



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

October 15, 2015

Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
P.O. Box 8101
White Plains, New York 10602

Via email to: elena@judgewatch.org

Dear Ms. Sassower:

This is in response to your Freedom of Information Law ("FOIL") request dated July 20, 2015, in which you appear to be following up on your January 8, 2004 letter to then Records Access Officer John Eiseman, concerning your December 2003 FOIL requests addressed directly to the Committee to Promote Public Trust and Confidence in the Legal System ("Committee") and to the Judicial Institute on Professionalism in the Law ("JIPL").

We have been unable to locate records regarding your January 8, 2004 FOIL letter to Mr. Eiseman, the underlying December 2003 FOIL requests addressed to the Committee and JIPL, or any responding correspondence. Based upon the copies that you provided with the current FOIL request, it appears you merely forwarded to Mr. Eiseman copies of the 2003 FOIL requests you addressed to the Committee and JIPL.

To the extent you now seek to "renew" these 2003 FOIL requests, it is unclear whether you in fact received responses from the Committee or JIPL directly. It further is not clear what FOIL requests for specifically identified records (as opposed to questions or categories of possible information or records) were embodied in your 2003 letters to the JIPL and Committee.

In any event, with regard to the Committee's 1999 report, we do not have copies of the report or underlying records, including transcripts or public comments. Notably, your requests do not identify specific records, are overly broad, and require interpretation as to what records could "establish" the following: "empirical" or "evidentiary" basis for "assertions" in the report; "activity" or "recommendations"; "why" Committees were not expanded locally; whether the Committee "retained" copies of 2001 correspondence from you as "empirical, evidentiary proof" of misconduct or corruption; or "redesignat[ion]" matters. See Public Officers Law § 89(3).

Regarding the JIPL, the available information, various public records, reports, journals, programs, and transcripts are available at the following link:
<http://www.nycourts.gov/ip/jipl/whatisit.shtml>

Again, as with the FOIL matter pertaining to the Committee, your remaining requests for JIPL do not identify specific records, are overly broad, and require interpretation as to what records could establish the following: information on "accountability" of lawyers; "methodology" related to assessing "accountability"; "attention" to reforms after a 1995 Craco report; or "methodology" related to whether JIPL "examined" or "verified." See Public Officers Law § 89(3).

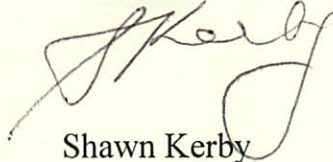
Also, as we previously informed you, we have no existing records responsive to your requests concerning the historic 1995 Craco report, including your correspondence and communications that you already would have from 1995-2001 submissions about the report or to the Appellate Division, First Department, Disciplinary Committee.

Your requests for "whereabouts" of your 1995 and 2001 "submissions," and inquiries about what "reappraisal" was undertaken in response to your submissions again do not identify records, and FOIL does not require answers to questions or legal research or assistance. See Public Officers Law § 89(3).

The various available journals, programs, convocations, and transcripts for the Committee on the Profession and the Courts and establishment of the JIPL after the 1995 report and its mandates, some of which date back to 2000, are available at the following links: <http://www.nycourts.gov/ip/jipl/convocations.shtml>
<http://www.nycourts.gov/ip/jipl/library.shtml>

It is unclear what records you are seeking regarding "funding," "yearly appropriations," "office space," or "staff" for JIPL. The members of JIPL are identified at the following link: <http://www.nycourts.gov/ip/jipl/membership.shtml>
As reflected, most members appear to be private attorneys.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Shawn Kerby", written over a horizontal line.

