COURT OF APPEALS
STATE OF NEW YORK

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ELENA RUTH SASSOWER, Coordinator
of the Center for Judicial Accountability, Inc.,
acting *pro bono publico*,

Petitioner-Appellant,

NOTICE OF MOTION FOR DISQUALIFICATION AND DISCLOSURE

-against-

AD 1st Dept. #5638/01
S.Ct./NY Co. #108551/99

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

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PLEASE TAKE NOTICE that upon the annexed Affidavit of Petitioner-Appellant, ELENA RUTH SASSOWER, dated May 1, 2002, "Law Day", the exhibits annexed thereto, and upon all the papers and proceedings heretofor had, ELENA RUTH SASSOWER will move this Court at 20 Eagle Street, Albany, New York 12207-1095 on Monday, May 20, 2002 at 10:00 a.m. or as soon thereafter as Respondent-Respondent and its counsel can be heard for an order:

1. Disqualifying this Court's Chief Judge and Associate Judges from participating in the above-captioned appeal for interest, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, as well as for bias, pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct;

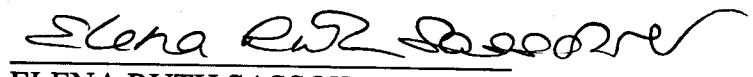
2. Designating justices of the Supreme Court to serve as Associate Judges of this Court for all purposes of this appeal, pursuant to Article VI, §2a of the

New York State Constitution, with the condition that the so-designated judges make disclosure pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct of material facts bearing upon their personal, professional, and political relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this appeal or exposed thereby.

3. Such other and further relief as may be just and proper, including disciplinary and criminal referrals, pursuant to §§100.3D(1) & (2) of the Chief Administrator's Rules Governing Judicial Conduct and DR 1-103(A) of New York's Disciplinary Rules of the Code of Professional Responsibility, of the documentary proof herein presented of longstanding and ongoing systemic corruption by judges and lawyers on the public payroll.

Dated: May 1, 2002, "Law Day"
White Plains, New York

Yours, etc.



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Respondent-Respondent
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COURT OF APPEALS
STATE OF NEW YORK

ELENA RUTH SASSOWER, Coordinator
of the Center for Judicial Accountability, Inc.,
acting *pro bono publico*,

AFFIDAVIT IN SUPPORT OF DISQUALIFICATION & DISCLOSURE

Petitioner-Appellant,

A.D. 1st Dept. #5638/01
S.Ct./NY Co. #108551/99

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the *pro se* Petitioner-Appellant, fully familiar with all the facts, papers, and proceedings in this important public interest Article 78 proceeding against Respondent-Respondent New York State Commission on Judicial Conduct [hereinafter "Commission"].

2. This motion is for the threshold relief of disqualifying this Court's judges from adjudicating this appeal by reason of their interest, proscribed by Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, as well as their bias, also proscribed by §100.3E of the Chief Administrator's Rules. Pursuant to Article VI, §2a of the New York State Constitution[1], I seek to replace this

[1] In pertinent part, Article VI, §2a states:

Court's judges as adjudicators of the jurisdictional issues of my Notice of Appeal and of the subsequent appeal[2] with specially-designated Supreme Court justices, who will make pertinent disclosure of disqualifying facts pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct.

3. To avoid needless repetition of the basic facts of this extraordinary appeal, as to which, additionally, there can be no doubt as to public importance and decisional conflict – the standard for appeal by leave (22 NYCRR §500.11(d)(1)(v)) -- I refer the Court to my simultaneously-filed Jurisdictional Statement and the record on which it rests, most particularly, my motions in the Appellate Division, First Department for reargument and for leave to appeal.

4. Because virtually every judge in this 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, professional, and political relationships, I raised legitimate issues of judicial disqualification and disclosure in the courts below, always suggesting alternative more neutral tribunals. Before the Appellate Division, First Department, I made a threshold August 17, 2001 motion for

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> "...In the case of the temporary absence or inability to act of any judge of the court of appeals, the court may designate any justice of the supreme court to serve as associate judge of the court during such absence or inability to act..."

[2] If notwithstanding this Court's holding in *Valz v. Sheepshead Bay*, 249 N.Y. 122, 131-2 (1928), the Court dismisses my appeal of right, I request, in the interest of judicial economy and justice, that it, *sua sponte*, grant leave to appeal for all the reasons set forth in my February 20, 2002 motion to the Appellate Division, First Department for leave. Otherwise, I will make a formal motion for leave to appeal, reiterating and expanding upon the grounds therein set forth.

its disqualification for interest and bias, pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, and for disclosure by its justices, pursuant to §100.3F of the Chief Administrator's Rules. Before Justice Wetzel, I presented a threshold December 2, 1999 letter-application for his disqualification for interest and bias and for disclosure pursuant to these same statutory and rule provisions [A-250-290].

5. By its December 18, 2001 decision & order[3], the Appellate Division, First Department denied my August 17, 2001 motion -- *without* findings, *without* reasons, *without* even identifying that the motion sought disqualification and disclosure and, indeed, by *falsifying* its requested relief. By his January 31, 2000 decision, order & judgment [A-9-14], Justice Wetzel denied my December 2, 1999 letter-application – *without* findings, *without* identifying any of the grounds it set forth as warranting his disqualification, and by concealing and totally ignoring its requested disclosure relief.

6. Just as Justice Wetzel's wrongful denial of my December 2, 1999 letter-application was the threshold and overarching issue on my appeal to the Appellate Division, First Department of his January 31, 2001 decision (*see* my Appellant's Brief, at pp. 1, 36-52), so the Appellate Division, First Department's wrongful denial of my August 17, 2001 motion in the last sentence of its December 18, 2001 decision is the threshold and overarching issue on my appeal to this Court (*see* my Jurisdictional Statement, pp. 5-6, 11-12).

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[3] The Appellate Division, First Department's December 18, 2001 decision & order is Exhibit "B" to my Jurisdictional Statement.

