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BY FAX AND BY HAND
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October 5, 1998

State of New York Commission on Judicial Nomination
666 Fifth Avenue
New York, New York 10103-0084

ATT: Stuart A. Summit, Counsel

RE: Media-reported candidacies of Justice Thomas E. Mercure, Justice D. Bruce Crew III, and Justice Albert M. Rosenblatt for the New York Court of Appeals

Dear Mr. Summit:

This letter follows up our telephone conversations on October 1st and 2nd, in which I reported to you that the Center for Judicial Accountability, Inc. (CJA) has documentary information establishing the unfitness of three candidates who -- according to an item in the September 15th New York Law Journal (Exhibit "A-1") -- have been interviewed by the State Commission on Judicial Nomination to fill the vacancy on the New York Court of Appeals created by the resignation of Judge Vito J. Titone. These candidates are two Appellate Division, Third Department Justices, Thomas E. Mercure and D. Bruce Crew III, and Appellate Division, Second Department Justice Albert M. Rosenblatt, reported to be a "favorite-son candidate of Second Department justices".

You informed me that statutory confidentiality prevents you from confirming or denying whether these Justices are, in fact, candidates -- or to otherwise identify the candidates being considered by the Commission. You also stated that you were not the source for the aforesaid New York Law Journal item and that you had no knowledge as to who its sources were.

For purposes of this letter, we are assuming that Justices Mercure, Crew III, and Rosenblatt have, as reported, each been interviewed by the Commission. According to the Commission's brochure (Exhibit "B-1"), such interview means that these candidates have passed the first hurdle of screening, to wit, that the Commission completed its "investigation" of their qualifications based upon the responses they were required to provide to the Commission in response to its questionnaire form.

Ex "C-2"

As reflected by the materials transmitted and summarized herein, these three justices disregarded ethical rules of disqualification and participated in judicial panel decisions which "threw" two politically-explosive cases. In so doing, they protected the powerful, politically-connected defendants, whose criminal and corrupt conduct was demonstrated in the record before them. These two cases are:

(1) *Mario Castracan and Vincent Bonelli, acting pro bono publico v. Anthony Colavita, et al.* (3rd Dept. #62134), a proceeding brought in the Third Department under New York's Election Law; and

(2) *Doris L. Sassower v. Mangano, et al.* (2nd Dept. #93-02925), a special proceeding brought in the Second Department under CPLR Article 78.

In *Castracan v. Colavita*, the *pro bono* petitioners, represented by *pro bono* counsel, Doris L. Sassower challenged as illegal, unethical, and unconstitutional, a written cross-endorsements deal between Democratic and Republican party leaders, trading seven judgeships over a three-year period, implemented at unlawfully-conducted judicial nominating conventions. Justices Mercure and Crew participated at different stages of the case on appeal. Justice Mercure was on the appellate panel which failed to disclose that all its judges were themselves the product of multi-party endorsements and denied petitioners' motion to accord the appeal the preference mandated under the Election Law and the Third Department's own rules. As a result, the appeal was not heard until *after* the 1990 Election. Justice Mercure was also a member of the appellate panel which gave the NAACP Legal Defense and Educational Fund a week less time than it stated it required for its *amicus curiae* brief -- although its time request was unopposed and was two weeks before the scheduled argument of the appeal. The result was to prevent the NAACP Legal Defense and Educational Fund from submitting an *amicus* brief because of its conflicting U.S. Supreme Court deadlines, of which it had informed the Third Department when it made its *amicus* request. As for Justice Crew, he was a member of the panel deciding the appeal -- three of whose members had multi-party endorsements. Its *per curiam* affirmance of the lower court's dismissal of the case, albeit on other grounds, not only ignored the transcending public interest at stake, but the fraud by the lower court, whose decision was shown to have violated elementary adjudicatory standards and falsified the record.

In the *Sassower v. Mangano* Article 78 proceeding, Ms. Sassower charged the Second Department with flagrant and deliberate misuse of its disciplinary power, including by its issuance of a fraudulent June 14, 1991 "interim" order suspending her law license, immediately, indefinitely, and unconditionally -- unsupported by an underlying petition, without reasons, without findings, without a hearing, and without any right of appeal. The Second Department panel, of which Justice Rosenblatt was a member, refused Ms. Sassower's request that it recuse itself and transfer the case to another Department. Included on the panel were three judges who had participated in every disciplinary order challenged as unlawful, including the June 14, 1991 suspension order, and a fourth who had participated in more than half of

the challenged orders. The panel dismissed the case, based on a false claim that it knew to be an "outright lie" -- and, which Ms. Sassower thereafter, additionally demonstrated as such.

These two cases, both of which were denied review by the New York Court of Appeals, were featured in CJA's very first public interest ad, "*Where Do You Go When Judges Break the Law?*", printed on the Op-Ed page of the October 26, 1994 New York Times, reprinted in the November 1, 1994 New York Law Journal (Exhibit "C"). Such ad was part of CJA's on-going effort to vindicate the public interest and secure disciplinary and criminal investigations of the justices involved. These efforts have included requests for gubernatorial appointment of a special prosecutor and for appointment of an investigative commission, the latter request supported by 1.500 petition signatures, the filing of complaints with agencies of government charged with investigative responsibilities, among them, the State Commission on Judicial Conduct, the State Ethics Commission, the Brooklyn District Attorney's Office, the U.S. Justice Department, and presentations to the State Assembly and Senate, including testimony before the Senate Judiciary Committee in opposition to confirmation of Howard Levine, who -- as an Appellate Division, Third Department justice -- participated in the *Castracan* appeal -- as well as against Carmen Ciparick, who, as a member of the Commission, participated in its summary dismissal, without investigation, of facially-meritorious judicial misconduct complaints, including two complaints arising from *Castracan*.

All government agencies and officials to whom we have turned and to whom we have provided the substantiating case files have knowingly and deliberately failed and refused to investigate our fact-specific, documented allegations of corruption and political manipulation. This has obliged us to undertake further litigation:

> (1) *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (N.Y. Co. Clerk #95-109141), an Article 78 proceeding suing the Commission on Judicial Conduct for its complicity in high-level state judicial corruption, by its dismissal, without investigation, of our judicial misconduct complaints -- among them, those based on *Castracan* and the *Sassower v. Mangano* Article 78 proceeding; and
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> (2) *Doris L. Sassower v. Guy Mangano, et al.* (U.S. Supreme Ct #98-106), a federal civil rights action under 42 U.S.C. §1983, in which the Appellate Division, Second Department is being sued for retaliating against Ms. Sassower for her judicial whistle-blowing advocacy, including in the *Castracan* case, and in which the State Attorney General is being sued for complicity in the Second Department's subversion of her state Article 78 proceeding.

These two cases, which had the potential to expose the fact that the *Castracan* case and *Sassower v. Mangano* Article 78 proceeding were "thrown" by fraudulent judicial decisions, were themselves "thrown" by fraudulent judicial decisions. CJA's public interest ad, "*Restraining 'Liars in the*

Courtroom' and on the Public Payroll" (NYLJ, 8/27/97) provides illustrative details (Exhibit "D").

