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BY FAX: 212-643-7828 (24 pages)

TO: Richard Schwartz, Editorial Page Editor
Michael Aronson, Editorial Board Member

FROM: Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)

RE: Yesterday's Meeting

DATE: April 8, 2003

Thank you for meeting with me yesterday – albeit to discuss your agenda items. As promised, I have spent several hours combing CJA's files for relevant information, including the transcripts of the 1981 and 1987 legislative oversight hearings of the Commission. Frankly, my review only reinforces my conviction that legislative oversight hearings must be held to publicly air the myriad of substantial issues pertaining to the Commission's functioning – and that unless the Daily News will editorialize for appointment of a special prosecutor to investigate the evidence of the Commission's corruption, including the transmogrification of the public's rights to the Commission's investigation of *facially-meritorious* judicial misconduct complaints under Judiciary Law §44.1, it must editorialize for legislative oversight hearings.

As I neglected to provide you with the Assembly Judiciary Committee's public announcement of the 1987 hearing and its important list of questions for witnesses, including its final question pertaining to "an independent audit of the Commission", these are enclosed.

Also enclosed is the Commission's January 31, 1990 report responding to Comptroller Regan's November 15, 1989 report "*Not Accountable to the Public*", signed by its Chairman, who was then John Bower – not Victor

Kovner, his predecessor. Mr. Bower's three-month tenure as Chairman ended with his resignation – and its scandalous aspects are reflected (at p. 5) in the powerful statement of former Bronx Surrogate Gelfand, delivered at the City Bar's May 14, 1997 public hearing. In the event I did not previously provide either of you with a copy of such statement in which former Judge Gelfand described the Commission as "an exercise in institutional corruption" and made, as his first recommendation, appointment of a special prosecutor, it is enclosed.

Now as to your agenda issues, I have not found any information as to past breaches of confidentiality by Commission members and/or staff. Therefore, I reiterate the recommendations I made yesterday. First, obtain from Mr. Mason's attorney the relevant affidavits or other documents on the subject. Second, confirm with Mr. Stern that breaches by Commission members are embraced by Judiciary Law §46, whose language speaks of "any staff member, employee or agent of the state commission on judicial conduct". Mr. Stern should be able to provide you with the reason why such phraseology says nothing about Commission members since, as reflected by the enclosed pages 6-7 of the 1981 hearing transcript, he worked with the Legislature on its drafting 25 years ago. Obviously, if Chairman Berger is the source of the "leak", he would not be able to sign the initiating written charges called for under Judiciary Law §46.2 to be filed "within ten days after the commission has acquired knowledge" of the breach.

As to confidential letters of dismissal and caution, you should ask Mr. Stern why such are not part of the Judiciary Law notwithstanding these confidential dispositions predated the current Commission (*see* 22 NYCRR §7000.5(c) of the Commission's rules). Information as to letters of dismissal and caution – albeit without identifying the judges to whom they apply – appear in the Commission's Annual Reports – not only in the statistical table at the end of the Report, but in a section summarizing them. For your convenience, a copy of such section from the 2002 Annual Report is enclosed.

The Commission's rules 22 NYCRR §§7000.2(1),(m), 7000.3(c), 7000.4, 7000.7(d) do not indicate that these confidential letters are provided to anyone other than the judge – such as, for instance, the Office of Court Administration – and you should confirm that, in fact, they are not.

April 8, 2003

Let me know if there is any additional information or suggestions I can provide you with. "Law Day", May 1, 2003, is less than three weeks away – and you should plan a special "*Judging the Judges*" editorial for that day.

Finally, as to the "pinata" that you, Richard, analogized to the Commission, I can guarantee you that there is no sharper and more certain prod to break it apart than the two boxes containing the file of my important public interest lawsuit against the Commission, which you forbade me to open. As discussed, I request that you give me an hour's time to make a presentation as to the *readily-verifiable evidence* of the Commission's corruption it presents.

It has long been my view that the news side of the Daily News should be undertaking an investigative expose of the Commission in conjunction with your "*Judging the Judges*" editorial series – and I am grateful to you, Richard, for offering to follow-up with Russ Hoyle. Certainly, it would make a great deal of sense for Mr. Hoyle to join us for our hour's meeting, which I hope will be soon upcoming.

Thank you.

Elena

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