Shawn Kerby
Assistant Deputy Counsel

Shawn Kerby

To: Center for Judicial Accountability
Subject: RE: Records Request -- Over a Decade Old: (1) Committee to Promote Public Trust & Confidence in the Legal System -- and its Local Committees; and (2) Judicial Institute on Professionalism in the Law

Dear Ms. Sassower:

We will process your FOIL request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability [mailto:elena@judgewatch.org]
Sent: Monday, July 20, 2015 4:58 PM
To: Shawn Kerby
Subject: Records Request -- Over a Decade Old: (1) Committee to Promote Public Trust & Confidence in the Legal System -- and its Local Committees; and (2) Judicial Institute on Professionalism in the Law

Dear Ms. Kerby,

Attached is the Center for Judicial Accountability's above-entitled records request of today's date.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
elena@judgewatch.org

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 8101
White Plains, New York 10602

Tel. (914) 421-1200

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

BY E-MAIL: skerby@nycourts.gov

July 20, 2015

Shawn Kerby, Records Access Officer & Assistant Deputy Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

RE: Records Request – Over a Decade Old:
(1) Committee to Promote Public Trust and Confidence in the Legal System – and
its Local Committees; and (2) Judicial Institute on Professionalism in the Law

Dear Ms. Kerby:

Over a decade ago, CJA raised questions about, and requested documents pertaining to: (1) the Committee to Promote Public Trust and Confidence in the Legal System; and (2) the Judicial Institute on Professionalism in the Law.

Enclosed is our January 8, 2004 letter to your predecessor, OCA Records Access Officer John Eiseman, and the two letters it enclosed: our December 22, 2003 letter to Wendy Deer, Esq., then counsel to the Committee to Promote Public Trust and Confidence in the Legal System, and our December 22, 2003 letter to Catherine O'Hagan Wolfe, then counsel to the Judicial Institute on Professionalism in the Law, each sent certified mail/return receipt.

Pursuant to §124 of the Chief Administrator's Rules and Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], request is made for a copy of any response to these three letters contained in OCA files – as *our files contain none*. If OCA files also show no response, we hereby renew our request for access to the documents specified by our two December 22, 2003 letters.

* Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

With respect to the Committee to Promote Public Trust and Confidence in the Legal System – as to which the current OCA website contains no link or information, including posting of its May 1999 Report¹ – we specifically reiterate our request for access to the following:

1. records, such as documentary and testimonial evidence from members of the public, establishing the empirical, evidentiary basis upon which the Committee relied for the assertion in its May 1999 Report that “errant attorneys and judges are accountable” and that the public would be further assured of such accountability “by opening to the public disciplinary proceedings once a *prima facie* case has been established”;
2. records establishing the Committee’s activity following issuance of its May 1999 Report, particularly with respect to its recommendations therein that: (1) the public should be made aware that “errant attorneys and judges are accountable and subject to sanctions by opening to the public disciplinary proceedings once a *prima facie* case has been established” (at pp. 33-34); (2) judges should control and require civil behavior of attorneys and “be required to report unethical attorney behavior” (at p. 34); and (3) judges should “take time to explain, in court, a... decision or procedure, especially for cases that are of high public concern and interest”.... (at p. 36);
3. records from the six local Committees to Promote Public Trust and Confidence in the Legal System, including hearing transcripts, pertaining to the reactions they received from members of the public whose litigation experience resulted in their filing complaints of judicial and attorney misconduct and making sanction motions;
4. records establishing why the six local Committees to Promote Public Trust and Confidence in the Legal System were not expanded so that there was a local committee for each judicial district, if not each county;
5. records as to whether the Committee retained within its files CJA’s March 2, 2001 letter to counsel Patricia Bucklin, furnishing empirical, evidentiary proof that attorneys and judges are unaccountable for their misconduct, that attorney and judicial complaint mechanisms are corrupt, and that this necessarily corrupts judicial screening, vitiating any possibility of “merit selection” – to which then Committee Co-Chair Judge Evelyn Frazee responded, by letter dated May 9, 2001:

¹ Request is made for a pdf of the Committee’s May 1999 Report so that we may post it on our website, www.judgewatch.org, on our webpage for the Committee. That webpage is accessible *via* our sidebar panel “Searching for Champions-NYS”, which brings up a menu page with a link for the Office of Court Administration. Our webpage for the Judicial Institute on Professionalism in the Law is also there.

“At this time, the Committee has been redesignated to focus upon implementation of the strategies suggested in its May 1999 report, rather than to continue an information gathering and recommendation function.”

6. records of the Committee’s purported “redesignat[ion]”, including the date, the identity of the person who proposed “redesignat[ion]”, whether it was voted upon by the Committee, and whether, thereafter, the Committee was “redesignated” back;
7. records establishing when – as it appears – the Committee and the six local committees were shut down.

