

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 3002
Southampton, New York 11969

Tel. (631) 377-3583
Fax (631) 377-3582

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

BY FAX: 646-428-6163 (10 pages)
BY E-MAIL: glaberson@nytimes.com

DATE: February 21, 2011

TO: William Glaberson, Metro Desk
The New York Times

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc.

RE: PROPOSAL FOR COVERAGE: Reporting on the public's "views" of the NYS Commission on Judicial Conduct, expressed at the NYS Senate Judiciary Committee hearings in 2009 – as to which neither the Senate Judiciary Committee, bar associations, nor advocacy organizations favored by The Times have rendered ANY report or made ANY findings

This is to reiterate my February 4th phone call, requesting to meet with you to discuss future reporting on the New York State Commission on Judicial Conduct – the subject of four separate articles by you in a nine-day span: January 25th, January 28th, February 2nd, and February 3rd.¹

Your articles identify critics of the proposal of the New York County Lawyers' Association that would make the Commission more protective of judges as complaining that it "takes into account judges' complaints but not the views of the public". However, you do not identify anything about the public's "views" of the Commission – including as expressed at the New York State Senate Judiciary Committee's hearings on the Commission in 2009 – or even that there were hearings. And you essentially portray these critics – the Brennan Center for Justice and Committee for Modern Courts – as spokesmen for the public's unidentified "views" of the Commission and promoters of the public interest. You even put the Commission itself on the side of the public, based on its opposition to the bar proposal and endorsement of opening

¹ These four articles were entitled: "*Proposal to Revamp Judicial-Conduct Agency Draws Fire*"; "*New York Bar Seeks Limits on Investigations of Judges*"; "*A Sex Joke and Other Judicial Bad Behavior*"; and "*A Push to Open Hearings in Judge-Misconduct Cases*".

* **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.

disciplinary hearings against judges. Nothing could be further from the truth.

The New York-based Brennan Center and Committee for Modern Courts – both of whose websites are essentially devoid of any mention of the Commission – as well as the out-of-state American Judicature Society, whose opinion you have also solicited, do not represent the public’s “views” of the Commission, nor the public interest with respect thereto. These organizations, like the bar associations:

- (a) do not file judicial misconduct complaints with the Commission;
- (b) refuse to comment on judicial misconduct complaints filed by others;
- (c) refuse to comment on citizen lawsuits against the Commission arising from its dismissal of complaints;
- (d) refuse to comment on the lawfulness of the Commission’s self-promulgated rule, 22 NYCRR §7000.3, by which the Commission has converted its mandatory duty to investigate facially-meritorious complaints under Judiciary Law §44.1 into a discretionary option, unbounded by any standard – also refusing to comment on the lawfulness of any other rule or statutory provision of the Commission affecting complainants’ rights.

This enables the Brennan Center, the Committee for Modern Courts, and American Judicature Society to pretend that the Commission is a functioning safeguard, protecting the public against unfit judges, when it is not. CJA has chronicled this by a paper-trail of advocacy with them, spanning more than a decade and a half. It is posted on our website, www.judgewatch.org, accessible *via* the sidebar panel “Searching for Champions: Organizations”. Our comparable paper-trail of advocacy with the New York County Lawyers’ Association, the New York State Bar Association, and the New York City Bar Association is similarly posted on our website, accessible *via* the sidebar panel: “Searching for Champions: Bar Associations”.

As illustrative, enclosed is a transcription of my public comments to the Committee for Modern Courts and the New York State Bar Association at the forum they co-sponsored on the Commission on December 11, 2002. My comments at that forum, as in my February 4th telephone conversation with you, were prefaced by reference to New York State Comptroller Ed Regan’s 1987 report, whose title expressed the Comptroller’s own “view” of the Commission: Not Accountable to the Public. That report is also posted on our website, most conveniently accessible *via* the sidebar panel “Judicial Discipline: State-NY”, as is the Comptroller’s December 7, 1989 press release “*Commission on Judicial Conduct Needs Oversight*”, a copy of which is enclosed.

