

The Gutsy Gazette*

Duo alleges charter-school juggernaut

Commission on Judicial Conduct to investigate Superior Court Judge

Press release of pro se litigants David Higgs and Rod Young

[* not a real publication]

Two former volunteers of the South Shore Charter School located in Hull, Massachusetts are accusing the Courts – to include a sitting judge now under investigation – and the Department of Education of concealing unbridled fraud in the state’s politically charged Charter School Program.

David Higgs of Weymouth and Rod Young of Hull, both software engineers, have built a website documenting their cause and defamation action:

<http://BeckvsDOE.Wellrock.net/>

The site contains 200+ downloadable exhibits from their defamation case “Beck et al. vs. DOE et al,” along with other material and links relating to charter schools and their oversight.

Among the postings are three damning reports of fiscal irregularities found by the State Auditor at two charter schools – including South Shore Charter – and, markedly, the DOE Charter School Office.

In 1997 the two men and their co-plaintiff, Roberta Beck, who recently passed away, “blew the whistle” on fiscal fraud they insisted was routine at the Hull K-12 charter school. Two years later a state audit – called by the whistle blowers – reported \$1.1 million in unsupported tuition claims that had been “reimbursed” by the state during the School’s first 2-1/2 years.

Higgs and Young say they have extensive evidence to prove that three “new-wave Boston Brahms” – Plymouth Superior Court Justice Richard Chin, Commissioner of Education David Driscoll, and Boston Globe Senior VP, Gregory Thornton, who is the School’s former Trustees Chair – covered up the wrongdoing.

“They are *uncommon* criminals,” Young said, accusing the prominent threesome of condoning a two-year, concerted campaign to discredit the plaintiffs and their allegations of fraud – a “cruel hoax which not incidentally,” Young believes, “hastened the passing” of his co-plaintiff and friend Roberta Beck.

In October, 2003 Higgs and Young reported Judge Chin to the Supreme

Judicial Court’s Commission on Judicial Conduct [CJC] for misquoting, and reversing, a 1998 FBI report that had exonerated David Higgs of computer crimes alleged by the School.

Higgs and Young also reported Chin to the CJC for twisting – and thereby disgracing the late Roberta Beck – a candid report of fiscal wrongdoing at the School, prepared in 1999 by two of Thornton’s trustees.

In all, they hold the Superior Court Justice responsible for deliberately distorting nine exhibits in the record.

And after only cursory comparison of Chin’s reworded versions of the two investigative reports – key citations in his dismissal of the civil suit – with the real McCoy, the judge may indeed have some explaining to do.

In the first instance, a report entitled “case closures,” issued after the Bureau quashed charges of computer crime against Higgs, is re-titled and reworded in the decision as “Higgs’ FBI report” with syntax suggesting that in fact Higgs did – as falsely accused – “remote[ly] access” school computers. The Justice variously inserts, substitutes, and strikes selected words, phrases, and even whole clauses, rendering an artful misquote.

been submitting unwarranted tuition claims to the state. Chin’s adaptation of the so-called ‘Pollets Report’ indicates, to the contrary, that Beck – not Anderson – was the real fiscal culprit.

The Judge’s attribution of ‘errors’ to Beck flies in the face of the 1999 state audit – ignored in his decision – that ascribed to Anderson \$1.1 million in undocumented claims he made against the state *during*, but also *before and after*, Beck’s tenure as data clerk.

Despite Higgs and Young’s cry of foul – and fraud – CJC Executive Director Jill Pearson responded initially that her Commission had neither “investigated [n]or docketed” their complaint, because, as Pearson explained, “You are asking us to do precisely what the Commission on Judicial Conduct is not allowed to do: review a judge’s decision for error.”

Massachusetts General Law chapter 211C §2(4), however, provides that only “[i]n the absence of fraud, corrupt motive, bad faith ... the commission shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it.”

Citing G.L.c.211C§2(4) Higgs and Young asked Pearson how the Court’s

FBI Report

“CASE CLOSURES ... Investigation determined access to system was obtained via default Windows 95 settings allowing file sharing and remote access. US Attorney’s Office declined prosecution. Request case be closed.”

Compare the record quoted above with the misquotation at right ...

..... reworded in Chin’s decision

“A copy of *Higgs’ FBI report* states that the “[i]nvestigation determined *that* access to *the* system was obtained via default Windows 95 settings allowing file sharing *from a* remote access” ... Therefore [the defendant] cannot be found liable for defaming ... Higgs ... as a matter of law.”

[italics supplied]

Painfully apparent by another comparison to Chin’s opinion, the judge reverses the findings of a second official inquiry: an internal investigative report produced by School Trustee John Pollets, Esq., who found that School CEO Timothy Anderson had

misquotation and reversal of an official FBI report should not constitute evidence of fraud sufficient to prompt immediate CJC investigation.

The two re-filed their complaint, corrected for format errors Pearson identified in their initial submission.

On Dec. 24 Pearson accepted the revision – which focused anew on the FBI exhibit – verifying that the complaint had "... been screened and will be looked into." [case # 2003-119]

Higgs and Young say that except for the state audit of the School and the recently begun CJC investigation of Judge Chin, "politics and justice as usual" have prevailed over each of their many complaints since 1997...