With respect to the Judicial Institute on Professionalism in the Law – whose webpage on the Unified Court System website is so hidden as to require a “search” to find it² – we specifically reiterate our requests for access to the following:

1. records as to the Institute’s project relating to “Accountability”, a project absent from the Institute’s current webpages, but described by its webpages in 2003 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 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 records as the Institute’s methodology: what information and documentation has it utilized to assess “the accountability of the profession” and the disciplinary system;

2. records establishing the Institute’s “continuous, long-term attention” to the following two “Major Reforms” identified by its 2003 webpages 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.”

This would include the Institute’s methodology: Did it examine whether §130-1.1 of the Chief Administrator’s Rules pertaining to frivolous conduct – which looks formidable “on paper” – is actually enforced by the courts? And how did it verify enforcement? Did it solicit comment from the public and legal community on the subject – requesting copies of case file evidence in substantiation? And what about grievance committee practices and procedures which, even “on paper”, the Four Judicial Departments have not yet standardized...” – even as of this date. Are there records of the Institute’s examination of these, *as written and as applied*?

3. records of the Institute’s reports to the Chief Judge and Administrative Board of the Courts as they relate to the Institute’s mandate set forth in the Chief Judge’s March 3, 1999 Executive Order:

“Monitor and comment 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 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).

4. records pertaining to the Institute’s funding, such as the yearly appropriations the OCA has made for the Institute since it was established in March 1999 – and whether this includes monies for office space and staff;
5. records establishing whether the Institute has retained within its files CJA’s submissions, *to wit*:
 - A. CJA’s November 15, 1995 letter-opposition to that portion of the Craco Committee Report (at p. 49) as recommended opening attorney disciplinary proceedings once formal charges are filed, including CJA’s

substantiating cert petition to the U.S. Supreme Court in the Article 78 proceeding *Doris L. Sassower v. Hon. Guy Mangano, et al.*, to which the response – by letter dated March 13, 1996 of Antonio Galvao, then Assistant Deputy Counsel in then Chief Administrative Judge Lippman's office, was:

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

- B. CJA's March 7, 2001 letter transmitting 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 – and the correspondence thereon – to which the response – by letter dated March 21, 2001 from Mr. Galvao was:

"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."

6. records of the whereabouts of CJA's November 15, 1995 and March 7, 2001 submissions, if they are not within the Institute's files;
7. records pertaining to whether the Institute ever undertook "a comprehensive reappraisal of the attorney disciplinary system" or ever considered "the question of bar associations' jurisdictional amenability to the attorney disciplinary process".

Pursuant to §124.6 of the Chief Administrator's Rules and Public Officers Law §89.3, your response is required "within five business days" of your receipt of this request. I would appreciate if you e-mailed it to me at elena@judgewatch.org.

Thank you.

Yours for a quality judiciary,


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

Enclosures: CJA's January 8, 2004 letter, with its two December 22, 2003 letters

CENTER for JUDICIAL ACCOUNTABILITY, INC.

**P.O. Box 69, Gedney Station
White Plains, New York 10605-0069**

**Tel (914) 421-1200
Fax (914) 428-4994**

**E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org**

Elena Ruth Sassower, Coordinator

January 8, 2004

**Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004**

ATT: John Eiseman, Records Access Officer

**RE: Requests for Documents Relating to: (1) Committee to Promote
Public Trust and Confidence in the Legal System; and (2) Judicial
Institute on Professionalism in the Law**

Dear Mr. Eiseman:

**Enclosed are CJA's December 22, 2003 letters to Wendy Deer, Counsel to the
Committee to Promote Public Trust and Confidence in the Legal System AND
to Catherine O'Hagan Wolfe, Counsel to the Judicial Institute on
Professionalism in the Law. You are an indicated recipient of each because, as
stated in the conclusion of each letter, you are the Unified Court System's
Records Access Officer and our request for documents is reinforced by F.O.I.L.
[Public Officers Law, Article VI] and Part 124 of the Chief Administrator's
Rules for Public Access to Records.**

**Pursuant to F.O.I.L. [Public Officers Law §89.3], your response is required
within five business days of receipt of this written request.**

Thank you.