7. Consequently, on this motion, the Court will be grappling with the same statutory and rule provisions of judicial disqualification and disclosure that are the substantive content of the appeal as they relate to the lower courts. Here – as there – the decisive question is the legal sufficiency of the subject motion/application in establishing statutory disqualification for interest, as well as my entitlement to "discretionary" recusal for bias, both actual and apparent, and for disclosure. Thus, while the substance of this appeal calls upon the Court to enunciate the fundamental adjudicative standards that must govern a judge when confronted with a judicial disqualification/disclosure application – as to which it appears this Court has *never* spoken -- this motion requires the Court to teach by its own example. There is no better way for this Court to instruct our State's judiciary[4].

8. It is my contention – so stated before the Appellate Division, First Department (my Appellant's Brief: pp. 38-9; my reargument motion: Exhibits "B-1", p. 6) -- that:

> "Adjudication of a recusal application should be guided by the same legal and evidentiary standards as govern adjudication of other motions. If the application sets forth specific supporting facts, the judge, as any adversary, must respond to those specific facts. To leave unanswered the 'reasonable questions' raised by such application would undermine its very purpose of ensuring the appearance, as well as the actuality, of the judge's impartiality.
>
> The law is clear...that 'failing to respond to a fact attested in the moving papers...will be deemed to admit it', Siegel, New York Practice, §281 (1999 ed., p. 442) -- citing *Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 599 (1975), itself citing *Laye v. Shepard*, 265 N.Y.S.2d 142 (1965), aff'd 267 N.Y.S.2d 477 (1st Dept. 1966) and

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[4] *Cf.* "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*", John M. Levy, 22 Santa Clara Law Review, pp. 95-116 (1982).

> Siegel, McKinney's Consolidated Laws of New York Annotated, Book 7B, CPLR 3212:16. 'If a key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it' *id.* Undenied allegations will be deemed to be admitted. *Whitmore v. J. Jungman, Inc.*, 129 N.Y.S. 776, 777 (S.Ct., NY Co. 1911)".

Further, based on treatise authority placed before the Appellate Division, First Department (my Appellant's Brief, p. 38; my reargument motion: Exhibit "C", p. 5) and, prior thereto, before Justice Wetzel [A-252; A-237]:

> "'The judge is ordinarily obliged to disclose to the parties those facts that would be relevant to the parties and their counsel in considering whether to file a judicial disqualification motion', Flamm, Richard E., Judicial Disqualification, p. 578, Little, Brown & Co., 1996."

9. Consistent with §100.3E of the Chief Administrator's Rules Governing Judicial Conduct that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned"[5], all seven of this Court's judges must recuse themselves so as to avoid the appearance of their bias. Six judges, however, are statutorily disqualified for interest, pursuant to Judiciary Law §14:

> "A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which... he is interested."

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[5] In reviewing the Commission's determinations of public discipline against judges, this Court routinely repeats, as the standard, the need to avoid the "appearance of impropriety", *Matter of Sardino*, 58 N.Y.2d 286, 290-291 (1983); *Matter of Sims*, 61 N.Y.2d 349, 358 (1984), citing cases, *Matter of Duckman*, 92 N.Y.2d 141, 153 (1998). Likewise, in public statements, Chief Judge Kaye reiterates that "judges must disqualify themselves when their impartiality might reasonably be questioned.", citing the Chief Administrator's Rules and the Model Code of Judicial Conduct, "*Safeguarding a Crown Jewel: Judicial Independence and Lawyer Criticism*", 25 Hofstra Law Review 703, 713 (Spring 1997).

10. These six judges, in the order in which their statutory disqualification is discussed, are: Associate Judge Albert M. Rosenblatt, Chief Judge Judith S. Kaye, Associate Judge George Bundy Smith, Associate Judge Victoria A. Graffeo, Associate Judge Carmen Beauchamp Ciparick, and Associate Judge Howard A. Levine. As herein demonstrated, their disqualifying interest is based on *their participation in the events giving rise to this lawsuit or in the systemic governmental corruption it exposes -- as to which they bear disciplinary and criminal liability.*

11. Consequently, the interests of these six judges are personal and pecuniary. This contrasts sharply with the *ex officio* interests of this Court's judges in *Morgenthau v. Cooke*, 56 N.Y.2d 24 (1982), and the shared generic judicial interests in *Maresca v. Cuomo*, 64 N.Y.2d 242 (1984) -- two appeals where no motions were even made for the Court's disqualification. It also contrasts sharply with *New York State Association of Criminal Defense Lawyers, et al. v. Kaye, et al.*, 95 N.Y.2d 556 (2000), where the Court, in denying a formal motion to disqualify those of its judges who had participated in the Court's challenged approval of administrative rule-making, explicitly stated:

> "The respondent Judges have no pecuniary or personal interest in this matter and petitioners allege none. Nor do petitioners allege personal bias or prejudice." (at 561).

12. Moreover, the "rule of necessity", invoked by the Court in each of these three cases, is inapplicable to the instant motion, based, as it is, on the individual disciplinary and criminal liabilities of the Court's judges. Replacement Supreme Court justices would not be so encumbered. Nor would they be material witnesses to

an official investigation born of this lawsuit, a further ground for judicial disqualification (*Cf.* §100.3E(1)(d)(iv) of the Chief Administrator's Rules Governing Judicial Conduct).

13. Finally, to the extent that this Court in *New York State Association of Criminal Defense Lawyers, et al., supra*, takes exception to the

> "substitution of the entire constitutionally appointed court, leaving 'the most fundamental questions about the Court and its powers to persons whose selection and retention are not tested by constitutional processes' (*In re Vermont Supreme Ct. Admin. Directive No. 17 v. Vermont Supreme Court*, 154 Vt. 217, 226, 576 A.2d 127, 132)", at 560,

the systemic governmental corruption exposed by this lawsuit embraces the corruption of the very "merit selection" process whereby this Court's judges are chosen. Indeed, at the time the Court issued its December 21, 2000 decision in *New York Association of Criminal Defense Lawyers*[6], adopting the notion that its judges are "tested by constitutional processes", Chief Judge Kaye was not only in possession of the documentary proof *from this lawsuit* chronicling how sham and repugnant these "constitutional processes" had become, but had received, *in hand*, my December 9, 2000 letter urging that she secure an official investigation thereof (¶¶90-98 *infra*).

