

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY PRIORITY MAIL

CERTIFIED/RETURN RECEIPT: 7000-1670-0007-0498-0645

May 31, 2001

American Judicature Society
180 N. Michigan Avenue, Suite 600
Chicago, Illinois 60601

ATT: Allan Sobel, Executive Vice-President and Director

- RE:
- (1) Reconsideration of CJA's request for *amicus* and other assistance in the appeal of the public interest lawsuit, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York (NY Co. #108551/99)*, to be argued in the Appellate Division, First Dept., September 2001 Term
 - (2) Inclusion of CJA as a "link" on American Judicature Society's website

Dear Mr. Sobel:

This letter follows up our brief phone conversation on April 11th. You then stated, in response to my questions, that except for my name, you didn't really know who I was, that you hadn't read my Appellant's Brief, sent to American Judicature Society under CJA's March 6th letter requesting *amicus* and other assistance in the above-entitled appeal against the New York State Commission on Judicial Conduct, that you were busy and really couldn't speak with me, and, that if I called back in two weeks, you were also going to be too busy to speak with me.

This lack of familiarity with my Appellant's Brief – and brusque treatment -- was particularly disturbing as nearly a month earlier, on March 15th, I had asked Kerry Hill, who heads your Center for Judicial Independence, to provide you with my Appellant's Brief so that you could determine for yourself the significance of the appeal, as to which she and the Director of your Center for Judicial Conduct Organizations, Cynthia Gray, had advised, *without reasons or other elaboration*, by a fax of that date, "there is nothing the American Judicature Society can do to assist" (Exhibit "A").

In view of the transcending issues of judicial independence presented by my Appellant's Brief – embracing *both* judicial discipline and selection – and American Judicature Society's expertise as to these important areas -- such response by Ms. Hill and Ms. Gray is wholly inappropriate. This letter, therefore, requests reconsideration of that denial, including by submission to American Judicature Society's Board of Directors at its annual meeting in August. As the appeal for which CJA's March 6th letter sought *amicus* and other assistance is now scheduled for oral argument in the September 2001 Term¹, Board action, even at that late juncture, would still be timely.

The most cursory examination of my Appellant's Brief shows that it documents that a New York State judge threw judicial independence "out the window" by a fraudulent judicial decision that, in *every* material respect, falsified the factual record and violated fundamental adjudicative standards. This, to cover up the *readily-verifiable* corruption of the New York State Commission on Judicial Conduct – the subject of the suit -- as well as the corruption of the "merit selection" process to New York's highest court. These are matters about which American Judicature Society, "a recognized authority and leader in promoting...an effective and fair system of judicial discipline" and preeminent advocate of "merit selection", cannot be silent. Tellingly, the March 15th letter signed by Ms. Hill and Ms. Gray (Exhibit "A") is devoid of *any* reason "why" American Judicature Society cannot "assist" in the appeal, including on the most basic level of providing advice, research help, support in coalition-building, and media connections.

Both Ms. Hill and Ms. Gray were unwilling to substantively discuss the appeal when I called them. Ms. Hill's excuse, in our March 15th conversation, for not commenting substantively was that my Appellant's Brief, which she told me was "well written", was not a "neutral" recitation, but one of an "interested party". Of course, I told Ms. Hill that she could qualify her comments as assuming the truth of the Brief's factual recitation for argument's sake. Indeed, I told her that based on my many years of contact with American Judicature Society, American Judicature Society had every reason to assume the integrity of such recitation². I also pointed out that my March 6th American

¹ See enclosed April 6th stipulation.

² Notable among these contacts, my document-supported communications with Ms. Gray: in 1994 when I attempted to get American Judicature Society to collaborate with CJA on a critique of the methodologically-flawed and dishonest Report of the National Commission on Judicial Discipline and Removal – which she rejected -- and my attempt in 1995 to get American Judicature Society to address the serious issues presented by an earlier lawsuit against the Commission, *Doris L. Sassower v. Commission on Judicial Conduct*, "thrown" by a fraudulent judicial decision [A-189-194]– which she also rejected. CJA's eventual critique of the Report of the National Commission on Judicial Discipline and Removal is reflected by my published article, "*Without Merit: The Empty Promise of Judicial Discipline*", *The Long Term View*, Massachusetts School of Law, summer 1997, Vol 4, No. 1 (Exhibit "B")– a copy of which was provided to American Judicature Society in 1998, along with voluminous supporting materials – never returned. The serious issues raised by *Doris L. Sassower v. Commission* are encompassed in my instant lawsuit (A-24-27; 48-56).

letter transmitting the Appellant's Brief and substantiating Appendix had *expressly* offered to furnish the underlying record, thereby enabling American Judicature Society to independently verify the Brief's factual recitation.

