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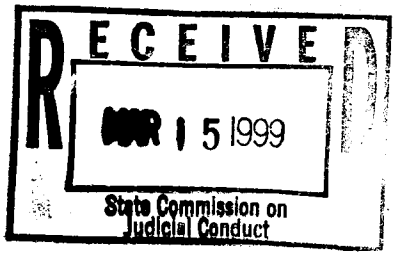

BY FAX 212-949-8864 11 pages
BY HAND: 3/15/99

March 11, 1999

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

ATT: Gerald Stern, Administrator

RE: (1) Your unsatisfactory response to CJA's February 3, 1999 letter, constituting BOTH an information request AND a judicial misconduct complaint against Appellate Division, Second Department Justice Daniel Joy; and (2) the Commission's on-going failure to respond to CJA's March 10, 1995 information request letter

Dear Mr. Stern:

This letter responds to your February 5, 1999 letter.

The inference properly drawn from your refusal to address CJA's interpretation of Judiciary Law §45, set forth in our February 3, 1999 letter, is that you are unable to do so. CJA's interpretation is based on the *express* wording of Judiciary Law §45 -- which exempts §44. Your non-responsive statement that "all of the Commission's records and proceedings are confidential pursuant to Judiciary Law, Section 45" does NOT constitute an interpretation since it does NOT confront that *express* exemption. Nor does it confront the fact that the language of Judiciary Law §44 does NOT bar the Commission from providing a complainant, whose complainant has been dismissed [1], with explanatory reasons and with

[1] This distinction was implicitly recognized by Albert Lawrence, the Commission's Clerk, whose January 13, 1995 letter to us stated "Concerning complaints to the Commission, I am able to correspond only with persons who signed the original complaints, owing to the confidentiality restrictions of the Judiciary Law." That letter is Exhibit "E" to CJA's March 10, 1995 letter to the Commissioners, annexed hereto as Exhibit "A". Were Judiciary Law §45 to furnish a basis for refusing to provide complainants with information about the Commission's dismissal of their complaints, Mr. Lawrence should have logically asserted as much in response to our January 22,

Ex "G"

information showing the Commission to be duly-constituted and untainted by bias and conflict of interest. Indeed, withholding such basic information from a complainant serves no legitimate purpose and is inconsistent with the constitutional and statutory intent in creating the Commission: to promote public confidence in the judiciary by establishing a taxpayer-supported agency, outside the judiciary, to receive and investigate judicial misconduct complaints.

Moreover, we protest -- and contest as false -- your attempt to create an illusion that it is "useless to debate" with us, based on past experience where "[you] once thought it appropriate to respond to every point [we] raised in [our] letters". The record of our correspondence establishes the true facts: you have continually refused to address the pivotal issues raised by our letters[2] -- and your responses have been so disingenuous and dishonest as to have compelled us to complain *directly* to Commissioner Lawrence Goldman[3]. As you know, Commissioner Goldman referred the matter back to you -- with predictably dishonest results[4]. For the benefit of the Ethics Commission and the Attorney General,

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1993 and January 19, 1995 letters, properly signed, requesting information about the dismissals of several of our prior complaints. Yet, as our March 10, 1995 letter to the Commissioners pointed out (Exhibit "A", at p. 3), Mr. Lawrence failed to respond to these properly signed letters -- much as the Commission, thereafter, failed to respond to the March 10, 1995 letter, which reiterated and expanded our informational requests to cover all eight of our prior judicial misconduct complaints against powerful, politically-connected judges. As to Mr. Lawrence's January 25, 1999 letter, which did respond to our December 29, 1998 letter requesting information about the dismissal of our October 6, 1998 judicial misconduct complaint, by contending that same is "confidential by law", Mr. Lawrence did not identify the "law" to which he was referring.