14. Such long overdue official investigation would necessarily emerge from adjudication of this appeal by a fair and impartial tribunal – to which I and the People of this State are constitutionally entitled.

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[6] According to the decision (at 558, fn. 1), Chief Judge Kaye recused herself as "It is not an uncommon practice for the Chief Judge alone to be recused in similar appeals involving judicial administration", citing *Maresca v. Cuomo*.

15. For the convenience of the Court, a Table of Contents follows:

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The Disqualification for Interest of Associate Judge Albert Rosenblatt and the Bias of His Colleagues on this Court Resulting From the Severe Disciplinary and Criminal Liability He Faces

16. Associate Judge Albert Rosenblatt is statutorily disqualified for interest. He is the first and only individually-named subject of my *facially-meritorious* October 6, 1998 judicial misconduct complaint [A-57-83], whose unlawful dismissal by the Commission, *without* investigation and *without* reasons [A-93], generated this lawsuit. He, therefore, has a direct personal interest in maintaining intact, with no impartial appellate review, Justice Wetzel's January 31, 2000 decision dismissing this proceeding [A-9-14] and the Appellate Division, First Department's December 18, 2001 "affirmance". Indeed, because impartial appellate review would necessarily expose the fraudulence of the two decisions upon which Justice Wetzel exclusively predicated dismissal of my Verified Petition [A-12-13] -- the first of which is Justice Herman Cahn's decision in *Doris L. Sassower v. Commission* -- Judge Rosenblatt has a further direct interest. This, because *Doris L. Sassower v. Commission* was triggered by the Commission's dismissals, *without* investigation and *without* reasons, of three *facially*-meritorious judicial misconduct complaints against Appellate Division, Second Department panels of which Judge Rosenblatt was a member.

17. My *facially-meritorious* October 6, 1998 judicial misconduct complaint itself identifies these three prior *facially-meritorious* complaints against Judge Rosenblatt [A-57, fn. 1], with particulars set forth in my October 5, 1998 letter to the Commission on Judicial Nomination, which is part of the complaint [A-66-7].

Likewise, they are identified by my Verified Petition [A-28¶"SEVENTEENTH"; A-31¶"TWENTY-EIGHTH"; A-35-36¶¶"FORTY-SECOND" – "FORTY-FOURTH"].

18. Consequently, were this Court to articulate the mandatory duty which Judiciary Law §44.1 imposes on the Commission to investigate *facially-meritorious* complaints – as required by its decision in *Matter of Nicholson*, 50 NY2d 597 (1980), the plain language of Judiciary Law §44.1, the statute's legislative history, and the public statement of the Commission's own longtime Administrator & Counsel [A-29, 59-60] – the Commission would be compelled, at long last, to not only investigate my *facially-meritorious* October 6, 1998 complaint against Judge Rosenblatt, at issue in my lawsuit [A-18], but to investigate the three prior *facially-meritorious* complaints against him, dated September 19, 1994, October 26, 1994, and December 5, 1994, at issue in *Doris L. Sassower v. Commission*[7] and brought up for review by my Second Claim for Relief [A-38-40¶"FIFTY-THIRD", *also*, A-25-26¶"NINTH"]. The result of these investigations would be catastrophic for Judge Rosenblatt.

19. Irrespective of whether, *upon investigation*, Judge Rosenblatt is found to have perjured himself on his *publicly-inaccessible* application to the Commission on Judicial Nomination as a candidate for this Court – the first of my two *facially-*

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[7] Copies of these *facially-meritorious* judicial misconduct complaints, with their appended attachments, are part of the record herein, having been supplied in conjunction with my July 28, 1999 omnibus motion [*See* File Folder II: A-348]. Additionally, these complaints are annexed as Exhibits "G", "I", and "J" (without attachments) to the Verified Petition in *Doris L. Sassower v. Commission*, also furnished to support my July 28, 1999 omnibus motion, in a separate File Folder containing the record of that Article 78 proceeding [A-346]. ADDITIONALLY, full copies (with attachments) are part of File Folder A to CJA's October 16, 2000 Report, made part of this motion [¶95].

meritorious allegations against him in my October 6, 1998 complaint [A-29: "TWENTY-SECOND"; A-57-58] – there is no dispute that, as to the second, he was a direct beneficiary of the litigation misconduct of his co-defendant, the New York State Attorney General, in the §1983 federal civil rights action *Doris L. Sassower v. Honorable Guy Mangano, et al.* [hereinafter "*Mangano* federal action"]. In substantiation, my October 6, 1998 complaint transmitted to the Commission a copy of Doris Sassower's *unopposed* petition for a writ of certiorari to the U.S. Supreme Court and supplemental brief [A-58][8].

20. Further, Judge Rosenblatt was indisputably a member of the Appellate Division, Second Department panels whose unlawful and retaliatory conduct are the ***facially-meritorious*** allegations of the September 19, 1994, October 26, 1994, and December 5, 1994 complaints – dismissed by the Commission *without* investigation and *without* reasons[9].

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[8] These are part of the record herein: *see* File Folder II in support of my July 28, 1999 omnibus motion [A-348].

[9] At the very time Doris Sassower filed these three *facially-meritorious* complaints against powerful, politically-connected Appellate Division, Second Department justices, alleging their retaliatory use of their judicial powers, the Commission was prosecuting a part-time town court justice, Alana J. Lindell-Cloud, for retaliatory conduct. Less than ten days after the Commission dismissed the first two of these complaints, its counsel was stating in a December 22, 1994 Post-Hearing Memorandum in furtherance of its prosecution of Justice Lindell-Cloud:

> "Obviously, a judge who uses her judicial authority as a weapon for gaining personal revenge has committed gross misconduct. Such a misuse of the trust and authority reposed in judges by the public is pernicious to that public's confidence in the fair and impartial administration of justice. Indeed, there is no more egregious misconduct by a judge than using the judicial office to harm a party, especially with the intention of gaining personal retribution." (at p. 8)

This was reiterated in a February 15, 1995 Memorandum in Support of a Motion to Confirm the Referee's Findings of Fact and Conclusions of Law and to Render Determination (at p. 8).