On April 11th, before speaking with you and learning that Ms. Hill had not, as I had requested, provided you with my Appellant's Brief and Appendix for your review, I spoke with Ms. Gray. What was most memorable about that conversation was Ms. Gray's statement that American Judicature Society would not even provide me with research help for purposes of my Reply Brief. Ms. Gray stated that this was because American Judicature Society has a "small" staff and its resources are "stretched". Yet, American Judicature Society promotes itself as "the largest independent, nonpartisan organization working to improve our courts and promote the effective administration of justice" and specifically identifies that it "respond[s] to hundred of inquiries from researchers, policy makers, journalists, and others on issues related to courts and judges".

As the Center for Judicial Conduct Organizations publishes summaries of decisions involving judicial discipline and, surely, has access to Westlaw and/or Lexis, it would be a simple matter for Ms. Gray to scan whether there is *any* decisional law for the outrageous propositions asserted on the appeal by the New York State Attorney General on behalf of the Commission, that:

- (1) a complainant whose facially-meritorious judicial misconduct complaint is dismissed by the Commission on Judicial Conduct lacks "standing" to sue the Commission based thereon; and that
- (2) a litigant lacks "standing" to challenge a court's interference with "random selection" in assigning his case to a judge, without notice or opportunity to be heard.

Yet, in my April 11th conversation with Ms. Gray, she would not provide me with *any* research assistance on these issues, which I raised with her. As I recall, she even declined to provide me with the benefit of her expertise by commenting on them.

As the Center for Judicial Conduct Organizations collects constitutional, statutory, and rule provisions relating to all the state commissions, Ms. Gray, with her long tenure as its Director, could readily offer substantive comment on my challenge to the various statutory and rule provisions involving the New York State Commission on Judicial Conduct, set forth in my verified petition's six Claims for Relief [A-37-45]. First and foremost of these, whether the Commission's self-promulgated rule 22 NYCRR §7000.3, giving the Commission unfettered discretion to do anything or nothing with a judicial misconduct complaint, is facially consistent with Judiciary Law §44.1, requiring the Commission to investigate all complaints not determined to be facially lacking in merit [A-37-38]. Surely, too, Ms. Gray could readily comment as to whether, in her professional

judgment, the two judicial misconduct complaints which are the subject of my lawsuit are facially meritorious [A-57-83; A-97-101]. Likewise, she is in a position to offer her professional judgment as to whether my application for Justice Wetzel's recusal for self-interest was legally sufficient to have mandated his disqualification or, at very least, to have obliged him to make disclosure of the information therein sought [A-250-293] – as well as the sufficiency of Justice Wetzel's decision denying recusal, *without* identifying a single ground asserted in the recusal application as warranting his disqualification and *without* making any disclosure [A-10-12]. Certainly, her professional expertise qualifies her to give an opinion as to the important proposition advanced in the Brief (at p. 38), for which I was unable to locate legal authority, that:

“Adjudication of a recusal application should be guided by the same legal and evidentiary standards as govern adjudication of other motions. If the application sets forth specific supporting facts, the judge, as any adversary, must respond to those facts. To leave unanswered the ‘reasonable questions’ raised by such application would undermine the very purpose of ensuring the appearance, as well as the actuality, of a judge’s impartiality.”

Your review of the Appellant's Brief and Appendix should convince you that the *real* reason for the failure and refusal of Ms. Gray and Ms. Hill to substantively comment on the merits of the appeal is because they know that *any* honest comment would bring down the New York State Commission on Judicial Conduct and, with it, expose systemic judicial corruption of a nature and magnitude that American Judicature Society likes to pretend does not exist. Even without the underlying file, the Appellant's Brief and Appendix establish that my lawsuit against the Commission was “thrown” by a fraudulent judicial decision – without which the Commission could not have survived. Indeed, because Justice Wetzel rested his dismissal decision [A-9-14] *exclusively* on the decisions in *Doris L. Sassower v. Commission* [A-189-194] and *Michael Mantell v. Commission* [A-299-307], all Ms. Hill and Ms. Gray had to do was examine my *uncontroverted* analyses of those two decisions in the Appendix [A-52-54; A-321-334] to verify that the judges in those cases employed false rationalizations and manipulations of the statutes and rules relating to the Commission to “throw” those lawsuits.