Yours for a quality judiciary,



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

Enclosures

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel (914) 421-1200
Fax (914) 428-1994

E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org

Elena Ruth Sassower, Coordinator

BY CERTIFIED MAIL/RRR: 7003-1680-0001-8617-5137

December 22, 2003

Wendy Deer, Counsel
Committee to Promote Public Trust and Confidence in the Legal System
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

RE: The "Viability" of the Committee to Promote Public Trust and Confidence in the Legal System – and the empirical, evidentiary basis for its implied claim in its May 1999 report (at p. 33) that "errant attorneys and judges are accountable"

Dear Ms. Deer:

This follows up our November 10th phone conversation wherein you responded to my skeptical inquiries about Chief Judge Kaye's Committee to Promote Public Trust and Confidence in the Legal System by stating that it was a "viable committee", following which, at my request, you faxed me a current roster of the Committee's members.

Please advise as to what specifically this "viable committee" has been doing since its May 1999 report – particularly with respect to its recommendations to:

- (1) "Make the public aware that errant attorneys and judges are accountable and subject to sanctions by opening to the public disciplinary proceedings once a *prima facie* case has been established. There should be procedural protections similar to those for a criminal proceeding for the attorney or judge involved in a disciplinary proceeding. The benefits of such a procedure are that it eliminates the perception that lawyers and judges are a closed group that look to protect themselves..." (at pp. 33-34) ;

(2) "Encourage judges to exercise their authority to control and require civil behavior of attorneys. Judges should be required to report unethical attorney conduct. Judges also should be mindful that they need to set an example of how to behave in a professional manner before attorney conduct and behavior can expect to be modified." (at p. 34);

(3) "Ask judges to take time to explain, in court, a ... decision or procedure, especially for cases that are of high public concern and interest. This presents a good opportunity to show the openness of the judiciary and to educate the public." (at p. 36);

Please also advise as to why neither the May 1999 report, the Committee's subsequent activities, nor even a roster of its members, including its chairs, are posted on the Unified Court System's website, www.courts.state.ny.us.

Indeed, the only information on the UCS website about the Committee [www.nycourts.gov/communityoutreach/popup3.html] is a two-sentence description that:

"The Committee to Promote Public Trust and Confidence in the Legal System was established in 1998 to identify and implement initiatives to enhance public trust and confidence in the State's legal system. The Committee's goals are to ensure that there is a fair and just system by which individuals who have contact with the legal system are treated with respect and equality, as well as to help bring about a greater understanding of and respect for the legal system."

This is followed by contact information for you as Committee counsel. Frankly, it would be most surprising if you received many contacts from members of the public - especially since the UCS homepage all but hides the Committee's existence from public view. Thus, a member of the public who does not know of the Committee's existence would have to fortuitously press the category "Courts", then "Court Administration", then "Office of Public Affairs", and then "UCS Commissions and Committees" in order to find it.

The single webpage that then appears continues with a list of six¹ "Local Committees to Promote Public Trust and Confidence in the Legal System" – which are described as "assisting in implementation of the recommendations of the State Committee to Promote Public Trust and Confidence in the Legal System...". Please advise as to: (1) what steps these local committees have taken to implement the three above-cited recommendations from the May 1999 report; (2) whether these local committees have furnished the State Committee with their own reports or other materials, including hearing transcripts, pertaining to the reactions they have received from members of the public whose litigation experience has led them to file complaints of judicial and attorney misconduct or sanctions motions; (c) why the six listed local committees have not been expanded so that there is a local committee for each judicial district, if not each county; (d) the names of the members of the six listed local committees.²

Insofar as the Committee's May 1999 report implies (at p. 33) that "errant attorneys and judges are accountable" – and that the public would be further assured as to such accountability "by opening to the public disciplinary proceedings once a *prima facie* case has been established" -- request is hereby made for access to the empirical, evidentiary basis upon which the Committee relied, such as documentary and testimonial evidence on these two subjects from members of the public.

As discussed, CJA intends to make a submission for the agenda of the Committee's next meeting, which you indicated would be in January. Such will focus on documentary proof, including that which we transmitted to the Committee under our March 2, 2001 letter to its then counsel Patricia Bucklin – that attorneys and judges are unaccountable for their misconduct, that attorney and judicial complaint mechanisms are corrupt, and that this necessarily corrupts judicial screening, vitiating any possibility of "merit selection".