21. Because of the particular importance of the *facially-meritorious* September 19, 1994 complaint, a copy is annexed (Exhibit "A"). It details the misconduct of the Appellate Division, Second Department panel in the Article 78 proceeding *Doris L. Sassower v. Honorable Guy Mangano, et al.* [hereinafter "*Mangano* Article 78 proceeding"], as the court of first instance. Further identified is the fact that the Commission was being provided with copies of "[a]ll of the papers in the Article 78 proceeding that were before the Appellate Division, Second Department" panel. This, to substantiate that the panel, a party in interest in that proceeding, "knowingly and deliberately violated fundamental judicial disqualification rules as to conflict of interest", including Judiciary Law §14 and the Chief Administrator's Rules Governing Judicial Conduct, by denying, *without* reasons, *without* findings, and *without* legal authority, Doris Sassower's motion for its disqualification. The panel then granted the "legally insufficient...factually false and perjurious" dismissal motion of its *own* attorney, the State Attorney General. In so doing, the panel covered up "an on-going pattern of heinous judicial misconduct and criminal acts mandating...removal from office" of the involved justices.

22. Among the "criminal acts" committed by the Appellate Division, Second Department, as specified by the September 19, 1994 complaint, were its

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The Commission thereafter adopted its counsel's position. Indeed, the Commission's July 14, 1995 decision, published on August 3, 1995 in the New York Law Journal (p. 2), stated

> "Even creating the appearance of using judicial office for retaliation is serious misconduct. (*Matter of Schiff v. State Commission on Judicial Conduct*, 83 NY2d 689, 693-94)."

"issuance and perpetuation of an interim Order of suspension of [Doris Sassower's] professional license – which, at the time it was issued on June 14, 1991, that Court knew to be fraudulent and jurisdictionally void – a fact highlighted by its failure to state any reasons for the interim suspension in its Order, in violation of the Appellate Division, Second Department's own rules (22 NYCRR §691.4(1)(2)) and the complete absence of any evidentiary findings, in violation of controlling decisional law of this State's highest Court, Matter of Nuey, 61 N.Y.2d 513, 474 N.Y.S.2d 714 (1984).

Notwithstanding the Court of Appeals' supervening decision in Matter of Russakoff, 72 N.Y.2d 520, 583 N.Y.S2d 949 (1992), which reiterated that interim suspension orders without findings had to be vacated as a matter of law, and that there must be a prompt post-suspension hearing, where no hearing has been held prior thereto, the [disciplinary] files... show that the Appellate Division, Second Department, without reasons, persists in refusing to vacate the June 14, 1991 interim suspension Order – although the record demonstrates that [Doris Sassower's] right to vacatur of [her] interim suspension is in all respects a fortiori to that of attorney Russakoff. The Appellate Division, Second Department further refuses to direct a post-suspension hearing, although no hearing was ever afforded [Doris Sassower] prior to her suspension. Contrary to [her] rights under the CPLR, it has also threatened [her] with criminal contempt if [she] makes any further motion without prior judicial approval." (Exhibit "A": pp. 4-5, emphases in the original).

These and other lawless acts were alleged to have been motivated by "ulterior, retaliatory goals". To prove this, the September 19, 1994 complaint proffered to the Commission a copy of the file of the disciplinary proceedings against Doris Sassower to establish that there was "not the slightest factual or legal basis" for the Appellate Division, Second Department's actions.

23. In addition to annexing documents reflecting Doris Sassower's stellar credentials, outstanding professional accomplishments, and extensive public interest

activities[10], the September 19, 1994 complaint identified that a prime reason for the Appellate Division, Second Department's retaliatory animus was her "judicial 'whistle-blowing' as *pro bono* counsel in the Election Law case of *Castracan v. Colavita*":

> "That case, brought in 1990 on behalf of the public interest, challenged the disenfranchisement of voters in the Ninth Judicial District, resulting from a corrupt political deal made in 1989 between the leaders of the two major parties in the Ninth Judicial District. By said deal, which was put in writing, party leaders cross-endorsed seven judgeships over a three-year period, including the Westchester Surrogate judgeship, contracted for judicial resignations, and agreed to a split of judicial patronage. *Castracan v. Colavita* also challenged the illegally-conducted judicial nominating conventions, at which the deal was implemented, and the perjurious certificates of nomination falsely attesting to compliance with Election Law requirements." (Exhibit "A", p. 7).

24. One need look no further than the settled decisional law cited at the outset of my Appellant's Brief (at p. 4), as well as at the outset of my 19-page analysis of the appellate "affirmance"[11], to know that verification of *facially-meritorious* allegations of ulterior-motivated, retaliatory decision-making – *readily accomplished* from the relevant case files -- would lead to Judge Rosenblatt's removal from the bench and criminal prosecution:

> "'*A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon*

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[10] *See* Exhibits "B-1" and "B-2" to the September 19, 1994 complaint, consisting of Doris Sassower's listing in the 1989 edition of the Martindale-Hubbell Law Directory and a letter from The Fellows of American Bar Association confirming Doris Sassower's 1989 election to that body, which reserves its elected membership to 1/3 of one percent of the practicing bar in each state. This is described at page 6 of the complaint (Exhibit "A").

[11] *See* Exhibit "B-1" to my January 17, 2002 reargument motion, page 2 thereof.

> *a desire to do justice or to properly perform the duties of his office, will justify a removal...*', italics added by [the Appellate Division, First Department] in *Matter of Capshaw*, 258 A.D. 470, 485 (1st Dept 1940), quoting from *Matter of Droege*, 129 A.D. 866 (1st Dept. 1909)."
>
> Also *Matter of Bolte*, 97 A.D. 551 (1st Dept. 1904)... 'A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another...' (at 568, emphasis in original). 'Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe.' (at 574)".