Upon request, CJA would be pleased to transmit for your review copies of the files in *Castracan* and in the *Sassower v. Mangano* Article 78 proceeding. We believe, however, that the enclosed materials will suffice to convince you that Justices Mercure, Crew, and Rosenblatt not only abused their judicial offices and are unworthy of the public trust, but that Justice Rosenblatt must be referred for criminal investigation, if -- as we believe -- he gave perjurious responses to pivotal questions on the Commission's questionnaire. These questions, #30(a)- (b), and #32(d) (Exhibit "B-3"), required Justice Rosenblatt to set forth his knowledge of judicial misconduct complaints filed against him and to disclose whether, during the past 10 years, he has been a party in litigation, other than Article 78, brought against him as a public officer. Disclosure also required him to provide the Commission with specific documents pertaining to any such litigation, to wit, a copy of the complaint therein and decisions thereon[1]. That he failed to do so appears evident from the fact that, in our October 1st conversation together, you asked me to explain to you the circumstances leading up to the Appellate Division, Second Department's suspension of Ms. Sassower's law license. Such inquiry would have been wholly superfluous had Justice Rosenblatt supplied the Commission with the verified complaint in the *Sassower v. Mangano, et al.* federal action -- to which he is a party, both in his official and personal capacities. Indeed, rather than going into the details of the suspension, I referred you to the particularized allegations of the complaint, which I stated I would be sending -- and for which you specifically requested the affidavit of service. Assuredly had Justice Rosenblatt already furnished the complaint and provided the information requested as to his knowledge of judicial misconduct complaints against him, we would reasonably expect the Commission to have summarily excluded him from consideration for higher judicial office, without any interview.

The following are enclosed: As to Justice Crew, whose participation in *Castracan* was as a member of the same appellate panel as Justice Levine, enclosed is a copy of our fact-specific September 7, 1993 testimony in opposition to Justice Levine's confirmation to the New York Court of Appeals, which

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[1] The text of these questions is as follows (Exhibit "B-3"):

30. (a) To your knowledge, has any complaint or charge ever been made against you in connection with your service in a judicial office? Include in your response any question raised or inquiry conducted of any kind by any agency or-official of the judicial system.

(b) If the answer to subpart (a) is "Yes", furnish full details, including the agency or officer making or conducting the inquiry, the nature of the question or inquiry, the outcome and relevant dates.

32. (d) During the past 10 years, have you been a party in any litigation other than an Article 78 proceeding brought against you as a public officer? If so, state the facts, provide the relevant dates and provide a copy of the complaint and any judicial decision in the action.

should be deemed equally applicable to Justice Crew. The testimony highlights *Castracan*'s transcending significance and is supported by a compendium of documents from the *Castracan* record, also enclosed. These documents include the appellate panel's *per curiam* decision and appellants' motion for reargument/renewal/recusal, with its alternative request for leave to appeal to the Court of Appeals. As to Justice Mercure, his participation in the self-interested panel which denied the formal preference application in *Castracan* is identified in the reargument/renewal/recusal motion (compendium, p. 45), with the testimony pointing out that the denial of the preference, as well as the denial of NAACP Legal Defense and Educational Fund's *amicus* time request (in which Justice Mercure also participated) were part of "a pattern of judicial rulings so unusual and aberrant as to be clearly suspect." (at p. 9)

As to Justice Rosenblatt, enclosed is a copy of Ms. Sassower's petition for a writ of certiorari and supplemental brief[2] in the *Sassower v. Mangano* §1983 federal action -- to which Justice Rosenblatt is a party. The verified complaint therein, which Justice Rosenblatt was required to produce for the Commission on Judicial Nomination, pursuant to its Question #32(d), is reprinted in full in the cert appendix [A-49-100][3], together with the pertinent lower court decisions [A-21; A-36]. Personal service of the verified complaint was effected on October 17, 1994 and admitted by the Appellate Division's Clerk, Martin Brownstein, on behalf of the Appellate Division, Second Department's 20 listed justices, Justice Rosenblatt among them. Mr. Brownstein's signed receipt is annexed as Exhibit "3" to Ms. Sassower's December 5, 1994 judicial misconduct complaint against Justice Rosenblatt -- the fourth of a series of complaints which she filed against him with the State Commission on Judicial Conduct.

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[2] The supplemental brief contains, in its appendix [SA-47], Ms. Sassower's July 27, 1998 letter to the Public Integrity Section, Criminal Division of the U.S. Justice Department seeking criminal investigation, *inter alia*, of the judges and state officials involved in the *Sassower v. Mangano* federal action. This includes Justice Rosenblatt. A free-standing copy of that letter was docketed with the Supreme Court Clerk, together with its exhibits, comprising our prior correspondence with the Justice Department seeking investigation of the judicial corruption reflected by the record in *Castracan v. Colavita*, the *Sassower v. Mangano* Article 78 proceeding, and our Article 78 proceeding against the Commission on Judicial Conduct and provided to the Justice Department. A copy of the free-standing letter with exhibits is enclosed. (*See* Exhibits "A" - "H" thereto) so that the Commission may, pursuant to the "Information and Privacy Waiver (Federal)" (Exhibit "B-5" herein) which Justices Rosenblatt, Mercure, and Crew were required to sign, make inquiries of the Justice Department relative to their findings, based on their examination of the aforesaid transmitted case records.

[3] The complaint [A-49-100] chronicles: (1) the retaliatory relationship between Ms. Sassower's advocacy in the *Castracan* case and the Appellate Division, Second Department's fraudulent "interim" suspension of her law license [*See, inter alia*, ¶¶76-8, 90, 103, 117-118]; (2) the subversion of Ms. Sassower's Article 78 remedy in *Sassower v. Mangano* [*See, inter alia*, ¶¶166-170, 173-178, 182-191, 195-209]; (3) Ms. Sassower's testimony before the Senate Judiciary Committee in opposition to confirmation of Justices Levine and Ciparick for the Court of Appeals [*See* ¶¶179-181; 192-194]

Also enclosed is the series of complaints which Ms. Sassower filed with the Commission, dated September 19, 1994, October 5, 1994[4], October 26, 1994, and December 5, 1995. Although all are facially-meritorious, the statutory standard mandating the Commission to investigate them (Judiciary Law §44.1), the Commission summarily dismissed each one, without investigation and without any reasons. This is reflected by the Commission's dismissal letters, which are also enclosed, together with its acknowledgment letters. Such dismissals formed the gravamen of Ms. Sassower's Article 78 proceeding against the Commission, which -- as particularized in CJA's public interest ad, *"Restraining 'Liars in the Courtroom' and on the Public Payroll"* (Exhibit "D") -- and, prior thereto in our published Letter to the Editor, *"Commission Abandons Investigative Mandate"*, NYLJ, 8/14/95 (Exhibit "E-1") and our public interest ad, *"A Call for Concerted Action"*, NYLJ, 11/20/96 (Exhibit "E-2") -- it survived only by fraud. Indeed, the September 19, 1994 judicial misconduct complaint was not only facially-meritorious, but fully documented. It transmitted to the Commission a copy of the record in the *Sassower v. Mangano* Article 78 proceeding --including the papers before the New York Court of Appeals[5]. That Justice Rosenblatt is *fully knowledgeable* of that complaint, documenting his misconduct in the Article 78 proceeding, is reflected by the recitations in the October 26, 1994 and December 5, 1994 complaints. These detail that Ms. Sassower presented the September 19th complaint to Justice Rosenblatt as among the grounds for his disqualification from a panel hearing seven appeals in an unrelated civil action in which Ms. Sassower and her law firm were defendants -- appeals which the panel thereafter disposed of by a legally and factually insupportable and dishonest decision. Exhibit "I" to the October 26, 1994 complaint, which is Ms. Sassower's October 17, 1994 letter to James Pelzer, Supervisor of the Decision Department of the Appellate Division, Second Department, describes what took place at the October 5th so-called "oral argument" of the seven appeals: Ms. Sassower was arbitrarily precluded both from handing up her formal Order to Show Cause for recusal and transfer, as well as from orally arguing it. In pertinent part, Ms. Sassower's letter, which includes *verifications* signed by both Ms. Sassower and myself, states:

> "At that point, my daughter, who was present as my paralegal assistant, rose to state what would have been included by me in an oral application for recusal and transfer -- had Justice Thompson permitted me to make one -- to wit, that the panel was disqualified and that on September 19, 1994 I had filed a formal complaint with the Commission on Judicial Conduct against the Appellate Division, Second Department

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[4] The October 5, 1994 complaint is annexed to the October 26, 1994 complaint as Exhibits "H" and "F".