As I explained to you, Comptroller Regan understood that no assessment of the Commission is possible without access to the records of the judicial misconduct complaints filed with the Commission. The Commission, however, would not allow such access – leading the Comptroller to call for legislative emendation of the Judiciary Law so that the records of complaints filed with the Commission could be audited. To date, nearly a quarter of a century later, the Legislature has failed to amend the Judiciary Law – and there has been no such audit.

Inasmuch as your articles imply that the Brennan Center, the Committee for Modern Courts, and American Judicature Society are honest and reputable information sources, why don't you ask them the basis upon which – without access to the records of complaints filed with the Commission – they purport that the Commission properly handles complaints, all but a fractional percentage of which the Commission dismisses. Also ask them why they purport that opening the Commission's disciplinary hearings as to this minuscule percentage of complaints will promote "public confidence"? Indeed, none of the witnesses testifying at the Senate Judiciary Committee's 2009 hearings said they lacked "confidence" in the Commission because its disciplinary hearings against judges are not public. Rather, they protested and called for official investigation of the Commission because, without hearings and mostly without investigation or contact, the Commission had dismissed their facially-meritorious, documented judicial misconduct complaints.

Your articles do not reveal that there has never been an audit of the Commission's records of its handling of complaints. Nor do you reveal that opening the Commission's disciplinary hearings against judges – advocated by the Commission, the Committee for Modern Courts, American Judicature Society, and proposed in 2009 and 2010 by Senator John Sampson when he chaired the Senate Judiciary Committee – has NO relevance to the upwards of 98% of complaints the Commission dismisses without hearings. The Commission has not only put these complaints beyond reach of audit, but destroys the vast majority after a mere five years' retention, notwithstanding the complained-against judges may be sitting on the bench for additional decades. Did you know this? – and that the Commission implemented this destruction policy in 1994, without seeking legislative approval?

Why don't you also ask the New York State Bar Association and the New York County Lawyers' Association why they have not balanced their solicitude of judges by any examination of what complainants have to say about the Commission's handling of their complaints? Perhaps some of the 77,000 lawyers of the State Bar and 9,000 lawyers of the New York County Lawyers would volunteer to review the testimony and documentation these complainants presented to the Senate Judiciary Committee at its 2009 hearings – and make findings with respect thereto.

The New York County Lawyers' Association did not testify at the Senate Judiciary Committee's 2009 hearings, even though the second of the Committee's two hearings was in Manhattan, literally around the corner from it – and was on September 24, 2009, ten days after its board of

directors' vote approving the report containing the proposals that would make the Commission more protective of judges. As for the New York State Bar, it testified at the Committee's first hearing, on June 8, 2009 in Albany – but not about the Commission.

The Brennan Center did not testify at either hearing. Nor did the American Judicature Society. The Committee for Modern Courts testified, at the second hearing, by its chairman – himself a former member and chairman of the Commission on Judicial Conduct – endorsing its performance and the opening of judicial disciplinary hearings on the pretense that it would enhance “public confidence”.

These 2009 Senate Judiciary Committee hearings, the direct result of CJA's advocacy before then Chairman Sampson in January and February 2009, received no coverage by The Times – and you cut me off as I attempted to tell you that the videos of the hearings are posted on CJA's website. They are most easily accessible *via* the top panel “Latest News” and, additionally, *via* the sidebar panel “Judicial Discipline: State-NY”.

As these two videos reflect, the Committee was unable to accommodate all the members of the public who clamored to testify – and Chairman Sampson promised that the Committee would hold additional hearings. He also endorsed a proposal by fellow Committee member Eric Adams that a task force be appointed to assist the Committee in addressing the mountain of information and evidence the public was presenting of corruption. Yet, no task force was appointed and the Committee's continued hearings were aborted. A third hearing, calendared for December 16, 2009 – at which CJA was slated to testify – was cancelled and not re-scheduled. To date, the Committee has neither rendered a report nor made any findings with respect to the mountain of substantiating documentary evidence it received at the two hearings. Indeed, its 2009 annual report, purporting to “detail the activities of the Judiciary Committee” in 2009, contains no reference to the hearings – the first legislative hearings on the Commission in 22 years.