25. This Court is already knowledgeable of the overwhelming documentation proving the criminal conduct and cover-up alleged in the *facially-meritorious* September 19, 1994 complaint (Exhibit "A"). Doris Sassower not only transmitted to the Court a copy of the "full set of papers in the... Article 78 proceeding" to support her attempted appeal of right of the Appellate Division, Second Department's September 20, 1993 decision, order & judgment dismissing her *Mangano* Article 78 proceeding[12], but, thereafter, to support her reargument motion and attempted appeal by leave, provided a full copy of her disciplinary file.[13] Additionally, to support each of her four attempts to obtain direct review of the Appellate Division, Second Department's unlawful June 14, 1991 interim suspension order, she transmitted to the

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[12] The Appellate Division, Second Department's September 20, 1993 decision, order & judgment is annexed to the September 19, 1994 complaint (Exhibit "A").

[13] *See* March 14, 1994 letter of Evan Schwartz, Esq., counsel for Doris Sassower (Supplemental Exhibit "1"); Doris Sassower's July 19, 1994 motion for reargument, reconsideration, leave to appeal and other relief (¶28).

Court copies of the relevant disciplinary files. Further, a copy of the file of the *Castracan v. Colavita* Election Law case had been transmitted to the Court to support the appeal of right therein. That appeal of right was pending before the Court at the same time as Doris Sassower's first attempted appeal of the June 14, 1991 suspension order.

26. As the seven sitting judges of this Court are a close and collegial group, with ties that are personal, professional and political, there is a reasonable question whether ANY of Judge Rosenblatt's six Court of Appeals colleagues could impartially evaluate, or be perceived as able to impartially evaluate, the instant appeal, knowing, as they must, the severe disciplinary and criminal consequences that would ensue to their brother, Judge Rosenblatt. This is apart from the severe disciplinary and criminal consequences to Judge Rosenblatt's former colleagues on the Appellate Division, Second Department, with whom this Court's members have and have had personal, professional, and political ties.

The Disqualification for Interest of Chief Judge Judith Kaye and Associate Judge George Bundy Smith Resulting from their Disciplinary and Criminal Liability from the *Mangano* Article 78 Proceeding

27. Because the *facially-meritorious*, indeed documented, allegations of the September 19, 1994 complaint (Exhibit "A") came before this Court in 1994 when Doris Sassower sought review of the Appellate Division, Second Department's decision in the *Mangano* Article 78 proceeding, Chief Judge Judith Kaye and

Associate Judge George Bundy Smith who participated in rejecting review[14] have a personal interest that there be no investigation of the September 19, 1994 complaint by an impartially-constituted Commission, discharging its obligations pursuant to Judiciary Law §§44.1 and 44.2. Such Commission could properly conclude that their May 12, 1994 order rejecting review as of right (Exhibit "B-4") and their September 29, 1994 order rejecting review by leave (Exhibit "B-5") -- in face of the record of judicial lawlessness, misconduct, and gross constitutional deprivation then before them -- amounts to complicity in the Appellate Division, Second Department's flagrant criminal conduct in the *Mangano* Article 78 proceeding and in its jurisdictionless, due process-less, and retaliatory disciplinary proceedings against Doris Sassower on which the *Mangano* Article 78 proceeding was based[15].

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[14] The only other members of the Court still on the bench, Associate Judges Howard Levine and Carmen Ciparick, recused themselves. Presumably, they would also recuse themselves from consideration of this appeal, as hereinafter set forth (at ¶¶107-115).

[15] Such conclusion would not be difficult as the Court's two orders rejecting review in the *Mangano* Article 78 proceeding are, when compared to the record before the Court, indefensible. Indeed, the September 29, 1994 order denying leave to appeal (Exhibit "B-5"), gave NO reason and, like the May 12, 1994 order which, *sua sponte*, dismissed the appeal of right (Exhibit "B-4"), inexplicably parsed the Appellate Division, Second Department's September 20, 1993 decision so as to separate its denial, *without* reasons, of Doris Sassower's cross-motion. In fact, Doris Sassower's cross-motion was inseparable from the Appellate Division, Second Department's granting of the dismissal motion of its own attorney, the Attorney General. This would have been immediately obvious had the Court identified the cross-motion's requested relief, *inter alia*, to disqualify the Appellate Division, Second Department, for sanctions against the Attorney General for his legally-insufficient, factually perjurious dismissal motion, and for summary judgment on Doris Sassower's verified Article 78 petition.

According to this Court's May 12, 1994 and September 29, 1994 orders (Exhibits "B-4" and "B-5"), the Appellate Division, Second Department's denial of the cross-motion did "not finally determine the proceeding within the meaning of the Constitution". Yet, had the cross-motion been granted, which, based on the record before the Appellate Division, Second Department was required *as a matter of law*, the Article 78 proceeding would have been as finally determined as it was by the granting of the Attorney General's legally insufficient and perjurious dismissal motion.

28. Summarizing the state of the record before the Court on the *Mangano* Article 78 proceeding was Doris Sassower's 56-page Chronology[16], cross-referenced to the disciplinary and Article 78 files, copies of which she had provided to the Court. By *any* objective standard, this document-supported Chronology resoundingly demonstrated Doris Sassower's entitlement to Article 78 relief because the Appellate Division, Second Department, aided and abetted by the Attorney General, had "abandoned all legal standards and respect for the rule of law"[17]. Further, the Chronology set forth a sequence of events showing

> "more than a bias and hostility against [Doris Sassower] on the part of [the Appellate Division, Second Department and its at-will appointees of the Grievance Committee of the Ninth Judicial District], but, rather their use of their public offices to further a politically-motivated vendetta to destroy [Doris Sassower's] professional career and practice and to exhaust [her] physically, emotionally, and financially so as to prevent her from speaking out against judicial corruption". (Doris L. Sassower's July 19, 1994 affidavit, ¶33)

29. At minimum, an impartially-constituted Commission reviewing the record would have ample evidence upon which to charge Chief Judge Kaye and Judge Smith with violating the mandate of what was then §100.3(b)(3) of the Chief Administrator's Rules Governing Judicial Conduct:

Such cross-motion, moreover, established the direct involvement of a "substantial constitution question", whose supposed lack was the stated ground for the Court's *sua sponte* dismissal of the appeal of right.

[16] The Chronology is Exhibit "J" to Doris Sassower's July 19, 1994 affidavit and is described therein at ¶¶29-34. Such Chronology is ALSO the "Factual Allegations" portion of the verified complaint in the *Mangano* federal action. [*See* cert petition to the U.S. Supreme Court in the *Mangano* federal action, reprinting the complaint, which is part of the record herein [A-348].