[5] As part of his application, Justice Rosenblatt was obliged to sign an "Information and Privacy Waiver (New York State and Miscellaneous)", expressly consenting to release of "information in the possession of the New York State Commission on Judicial Conduct" (Exhibit "B-4"). This would include release to the Commission on Judicial Nomination of the substantiating record in the *Sassower v. Mangano* Article 78 proceeding, transmitted with Ms. Sassower's September 19, 1994 complaint.

and, in particular, against two members of the panel.

Justice Rosenblatt, who was seated directly in front of my daughter, then asked who those members were, to which my daughter responded that they were Justice Thompson and himself. Obviously, my daughter's statement would have been wholly unnecessary had I been permitted to make my recusal/transfer application orally. Indeed, my September 19, 1994 complaint to the Commission on Judicial Conduct was annexed as Exhibit "C" to my Order to Show Cause."

The October 17, 1994 letter further recites that *immediately* following the October 5, 1994 "oral argument", Ms. Sassower left a copy of the Order to Show Cause with Mr. Pelzer and went to the Commission on Judicial Conduct, where she filed the original with a hand-written complaint. Copies of these documents were annexed to the October 17, 1994 letter, which was hand-delivered to Mr. Pelzer, together with five copies for the four judges of the appellate panel and for Appellate Division, Second Department Presiding Justice Mangano. This is reiterated in the October 26, 1994 and December 5, 1994 complaints -- the latter of which expressly identifies (at p.3, fn. 4) that each of the copies of the October 17, 1994 letter annexed full copies of that Order to Show Cause. Consequently, Justice Rosenblatt not only has knowledge of the September 19, 1994 complaint against him from my direct exchange with him at the October 5, 1994 "oral argument" -- but was furnished a copy of it as part of the annexed Show Cause Order, as well as a copy of the October 5, 1994 hand-written complaint.

Thus, the October 17, 1994 letter to Mr. Pelzer establishes, at minimum, that Justice Rosenblatt had knowledge sufficient to have responded affirmatively to this Commission's Question #30(a) and, as to (b), to have provided information as to the September 19, 1994 and October 5, 1994 complaints. Indeed, Justice Rosenblatt may well have learned of the additional October 26, 1994 and December 5, 1994 misconduct complaints against him. Such knowledge is not unlikely in view of the fact that Justice Rosenblatt's misconduct, as alleged therein and in the prior complaints, is bound up with that of Justice William Thompson, the presiding justice in the *Sassower v. Mangano* Article 78 proceeding panel and in the panel deciding the seven appeals. Justice Thompson is a member of the Commission on Judicial Conduct and can be presumed to have seen those complaints. Based on his egregious and criminal acts as therein particularized, one would not suppose that Justice Thompson would have any compunction about disclosing the existence of such subsequent complaints to Justice Rosenblatt. Moreover, since those misconduct complaints were widely circulated as exhibits to Ms. Sassower's verified petition in her Article 78 proceeding against the Commission on Judicial Conduct, Justice Rosenblatt may have been apprised of them -- and received copies -- from any number of sources, who additionally, were free to access the ligation file, containing the misconduct complaints, from the N.Y. County Clerk's office.

Simultaneous with our hand-delivery of this letter to you, we are delivering a copy to the Commission on Judicial Conduct, as yet a further facially-meritorious complaint against Justice Rosenblatt. This instant complaint rests on our belief -- for reasons hereinabove particularized (at p. 4) -- that Justice Rosenblatt committed perjury in his responses to Questions #30(a)-(b) and #32(d) (Exhibit "B-3"). Following your verification of such fact, we request you provide the Commission on Judicial Conduct with a copy of those responses, pursuant to Judiciary Law, Article 3-A, §66 -- which excepts from confidentiality perjury under Article 210 of the Penal Law. Indeed, the preface to the Committee's questionnaire (Exhibit "B-2") specifically alerts candidates to such perjury exception.

Our instant judicial misconduct complaint is additionally based on Justice Rosenblatt's collusion and complicity -- as well as that of his Second Department brethren -- in the fraudulent defense tactics of co-defendant counsel, the New York State Attorney General in the *Sassower v. Mangano* federal action, as particularized in the *unopposed* cert petition and publicized in the closing paragraphs of our ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "D"), which Justice Rosenblatt and his Second Department co-defendants can be presumed to have seen. Such litigation fraud plainly constitutes conduct "prejudicial to the administration of justice" and should lead not only to a disciplinary investigation by the Commission on Judicial Conduct, but to further disqualification of Justice Rosenblatt from this Commission's consideration.

Based on CJA's direct personal experience spanning many, many years, the Governor's office and the Senate Judiciary Committee are utterly contemptuous of documentary proof establishing the unfitness of the Governor's judicial nominees. Consequently, *IF* there is to be any respect for "merit selection" principles, it falls to this Commission to pursue rigorous and effective investigations of would-be nominees to the Court of Appeals and to take appropriate action against dishonest applicants. As reflected by the foregoing presentation, CJA has a great deal to offer in providing the Commission with readily-verifiable information pertinent to candidate qualifications. We, therefore, request that much as the Commission, in the normal course of its investigations, purports to contact references and individuals having knowledge of the candidates, so it include CJA among its knowledgeable sources before finalizing its deliberations[6].

Finally, and on the subject of the political deal-making and disrespect in Albany for judicial qualifications, CJA has extensive correspondence with Governor Pataki's office during Michael Finnegan's tenure as Governor Pataki's counsel. Such correspondence exposed not only the Governor's sham judicial screening procedures, but the flagrant misconduct of Mr. Finnegan and his subordinates

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[6] The need for thorough investigation of judicial qualifications -- including verification of information provided by applicants in response to questionnaires -- was highlighted, to no avail, in our December 15, 1993 testimony in opposition to Senate confirmation of Justice Ciparick's nomination to the New York Court of Appeals. A copy of our testimony, which also objected to the confidentiality provisions of Article 3-A as unconstitutional, is enclosed, together with its substantiating compendium.

in connection therewith. This is reflected by our Letter to the Editor, "*On Choosing Judges, Pataki Creates Problems*", published in the November 16, 1996 New York Times (Exhibit "F"). Mr. Finnegan is a member of the Commission on Judicial Nomination, by appointment of the Governor -- a circumstance that bodes ill for the integrity of the process.

