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Elena Ruth Sassower, Coordinator

BY FAX: 212-210-2921 (10 pages)

August 14, 2002

Russ Hoyle, Editor
New York Daily News
450 West 33rd Street
New York, New York 10001

RE: An Investigative Expose of the NYS Commission on
Judicial Conduct – based on the *readily-verifiable*
evidence of its corruption presented by a public interest
lawsuit pending before the NYS Court of Appeals

Dear Mr. Hoyle:

Thank you for your willingness to explore the *readily-verifiable* evidence of the corruption of the New York State Commission on Judicial Conduct, embodied by my public interest lawsuit against it, now before the Court of Appeals.

Reflecting the explosive nature of the case is the article about it “*Appeal for Justice*”, from the April 25 - May 1, 2002 issue of Albany’s alternative newspaper, Metroland.

Larry Cohler-Esses has a copy of the file of the lawsuit, reflecting the state of the record in Appellate Division, First Department – before that court “threw” the case by a fraudulent judicial decision, without which the Commission could NOT have survived.

As demonstrated by the papers before the Court of Appeals, physically incorporating two other lawsuits against the Commission, the Commission is now the beneficiary of five fraudulent judicial decisions – with two Appellate Division, First Department decisions in two separate cases holding, in single sentences unsupported by any discussion of facts or law, that a complainant whose judicial misconduct complaint is dismissed by the Commission lacks “standing” to sue. In such fashion, the lower courts – all of whose judges are under the Commission’s disciplinary jurisdiction, with an interest that it remain a corrupt façade, have “protected” the Commission and insulated it from legal challenge.

An investigative expose of the Commission is particularly timely. Not only will the Court of Appeals presumably be ruling on the lawsuit next month, but next month marks FIFTEEN YEARS that the New York State Legislature has NOT held an "oversight" hearing of the Commission. Previous routine "oversight" hearings were held in 1981 and 1987, but NOT since. This, despite the fact that in 1989 New York State Comptroller Regan issued a devastating report on the Commission entitled "*Not Accountable to the Public: Resolving Charges Against Judges is Cloaked in Secrecy*", accompanied by a press release asserting: "Because there is no independent review of the Commission's activities, it is operating without appropriate oversight". A copy of the Comptroller's press release and introduction to the report is enclosed.

I look forward to your promised return call, which you indicated would be within the next week or two after you have had the opportunity to speak with Larry.

Yours for a quality judiciary,



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

Enclosures

cc: Larry Cohler-Esses [by fax: 212-643-7831]

TRANSMISSION VERIFICATION REPORT

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April 25-May 1, 2002

Appeal for Justice

Lawsuit alleges corruption at the state Commission on Judicial Conduct—and seeks to disqualify all members of the Court of Appeals from hearing it

MAY 1 IS A FITTING DAY FOR Elena Ruth Sassower to serve her papers with state Attorney General Eliot Spitzer and the state Commission on Judicial Conduct. May 1, after all, is Law Day—a day established by congressional resolution in 1961 to celebrate liberty, equality and justice under the law. Likewise, the point of Sassower's public-interest suit, a proceeding against the Commission on Judicial Conduct alleging that it is corrupt and has failed to fulfill its mandate to investigate civilians' complaints against judges, is to draw attention to people's rights to "justice under law." Or, in some instances, the lack thereof.

As coordinator for the Center for Judicial Accountability Inc., a nonprofit citizens' organization that for more than a decade has been dedicated to revealing the secretive and insular nature of the commission, Sassower is filing a motion with the Court of Appeals to compel the organization to investigate *all* complaints against judges, as required by state law. As it stands now, the commission investigates complaints at its own discretion, and critics say that all too often, complaints against politically connected, higher-level judges are dismissed; when a complaint against a powerful judge is heard, the resulting punishment often is little more than a slap on the wrist.

The charges and evidence in Sassower's petition are intensely critical of the commission, its administrators and members, and of Spitzer, whom Sassower says has helped insulate the commission from public accountability and judges from receiving complete investigations. In essence, she has assembled an exhaustive set of legal papers that implicates officials as high up as Gov. George Pataki in what she calls "willful misconduct," and an attempt to subvert oversight of the judiciary—especially members of the judicia-

ry who have friends in high places.

