

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Box 69, Gedney Station
White Plains, New York 10605

By Priority Mail

December 15, 1995

Assembly Judiciary Committee
L.O.B. Room 831
Empire State Plaza
Albany, New York 12248

ATT: Patricia Gorman, Counsel

Dear Pat:

Time moves faster than I do. Ever since our meeting in Albany on October 24th, I have been meaning to write a note of thanks to you and Joanne Barker, counsel to the Assembly Judiciary Committee, to Anthony Profaci, associate counsel of the Assembly Judiciary Committee, to Joan Byalin, counsel to Chairwoman Weinstein, and to Josh Ehrlich, counsel to the Assembly Election Law Committee, for the two hours time each of you gave us to discuss CJA's recommendations for imperatively-required legislative action.

I did telephone Joan Byalin on October 26th and conveyed our appreciation. I hope it was passed on to Chairwoman Weinstein and to the counsel present at the October 24th meeting.

We trust you have now had sufficient time to review the documents we supplied the Assembly Judiciary Committee and to verify their extraordinary significance. This includes the court papers in our Article 78 proceeding against the New York State Commission on Judicial Conduct¹--and our related correspondence.

* By your review of Point II of our Memorandum of Law²--detailed with legislative history and caselaw--there should be no question but that the self-promulgated rule of the Commission (22 NYCRR §7000.3) is, on its face, irreconcilable with the statute defining the Commission's duty to investigate facially meritorious complaints (Judiciary Law, §44.1) and with the constitutional amendments based thereon. For your convenience, copies of the rule and statutory and constitutional provisions are annexed hereto as Exhibits "A-1", "A-2", and "A-3", respectively.

¹ For ease of reference, the court papers in the Article 78 proceeding against the Commission are designated herein by the numbers assigned them by our Inventory of Transmittal.

² See Doc. 6, pp. 10-17.

EX "F"
to CJA's 4/18/96 10v

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Moreover, you should now be convinced that the Supreme Court's decision of dismissal, justifying §7000.3, as written,--by an argument not advanced by the Commission--is palpably insupportable.

The definitions section of §7000.1 (Exhibit "A-1"), which the Court itself quotes in its decision³, believes its claim that "initial review and inquiry" is subsumed within "investigation". Such definitions section expressly distinguishes "initial review and inquiry" from "investigation"⁴.

Even more importantly, the Court's aforesaid sua sponte argument, which it pretends to be the Commission's "correct[] interpret[ation]" of the statute and constitution, does NOTHING to reconcile §7000.3, as written, with Judiciary Law, §44.1 (Exhibit "A-2"). This is because §7000.3 (Exhibit "A-1") uses the discretionary "may" language in relation to both "initial review and inquiry" and "investigation"--THUS MANDATING NEITHER. Additionally, as written, §7000.3 fixes NO objective standard by which the Commission is required to do anything with a complaint--be it "review and inquiry" or "investigation". This contrasts irreconcilably with Judiciary Law §44.1, which uses the mandatory "shall" for investigation of complaints not determined by the Commission to facially lack merit.

³ The Supreme Court decision does not quote the entire definition of "investigation", set forth in §7000.1(j). Omitted from the decision is the specification of what "investigation" includes. The omitted text reads as follows:

"An investigation includes the examination of witnesses under oath or affirmation, requiring the production of books, records, documents or other evidence that the commission or its staff may deem relevant or material to an investigation, and the examination under oath or affirmation of the judge involved before the commission or any of its members."

⁴ Accordingly, the "initial review and inquiry" is conducted by the "commission staff" and is

"intended to aid the commission in determining whether or not to authorize an investigation." (emphases added).

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As to the issue of the constitutionality of §7000.3, as applied, your review of the papers should have persuaded you that such important issue was squarely before the Court⁵--contrary to the Supreme Court's bald representation that it was not.

Finally, we expect you have also confirmed that the threshold issues which the Supreme Court was required to adjudicate before it could grant the Commission's dismissal motion were entirely ignored by it. Those threshold issues--fully developed in the record before the Supreme Court--included the uncontroverted default of the Commission on Judicial Conduct⁶ and the uncontroverted showing that the Commission's dismissal motion was insufficient, as a matter of law⁷. This is over and beyond the conflict of interest issues affecting the Attorney General's representation of the Commission, which we made the subject of repeated objection to the Court⁸.

Consequently, based on the record before you, you should have now confirmed that the Supreme Court's decision of dismissal is a knowing and deliberate fraud upon the public--and is known to be such by the Commission on Judicial Conduct, the State Attorney General, and the State Ethics Commission, who have each received explicit and extensive communications from us on that subject (Exhibits "C", "D", and "E").

Since none of these public agencies and offices have taken steps to vacate for fraud the Supreme Court's decision of dismissal--which was pointed out as their duty to do⁹--it now falls to the Assembly Judiciary to take action to protect the public. As a first priority, the Assembly Judiciary Committee must require the Commission on Judicial Conduct to address the specific issues raised herein as to the false and fraudulent nature of the Supreme Court's decision.

⁵ See Doc. 1: Notice of Petition: (a)(b)(c); Article 78 Petition: ¶¶ NINETEENTH, TWENTIETH, TWENTY-FIRST, TWENTY-SECOND, TWENTY-THIRD, TWENTY-FOURTH, TWENTY-FIFTH, TWENTY-SIXTH, TWENTY-SEVENTH, TWENTY-EIGHTH, TWENTY-NINTH, THIRTY-THIRD, "WHEREFORE" clause: (a), (b), (c).

⁶ See Doc. 2, Aff. of DLS in Support of Default Judgment; Doc. 5, ¶¶2-3, 7; Doc. 6, pp. 1-2.