Yours for a quality judiciary,

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

Enclosures: (1) testimony and compendia in opposition to Senate confirmation of Justices Howard Levine and Carmen Ciparick to the New York Court of Appeals
(2) *Sassower v. Mangano, et al.* cert petition and supplemental brief
(3) 7/27/98 letter to Public Integrity Section, Criminal Division, U.S. Justice Department
(4) judicial misconduct complaints: 9/19/94, 10/26/94, 12/5/94; with the Commission on Judicial Conduct's acknowledgment and dismissal letters
(5) CJA's informational brochure

cc: New York State Commission on Judicial Conduct

9/15/98

NEWS

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The Commission on Judicial Nomination interviewed between 15 and 20 candidates, about half of those who had applied, for an opening on the New York Court of Appeals over three days last week, according to sources. Among those who were reportedly interviewed were Justice Albert M. Rosenblatt, of the Appellate Division, Second Department; Justices D. Bruce Crew 3d and Thomas E. Mercure of the Third Department; Charles G. Moerdler, a partner at Stroock & Stroock & Lavan; and Michael J. Hutter Jr., special counsel at Thuillez, Ford, Gold & Johnson in Albany. With the opening created by the resignation of Judge Vito J. Titone who came from the Second Department, Justice Rosenblatt is considered the favorite-son candidate of Second Department justices who would like to see Judge Titone's successor come from their department, sources said.

Ex "A-1"

AND BAR SINCE 1888

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S NEWS

date

The State Commission on Judicial Nomination will not meet until next month to vote on a list of names from which Governor Pataki must select the successor to Judge Vito J. Titone on the New York Court of Appeals, sources report. The commission had previously scheduled a meeting for last Thursday at which it was expected to vote on its list of recommended candidates. Because the Governor has 15 to 30 days to make his choice after receiving the list, the revised schedule may push the outside deadline for the Governor's selection past the state's general election on Nov. 3.

71 Ex "A-2"

State. The Commissioners are not compensated for their service, and each serves a four-year term.

ELIGIBILITY REQUIREMENTS FOR NOMINEES

In order to qualify for nomination, a candidate must be a resident of New York State and have been admitted to practice law in New York for at least 10 years. There are no other eligibility requirements. For example, a candidate need not have prior service as a judge and need not be a practicing lawyer.

THE PRE-NOMINATION PROCESS

Whenever a vacancy on the Court of Appeals arises, the Commission begins the nomination process which ultimately yields a short list of candidates for the Governor's selection. The nomination process is initiated when candidates submit applications to the Commission or are recommended by others. The Commission requires each candidate to answer a comprehensive questionnaire which covers the candidate's personal, education and professional background, legal experience and community activities. The Commission also requires each candidate to submit a personal statement setting out the candidate's views on the law, the judiciary, the Court of Appeals and his or her candidacy.

The Commission strives to obtain as complete a picture of each candidate's qualifications and achievements as possible. In addition to the questionnaires and personal statements, the Commission considers writing samples of the candidates and judicial decisions, if any. The Commission also considers each candidate's reputation in the community, and information provided by colleagues, adversaries, and others who have come into contact with the candidate during his or her career.

After gathering a wealth of information, the Commission meets as a body to interview each of the final round of candidates that it is considering. The candidates in the final group considered by the Commission must also submit full information on their finances.

Only after this review process do the Commissioners case votes to determine which candidates will be submitted to the Governor as the best qualified to serve on the Court of Appeals. The voting procedures used by the Commission ensure that no candidate will be recommended to the Governor without broad support from a large majority of the Commission, including the favorable votes of at least eight of the twelve Commissioners. All proceedings and records of the Commission are confidential.

THE NOMINATION PROCESS

For a vacancy in the office of Associate Judge, the Commission is required to nominate between three and seven candidates to the Governor. For the office of Chief Judge, the Commission must nominate seven candidates. The Commission does not rank the nominees submitted to the Governor. The Governor, with the advice and consent of the Senate, may only appoint judges to the Court of Appeals from the list of candidates nominated by the Commission.

In this way, the Commission fulfills its duty to the citizens of this State by making sure that our State's highest court -- our "court of last resort" -- is served by highly qualified and dedicated judges.

April, 1998

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rec'd 10/5/98

State of New York
COMMISSION ON JUDICIAL NOMINATION
666 Fifth Avenue
New York, New York 10103-0084
Telephone: (212) 841-0715
Telefax: (212) 262-5152

QUESTIONNAIRE FOR CANDIDATES FOR ASSOCIATE JUDGE OF THE COURT OF APPEALS

This questionnaire must be completed and verified before consideration of candidacy can commence.

Unless otherwise indicated, every question must be answered, although the answer may be negative, or by an indication that the question is inapplicable.

If the space given is insufficient for an answer, complete the answer on a sheet or sheets and attach them to this questionnaire.

Judiciary Law, Article 3-A, § 66 provides that all communications to the Commission, including applications among other things, shall be confidential and privileged and not available to any person, except as otherwise provided in Article 3-A, and except for the purposes of Article 210 of the Penal Law, which relates to perjury.

1. Full name. *(If you have ever used or been known by any other name, state that name.)*

2. Social Security number.

3. Office address and telephone and fax numbers.

29. To your knowledge, has any complaint or charge ever been made against you as a lawyer? If so, furnish full details, including the Bar Association or other entity to which the charge was referred, the nature of the complaint or charge, the outcome and the dates involved.[1]

30. (a) To your knowledge, has any complaint or charge ever been made against you in connection with your service in a judicial office? Include in your response any question raised or inquiry conducted of any kind by any agency or-official of the judicial system.

(b) If the answer to subpart (a) is "Yes", furnish full details, including the agency or officer making or conducting the inquiry, the nature of the question or inquiry, the outcome and relevant dates.[2]

[1] Judiciary Law, Article 3-A § 64(3) provides that this Commission may require from any court or other agency of the State any information or data as will enable it properly to evaluate qualifications of candidates, subject to an absolute judicial or executive privilege where one exists.

[2] Judiciary Law, Article 3-S § 64(3) provides that this Commission may require from any court or other agency of the State any information or data as will enable it properly to evaluate qualifications of candidates, subject to an absolute judicial or executive privilege where one exists.

(d) During the past 10 years, have you been a party in any litigation other than an Article 78 proceeding brought against you as a public officer? _____. If so, state the facts, provide the relevant dates and provide a copy of the complaint and any judicial decision in the action.

33. In responding to the following questions, please answer as fully as possible to the extent that there is any circumstance that a reasonable person would find relevant to the performance of the duties of Judge of the Court of Appeals.

(a) What is the present state of your health?

(b) Have you in the past ten years (i) been hospitalized or otherwise confined due to injury or illness or (ii) been prevented from working due to injury or illness or otherwise incapacitated for a period in excess of ten days? If so, give the particulars, including the causes, the dates, the places of hospitalization or confinement or incapacitation.

(c) Do you suffer from any impaired physical or mental condition?

(d) Are you currently under treatment for an illness or physical condition? If so, give details.

(e) During the past ten years, have you been treated for, or had any problem with, alcohol or drug abuse or any other form of substance abuse? If so, give details.

(f) During the past ten years, have you been treated for or suffered from any mental illness? If so, give details.