[2] This includes your refusal to reconcile the discrepancy between Judiciary Law §44.1 and 22 NYCRR §7000.3, as requested in our letters [Ex. "C-3", p.2; Ex. "C-8", p.3; Ex. "C-9", p.2, ¶6; Ex. "C-10", p.2; Ex. "E-1"; Ex. "E-2"]; your refusal to controvert our fact-specific, documented showing that the Supreme Court decision dismissing our Article 78 proceeding against the Commission is a fraud, as requested in our letters [Ex. "D-8", p.3; Ex. "D-9"; Ex. "D-13", p.3; Ex. "E-1"; "E-2"; "E-3"; Ex. "E-4"]; and your refusal to address the standard for disciplinary review and investigation, set forth in your *own* article in Pace Law Review [Vol. 7, No. 1 (winter 1987) pp. 291-388] as to "...*When 'Error' is Misconduct*" (at pp. 304-5), as requested in our letters [Ex. "D-1"; "Ex. D-3"]. A copy of those pages from your article was Exhibit "C" to CJA's September 14, 1995 letter to the Ethics Commission, transmitted to you under our September 14, 1995 coverletter (Ex. "D-1"). Because of its dispositive significance in establishing the utter deceitfulness of your response to that letter AND of our entitlement to investigation of our judicial misconduct complaints against high-ranking, politically-connected judges, another copy is annexed hereto as Exhibit "B-1" . For the same reason, annexed as Exhibit "B-2" are the pertinent pages from your own counsel's memorandum in *Matter of Slavin*, which we faxed to the Commission under a January 31, 1996 inquiry letter (Ex. "D-6"). Your February 1, 1996 response confirmed those pages as being from the record in *Slavin* and, even more significantly, confirmed that you "usually make recommendations on complaints" (Ex. "D-7").

[3] *See* Ex. "D-8"; Ex. "D-9"; Ex. "D-13".

[4] *See* Ex. "D-10"; Ex. D-14".

indicated recipients of this letter, who have not had the benefit of that correspondence, it is annexed. Exhibit "C" consists of the exchange of letters relating to CJA's request, pursuant to 22 NYCRR §7001 *et seq.* and the Freedom of Information Law, for information concerning the promulgation of 22 NYCRR §7000 *et seq.* Exhibit "D" consists of the exchange of letters relating to CJA's September 14, 1995 letter to you (Exhibit "D-1"), in support of the Commission's reconsideration of its summary dismissal of CJA's September 19, 1994 judicial misconduct complaint, based on the principles for disciplinary review set forth in your Pace Law Review article as to "*...When 'Error' is Misconduct*" (Exhibit "B-1"). Exhibit "E" consists of the exchange of letters relating to the City Bar's May 14, 1997 hearing and CJA's challenge to the Commission to address the case file proof that the Supreme Court's dismissal of our Article 78 proceeding against it is a fraud[5].

As to your statement that one point you "have repeatedly made in conversations and correspondence over the past few years" is that:

> "The Commission dismisses complaints that are not valid on their face. Every complaint dismissed by the Commission without an investigation was based on the Commission's judgment that the complaint was not valid on its face",

you never made this point until *after* we commenced our Article 78 proceeding against the Commission, which was based on the controlling language of Judiciary Law §44.1. Nor did you thereafter make such point in responding to our March 10, 1995 letter to the Commissioners (Exhibit "A"), inquiring as to the basis for the Commission's dismissals of our eight *facially-meritorious* complaints against powerful, politically-connected judges[6], and requesting confirmation that such dismissals were *without* investigation. Indeed, our correspondence[7] repeatedly highlighted to you -- and the Commissioners -- that we had had no response to that March 10, 1995 letter, other than confirmation from you that you had "distributed [it] to the Commission" and that "[n]o disciplinary action had been taken against Mr. Lawrence" (Exhibit "C-13")[8]. To date, we have still had no response to that letter's particularized request for information about the Commission's dismissals of those eight complaints -- not even a denial

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[5] The pertinent record references are set forth in CJA's analysis of the decision, appearing at pp. 1-3 of CJA's December 15, 1995 letter to the NYS Assembly Judiciary Committee. A copy of those pages is annexed to CJA's February 1, 1996 letter to Commissioner Goldman: Exhibit "D-8" (Ex. "C" thereto").