- In June of 2002 Higgs and Young made a public-records request of the Department of the Superior Court for "any and all" undisclosed "*ex parte*" documents used in Judge Chin's decision. The Department responded that the Courts *were not subject to the state's freedom-of-information law*.

- The complainants made repeated inquiries of the Office of the Attorney General. Young states that William Porter, head of the Administrative Law Division, promised in 2002 to advise him just how the Office of The Attorney General might respond.

After more than a year of unreturned phone calls, Young reports that he finally re-contacted Porter, only to be told that the A.G. could not properly defend Commissioner of Education David Driscoll in *Beck v. DOE* – along with two former DOE associate commissioners also named as defendants – while looking into related allegations of judicial and fiscal fraud.

- In October of this year Higgs and Young took their charges of wrongdoing to the Office of the U.S. Attorney, but were rebuffed by Stephen Huggard, Head of the Public Corruption Division, who decreed that no federal law had been violated. However, Young says that Huggard's office indicated to him that federal fraud statutes had not even been considered.

Huggard's boss, U.S. Attorney Michael Sullivan, a Republican, was appointed District Attorney for Plymouth County by Governor William Weld in 1995, and subsequently elevated to U.S. Attorney for Massachusetts by President George W. Bush in 2001. Both G.O.P. administrations jealously guard the reputation of the Charter School Program, and aggressively promote its expansion.

In 1997, as District Attorney, Sullivan declined to act on Higgs and Young's report of fraud at South Shore Charter, located within his jurisdiction. He did, however, arrange for the men to meet with Thomas Holak of the Office of the State Auditor.

The Holak meeting led to a year-long audit of the School, and a 1999 report of audit with damning findings against CEO Anderson. Commissioner Driscoll promptly rejected the report as "unfounded," refusing to investigate its \$1.1-million findings – as the State Auditor publicly had recommended.

After release of the state audit, the School's Board of Trustees voted 10-to-2 not to renew Anderson's contract.

- In January 2000, DOE staff lawyer Ann Hess reported on a "re-investigation," which, per charter-school regs, the men had demanded to reprise their charges of charter-school fraud made over and over since August 1997.

Concluding just before the Board of Education re-chartered the School thru 2005, Hess predictably reported to Commissioner Driscoll and the BOE, "... no evidence of any wrongdoing by any party in ... enrollment reporting for the South Shore Charter School."

Hess reached her finding with no mention made of numerous evidentiary documents supplied her by the plaintiffs. Most conspicuously she ignored the 'Pollets Report,' which Chairman Thornton had suppressed since its submission six months before. Beck, Higgs, and Young had insisted that Hess acquire a copy of the potentially telling report, which at the time they could only surmise had been drafted. Hess subsequently requested the document directly from Thornton.

Notably, several months afterward, responding to a public-records request by Young, DOE staff lawyer Kristin McIntosh denied the Department had ever received a copy of that report.

- In July 2000 Higgs and Young asked the Plymouth Superior Court to sanction Chairman Thornton and School attorney Mark Batten, a partner in the prestigious Boston firm of Bingham McCutchen LLP, for violation of Rule 34 of Civil Procedure, by virtue of their repeated denials that the 'Pollets Report' ever existed.

But Judge Chin's colleague Assoc. Justice Thomas Connolly ruled "... the motion at this time [is] totally unwarranted and not called for in the circumstances of this case at this time." Connolly discounted a July 6, 2000 answer to a 'production request,' in which Batten claimed, "The School has searched its files for documents responsive to your request [to no avail]."

By ironic coincidence, five days later on July 11, the Public Records

Division, concluding a ten-month "in-camera review," ordered Batten to release the same 'Pollets Report' he had just assured Higgs did not exist.

- Documents posted on Higgs and Young's website indicate that in October 2003 the Bar Counsel refused the men's formal request to investigate Batten for discovery violations – which, if found, would seem to constitute a breach of attorney ethics.

Counsel Daniel Crane of the Office of the Bar Counsel explained, "... the same or closely related issues have also been raised in a currently pending court case."

"Not so," Young rejoins, "Appeals briefs have yet to be filed," adding that Asst. Clerk Joseph Stanton advised him that the Appeals Court, before which *Beck v. DOE* has been "pending" since March 2002, focuses narrowly on *judicial error*, and would not likely consider *attorney misconduct* allegedly occurring years before.

- Higgs and Young included in their complaint to the Bar Counsel the additional charge that Batten had devised or condoned inaccurate and misleading *ex parte* materials influencing Judge Chin's decision. If verified, the impropriety would account for Chin's distortions of the FBI and Pollets reports, and of seven other exhibits in his decision.

- In November 2003, Higgs and Young lodged a complaint with the FBI against Judge Chin. This most recent, notably *criminal* charge underscores the misquoted 1998 FBI notification. They referred the Bureau to their web site to review other misrepresentations alleged.

Higgs enumerates "thirteen falsifications by the Court of nine exhibits on the record," grounded, he claims, in Title 18, Part I, Chapter 47 ["Fraud and False Statements"], Section 1001 of the federal code, which forbids "... mak[ing] or us[ing] any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement."

Higgs and Young are hopeful that in lieu of decisive CJC action, the FBI will subject the state's "charter-school juggernaut" to some "long overdue scrutiny."

- And, if not the Bureau, then perhaps the Supreme Judicial Court. In December 2003 the indefatigable duo asked the SJC to undertake direct appellate review of their suit.