INFORMATION AND PRIVACY WAIVER
(New York State and Miscellaneous)

I hereby waive the privilege of privacy and confidentiality including, without limitation, any confidentiality under Section 90 of the Judiciary Law, with respect to any information which concerns me and is known, recorded with, on file with or in the possession of any person or organization including, without limitation, any governmental, judicial, investigative or other official agency, grievance or disciplinary committee, body or court, any bar association or other professional association, and any educational institution, doctor or hospital; I hereby consent to the release of all such information to the New York State Commission on Judicial Nomination and consent to the issuance, without notice, of any order necessary or appropriate to obtain such information; I hereby authorize a representative of the New York State Commission on Judicial Nomination to request and any such information; and I hereby request any such organization or person in possession of such information to deliver it to a representative of the New York State Commission on Judicial Nomination.

I specifically consent to the release of any such information in the possession of the New York State Commission on Judicial Conduct and request that the same be delivered to a representative of the New York State Commission on Judicial Nomination.

_____
(Signature)

Sworn to before me this
_____ day of _____, 19__

_____
Notary Public

INFORMATION AND PRIVACY WAIVER
(Federal)

I, _____, am informed that as part of a routine check of my background in connection with possible appointment to a position on the New York State Court of Appeals, the Commission on Judicial Nomination may wish to make inquiries concerning me to various agencies of the Federal government. Having been advised that information from the files of Federal agencies may be unavailable to the Judicial Nomination Commission without my written consent due to the Privacy Act of 1974, 5 United States Code Section 552a, and the Freedom of Information Act, 5 U.S.C. Section 552, I hereby consent to inquiries concerning me by the Commission on Judicial Nomination to any Federal agency and to the disclosure to the Commission on Judicial Nomination by such Federal agency of any information the agency may have pertaining to me with the exception of any material which is specifically exempt from disclosure by a Federal statute other than the Privacy Act of 1974 or the Freedom of Information Act.

_____
(Signature)

Sworn to before me this
_____ day of _____, 19__

_____
Notary Public

Reprinted from the Op-Ed Page, Oct. 26, 1994, *THE NEW YORK TIMES*

The New York Times

Where Do You Go When Judges Break the Law?

FROM THE WAY the current electoral races are shaping up, you'd think judicial corruption isn't an issue in New York. Oh, really?

On June 14, 1991, a New York State court suspended an attorney's license to practice law—immediately, indefinitely and unconditionally. The attorney was suspended with no notice of charges, no hearing, no findings of professional misconduct and no reasons. All this violates the law and the court's own explicit rules.

Today, more than three years later, the suspension remains in effect, and the court refuses even to provide a hearing as to the basis of the suspension. No appellate review has been allowed.

Can this really happen here in America? It not only can, it did.

The attorney is Doris L. Sassower, renowned nationally as a pioneer of equal rights and family law reform, with a distinguished 35-year career at the bar. When the court suspended her, Sassower was *pro bono* counsel in a landmark voting rights case. The case challenged a political deal involving the "cross-endorsement" of judicial candidates that was implemented at illegally conducted nominating conventions.

Cross-endorsement is a bartering scheme by which opposing political parties nominate the same candidates for public office, virtually guaranteeing their election. These "no contest" deals frequently involve powerful judgeships and turn voters into a rubber stamp, subverting the democratic process. In New York and other states, judicial cross endorsement is a way of life.

One such deal was actually put into writing in 1989. Democratic and Republican party bosses dealt out seven judgeships over a three-year period. "The Deal" also included a provision that one cross-endorsed candidate would be "elected" to a 14-year judicial term, then resign eight months after taking the bench in order to be "elected" to a different, more patronage-rich judgeship. The result was a musical-chairs succession of new judicial vacancies for other cross-endorsed candidates to fill.

Doris Sassower filed a suit to stop this scam, but paid a heavy price for her role as a judicial whistle-blower. Judges who were themselves the products of cross-endorsement dumped the case. Other cross-endorsed brethren on the bench then viciously retaliated against her by suspending her law license, putting her out of business overnight.

Our state law provides citizens a remedy to ensure independent review of governmental misconduct. Sassower pursued this remedy by a separate lawsuit against the judges who suspended her license.

That remedy was destroyed by those judges who, once again, disobeyed the law — this time, the law prohibiting a judge from deciding a case to which he is a party and in which he has an interest. Predictably, the judges dismissed the case against themselves.

New York's Attorney General, whose job includes defending state judges sued for wrongdoing, argued to our state's highest court that there should be no appellate review of the judges' self-interested decision in their own favor.

Last month, our state's highest court — on which cross-endorsed judges sit — denied Sassower any right of appeal, turning its back on the most basic legal principle that "no man shall be the judge of his own cause." In the process, that court gave its latest demonstration that judges and high-ranking state officials are above the law.

Three years ago this week, Doris Sassower wrote to Governor Cuomo asking him to appoint a special prosecutor to investigate the documented evidence of lawless conduct by judges and the retaliatory suspension of her license. He refused. Now, all state remedies have been exhausted.

There is still time in the closing days before the election to demand that candidates for Governor and Attorney General address the issue of judicial corruption, which is real and rampant in this state.

Where do you go when judges break the law? You go public.

Contact us with horror stories of your own.

CENTER *for* JUDICIAL ACCOUNTABILITY

TEL (914) 421-1200 • FAX (914) 684-6554
E-MAIL probono@delphi.com
Box 69, Gedney Station • White Plains, NY 10605

*The **Center for Judicial Accountability, Inc.** is a national, non-partisan, not-for-profit citizens' organization raising public consciousness about how judges break the law and get away with it.*

Ex "C"

New York Law Journal

AUGUST 27, 1997

[at page 3]

RESTRAINING "*LIARS IN THE COURTROOM*" AND ON THE PUBLIC PAYROLL

On June 17th, The New York Law Journal published a Letter to the Editor from a former New York State Assistant Attorney General, whose opening sentence read "Attorney General Dennis Vacco's worst enemy would not suggest that he tolerates unprofessional or irresponsible conduct by his assistants after the fact". Yet, more than three weeks earlier, the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization, submitted a proposed Perspective Column to the Law Journal, detailing the Attorney General's knowledge of, and complicity in, his staff's litigation misconduct -- before, during, and after the fact. The Law Journal refused to print it and refused to explain why. Because of the transcending public importance of that proposed Perspective Column, CJA has paid $3,077.22 so that you can read it. It appears today on page 4.

[at page 4]

RESTRAINING "*LIARS IN THE COURTROOM*" AND ON THE PUBLIC PAYROLL

-- a $3,077.22 ad presented, in the public interest, by the Center for Judicial Accountability, Inc. --

(continued from page 3)

In his May 16th Letter to the Editor, Deputy State Attorney General Donald P. Berens, Jr. emphatically asserts, "the Attorney General does not accept and will not tolerate unprofessional or irresponsible conduct by members of the Department of Law."

A claim such as this plainly contributes to the view -- expressed in Matthew Lifflander's otherwise incisive Perspective Column "*Liars Go Free in the Courtroom*" (2/24/97) -- that the State Attorney General should be in the forefront in spearheading reform so that the perjury which "pervades the judicial system" is investigated and deterrent mechanisms established. In Mr. Lifflander's judgment, "the issue is timely and big enough to justify creation of either a state Moreland Act Commission investigation by the Governor and the Attorney General, or a well-financed legislative investigation at the state or federal level", with "necessary subpoena power". Moreover, as recognized by Mr. Lifflander and in the two published letter responses (3/13/97, 4/2/97), judges all too often fail to discipline and sanction the perjurers who pollute the judicial process.