> "A judge shall take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware."

30. That their violation of such unambiguous and unequivocal ethical mandate was, in every sense, knowing and deliberate is clear from Doris Sassower's July 19, 1994 notice of motion for reargument, reconsideration, leave to appeal, and other relief, expressly requesting:

> "referral of the Justices of the Second Department, their at-will appointees, and the Attorney General of the State of New York for criminal and disciplinary investigation, pursuant to §100.3(b)(3) of the 'Rules Governing Judicial Conduct'".

¶¶60-63 of her moving affidavit then pressed the point under the title heading:

> "THIS COURT HAS AN AFFIRMATIVE DUTY TO REPORT MISCONDUCT BY JUDGES AND LAWYERS OF WHICH IT HAS BECOME AWARE IN THIS ARTICLE 78 PROCEEDING".

31. This was then reinforced by Doris Sassower's concluding words in her subsequent submission – her last to this Court in the *Mangano* Article 78 proceeding:

> "...this Court must not shirk its duty to direct appropriate criminal and disciplinary investigation of the Attorney General and his clients, which the record... shows to be warranted. To do otherwise would not only eliminate any normative ethical standard for the State's highest legal officer and its second highest court, but would convey the message to the public and the lower courts that the reporting requirements of the Chief Administrator's Rules of Judicial Conduct, approved by this Court, are not adhered to by this Court itself." (Doris Sassower's August 8, 1994 affidavit in reply and in further support of reargument, reconsideration, leave to appeal, and other relief, ¶27)

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[17] Doris L. Sassower's July 19, 1994 affidavit, ¶30.

32. The consequences of what Chief Judge Kaye and Judge Smith did and wilfully failed to do in the *Mangano* Article 78 proceeding set in motion the train of events which not only led to this lawsuit, but are integrally part:

A. The Appellate Division, Second Department justices, having been protected by Chief Judge Kaye and Judge Smith from exposure and penalties for their serious judicial misconduct, continued to perpetuate their unlawful June 14, 1991 interim suspension of Doris Sassower's law license and to otherwise demonstrate their lawless and retaliatory conduct toward her, as for example, in unrelated civil appeals from which they refused to recuse themselves and which, as a result, became the subject of the *facially-meritorious* October 26, 1994 and December 5, 1994 judicial misconduct complaints.

B. The Attorney General, having "gotten away" with his defense misconduct in the *Mangano* Article 78 proceeding, not *only* before his own Appellate Division, Second Department client, but *before this very Court*[18], was emboldened to repeat such tactics again and again in every other court venue wherein Doris Sassower sought to vindicate her constitutional, due process, and equal protection rights. Thus, when Doris Sassower turned to federal court with her *Mangano* federal action, serving all 20 justices of the Appellate Division, Second Department, Judge Rosenblatt among them[19], with her summons and complaint on October 17, 1994 –

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[18] The Attorney General's fraudulent conduct before this Court is identified in the September 19, 1994 complaint (Exhibit "A", p. 4).

[19] The affidavit of service is annexed as Exhibit "3" to the *facially-meritorious* December 5, 1994 judicial misconduct complaint.

three weeks after this Court's September 29, 1994 order (Exhibit "B-5") – the Attorney General, a defendant in the federal action by reason of his defense misconduct in the *Mangano* Article 78 proceeding[20], represented all defendants and wholly corrupted the judicial process with even more egregious defense misconduct. Also by defense misconduct he opposed her petition to the U.S. Supreme Court for a writ of certiorari in her *Mangano* Article 78 proceeding[21]. Likewise, with defense misconduct he defeated her Article 78 proceeding *Doris L. Sassower v. Commission* which she initiated following the Commission's dismissals, *without* reasons and *without* investigation, of her *facially-meritorious* September 19, 1994, October 26, 1994, and December 5, 1994 judicial misconduct complaints.

33. The Attorney General's pervasive litigation misconduct in *Doris L. Sassower v. Commission*, in the *Mangano* Article 78 proceeding, and in the *Mangano* federal action -- for which state and federal judges rewarded him with fraudulent judicial decisions -- is summarized in the Center for Judicial Accountability's (CJA) public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "C-1") [A-55-56], referred to in my *facially-meritorious* October 6, 1998

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[20] *See* ¶¶10, 168-170, 174-178, 195-196, 200-208 of the federal complaint, reprinted in Doris Sassower's petition for a writ of certiorari to the U.S. Supreme Court in the *Mangano* federal action -- part of the record herein [A-348].

[21] Judge Victoria Graffeo was then Solicitor General and it is her name which appears on the Attorney General's 3-page "Memorandum in Opposition" to the U.S. Supreme Court in the *Mangano* Article 78 proceeding (Exhibit "C-2"). The fraudulent and bad-faith nature of such submission is particularized by Doris Sassower's 8-page "Reply Memorandum" (Exhibit "C-3") (*See also* ¶104 *infra*).

judicial misconduct complaint [A-57] and part thereof [A-79-80][22]. It is also the basis upon which my July 28, 1999 omnibus motion in Supreme Court/New York County sought to disqualify the Attorney General from representing the Commission by reason of his multiple conflicts of interest and to punish him for his litigation misconduct born of those conflicts. As demonstrated by ¶¶10-53 of the omnibus motion and summarized at ¶14:

> "this Article 78 proceeding presents the confluence of the three litigations which '*Restraining 'Liars''* describes and necessarily exposes the official misconduct of Attorney General Spitzer's predecessors in those litigations and subsequent thereto in wilfully failing and refusing to take corrective steps upon notice, as well as his own misconduct in failing to take corrective steps when notified of his mandatory ethical and professional duty to do so."

34. Plainly, Chief Judge Kaye and Judge Smith have a personal interest that there be no impartial appellate review of a lawsuit where the critical issues of the Attorney General's disqualifying conflicts of interest and resulting litigation misconduct trace back to his egregious litigation misconduct in the *Mangano* Article 78 proceeding, to which they effectively "gave their blessings".

