adequate funding. Therefore, we additionally request information as to: (1) the yearly appropriations that the Office of Court Administration (OCA) has allotted for the Institute since its establishment in March 1999; (2) whether the OCA has provided the Institute with its own office space; and (3) whether the Institute has any full-time staff.

Surely, if the Institute has its own office space, it maintains relevant materials not only as to its current operations⁶, but as to its founding. In any event, since you were counsel to the Craco Committee on the Profession and the Courts, whose work underlies the Institute's establishment, please advise as to what

⁶ If a transcript was made of the "two-night public forum to gather information about the public's experience of lawyers and the legal process in New York", held on March 19-20, 2002, or of any other "public forum", we specifically request to review same – as well as any other records relating thereto.

records pertaining to the Craco Committee are publicly available for review. Specifically, with respect to pages 4-9 of the Committee's November 1995 report under the heading, "THE METHOD OF INQUIRY", please advise

- (a) whether there are transcripts of the Committee's five public hearings, described as "limited to users of legal services" (at p. 5) and whose many, many witnesses are listed at Appendix C. If so, may these be reviewed, as likewise the "substantial response" that the Committee received of "written material from the public"?
- (b) whether there are transcripts of the Committee's meetings with: (i) "leading academic ethicists of the profession"; (ii) "chief counsel of the departmental disciplinary committees"; (iii) "deans, or their representatives, of most of the law schools in New York and with a large number of administrative judges from districts around the state"; and (iv) bar association representatives. If so, may these be reviewed, as likewise the written submissions of these participants to the Committee?

Additionally, we would like to review all publicly-available records pertaining to: (1) the Administrative Board's August 1996 adoption, in principle, of all but two recommendations of the Craco Commission, identified on the Institute's website; (2) the Administrative Board's creation of two task forces to propose plans for implementation of the recommendations; and (3) the full reports of these task forces⁷.

To avoid unnecessary duplication with respect to our upcoming presentation to the Institute, please advise as to whether our past submissions have been maintained in the Institute's files. The first of these submissions, CJA's November 15, 1995 letter-opposition to that portion of the Craco Committee report (p. 49) as recommended opening attorney disciplinary proceedings once formal charges are filed, which we substantiated by the cert petition to the U.S. Supreme Court in the Article 78 proceeding *Doris L. Sassower v. Hon.*

⁷ As discussed, although the Institute's website posts the report of one of the task force subcommittees pertaining to the Craco Committee's recommendation to establish the Institute, it has not posted Appendix A to that report, consisting of the subcommittee's 14-person membership - which we specifically request.

Guy Mangano, et al., is reflected by CJA's March 13, 1996 letter to Antonio Galvao, then Assistant Deputy Counsel in Chief Administrative Judge Lippman's office⁸ -- to which Mr. Galvao responded by letter dated March 19, 1996, stating:

"The view of the Center for Judicial Accountability will be given careful consideration as we undertake a comprehensive reappraisal of the attorney disciplinary system."

The second of these submissions, the record of CJA's November 14, 2000 disciplinary complaint to the First Department Disciplinary Committee against four major bar associations and culpable lawyers acting on their behalf in "screening" candidates to the New York Court of Appeals, is reflected by CJA's March 7, 2001 letter to Mr. Galvao -- to which he responded by letter dated March 21, 2001:

"Please be advised that the Institute will take the issues raised in your letter under consideration should it at any time in the future address the question of bar associations' jurisdictional amenability to the attorney disciplinary process."

For your convenience, copies of this correspondence are enclosed⁹. As to these, please confirm that Chairman Craco himself reviewed the documents reflected by CJA's March 13, 1996 letter and, as to Mr. Galvao's March 21, 2001 letter, that it was authorized by Chairman Craco and Institute members based on their own review of CJA's March 7, 2001 letter and the documents it enclosed.

To the extent that the Freedom of Information Law (F.O.I.L.) [Public Officers Law, Article VI] and Part 124 of the Chief Administrator's Rules for Public Access to Records reinforce our entitlement to requested documents, CJA hereby invokes same. For such reason, a copy of this letter is also being furnished to John Eiseman, as Records Access Officer for the Unified Court

⁸ Mr. Galvao's current title is Executive Assistant to Chief Administrative Judge Lippman.