In truth, the Attorney General, our state's highest law enforcement officer, lacks the conviction to lead the way in restoring standards fundamental to the integrity of our judicial process. His legal staff are among the most brazen of liars who "go free in the courtroom". Both in state and federal court, his Law Department relies on litigation misconduct to defend state agencies and officials sued for official misconduct, including corruption, where it has *no* legitimate defense. It files motions to dismiss on the pleadings which falsify, distort, or omit the pivotal pleaded allegations or which improperly argue *against* those allegations, without *any* probative evidence whatever. These motions also misrepresent the law or are unsupported by law. Yet, when this defense misconduct -- readily verifiable from litigation files -- is brought to the Attorney General's attention, he fails to take any corrective steps. This, notwithstanding the misconduct occurs in cases of great public import. For its part, the courts -- state and federal -- give the Attorney General a "green light."

Ironically, on May 14th, just two days before the Law Journal published Deputy Attorney General Berens' letter, CJA testified before the Association of the Bar of the City of New York, then holding a hearing about misconduct by state judges and, in particular, about the New York State Commission on Judicial Conduct. The Law Journal limited its coverage of this important hearing to a three-sentence blurb on its front-page news "Update" (5/15/97).

Our testimony described Attorney General Vacco's defense misconduct in an Article 78 proceeding in which we sued the Commission on Judicial Conduct for corruption (N.Y. Co. #95-109141). Law Journal readers are already familiar with that public interest case, spearheaded by CJA. On August 14, 1995, the Law Journal printed our Letter to the Editor about it, "*Commission Abandons Investigative Mandate*" and, on November 20, 1996, printed our $1,650 ad, "*A Call for Concerted Action*".

The case challenged, *as written and as applied*, the constitutionality of the Commission's self-promulgated rule, 22 NYCRR §7000.3, by which it has converted its mandatory duty under Judiciary Law §44.1 to investigate facially-meritorious judicial misconduct complaints into a discretionary option, unbounded by *any* standard. The petition alleged that since 1989 we had filed eight facially-meritorious complaints "of a profoundly serious nature -- rising to the level of criminality, involving corruption and misuse of judicial office for ulterior purposes -- mandating the ultimate sanction of removal". Nonetheless, as alleged, each complaint was dismissed by the Commission, *without* investigation, and *without* the determination required by Judiciary Law §44.1(b) that a complaint so-dismissed be "on its face lacking in merit". Annexed were copies of the complaints, as well as the dismissal letters. As part of the petition, the Commission was requested to produce the record, including the evidentiary proof submitted with the complaints. The petition alleged that such documentation established, "*prima facie*, [the] judicial misconduct of the judges complained of or probable cause to believe that the judicial misconduct complained of had been committed".

Mr. Vacco's Law Department moved to dismiss the pleading. Arguing *against* the petition's specific factual allegations, its dismissal motion contended -- *unsupported* by legal authority -- that the facially irreconcilable agency rule is "harmonious" with the statute. It made no argument to our challenge to the rule, *as applied*, but in opposing our Order to Show Cause with TRO falsely asserted -- *unsupported* by law or *any* factual specificity -- that the eight facially-meritorious judicial misconduct complaints did not have to be investigated because they "did not on their face allege judicial misconduct". The Law Department made no claim that any such determination had ever been made by the Commission. Nor did the Law Department produce the record -- including the evidentiary proof supporting the complaints, as requested by the petition and further reinforced by separate Notice.

Although CJA's sanctions application against the Attorney General was fully documented and uncontroverted, the state judge did not adjudicate it. Likewise, he did not adjudicate the Attorney General's duty to have intervened on behalf of the public, as requested by our formal Notice. Nor did he adjudicate our formal motion to hold the Commission in default. These threshold issues were simply obliterated from the judge's decision, which concocted grounds to dismiss the case. Thus, to justify the rule, *as written*, the judge advanced his own interpretation, falsely attributing it to the Commission. Such interpretation, belied by the Commission's own definition section to its rules, does nothing to reconcile the rule with the statute. As to the constitutionality of the rule, *as applied*, the judge baldly claimed what the Law Department never had: that the issue was "not before the court". In fact, it was squarely before the court -- but adjudicating it would have exposed that the Commission was, as the petition alleged, engaged in a "pattern and practice of protecting politically-connected judges...shield[ing them] from the

disciplinary and criminal consequences of their serious judicial misconduct and corruption".

The Attorney General is "the People's lawyer", paid for by the taxpayers. Nearly two years ago, in September 1995, CJA demanded that Attorney General Vacco take corrective steps to protect the public from the combined "double-whammy" of fraud by the Law Department and by the court in our Article 78 proceeding against the Commission, as well as in a prior Article 78 proceeding which we had brought against some of those politically-connected judges, following the Commission's wrongful dismissal of our complaints against them. It was not the first time we had apprised Attorney General Vacco of that earlier proceeding, involving perjury and fraud by his two predecessor Attorneys General. We had given him written notice of it a year earlier, in September 1994, while he was still a candidate for that high office. Indeed, we had transmitted to him a full copy of the litigation file so that he could make it a campaign issue -- which he failed to do.

Law Journal readers are also familiar with the serious allegations presented by that Article 78 proceeding, raised as an essential campaign issue in CJA's ad "*Where Do You Go When Judges Break the Law?*". Published on the Op-Ed page of the October 26, 1994 New York Times, the ad cost CJA $16,770 and was reprinted on November 1, 1994 in the Law Journal, at a further cost of $2,280. It called upon the candidates for Attorney General and Governor "to address the issue of judicial corruption". The ad recited that New York state judges had thrown an Election Law case challenging the political manipulation of elective state judgeships and that other state judges had viciously retaliated against its "judicial whistle-blowing", *pro bono* counsel, Doris L. Sassower, by suspending her law license immediately, indefinitely, and unconditionally, *without* charges, *without* findings, *without* reasons, and *without* a pre-suspension hearing, -- thereafter denying her *any* post-suspension hearing and *any* appellate review.

Describing Article 78 as the remedy provided citizens by our state law "to ensure independent review of governmental misconduct", the ad recounted that the judges who unlawfully suspended Doris Sassower's law license had refused to recuse themselves from the Article 78 proceeding she brought against them. In this perversion of the most fundamental rules of judicial disqualification, they were aided and abetted by their counsel, then Attorney General Robert Abrams. His Law Department argued, *without* legal authority, that these judges of the Appellate Division, Second Department were not disqualified from adjudicating their own case. The judges then granted their counsel's dismissal motion, whose legal insufficiency and factual perjuriousness was documented and uncontroverted in the record before them. Thereafter, despite repeated and explicit written notice to successor Attorney General Oliver Koppell that his judicial clients' dismissal decision "was and is an outright lie", his Law Department opposed review by the New York Court of Appeals, engaging in further misconduct before that court, constituting a deliberate fraud on that tribunal. By the time a writ of certiorari was sought from the U.S. Supreme Court, Mr. Vacco's Law Department was following in the footsteps of his predecessors (AD 2nd Dept. #93-02925; NY Ct. of Appeals: Mo. No. 529, SSD 41; 933; US Sup. Ct. #94-1546).

Based on the "hard evidence" presented by the files of these two Article 78 proceedings, CJA urged Attorney General Vacco to take immediate investigative action and remedial steps since what was at stake was not only the corruption of two vital state agencies -- the Commission on Judicial Conduct and the Attorney General's office -- but of the judicial process itself.