¹ The website incorrectly states that there are "five local committees", but goes on to list six: Nassau, Queens, Suffolk, Second Judicial District, Seventh Judicial District, and Eighth Judicial District.

² The only description of their membership, aside from their chairmen – all judges -- is that these local committees include: "judges, attorneys, court personnel, and community members". Among the listed chairmen, Suffolk County Administrative Judge Alan D. Oshrin, who passed away in August, and who has since been succeeded by Judge H. Patrick Leis, III.

So as to avoid needless duplication, please advise as to whether the empirical, evidentiary proof which our March 2, 2001 letter transmitted has been retained in the Committee's files. For your convenience, a copy of that March 2, 2001 letter is enclosed -- as is a copy of the May 9, 2001 letter of Committee Co-Chair Judge Evelyn Frazee, which followed upon my leaving for Ms. Bucklin repeated phone messages requesting to speak with her in the wake of public announcement of her appointment as Executive Director of the New York State Bar Association³ (*inter alia*, April 3, 2001 New York Law Journal, "Bar Meets, Plans to Lobby Lawmakers").

Conspicuously, Co-Chair Frazee's May 9, 2001 letter neither mentioned CJA's March 2, 2001 letter nor any review of the evidentiary materials it transmitted, *to wit*, the record of CJA's November 14, 2000 disciplinary complaint to the First Department Disciplinary Committee against, *inter alia*, the New York State Bar Association and the culpable lawyers acting on its behalf for complicity in the corruption of "merit selection" to the New York Court of Appeals. Please advise whether, in fact, Co-Chair Frazee AND the Committee members ever reviewed for themselves the March 2, 2001 letter, its transmitted documentation, as well as our March 7, 2001 letter to Ms. Bucklin, enclosing our letter of that date to the Institute on Professionalism in the Law -- to which the Committee was an indicated recipient. Absent such review, Co-Chair Frazee and the Committee members could not have made any informed determination as to their professional and ethical responsibilities with respect thereto.

Finally, insofar as Co-Chair Frazee's May 9, 2001 letter claims:

"At this time, the Committee had been redesignated to focus upon implementation of the strategies suggested in its May 1999 report, rather than to continue an information gathering and recommendation function",

³ This correspondence is additionally posted on CJA's website, www.judgewatch.org [See "Correspondence: NYS Officials-Chief Judge Kaye and OCA": Committee to Promote Public Trust and Confidence in the Legal System]. Likewise posted are CJA's September 7, 2000 letters to Committee members Glenn Lau-Kee, Esq. and Barry Kamins, Esq., copies of which are enclosed. Our September 7, 2000 letter to Mr. Lau-Kee transmitted to him copies of CJA's correspondence with Chief Judge Kaye, culminating in our August 3, 2000 judicial misconduct complaint against her -- duplicates of which we transmitted under our March 2, 2001 letter to Ms. Bucklin.

December 22, 2003

please identify when the Committee was so "redesignated", at whose instance the "redesignation" was proposed, whether such "redesignation" was voted on by Committee members -- and any publicly-available documents reflecting same. If the Committee has since been "redesignated" back, please furnish comparable information and documents.

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 such legal authority. For such reason, a copy of this letter is also being furnished to John Eiseman, as Records Access Officer for the Unified Court System.

Thank you.

Yours for a quality judiciary,



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

Enclosures

cc: John Eiseman, Records Access Officer/OCA

7003 1680 0001 8617 5137

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 or PO Box No. 25 Beaver Street 11th floor
 City, State, ZIP+4 NY NY 10004

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CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Web site: www.judgewatch.org

Elena Ruth Sassower, Coordinator

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].

December 22, 2003

System.

Thank you.

Yours for a quality judiciary,

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

Enclosures

cc: John Eiseman, Records Access Officer/OCA

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 or PO Box No.: 27 Madison Ave.
 City, State, ZIP+4: NY NY 10010
 PS Form 3800, January 2001

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VOLUME 227—NO. 51

3/18/02

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.

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.

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

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 Developmental Disabilities Planning Council.

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/.

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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