I have spoken with several witnesses who testified at the Senate Judiciary Committee's 2009 hearings – including attorneys Regina Felton, Esq. and Nora Renzulli, Esq. and financial auditor/investigative reporter Catherine Wilson², each having direct, first-hand experience filing complaints with the Commission. They have stated that they would be willing to participate in a meeting with you so that you can achieve some balance in your coverage – preferably by an investigative expose of the Commission, such as has not been done by The Times since the Commission first opened its doors in 1975.

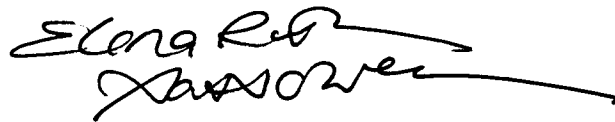
Please let me know by week's end whether you would be willing to meet with such a delegation of witnesses. If not, please pass this memo on to Bill Keller, who you identified to me as your editor having oversight over your work – with a request that, at very least, he personally view the video of

² They each testified at the September 24, 2009 hearing in Manhattan – and the meter readings of their testimony are indicated on CJA's webpage of the hearings to facilitate your locating it on the video.

the testimony of Ms. Felton, Ms. Renzulli, and Ms. Wilson, as well as the video of the testimony of witnesses John Montagnino, Esq. and Pamela Carvel (of Carvel ice cream fame)³. Meantime, I am furnishing a copy of this memo to The Times' Editorial Board, with a comparable meeting request so that their editorial positions on the Commission may be properly informed – including as to the fact, confused by your articles, that none of the parties from whom you solicited comment have proposed opening more than the Commission's judicial disciplinary hearings – an essentially diversionary and irrelevant reform.

Finally, inasmuch as the Senate Judiciary Committee's 2009 hearings on the Commission were combined with hearings on New York's court-controlled attorney disciplinary system – which, to my knowledge, has also never been the subject of any investigative expose by The Times and no recent coverage, please advise when a separate delegation of hearing witnesses might meet with you as to their "views", likewise based on their direct, first-hand experience, whether as complainants or complained-against attorneys. For starters, I suggest the video testimony of Paul Altman, Luisa Esposito, John Aretakis, Esq., Catherine Malarkey, and Suzanne McCormack.

Thank you.



P.S. On February 16th, I spoke with your colleague, James Barron, following his presentation at the Southampton library about his work at The Times and questions from the audience that included inquiries about objectivity, balance, and how The Times gets its stories. I briefly discussed the foregoing with Mr. Barron – and am cc'ing him on this letter in the hope he might be able and willing to pursue the stories herein – or help in pitching them to you and Times editors.

Enclosures: (1) transcription of comments at December 11, 2002 forum on the NYS Commission on Judicial Conduct, co-sponsored by the NYS Bar Association & Committee (Fund) for Modern Courts;
(2) NYS Comptroller Ed Regan's December 7, 1989 press release, "*Commission on Judicial Conduct Needs Oversight*"

cc: New York Times Editorial Board:

By fax (212) 556-3815 and e-mail: editorial@nytimes.com

James Barron: barron@nytimes.com

Witnesses at the NYS Senate Judiciary Committee's 2009 hearings on the NYS Commission on Judicial Conduct & attorney disciplinary system

³ Their testimony was at the June 8, 2009 hearing in Albany – and the meter readings of their testimony are also indicated on CJA's webpage of the hearings to facilitate your locating it on the video.

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

"Judging the Judges: The New York State Commission on Judicial Conduct"

Sponsored by the New York State Bar Association and Fund for Modern Courts

Wednesday, December 11, 2002

NYSBA headquarters, Albany, New York

Moderated by NYSBA President Lorraine Power Tharp

[Transcribed by Elena Sassower from an audiotape]

"My name is Elena Sassower and I am the coordinator and cofounder of the Center for Judicial Accountability, which is a non-partisan, non-profit citizens organization which for the past ten years has been collecting evidence to document the corruption of the New York State Commission on Judicial Conduct.