[6] CJA's March 10, 1995 letter to the Commissioners (Exhibit "A") was also filed with the New York State Ethics Commission under a March 22, 1995 coverletter as our ethics complaint against the members and staff of the Commission on Judicial Conduct.

[7] *See* Ex. "D-8" (Ex. "A" thereto); Ex. "D-8", p.2; Ex. "D-9"; Ex. "D-11"; Ex. "D-13"; Ex. "D-14".

[8] It necessitated repeated inquires about the Commission's non-response to our March 10, 1995 letter before you made these claims. *See* Ex. "D-8", p. 4; Ex. "D-10"; Ex. "D-12".

based on Judiciary Law §45. By this letter we reiterate our right to such information.

As to your unsubstantiated statement that:

> "The Commission determined that your October 1998 complaint against a judge who was being considered for the Court of Appeals was not valid on its face",

this is the FIRST time you purport this to be the basis for the dismissal of any one of our complaints.

Since the conduct alleged by our October 6, 1998 judicial misconduct complaint -- which must be assumed true for purposes of summary dismissal -- constitutes serious misconduct, to wit, our fact-specific allegation that Justice Rosenblatt perjured himself in completing his questionnaire for the Commission on Judicial Nomination and our further allegation of his collusion and complicity in the defense misconduct in the §1983 federal action, *Sassower v. Mangano, et al.* -- misconduct of which he was a beneficiary and whose particulars were presented in our *unopposed* cert petition and supplemental brief, accompanying our complaint -- please define what the Commission means by "not valid on its face". Assumedly, this is equivalent to "the complaint on its face lacks merit" -- the only basis upon which the Commission can dismiss a complaint under Judiciary Law §44.1.

Please also confirm that by saying "the Commission determined", you are referring to the Commission members rather than yourself or other staff. As noted by our past correspondence, you have sometimes confused yourself with the Commission[9].

If you do mean a determination by Commission members, are we right in interpreting Judiciary Law §43 and 22 NYCRR §7000.11 to allow two Commissioners, forming a majority of a three-member panel, to summarily dismiss a judicial misconduct complaint under Judiciary Law §44.1. Our February 3, 1999 letter asked that you advise us if this was incorrect. From your failure to so advise us, are we to assume that our interpretation is correct?

At to your statement that "[i]f [we] wish to make a complaint against any judge who is a member of the Commission, [we] may of course do so, and it will be presented to the Commission", it appears you have not deemed our February 3, 1999 letter to be a judicial misconduct complaint against Justice Joy. This, notwithstanding the letter specifically asked that it be considered a judicial misconduct complaint against him, "absent express notice" that he did not participate in the Commission's dismissal of our October 6, 1998 complaint. Your February 5, 1999 letter gives no such notice.

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[9] *See* Ex. "C-8, p.1"; Ex. "D-4", at p. 2.

As you know, the Commission routinely acknowledges judicial misconduct complaints by a form letter that always states that the "complaint will be presented to the Commission, which will decide whether or not to inquire into it". Except for our October 6, 1998 judicial misconduct complaint -- which the Commission failed to acknowledge until our November 3, 1998 reminder letter -- our past judicial misconduct complaints have always been acknowledged within two weeks. Yet, five weeks have now passed without the Commission's usual form-letter acknowledgment of our February 3, 1999 complaint against Justice Joy.