So far, Sassower's case has been dismissed out of hand by lower courts; she points out, however, that her case was steered before judges who had a vested interest in seeing its demise, although the

Nomination. Sassower believes that Rosenblatt was not forthcoming with the commission when it asked him whether he had ever been a subject of misconduct complaints. The Commission on Judicial Conduct dismissed Sassower's complaint without investigation in December 1998. It was after failing to receive satisfactory answers to her repeated questions about the dismissal of her complaint—and subsequent related complaints—that Sassower began her legal proceedings against the Commission on Judicial Conduct.

"It's the complaint against him based upon his perjury in his application to the

panel hearing a case brought by Sassower's mother, Doris Sassower, which alleged corruption in election laws as it pertains to judges. The case resulted in the abrupt and unconditional suspension of Doris Sassower's law license without a hearing or notice of charges.

The only Appeals Court judge who is not somehow directly involved with the case is Richard Wesley. But Sassower says that he should also be disqualified because of the "appearance that he cannot be fair and impartial" if his colleagues are all implicated in the suit.

"Because virtually every judge in the

The criminal ramifications of this lawsuit reach this state's most powerful leaders upon whom judges are directly and immediately dependent and with whom they have personal and professional relationships.

assistant solicitor general Carol Fischer, acting on behalf of the attorney general's office, argued in 2000 that "any question of judicial bias is meritless." Practically no one in state government or the court system is willing comment on it.

This time around, Sassower's case is going to be particularly difficult for the courts to contend with because she is asking that none of the judges sitting on the Court of Appeals be allowed to preside over it.

"What is most dramatic [about this case] is not the fact that I'm going to be serving my notice of appeal on the commission and its attorney, the state attorney general," Sassower commented. "But that I am also accompanying that with an unusual motion to disqualify the judges of the Court of Appeals."

According to Sassower, all save one of the Appeals Court judges have "personal and pecuniary" interests in her case.

Take, for instance, Associate Judge Albert Rosenblatt. In 1998, Sassower made a judicial misconduct complaint against him, charging that he committed perjury when he was being interviewed for his position by the commission in charge of appointing Appeals Court judges, the Commission on Judicial

Court of Appeals which was dismissed by the commission, so he has direct interest," Sassower said. She said that both Judge George Bundy Smith and Judge Victoria Graffeo were involved in the events that gave rise to the initial suit—the "ramming through" of the approval of Rosenblatt despite complaints against his appointment—and should also be disqualified from the case.

As for Chief Judge Judith Kaye, Sassower said that over the past two years, she has provided her with full copies of her complaints and lawsuit against the commission: "I said, 'You need to appoint a special inspector general [to investigate].' . . . But what does she do? She says she has no authority. I say she sure does have the authority to undertake an official investigation. So I filed a misconduct complaint [against her] with the commission based on the ethical rules that a judge must take appropriate action when faced with evidence of violative conduct taking place in front of him."

Judge Carmen Ciparik ought to be disqualified, Sassower contended, because she served on the commission from 1985 through 1993.

Judge Howard Levine should be disqualified, she said, because he sat on a

state is under the commission's disciplinary jurisdiction and because the criminal ramifications of this lawsuit reach this state's most powerful leaders upon whom judges are directly and immediately dependent and with whom they have personal and professional relationships," Sassower's court papers state, "I raised legitimate issues of judicial disqualification and disclosure in the courts . . . Their disqualifying interest is based on participation in the events giving rise to this lawsuit or in the systematic governmental corruption it exposes—as to which they bear disciplinary and criminal liability."

Sassower acknowledged that her suit has already been denied by both the Supreme and Appellate courts in the past, but she said she's not going to be dissuaded, even if Appeals Court refuses her again: "I did not bring this case with the idea that the public's rights would be vindicated in the court," she said. "I brought this case because, if the courts are corrupt from bottom to top, I was going to put it all together in a neat package where it could be presented to the public in a neat form. . . . The public needs to know what's going on with judiciary discipline and judicial nomination."

—Erin Sullivan

NEWS

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

FOR RELEASE: IMMEDIATE, THURSDAY, DECEMBER 7, 1989

Contact: Robert R. Hinckley
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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 -

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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.