35. A related issue on this appeal is a judge's disciplinary responsibilities, pursuant to §§100.3D(1) & (2) of the Chief Administrator's Rules Governing Judicial Conduct, to address attorney and judicial misconduct, including by referrals to disciplinary and criminal authorities for prosecution. This, because neither Justice

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[22] As pointed out by my July 28, 1999 omnibus motion (¶13), "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "C-1") [A-55-56] is part of my pleading, pursuant to CPLR §3014.

Wetzel nor the Appellate Division, First Department took *any* steps to restrain the Attorney General's unrestrained litigation misconduct, despite my repeated invocation of §100.3D in the context of my undisputed fully-documented sanctions motions. Both Justice Wetzel and the Appellate Division, First Department denied these motions, *without* reasons and *without* findings --including as to my showing that the Attorney General's advocacy rested on judicial decisions he knew to be fraudulent, *to wit*, the decision of Justice Cahn in *Doris L. Sassower v. Commission* [A-189-194] and the decision of Justice Edward Lehner in *Michael Mantell v. Commission* [A-299-307][23]. Here, too, Chief Judge Kaye and Judge Smith have a personal interest that there be no independent appellate review since judicial pronouncement as to §100.3D and such related reporting requirement as DR 1-103(A) of New York's Disciplinary Rules of the Code of Professional Responsibility would only underscore their violations in the *Mangano* Article 78 proceeding.

36. Of course, Chief Judge Kaye and Judge Smith also have a personal interest in the threshold issue on this appeal as to whether the Appellate Division, First Department could properly deny, *without* reasons or findings, my August 17, 2001 motion for its disqualification and whether Justice Wetzel could properly deny, *without* findings, my December 2, 1999 letter-application for his disqualification. After all, in the *Mangano* Article 78 proceeding, they effectively "gave their blessing" to the Appellate Division, Second Department's far more egregious denial, *without*

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[23] On appeal to the Appellate Division, First Department, the Attorney General also urged the fraudulent appellate decision in *Mantell* [*see* my January 17, 2001 reargument motion, ¶¶9-10].

reasons or findings, of Doris Sassower's July 2, 1993 motion for its disqualification. As Doris Sassower pointed out to the Court in her July 19, 1994 motion for reargument, reconsideration, leave to appeal, and other relief:

> "In permitting accused judges to adjudicate their own case – and to do so, as here – in the context of an Article 78 proceeding against them – this Court has not only flouted the historic origin and legislative intent behind the Article 78 statute, but has disregarded a vast body of law relative to judicial disqualification – including that incorporated in our State Constitution and codified in Judiciary Law §14, as well as that which has been constitutionalized by decisional law of the United States Supreme Court, including Aetna v. Lavoie, 475 U.S. 813, 106 S.Ct. 1580 (1986) and Liljeberg v. Health Services , 486 U.S. 487, 108 S.Ct. 2194 (1988)." (at ¶ 11)

37. Chief Judge Kaye and Judge Smith also have a personal interest in the disclosure issue ignored by both the Appellate Division, First Department and Justice Wetzel – since they themselves made no disclosure in the *Mangano* Article 78 proceeding. The relevance of disclosure in the *Mangano* Article 78 proceeding may be seen from Doris Sassower's submissions therein which identified that her:

> "ex-husband testified in January 1987 at Senate Judiciary Committee hearings in opposition to the confirmation of Judge Bellacosa to this Court. On information and belief, both Judge Bellacosa and Chief Judge Kaye are the subject of pending litigation by Mr. Sassower in Federal court." (March 14, 1994 letter, fn. 7)[24].

38. Among the facts that might have been disclosed by Chief Judge Kaye and former Associate Judge Bellacosa was whether the Attorney General was then

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[24] *See* also Doris Sassower's July 19, 1994 affidavit in support of her motion for reargument, reconsideration, leave to appeal, and other relief (at ¶37).

representing them in Mr. Sassower's federal action. If so, they surely had a conflict in addressing his litigation misconduct in the *Mangano* Article 78 proceeding – and, especially, if he was engaging in similar litigation misconduct, on their behalf, to defeat Mr. Sassower's federal action.

39. That Chief Kaye is a knowing beneficiary of the Attorney General's *modus operandi* of litigation misconduct in defeating lawsuits against herself and the judiciary would explain why over the many years of my correspondence with her[25], providing her with copies of "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "C-1") [A-55-56], the fact-specific, document-supported allegations of the ad as to the Attorney General's litigation misconduct and the fraudulent judicial decisions of which he had been rewarded did not elicit in her any response – let alone one consistent with her transcending duties as "chief judicial officer of the unified court system" (Judiciary Law §210.1)[26].

40. Chief Judge Kaye and various members of this Court, past and present, may be presumed to be aware of my father's litigation and other adversarial contacts

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[25] Until March 3, 2000, my correspondence with Chief Judge Kaye related to Governor Pataki's manipulation of judicial selection to the lower state courts – a selection process in which she participates through her appointments to his judicial "screening" committees. One of these letters, dated January 7, 1998, is annexed as Exhibit "E" to my February 23, 2000 letter to Governor Pataki. [*See* File Folder "A" to CJA's October 16, 2000 Report on the Commission on Judicial Nomination's subversion of "merit selection" to this Court].

[26] It must be noted that the Office of Court Administration has on its counsel's staff the very Assistant Attorney General who filed the legally insufficient and factually perjurious dismissal motion in the *Mangano* Article 78 proceeding before his own Appellate Division, Second Department client and who, thereafter, engaged in fraudulent advocacy before this Court. This is John J. Sullivan, Assistant Deputy Counsel. Mr. Sullivan presumably defends the OCA in its litigation.

(Exhibit "D-1")[27]. As to Chief Judge Kaye, annexed is a copy of a *facially-meritorious* March 29, 1994 complaint which my father filed with the Commission against her, sending her a copy (Exhibit "D-2"). This was done, unbeknownst to my mother, Doris Sassower, or myself, during the very period in which the *Mangano* Article 78 proceeding was before the Court and alleged that the Chief Judge was responsible for the Office of Court Administration's cover-up of *readily-verifiable* judicial misconduct pertaining, *inter alia*, to non-compliance with mandatory filing requirements by court-appointed fiduciaries and judges. Also annexed is a predecessor October 20, 1993 complaint against the Chief Judge, which my father also filed, likewise sending her a copy (Exhibit "D-3").