In 1989, State Comptroller Ed Regan came out with a report on the Commission on Judicial Conduct, entitled "*Not Accountable to the Public*", and said that the Commission on Judicial Conduct was operating without appropriate oversight. The reason was State Comptroller Regan recognized at that time that unless he could examine how the Commission on Judicial Conduct was handling complaints that it received, whether its dismissals of complaints were proper, whether it was being documented with reasons, he could not verify that the Commission on Judicial Conduct was acting in conformity with the law and so he suggested, he recommended, in 1989, that there be legislative change made so that the Commission could be held accountable to the public.

Now there has not been a legislative oversight hearing of the Commission on Judicial Conduct in over 15 years. There was a routine oversight hearing in 1981. There was a routine oversight hearing in 1987. And there has been no oversight hearing of the Commission on Judicial Conduct since that time, notwithstanding the 1989 report of Comptroller Regan.

Now, our non-profit, non-partisan citizens organization has been doing what Ed Regan couldn't do. We have been collecting duplicate copies of judicial misconduct complaints filed with the Commission. We have been shadowing the Commission, as well as ourselves filing complaints with the Commission on Judicial Conduct. And we have been able to verify and document the Commission's corrupt, unlawful dismissal of judicial misconduct complaints, which is now the subject of a lawsuit pending in the Court of Appeals as we speak.

My question is two-fold:

One, whether the Commission on Judicial Conduct, and the Fund for Modern Courts, and the New York State Bar Association would endorse, would lobby, would press for a legislative oversight hearing of the Commission at which evidence can be presented as to what has been going on over all these years.

And number two, whether, independent of that effort to obtain legislative oversight hearings, the New York State Bar Association and the Fund for Modern Courts would address the evidence of the Commission on Judicial Conduct's corruption, which is embodied in this lawsuit, such as they have refused to do over these many, many years. The Commission's corruption is not 'he said-she said', it is not a matter of opinion, it is verifiable from court documents and I would like to know whether, over and apart from legislative oversight hearings, the Fund for Modern Courts and the New York State Bar Association will review these files and deny and dispute what they show: that the Commission is corrupt, that it has corrupted the judicial process, and it has been the beneficiary of a series of fraudulent judicial decisions without which it would not have survived several court challenges.

...

By the way, here is all the correspondence with the State Bar Association in the past year to get them to act, and with the Fund for Modern Courts trying to get them to act – to discharge their duties to the public in some meaningful way, rather than a sham forum at which all insiders, other than Mr. Racanelli, have been presenting. Sure, you have the Deputy Administrator, you have a former Commissioner, you have a present Commissioner. What else are they going to say, but that the Commission “walks on water”?

[inaudible comment by Robert Tembeckjian, Deputy Administrator of the New York State Commission on Judicial Conduct]

Yes because the [Commission] is protected by judges under its disciplinary jurisdiction. Those decisions are frauds as readily verifiable from comparison of the decisions with the record and with fundamental law and legal principles.

...

Will the State Bar and the Fund examine this court file, encompassing two other legal challenges to the Commission, establishing its corruption and its corrupting of the judicial process? Will you do it?”

* * *

Upon conclusion of the program, Elena Sassower left two cartons containing a copy of the file of *Elena Ruth Sassower, Coordinator of the Center for*

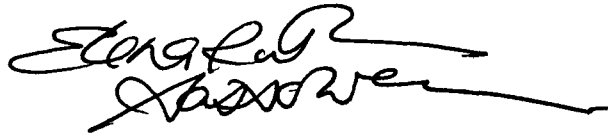
Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York – physically incorporating the files of two other lawsuits against the Commission, *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission* – at NYSBA headquarters. This, in addition to a copy of CJA's past correspondence requesting the State Bar Association's *amicus* and other assistance in the lawsuit.

Six weeks later, Elena Sassower picked up these two cartons – leaving only a copy of her two final motions in the lawsuit – her October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief and her October 24, 2002 motion for leave to appeal – and the Court of Appeals' decisions denying them, without reasons.

These two motions suffice to establish that the Commission has been the beneficiary of five fraudulent lower court decisions in three separate cases – to which the Court of Appeals put its *imprimatur* by its own fraudulent decisions.

Elena Sassower also provided copies of these two motions to the Fund for Modern Court's Executive Director, upon the conclusion of the December 11, 2002 "Judging the Judges" forum, together with duplicate copies of her prior correspondence with the Fund, requesting its *amicus* and other assistance in the case.