⁷ See Doc. 6, pp. 2-9.

⁸ See Doc. 2: DLS Aff. in Support of Default Judgment, ¶¶9, 14, Ex. "B" thereto, p. 3; Doc. 5, ¶¶10, 50-4

⁹ See Exhibit "D", p. 6; Exhibit "E".

P 801 449 994
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Michael Finnegan</i>	
<i>Dr. George Pataki</i>	
Street and No. <i>Executive Chamber</i>	
P.O. State and ZIP Code <i>Albany, NY 12224</i>	
Postage	\$ <i>1.47</i>
Certified Fee	<i>1.10</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	<i>1/10</i>
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ <i>3.67</i>
Postmark or Date	<i>APR 22 1996</i>

Is your RETURN ADDRESS completed on the reverse side?

SENDER: ■ Complete items 1 and/or 2 for additional services. ■ Complete items 3, 4a, and 4b. ■ Print your name and address on the reverse of this form so that we can return this card to you. ■ Attach this form to the front of the mailpiece, or on the back if space does not permit. ■ Write "Return Receipt Requested" on the mailpiece below the article number. ■ The Return Receipt will show to whom the article was delivered and the date delivered.		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.
3. Article Addressed to: <i>Michael Finnegan</i> <i>Encl</i> <i>Dr. George Pataki</i> <i>Executive Chamber</i> <i>Albany, NY 12224</i>	4a. Article Number <i>P 801 449 994</i>	
	4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
	7. Date of Delivery <i>4-22-96</i>	
5. Received By: (Print Name) 6. Signature (Addressee or Agent) <i>X Paul Boye</i>	8. Addressee's Address (Only if requested and fee is paid)	

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

PS Form 3800, June 1985

P 801 449 993
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>David Greenberg</i>	
Street and No. <i>Senate Judiciary Committee</i>	
Room <i>413 Capitol</i>	
P.O. State and ZIP Code <i>Albany, NY 12247</i>	
Postage	\$ <i>1.47</i>
Certified Fee	\$ <i>1.10</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ <i>2.57</i>
Postmark or Date	<i>9561 6</i>

PS Form 3800, June 1985

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: <i>David Greenberg</i> <i>Senate Judiciary Committee</i> <i>Room 413, The Capitol</i> <i>Albany, NY 12247</i>	4a. Article Number <i>P 801 449 993</i>
5. Received By: (Print Name) <i>X A. Abubali</i>	4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD
6. Signature: (Addressee or Agent) <i>X A. Abubali 4/22/96</i>	7. Date of Delivery
PS Form 3811, December 1994	8. Addressee's Address (Only if requested and fee is paid)

Domestic Return Receipt

Thank you for using Return Receipt Service.

P 801 449 997
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Assembly Judiciary Committee</i>	
Street and No. <i>Post Office General</i>	
Room <i>831 Empire State Plaza</i>	
P.O. State and ZIP Code <i>Albany, NY 12248</i>	
Postage	\$ <i>1.24</i>
Certified Fee	\$ <i>1.10</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ <i>2.34</i>
Postmark or Date	<i>9561 6</i>

PS Form 3800, June 1985

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
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- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: <i>Assembly Judiciary Committee</i> <i>Post Office General</i> <i>Room 831 Empire State Plaza</i> <i>Albany, NY 12248</i>	4a. Article Number <i>P 801-449-997</i>
5. Received By: (Print Name) <i>X Thomas J. Tompkins</i>	4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD
6. Signature: (Addressee or Agent)	7. Date of Delivery
PS Form 3811, December 1994	8. Addressee's Address (Only if requested and fee is paid)

Domestic Return Receipt

Thank you for using Return Receipt Service.

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SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
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I also wish to receive the following services (for an extra fee):

1. Addressee's Address
2. Restricted Delivery

Consult postmaster for fee.

Thank you for using Return Receipt Service.

3. Article Addressed to:
Senate Majority Leader Bruno
NYS Senate
Albany, NY 12247

4a. Article Number
P 801 449 995

4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD

7. Date of Delivery

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)
X [Signature] 4/22/96

PS Form 3811, December 1994

Domestic Return Receipt

P 801 449 995
RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Senate Majority Leader Joseph Bruno</i>	
Street and No. <i>NYS Senate</i>	
P.O., State and ZIP Code <i>Albany, NY 12247</i>	
Postage	<i>\$ 1.47</i>
Certified Fee	<i>1.10</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	<i>\$ 2.57</i>
Postmark or Date	<i>APR 19 1996</i>

PS Form 3800, June 1985

PS Form 3800, June 1985

P 801 449 995 RECEIPT FOR CERTIFIED MAIL NO INSURANCE COVERAGE PROVIDED NOT FOR INTERNATIONAL MAIL (See Reverse)	
Sent to <i>Judge Jonathan B. King</i>	Street and No. <i>601 Second Avenue</i>
Street and No.	
P.O. State and ZIP Code <i>NY C 10017</i>	Postage <i>\$ 1.47</i>
Certified Fee <i>1.10</i>	Special Delivery Fee
Restricted Delivery Fee	Return Receipt showing to whom and Date Delivered <i>APR 19 1996</i>
Return Receipt showing to whom, Date, and Address of Delivery	TOTAL Postage and Fees <i>\$ 2.57</i>
Postmark or Date <i>APR 19 1996</i>	

Thank you for using Return Receipt Service.

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SENDER:

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1. Addressee's Address
2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Judge Jonathan B. King
New York, Comm. S.
NYS Commission on
Judicial Conduct
801 Second Avenue
NY C 10017

4a. Article Number
P 801 449 996

4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD

7. Date of Delivery

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)
X [Signature]

PS Form 3811, December 1994

Domestic Return Receipt