Finally, despite your recognition that you have not responded "to every one of the many questions posed by [our] February 3, 1999 letter", there were not so "many questions", considering your blanket invocation of Judiciary Law §45 to deprive us of information substantiating the legitimacy of Commission's dismissal of our October 6, 1998 complaint. Three specific questions you have not answered -- as distinct from the issues you have not addressed -- are:

> (1) "confirm that Mr. Berger has been Chairman of the Commission since 1990 or 1991 -- and provide are us with the legal authority for his continuation in that office" -- Judiciary Law §41.2 limiting his term as chairman to "his term in office or for a period of two years, whichever is shorter";
>
> (2) confirm that the date on Mr. Lawrence's December 23, 1998 letter dismissing CJA's October 6, 1998 complaint accurately reflects that the Commission's purported dismissal was "not only AFTER the Governor's December 9, 1998 nomination of Justice Rosenblatt, but AFTER the Senate's December 17, 1998 confirmation";
>
> (3) "any and all procedures for review of the Commission's purported dismissal of CJA's *facially-meritorious* October 6, 1998 judicial misconduct complaint."

It should not be particularly "time-consuming" or burdensome for you to answer these straightforward questions -- which should not require the intercession of a court or administrative body.

As to your statement that:

> "No court or administrative body has ever held that an agency of government has to respond to every question presented or justify its decisions",

are you suggesting that a government agency is free to ignore legitimate questions concerning its compliance with its statutes, operating rules, and with due process standards or that it is not accountable where it has "failed to perform a duty enjoined upon it by law" or where a determination it has made was "in violation of lawful procedure, was affected by error of law or was arbitrary and capricious or an

abuse of discretion" [CPLR §7803]. Is it now your contention that Article 78 is not an available remedy for an aggrieved complainant-taxpayer to obtain review of the Commission's acts and omissions?

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosures: Exhibits, as inventoried

cc: NYS Attorney General Eliot Spitzer
NYS Ethics Commission

TRANSMISSION VERIFICATION REPORT

TIME : 03/11/1999 16:45
NAME : CJA
FAX : 9144284994
TEL : 9144211200

DATE,TIME	03/11 16:39
FAX NO./NAME	12129498864
DURATION	00:05:40
PAGE(S)	11
RESULT	OK
MODE	STANDARD

EXHIBIT "A": **CJA's MARCH 10, 1995 LETTER TO THE COMMISSIONERS, REQUESTING INFORMATION ABOUT THE COMMISSION'S DISMISSAL OF ITS EIGHT JUDICIAL MISCONDUCT COMPLAINTS AGAINST POWERFUL, POLITICALLY-CONNECTED JUDGES**

A: NY Post editorial, "*Who Judges the Judges?*", 3/7/95

B-1: CJA's 1/22/93 ltr to Albert Lawrence, Commission Clerk
B-2: CJA's 6/8/93 fax coversheet to Lee Kiklier, Administrative Asst.

C-1: Mr. Lawrence's 12/13/94 ltr
C-2: Mr. Lawrence's 1/24/95 ltr

D: CJA's 12/15/94 ltr to Mr. Lawrence

E: Mr. Lawrence's 1/13/95 ltr

F: CJA's 1/19/95 ltr to Mr. Lawrence

EXHIBIT "B": **STANDARDS OF DISCIPLINARY REVIEW AND INVESTIGATION**

Exhibit "B-1": pp. 303-305: "*Determining Generally When 'Error' is Misconduct*", from "*Is Judicial Discipline in New York State a Threat to Judicial Independence?*", by Gerald Stern, Pace Law Review, Vol. 7, No. 2 (winter 1987), pp. 291-387.

Exhibit "B-2" pp. 14-21 of Post-Hearing Memorandum, Proposed Findings of Fact and Conclusions of Law by Counsel to the Commission in *Matter of Joseph Slavin*

EXHIBIT "C": **INVENTORY OF EXCHANGE OF LETTERS RELATING TO CJA's REQUEST, PURSUANT TO 22 NYCRR §7001 *ET SEQ.* AND THE FREEDOM OF INFORMATION LAW, FOR INFORMATION CONCERNING THE PROMULGATION OF 22 NYCRR §7000 *ET SEQ.***