Neither the State Bar nor the Fund ever commented upon these dispositive motions. Nor did they return them to CJA.

A handwritten signature in black ink, appearing to read "Elena Sassower". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

NEWS

FROM THE OFFICE
OF
NEW YORK STATE COMPTROLLER EDWARD V. REGAN

FOR RELEASE: IMMEDIATE, THURSDAY, DECEMBER 7, 1989

Contact: Robert R. Hinckley
(518) 474-4015



REGAN: COMMISSION ON JUDICIAL CONDUCT NEEDS OVERSIGHT

Because the State Commission on Judicial Conduct has shielded itself from independent review by refusing to provide access to its confidential records for audit, State taxpayers will have no assurance that the Commission is operating in a fair manner, State Comptroller Edward V. Regan said today.

"The Commission has denied our request for access to confidential records and has refused to propose legislation to open its records to my Office," said Comptroller Regan. "As a result, my auditors cannot determine if the Commission is complying with applicable State laws and regulations.

"Because there is no independent review of the Commission's activities, it is operating without appropriate oversight," Mr. Regan said. "Without an effective system of checks and balances, the potential exists that the Commission may be abusing its authority by wrongfully dismissing complaints against judges without cause and justification."

In responding to the Comptroller's Office request for access to records, Commission officials invoked the confidentiality provisions of Sections 45 and 46 of the Judiciary Law which, according to the Comptroller's audit, "provide that all complaints, correspondence, Commission proceedings and transcripts thereof, other papers and data and records of the Commission are confidential and shall not be made available to anyone other than the Commission, its designated staff personnel and its agents in the performance of their power and duties."

The Commission apparently allows certain outside contractors and their employees access to confidential information as agents of the Commission. Commission officials indicated that allowing such access was necessary for the contractors to perform their work.

In order to comply with the law and provide appropriate oversight of a governmental body, the Comptroller's auditors requested that they be designated agents of the Commission. This request was denied. They also asked the Commission to propose legislation to provide the Comptroller's Office access. Once again, the Commission refused.

In their 1989 annual report, Commission officials cited similar problems in not being able to gain access to confidential records in carrying out their responsibilities. According to that report, the Commission has been unable to expeditiously obtain required material

- more -

from records either under court seal or made confidential by statute. The report also states that no judge should be shielded from proper inquiry because the alleged misconduct is under court seal and that any concern regarding the release of such information should be allayed by the Commission's strict confidentiality mandate.

Comptroller Regan said,

"It is essential that auditors from the Office of the State Comptroller have access to all records when they audit and evaluate a program on behalf of the State's taxpayers. Historically, most State agencies have recognized the Comptroller's authority and the importance of this concept and have fully cooperated by providing full access to their records. In having access to confidential records, auditors are bound by the provisions of the law regarding not disclosing specific information that is confidential.

"For example, the State Tax Department provides our auditors access to personal and corporate tax returns. The Department of Correctional Services provides our auditors with criminal history records and inmate medical records. Schools provide our auditors with student records. The Civil Service Department has shared the actual medical claims history records of employees. To do anything less would impair the public's right to know, generically, that their tax dollars are being spent in an appropriate manner, especially in areas that are not subject to scrutiny by outsiders."

The Comptroller made these comments in releasing an examination of the Commission's financial management practices. Auditors stated that nothing came to their attention during the course of their review to indicate that the Commission was not operating in accordance with sound fiscal practices. However, auditors were unable to complete their compliance audit because the Commission refused access to certain records.

Since the Commission was established in 1978, it has reportedly handled 10,680 complaints of judicial misconduct, of which 7,615 (71 percent) have been dismissed without investigation. During 1987 and 1988, the Commission received 1,908 complaints, including 1,271 complaints against State judges and 635 complaints against town justices. The Commission investigated 12 percent of the complaints against State judges and 37 percent of the complaints against town justices during this period.

Auditors also indicated that there appears to be an inherent conflict of interest in the Commission's decision-making process. The Court of Appeals, which is a body whose members the Commission is responsible for handling complaints against, can rule on Commission determinations upon a judge's request.

###