CENTER for JUDICIAL ACCOUNTABILITY, INC.

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6 pages

March 18, 1996

Professor Stephen Gillers
New York University School of Law
40 Washington Square South, Room 308
New York, New York 10012

Dear Professor Gillers:

This letter memorializes our most memorable conversation last Tuesday, March 12th, immediately following your oral presentation at Hofstra University's Conference on "Legal Ethics: The Core Issues". It also reiterates what I told you then--which you, as a leading expert on ethics, should know without my having to tell you---to wit, that it is absolutely unethical for you to favorably comment to the press about the functioning of the New York State Commission on Judicial Conduct when, as you candidly admitted to me:

(1) you have never seen copies of any of the judicial misconduct complaints which the Commission on Judicial Conduct has dismissed, without investigation; and

(2) you have never compared the self-promulgated rule (22 NYCRR §7000.3) under which the Commission has been dismissing, rather than investigating, judicial misconduct complaints, with the statute which created and empowered the Commission (Judiciary Law §44.1).

An example of the favorable comment given by you to the press, in response to queries about the Commission on Judicial Conduct, may be gleaned from the enclosed article, "Judicial Hearings Are Rare", by Letta Taylor, which appeared in Long Island Newsday, on or about September 18, 1995 (Exhibit "A"). In pertinent part, it reads as follows:

> "The Westchester-based Center for Judicial Accountability has accused the commission of targeting lower court jurists while 'covering up for powerful and politically-connected judges.'
>
> But Gillers said he had seen no evidence of that...".

Ex "E"

It seems clear that the reason you have "seen no evidence" is because you have deliberately chosen not to see it.

As you know, last summer, the New York Law Journal informed its readers of our legal challenge to the Commission on Judicial Conduct when, on July 31, 1995, it highlighted the Supreme Court's dismissal of our case, under its "Decisions of Interest", and thereafter, when it published our Letter to the Editor, "Commission Abandons Investigative Mandate", on August 14, 1995 (Exhibit "B").

I quoted from and enclosed a copy of our published Letter to the Editor in my December 1, 1995 fax letter to you (Exhibit "C"). That faxed letter inquired as to your willingness to serve as an "expert", independently evaluating the file of our case against the Commission for an A & E film documentary about judicial abuse and corruption. Yet, as you admitted to me, you neither responded to that letter to you--nor to my several follow-up telephone messages.

Moreover, when--during the course of our conversation last Tuesday--I asked whether you would now be willing to review the case file so that you could inform yourself as to the blatant unconstitutionality of the Commission's self-promulgated rule, as written and as applied--you rejected my proffer of the file--a copy of which I had in my hand.

If, in any respect, this letter does not accurately reflect our conversation last Tuesday, or if the Newsday reporter was inaccurate in the response she attributed to you, please let us know.

Please also let us know, should you decide to review the file of our ground-breaking public interest case against the Commission on Judicial Conduct.

We believe it is your ethical and professional duty to verify the documentary proof contained in that file, establishing that the New York State Commission on Judicial Conduct is corrupt and the beneficiary of a fraudulent judgment of dismissal--without which it could not have survived our legal challenge.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosures

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Judicial Hearings Are Rare

The state Commission on Judicial Conduct investigates about 1,600 complaints against judges each year, but fewer than 30 of them result in formal charges such as those lodged against Nassau County Court Judge B. Marc Mogil.

Only about six to nine cases annually become the subject of a hearing such as the one involving Mogil that is going on in Manhattan. Since 1991, the commission has dismissed only one case against a judge after such a hearing.

"The charges have to be serious and the evidence has to be strong for a complaint to reach the hearing stage," said Stephen Gillers, a legal ethics professor at the New York University Law School. "But then, the accused judge has the opportunity to challenge that evidence and the fact that it is strong doesn't mean it is true."

The commission can sanction or remove judges from the bench for misconduct ranging from improper rulings to erratic behavior or illegal actions such as pilfering public funds. It issues private cautions to about 40 judges a year in lieu of charges and many judges resign once they know they are under investigation, said the commission's administrator, Gerald Stern.

Of the 15 to 30 cases annually that result in charges, more than half are resolved through "stipulations" in which the judge forgoes a hearing and instead admits to the conduct in question — sometimes with the caveat that he or she didn't consider it to be wrong — or leaves office voluntarily.

Three or four usually are removed from the bench annually. The others found guilty of misconduct usually are publicly admonished or censured, said Stern.

The Westchester-based Center for Judicial Accountability has accused the commission of targeting lower court jurists while "covering up for powerful and politically connected judges."

But Gillers said he had seen no evidence of that and Stern called the accusation "total nonsense."

Usually, information about complaints against jurists are made public only if the charges are upheld. Mogil is only the seventh judge in the commission's 20-year history to waive his right to privacy.

The 11-member commission is composed of four judges, five lawyers and two lay persons who are appointed by the three branches of state government.

Hearings are conducted by "referees" — judges appointed by the commission who issue a recommendation to the commission to either uphold or dismiss the charges, based on the preponderance of evidence. The commissioners also receive final arguments from both sides in the case.

The panel usually votes to uphold the referee's recommendation, but it makes its own decision on what form a sanction will take.

—Letta Taylor