Exhibit "C-1": CJA's 3/20/95 ltr to Gerald Stern

Exhibit "C-2": Jean Savanyu's 3/21/95 ltr

Exhibit "C-3": CJA's 4/4/95 ltr to Gerald Stern

Exhibit "C-4": Gerald Stern's 4/6/95 ltr

Exhibit "C-5": CJA's 4/6/95 ltr to Lee Kiklier

Exhibit "C-6": CJA's 4/10/95 ltr to Juanita Gonzalez

Exhibit "C-7": Gerald Stern's 4/12/95 ltr

Exhibit "C-8": CJA's 4/20/95 ltr to Gerald Stern

Exhibit "C-9": Gerald Stern's 4/21/95 ltr

Exhibit "C-10": CJA's 5/18/95 ltr to Gerald Stern

Exhibit "C-11": Gerald Stern's 5/22/95 ltr

Exhibit "C-12": CJA's 6/29/95 ltr to Gerald Stern

Exhibit "C-13": Gerald Stern's 7/3/95 ltr

Exhibit "C-14": Gerald Stern's 7/5/95 ltr

Exhibit "C-15": Gerald Stern's 7/27/95 handwritten note

EXHIBIT "D": **INVENTORY OF EXCHANGE OF LETTERS IN SUPPORT OF CJA's REQUEST FOR THE COMMISSION'S RECONSIDERATION OF ITS SUMMARY DISMISSAL OF CJA's SEPTEMBER 19, 1994 JUDICIAL MISCONDUCT COMPLAINT, BASED ON THE PRINCIPLES FOR DISCIPLINARY REVIEW SET FORTH IN GERALD STERN'S PACE LAW REVIEW ARTICLE AS TO "...*WHEN 'ERROR' IS MISCONDUCT*" (EXHIBIT "B-1")**

Exhibit "D-1": CJA's 9/14/95 ltr to Gerald Stern, marked "Personal and Confidential"

Exhibit "D-2": Gerald Stern's 9/26/95 ltr, marked "Confidential"

Exhibit "D-3": Gerald Stern's 12/26/95 ltr

Exhibit "D-4": CJA's 1/9/96 ltr to Gerald Stern, marked "Personal and Confidential"

Exhibit "D-5": Gerald Stern's 1/17/96 ltr

Exhibit "D-6": CJA's 1/31/96 ltr to Alan Friedberg, Esq.

Exhibit "D-7": Gerald Stern's 2/1/96 ltr

Exhibit "D-8": CJA's 2/1/96 ltr to Commissioner Lawrence Goldman, with exhibits
- Ex. A: CJA's 9/24/95 ltr to Chairman Henry Berger
- Ex. B: CJA's Letter to the Editor, "*Commission Abandons Investigative Mandate*" (NYLJ, 8/14/95)
- Ex. C: CJA's 12/15/95 ltr to Assembly Judiciary Committee, pp. 1-3

Exhibit "D-9": CJA's 4/15/96 ltr to Commissioner Goldman

Exhibit "D-10": Commissioner Goldman's 4/17/96 ltr

Exhibit "D-11": CJA's 4/17/96 ltr to Gerald Stern

Exhibit "D-12": Gerald Stern's 4/18/96 ltr

Exhibit "D-13": CJA's 4/22/96 ltr to Commissioner Goldman

Exhibit "D-14": Gerald Stern's 5/8/96 ltr

EXHIBIT "E": **EXCHANGE OF LETTERS RELATING TO THE CITY BAR'S MAY 14, 1997 HEARING AND CJA's CHALLENGE TO THE COMMISSION TO ADDRESS THE CASE FILE PROOF THAT THE SUPREME COURT'S DISMISSAL OF ITS ARTICLE 78 PROCEEDING AGAINST THE COMMISSION IS A FRAUD**

Exhibit "E-1": CJA's 5/6/97 fax to Gerald Stern, with 5/6/97 memo (w/o exhibits)

Exhibit "E-2": CJA's 5/13/97 ltr to Chairman Henry Berger

Exhibit "E-3": Gerald Stern's 5/13/97 ltr

Exhibit "E-4": CJA's 5/13/97 ltr to Gerald Stern