What has been the Attorney General's response? He has ignored our voluminous correspondence. Likewise, the Governor, Legislative leaders, and other leaders in and out of government, to whom we long ago gave copies of one or both Article 78 files. No one in a leadership position has been willing to comment on either of them.

Indeed, in advance of the City Bar's May 14th hearing, CJA challenged Attorney General Vacco and these leaders to deny or dispute the file evidence showing that the Commission is a beneficiary of fraud, without which it could *not* have survived our litigation against it. None appeared -- except for the Attorney General's client, the Commission on Judicial Conduct. Both its Chairman, Henry Berger, and its Administrator, Gerald Stern, conspicuously avoided making *any* statement about the case -- although each had received a personalized written challenge from CJA and were present during our testimony. For its part, the City Bar Committee did not ask Mr. Stern *any* questions about the case, although Mr. Stern stated that the sole purpose for his appearance was to answer the Committee's questions. Instead, the Committee's Chairman, to whom a copy of the Article 78 file had been transmitted more than three months earlier -- but, who, for reasons he *refused* to identify, did *not* disseminate it to the Committee members -- abruptly closed the hearing when we rose to protest the Committee's failure to make such inquiry, the importance of which our testimony had emphasized.

Meantime, in a §1983 federal civil rights action (*Sassower v. Mangano, et al*, #94 Civ. 4514 (JES), 2nd Cir. #96-7805), the Attorney General is being sued as a party defendant for subverting the state Article 78 remedy and for "complicity in the wrongful and criminal conduct of his clients, whom he defended with knowledge that their defense rested on perjurious factual allegations made by members of his legal staff and wilful misrepresentation of the law applicable thereto". Here too, Mr. Vacco's Law Department has shown that there is no depth of litigation misconduct below which it will not sink. Its motion to dismiss the complaint falsified, omitted and distorted the complaint's critical allegations and misrepresented the law. As for its Answer, it was "knowingly false and in bad faith" in its responses to *over 150* of the complaint's allegations. Yet, the federal district judge did not adjudicate our fully-documented and uncontroverted sanctions applications. Instead, his decision, which obliterated any mention of it, *sua sponte*, and *without* notice, converted the Law Department's dismissal motion into one for summary judgment for the Attorney General and his co-defendant high-ranking judges and state officials -- where the record is wholly devoid of *any* evidence to support anything but summary judgment in favor of the plaintiff, Doris Sassower -- which she expressly sought.

Once more, although we gave particularized written notice to Attorney General Vacco of his Law Department's "fraudulent and deceitful conduct" and the district judge's "complicity and collusion", as set forth in the appellant's brief, he took no corrective steps. To the contrary, he tolerated his Law Department's further misconduct on the appellate level. Thus far, the Second Circuit has maintained a "green light". Its one-word order "DENIED", *without* reasons, our fully-documented and uncontroverted sanctions motion for disciplinary and criminal referral of the Attorney General and his Law Department. Our perfected appeal, seeking similar relief against the Attorney General, as well as the district judge, is to be argued **THIS FRIDAY, AUGUST 29TH**. It is a case that impacts on every member of the New York bar -- since the focal issue presented is the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*. You're all invited to hear Attorney General Vacco *personally* defend the appeal -- if he dares!

We agree with Mr. Lifflander that "what is called for now is action". Yet, the impetus to root out the perjury, fraud, and other misconduct that imperils our judicial process is not going to come from our elected leaders -- least of all from the Attorney General, the Governor, or Legislative leaders. Nor will it come from the leadership of the organized bar or from establishment groups. Rather, it will come from *concerted* citizen action and the power of the press. For this, we do not require subpoena power. We require only the courage to come forward and publicize the readily-accessible case file evidence -- *at our own expense, if necessary*. The three above-cited cases -- *and this paid ad* -- are powerful steps in the right direction.

CENTER for JUDICIAL ACCOUNTABILITY, Inc.

Box 69, Gedney Station, White Plains, NY 10605
***Tel*: 914-421-1200 *Fax*: 914-428-4994**
***E-Mail*: judgewatch@aol.com**
***On the Web*: www.judgewatch.org**

Governmental integrity cannot be preserved if legal remedies, designed to protect the public from corruption and abuse, are subverted. And when they are subverted by those on the public payroll, including by our State Attorney General and judges, the public needs to know about it and take action. That's why we've run this ad. Your tax-deductible donations will help defray its cost and advance CJA's vital public interest work.

NEW YORK LAW JOURNAL

Monday, August 14, 1995

LETTERS

To the Editor

Comm'n Abandons Investigative Mandate

Your front-page article, "Funding Cut Seen Curbing Disciplining of Judges," (*NYLJ*, Aug. 1) quotes the chairman of the New York State Commission on Judicial Conduct as saying that budget cuts are compromising the commission's ability to carry out "its constitutional mandate." That mandate, delineated in Article 2-A of the Judiciary Law, is to "investigate" each complaint against judges and judicial candidates, the only exception being where the commission "determines that the complaint on its face lacks merit" (§44.1).

Yet, long ago, in the very period when your article shows the commission had more than ample resources — and indeed, was, thereafter, requesting less funding — the commission jettisoned such investigative mandate by promulgating a rule (22 NYCRR §7000.3) converting its mandatory duty to an optional one so that, unbounded by any standard and without investigaiton, it could arbitrarily dismiss judicial misconduct complaints. The unconstitutional result of such rule which, as written, cannot be reconciled with the statute, is that, by the commission's own statistics, it dismisses, without investigation, over 100 complaints a month.

For years, the commission has been accused of going after small town justices to the virtual exclusion of those sitting on this state's higher courts. Yet, until now, the confidentiality of the commission's procedures has prevented researchers and the media from glimpsing the kind of facially-meritorious complaints the commission dismisses and the protectionism it practices when the complained-of judge is powerful and politically-connected. However, the Center for Judicial Accountability Inc., a not-for-profit, non-partisan citizens' organization, has been developing an archive of duplicate copies of such complaints. Earlier this year, we undertook a constitutional challenge to the commission's self-promulgated rule, as written and applied. Our Article 78 petition annexed copies of eight facially-meritorious complaints against high-ranking judges filed with the commission since 1989, all summarily dismissed by the commisison, with no finding that the complaints were facially without merit.

In "round one" of the litigaiton, Manhattan Supreme Court Justice Herman Cahn dismissed the Article 78 proceeding in a decision reported on the second-front-page of the July 31 *Law Journal* and reprinted in full. By his decision, Justice Cahn, ignoring the fact that the commission was in default, held the commission's self-promulgated rule constitutional. He did this by ignoring the commission's own explicit definition of the term "investigation" and by advancing an argument never put forward by the commission. As to the unconstitutionality of the rule, as applied, demonstrated by the commission's summary dismissals of the eight facially-meritorious complaints, Justice Cahn held, without any law to support such ruling and by misrepresenting the factual record before him, that "the issue is not before the court."

The public and legal community are encouraged to access the papers in the Article 78 proceeding from the New York County Clerk's office (*Sassower v. Commission*, #95-109141) — including the many motions by citizen intervenors. What those papers unmistakably show is that the commission protects judges from the consequences of their judicial misconduct — and, in turn, is protected by them.

Elena Ruth Sassower
White Plains, N.Y.