⁹ This correspondence is also posted on CJA's website: www.judgewatch.org [See, "Correspondence: State Officials-Chief Judge Kaye and OCA": *Committee on the Profession and the Courts / Judicial Institute on Professionalism in the Law*].

System.

Thank you.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosures

cc: John Eiseman, Records Access Officer/OCA

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NEW YORK, MONDAY, M

TODAY'S NEWS

Update

Several prominent attorneys, led by former City Bar President Evan A. Davis, are urging Governor Pataki to use his leverage in the battle to effect campaign finance reform. On Friday, a letter to the Governor asked him to promote legislation to establish public campaign financing, enhance reporting requirements, ban soft money contributions and other measures. Among those signing the letter were: retired Court of Appeals Judge Richard D. Simons; former Chief Administrative Judge Richard Bartlett, of Bartlett Pontiff Stewart & Rhodes in Glens Falls; former New York City Corporation Counsel Frederick A.O. Schwartz Jr.; and Elizabeth Moore, former counsel to Governor Cuomo.

Former Governor Hugh L. Carey, now of Whiteman Breed Abbott & Morgan in Manhattan, was given a lifetime achievement award last week by the New York State Developmental Disabilities Planning Council. Mr. Carey received the award at the Executive Mansion from Governor Pataki's mother, Margaret Pataki. Governor Pataki, a Republican, praised his Democratic predecessor for signing the Willowbrook consent decree, establishing the Office of Mental Retardation and Developmental Disabilities and creating the Commission on the Quality of Care and the Development Disabilities Planning Council.

The First Department Committee to Certify Law Guardians for Appointment in Domestic Relations Matters will hold its first training seminar on April 15 at the City Bar. Attendance is limited; priority will be given to those who submit applications, which can be obtained from Antonina Munz at (212) 340-0479. To register, send a \$225 check payable to the Association of the Bar of the City of New York, with your name, firm name, address, phone and e-mail address, to Elizabeth Hamad, 42 West 44th Street, New York, NY 10036. See also the law guardian definition and standards on page 10.

The New York State Judicial Institute on Professionalism in the Law is sponsoring a two-night public forum to gather information about the public's experience of lawyers and the legal process in New York. The forum will be held tomorrow from 6 to 9 p.m. at Medgar Evers College 1650 Bedford Avenue and Wednesday from 6 to 9 p.m. at Kings County Supreme Court, Room 224, 360 Adams Street. For more information, and to register to participate, contact Sheila Murphy at (212) 428-2862. Ms. Murphy can also be contacted by e-mail at smurphy@courts.state.ny.us/jipl/.

There is still time to enter the second annual New York Law Journal Magazine Fiction Writing Contest. For details and rules see the ad appearing on page 4, or go to

Bronx Supreme Court Justice Stanley Green has ruled that the four police officers who shot and killed Amadou Diallo in 1999 will have to turn over personnel files and other departmental records for a civil case alleging the officers violated Mr. Dial-

District Attorney Judge Libeled

BY JOHN CAHER

MONTICELLO — A Sullivan County judge's harsh criticism of the veteran district attorney — a longtime political enemy — has sparked an unusual battle where the prosecutor is pondering a defamation action for comments the judge made in a decision.

Normally, a judge's written opinion will not expose him or her to a libel action. However, in this case, Sullivan County District Attorney Stephen F. Lungen said the judge's comments are so defamatory and so inconsistent with the facts that the law should provide a remedy. Mr. Lungen last week wrote to Sullivan County Judge Frank J. LaBuda asking the judge to edit a decision he recently wrote in *People v. Caruso*, 179-01.

"I asked him to withdraw it and I am sure he won't," Mr. Lungen said. "But I need to give him that opportunity before I take the next step."

The judge on Friday stood by his decision. "That is my opinion and the case is proceeding in normal fashion," he said.

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