Commission of Judicial Conduct

**Not Accountable to the Public:
Resolving Charges Against Judges
is Cloaked in Secrecy**

Report 90-S-23

**Office of the
State Comptroller**
Edward V. Regan
State Comptroller

COMMISSION ON JUDICIAL CONDUCT
NOT ACCOUNTABLE TO THE PUBLIC:
RESOLVING CHARGES AGAINST JUDGES
IS CLOAKED IN SECRECY

A. Introduction

The Commission on Judicial Conduct (Commission) investigates complaints against judges of the Unified Court System and determines if disciplinary action is warranted. In performing its investigatory and disciplinary role, the Commission holds closed door hearings. The entire proceedings remain secret from the public except when a judge is disciplined. Even then, all investigations and pre-hearing records remain confidential. If the judge is not disciplined, all records of the proceedings remain secret forever.

The Commission has shielded itself from any independent review of its operations by invoking confidentiality provisions of the Judiciary Law. During the course of this audit, their practice of operating in secrecy was cited to deny the State Comptroller's auditors access to confidential operating records thereby impairing the State Comptroller's ability to conduct an independent audit of Commission activities in accordance with generally accepted government auditing standards. The State Comptroller has traditionally served as the people's watchdog and, as such, has played a vital role in the system of checks and balances which strengthen our form of democratic government. When important hearings such as these are closed and the State Comptroller is denied access to independently review operating records, the citizens of the State are foreclosed from receiving any independent assurance regarding the prudent and fair operation of a critical State program, which, if abused, negatively affects the foundation of State government.

The Commission was established by Chapter 156 of the Laws of 1978 to receive, initiate, investigate and hear complaints of misconduct against judges in New York's Unified Court System. In doing so, it conducts investigations and hearings, subpoenas witnesses and documents, and makes appropriate determinations as to dismissing complaints or disciplining judges. The Commission also has jurisdiction over matters pertaining to the physical and mental disability of judges. It does not review judicial decisions or alleged errors of law, nor does it issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies.

Misconduct includes, but is not limited to the persistent failure to perform duties, habitual intemperance, assertion of influence, gender bias, corruption and conduct on or off the bench prejudicial to the administration of justice. Discipline can be in the form of admonishment, censure, removal or retirement of the judge.

The Commission is composed of 11 members serving four year terms. Four members are appointed by the Governor, three by the Chief Judge of the Court

of Appeals, and one each by the four leaders of the legislature. The Constitution requires that Commission membership include four judges, at least one attorney and no fewer than two lay persons. The Commission elects a chairperson and appoints an administrator, who is responsible for hiring and supervising staff under the direction of the Commission.

The Commission has an administrative staff of 41 employees, including attorneys, investigators, and support staff. Although the Commission's main office is located in New York City, investigations are also conducted from offices in Albany and Rochester. The Commission spent about \$2 million in fiscal year 1988-89.

Draft copies of the matters in this report were provided to Commission officials for review and comment. Their comments were considered in preparing this report and are attached as Appendix A to this report.

Commission officials disagree with our recommendation that the Commission propose legislation authorizing the State Comptroller to have access to the Commission's non-public operating records for audit purposes. The Commission states that it is not in the best position to seek a change in the law which makes Commission records confidential, because "...the Commission has some strong doubts about the kind of access being sought for the purposes expressed in your report...."

We sought access to Commission records to determine whether the Commission conducts thorough investigations and hearings, and that it documents its decisions for dismissing complaints against judges, or disciplining judges. We did not attempt to determine whether the Commission's decisions were appropriate, and we would not propose to do so. We believe that the Commission serves a vital public function in disposing of complaints against judges and that it is in the public's interest that this function be properly conducted. However, due to the Commission's invoking of the confidentiality provisions of the Judiciary Law during our audit, the Commission's activities remain shielded from independent review and the citizens of the State are denied independent assurance that a critical State program is operated in compliance with all applicable laws and procedures.

Because the Commission has refused to propose legislation to open its records to the State Comptroller's independent review, we suggest that the leadership of the State Legislature consider acting to provide the State Comptroller with specific statutory authority for access to the Commission's non-public records for audit purposes so there can be adequate public accountability over this vital government activity.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Administrator of the Commission shall report to the Governor, the State Comptroller and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

In addition to matters discussed in this report, we have provided the Commission with comments concerning certain financial management practices at the Commission. Although these matters, which are considered to be of lesser significance, are not included in this report, the recommendations should be implemented to improve operations. Included in this letter is our report of internal controls over financial management practices of the Commission.