Ex "E-1"

New York Law Journal

Wednesday, November 20, 1996 Page 3

A CALL FOR CONCERTED ACTION

Last Saturday,* The New York Times *printed our Letter to the Editor,"On Choosing Judges, Pataki Creates Problems", about the Governor's manipulation of appointive judgeships. Meanwhile, the* New York Law Journal *has failed to print the following Letter to the Editor, which we submitted last month, and ignored our repeated inquiries. We think you should see it.

In his candid Perspective piece "*The Importance of Being Critical*" (10/17/96), Richard Kuh expresses concern that the Committee to Preserve the Independence of the Judiciary, in its rush to defend judges from personal attack, will ignore legitimate criticism against judges. He therefore suggests that the now seven-month old Committee be countered by formation of "an up-front, outspoken, courageous group...to publicly attack bench shortcomings".

In fact, such "up-front, outspoken, courageous group" already exists and has not only challenged "bench shortcomings", but the rhetorical posturing of the Committee to Preserve the Independence of the Judiciary.

The group is the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit organization of lawyers and laypeople. For the past seven years, CJA has documented the dysfunction and politicization of judicial selection and discipline processes on local, state, and national levels and has been on the front-lines in taking action to protect the public. Two years ago, we ran an ad on the Op-Ed page of *The New York Times* entitled, "*Where Do You Go When Judges Break the Law?*", about our in-the-trenches formative background in battling political manipulation of judicial elections in this state and about judicial retaliation against a judicial whistleblower. On November 1, 1994, we re-ran that ad in this newspaper.

CJA's work has received growing media attention: in an A&E cable television Investigative Report on the American justice system, in *Reader's Digest* and, most recently, in an article entitled "*Playing Politics with Justice*" in the November issue of *Penthouse*.

Both this year and last, the *New York Law Journal* has printed Letters to the Editor from us. In "*No Justification for Process's Secrecy*" (1/24/96), we recounted our testimony at the so-called "public" hearing of Mayor Giuliani's Advisory Committee on the Judiciary, protesting the public's exclusion from the Mayor's behind-closed-doors judicial selection process and demonstrating that such secrecy makes "merit selection" impossible. In "*Commission Abandons Investigative Mandate*" (8/14/95), we described our ground-breaking litigation against the New York State Commission on Judicial Conduct, challenging the constitutionality of its self-promulgated rule (22 NYCRR §7000.3) by which it has unlawfully converted its statutory duty to investigate facially-meritorious complaints (Judiciary Law §44.1) into a discretionary option, unbounded by any standard. Our published Letter invited the legal community to review the New York County Clerk's file (#95-109141) to verify the evidentiary proof therein that the Commission protects politically-connected, powerful judges from disciplinary investigation and that it survived our legal challenge *only* because of a judge's fraudulent dismissal decision.

Back in February of this year, at a time when bar leaders were hemming and hawing on the sidelines as Mayor Giuliani and Governor Pataki were calling for the removal of Judge Lorin Duckman based on their selected readings of transcript excerpts from hearings at which Judge Duckman lowered bail for Benito Oliver, CJA had already obtained the full transcript. We wasted no time in publicly rising to the defense of Judge Duckman. We wrote to the Mayor, the Governor, and the Brooklyn District Attorney, charging them with inciting the public by deliberately misrepresenting and distorting the transcript. Indeed, because of Mayor Giuliani's professed concern in protecting New Yorkers from "unfit judges", we delivered to him a copy of the file of our case against the Commission on Judicial Conduct so that he could take action against it for endangering the public by its demonstrable cover-up of judicial misconduct and corruption.

It was against this dazzling record of *pro bono* civic activism by CJA, protecting the public from self-serving politicians, no less than from unfit judges, that bar leaders and law schools formed the Committee to Preserve the Independence of the Judiciary in early March. Prior to its organizational meeting at the New York County Lawyers Association, CJA requested the opportunity to be present. We made known to the Committee's organizers our public defense of Judge Duckman, as well as the significance of our case against the Commission on Judicial Conduct -- the file of which we had provided six weeks earlier to the City Bar. Nevertheless, when we arrived for the Committee meeting, with yet another copy of the file of our case against the Commission, the room was *literally* locked with a key to bar our entry. Meantime, Judge Duckman's attorney was ushered in to address the assembled bar leaders and law school deans and was present while the Committee reviewed its draft Statement. This Statement, of course, included rhetorical support for "the independent functioning of the constitutionally created New York State Commission on Judicial Conduct".

Since then, the Committee to Preserve the Independence of the Judiciary has continued to shut us out and ignore the file evidence in its possession that the Commission is "not merely dysfunctional, but corrupt". Likewise, the politicians to whom we have given copies of the court file, including Governor Pataki, have ignored it. Indeed, we cannot find anyone in a leadership position willing even to comment on the Commission file.

Such conduct by bar leaders, law school deans, and public officials only further reinforces the conclusion that if the real and pressing issues of judicial independence and accountability are to be addressed, including protection for judicial "whistleblowers", it will require the participation of those outside the circles of power in the legal establishment.

CJA invites lawyers who care about the integrity of the judicial process -- and the quality of judges around which the process pivots -- to join us for *concerted action*. Requests for anonymity are respected.

CENTER for JUDICIAL ACCOUNTABILITY, Inc.

Box 69, Gedney Station, White Plains, NY 10605
***Tel*: 914-421-1200 *Fax*: 914-684-6554**
***E-Mail*: judgewatch@aol.com**
***On the Web*: http://www.judgewatch.org**

If you share CJA's view that our reply to Mr. Kuh's Perspective piece is an important one and deserved to be seen by the legal community, help defray the cost of this ad. It cost us $1,648.36. All donations are tax-deductible. Better still, join CJA as a member. Your participation, up-front or behind-the-scenes, will make change happen.

Ex "E-2"

The New York Times

EDITORIALS/LETTERS *SATURDAY, NOVEMBER 16, 1996*

On Choosing Judges, Pataki Creates Problems

To the Editor:

Our citizens' organization shares your position that Gov. George E. Pataki should take the lead in protecting the public from processes of judicial selection that do not foster a quality and independent judiciary ("No Way to Choose Judges," editorial, Nov. 11). However, the Governor is the problem — not the solution.

A Sept. 14 news article described how Governor Pataki had politicized "merit selection" to New York's highest court by appointing his own counsel, Michael Finnegan, to the Commission on Judicial Nomination, the supposedly independent body that is to furnish him the names of "well qualified" candidates for that court.

More egregious is how Governor Pataki has handled judicial appointment to the state's lower courts. Over a year and a half ago, the Governor promulgated an executive order to establish screening committees to evaluate candidates for appointive judgeships. Not one of these committees has been established. Instead, the Governor — now almost halfway through his term — purports to use a temporary judicial screening committee. Virtually no information about that committee is publicly available.

Indeed, the Governor's temporary committee has no telephone number, and all inquiries about it must be directed to Mr. Finnegan, the Governor's counsel. Mr. Finnegan refuses to divulge any information about the temporary committee's membership, its procedures or even the qualifications of the judicial candidates Governor Pataki appoints, based on its recommendation to him that they are "highly qualified."

Six months ago, we asked to meet with Governor Pataki to present him with petitions, signed by 1,500 New Yorkers, for an investigation and public hearings on "the political manipulation of judgeships in the State of New York." Governor Pataki's response? We're still waiting.

ELENA RUTH SASSOWER
Coordinator, Center for Judicial Accountability Inc.
White Plains, Nov. 13, 1996

Ex "F"