Under such circumstances, where Ms. Hill and Ms. Gray had the evidence before them that three separate lawsuits against the Commission were “thrown” by fraudulent decisions and where, additionally, CJA's March 6th letter gave them notice that the fraudulent lower court decision in *Mantell* had been affirmed on appeal in a two-paragraph cover-up decision³, their duty under ethical rules of professional responsibility⁴, was not to put their “heads in the sand”. Rather, their

³ See, in addition, CJA's December 10, 2000 memorandum-notice to the Attorney General and Commission, transmitted with that letter.

⁴ See, *inter alia*, Rule 8.3 of the ABA's Model Rules of Professional Conduct, “Reporting Professional

duty was – and is -- to bring such extraordinary corruption of the judicial process to maintain New York's corrupted Commission on Judicial Conduct to the attention of appropriate authorities. This, in addition to the attention of other associations and organizations claiming a commitment to judicial independence. Among the entities to which American Judicature Society provides links from its website⁵ are the American Bar Associations' Standing Committee on Judicial Independence, the Constitution Project, the Fund for Modern Courts, and the Brennan Center for Justice.

Based on your review of the Appellant's Brief, Appendix, and my correspondence with the New York State Attorney General relating thereto – which were before Ms. Hill and Ms. Gray in denying CJA's March 6th request for *amicus* and other support -- there should be no question but that American Judicature Society has an important role to play in assisting on the appeal, including by its professional comment and research resources, and in bringing the corruption issues to the attention of appropriate investigative and prosecutorial authorities, as well as to the attention of public interest entities supposedly championing judicial independence. The evidentiary materials transmitted herewith only further reinforce this role. They consist of: the Attorney General's Respondent's Brief and my Critique thereof, as well as my April 18th and May 3rd letters to the Attorney General⁶.

Finally, in view of American Judicature Society's support for cameras at the federal trial level, not just for federal appellate argument⁷, please be advised that New York's Appellate Division, First

Misconduct", as well as Rule 8.4 thereof defining "Misconduct".

⁵ As American Judicature Society makes a disclaimer that "Links to web pages... do not necessarily indicate support or advocacy by the American Judicature Society or the Center for Judicial Independence of the information, policies, or viewpoints contained therein", CJA requests that it be added as a "link" – based on the overwhelming documentary materials, in American Judicature Society's possession, establishing CJA's credibility, expertise, and commitment to judicial independence/accountability issues. Should American Judicature Society wish further documentary materials, CJA would be pleased to provide them. Meantime, it might be of interest for you to know that more than 27 years ago, in February 1974, Judicature recognized the pioneering work of Doris L. Sassower, later CJA's Co-Founder and Director, by publishing her article, "*Women in the Judiciary: Undoing the Law of the Creator*".

⁶ Also enclosed is my May 3rd letter to Deputy Solicitor General Belohlavek.

⁷ According to an item on the front-page of the March 26, 1996 New York Law Journal,

"American Judicature Society has called upon the U.S. Judicial Conference to revise its position and permit televised coverage of federal trials. While welcoming the conference's decision to permit broadcast coverage of federal appellate arguments, the AJS, a 10,000 member independent group working for court improvements, urged it to 'move farther and faster by allowing coverage of federal trials, not just appellate arguments.'"

Department – although a “court of record” (NYS Constitution, Article VI, §1b) -- has no taping system, no audio camera, and not even a court stenographer. Consequently, for there to be a “record” of the September oral argument of my appeal, a special application will have to be made. Please consider this letter a request that American Judicature Society make such application on behalf of the public interest in the case – or, at very least, that it support my application, to which I plan to append petition signatures, reflecting the public interest. A copy of the petition I am presently circulating is enclosed.

I await American Judicature Society’s substantive response.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosures

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