41. As herein shown, Chief Judge Kaye's demonstrated cover up and protectism of those under her authority and control whose misconduct is proven in documents provided her, lends credence to Mr. Sassower's complaints. To my knowledge, these complaints did not result in the slightest investigative or curative action by her.

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[27] As reflected by my August 17, 2001 motion (¶¶10-14), my father filed a substantial number of judicial misconduct complaints with the Commission against a substantial number of judges. Copies of illustrative complaints against First Department justices are annexed thereto as Exhibit "E". One of these is a February 10, 1989 complaint (Exhibit "E-3a") enclosing a February 7, 1989 letter to then Chief Judge Sol Wachtler. Upon information and belief, my father had extensive correspondence with Chief Judge Wachtler and his Chief Administrators both prior thereto and thereafter. Among these, a June 24, 1988 letter to Chief Judge Wachtler and his then Chief Administrator Albert Rosenblatt (Exhibit "D-6"), relating to their "ultimate responsibility" for non-compliance with mandatory filing requirements by court-appointed fiduciaries and judges.

The Disqualification for Interest of Chief Judge Kaye and Associate Judge Smith Resulting from their Disciplinary and Criminal Liability Arising out of Related Prior and Subsequent Appeals to this Court

42. Chief Judge Kaye and Judge Smith also participated in Doris Sassower's attempted appeals in the related prior and subsequent proceedings challenging the June 14, 1991 interim suspension order, from which a reconstituted Commission would derive further evidence of their criminal complicity in the Appellate Division, Second Department's politically-motivated retaliation against Doris Sassower – the subject of the *facially-meritorious* September 19, 1994 judicial misconduct complaint (Exhibit "A") – or, at very least, their wilful violation of §100.3D of the Chief Administrator's Rules Governing Judicial Conduct.

43. Thus, Chief Judge Kaye, as an Associate Judge, participated in the Court's September 10, 1991 order denying, *without* reasons, Doris Sassower's motion for leave to appeal the June 14, 1991 suspension order (Exhibit "B-1"). That any fair and impartial tribunal, not bent on covering up corrupt, politically-motivated judicial conduct, would have been compelled to grant such motion is clear from the record before the Court[28]. Such record documented facts exponentially more violative than any recited by the Court's 1984 decision in *Nuey* or by its 1986 decision in *Matter of Padilla and Gray*, 67 N.Y.2d 440 – appeals in which the Court granted leave to appeal to three interimly suspended attorneys. Similarly, the record documented facts

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[28] Simultaneously before the Court was the appeal of right in *Castracan v. Colavita*, which the Court dismissed on October 15, 1991 (Exhibit "B-2").

pertaining to Doris Sassower's interim suspension are exponentially more violative than those recited in the Court's subsequent 1992 decision in *Russakoff* – involving another interimly suspended attorney. Indeed, it was a mere four months after denying Doris Sassower's motion for leave to appeal the Appellate Division, Second Department's interim suspension of her law license that the *identical* Court granted Mr. Russakoff's motion for leave to appeal the Appellate Division, Second Department's interim suspension of his law license.

44. Moreover, attorneys Nuey, Padilla, Gray, and Russakoff were not, as Doris Sassower had been,

> "a distinguished matrimonial and human rights lawyer, lecturer and writer... in continuous good standing at the bar for over thirty-five years... [with] a thriving private practice, an outstanding career and a national reputation based on her legal writings, her public advocacy in the area of equal rights and law reform, and her litigation accomplishments in both the private and public sector. She was consistently rated 'AV' by Martindale-Hubbell's Law Directory and, in June 1989, was elected as a Fellow of the American Bar Foundation. Such honor is reserved for less than one-third of one percent of the practicing bar of each State.
>
> ... [She] had been President of the New York Woman's Bar Association and had a long background in the area of judicial reform. She had served on committees to reform the judicial selection process and had written and been published on the subject in The New York Law Journal.
>
> For eight years, from 1972-1980, [she] had served as the first woman appointed to the Judicial Selection Committee of the New York State Bar Association. In that capacity, [she] interviewed and participated in the evaluation of every candidate for the New York State Court of Appeals, the Appellate Divisions, and the Court of Claims. She herself was nominated as a candidate for the Court of Appeals in 1972."[29]

[29] This description is from ¶¶14-16 of the verified complaint in the *Mangano* federal action, a copy of which was before the Court in 1995 and 1996 on Doris Sassower's fifth and sixth

45. It is significant that when Doris Sassower's 1991 motion for leave was before the Court, Judge Kaye already knew – without necessity of further legal research -- that there was NO statutory authority for interim suspensions and that the lack of findings in the June 14, 1991 interim suspension order, on *its face*, required its vacatur, *as a matter of law*. This, by virtue of the Court's 1984 *Nuey* decision in which she had participated, much as she had likewise participated in its 1986 decision in *Padilla and Gray*.

46. Doris Sassower's second attempt to secure review of the June 14, 1991 suspension order was an appeal of right, based on the Appellate Division, Second Department's "direct refusal" to follow the Court's controlling precedent in *Russakoff*. Such precedent not only reiterated the findings requirement for interim suspension orders, but additionally identified the constitutional infirmity of interim suspension rules, such as those of the Appellate Division, Second Department, which make no provision for a prompt post-suspension hearing. Notwithstanding Doris Sassower showed that the Appellate Division, Second Department was refusing, *without* reasons, to vacate her finding-less suspension order, as well as refusing, *without* reasons, to provide her with a post-suspension hearing, Associate Judge Kaye and Judge Smith, then a new Court member, participated in the Court's November 18, 1992 order, dismissing the appeal, *sua sponte*, upon the boiler-plate ground that "the

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attempts to appeal the Appellate Division, Second Department's June 11, 1991 suspension order. The verified complaint in the *Mangano* federal action is part of the record herein, appearing in the appendix to Doris Sassower's petition for a writ of certiorari [A-348].

order appealed-from does not finally determine the proceeding within the meaning of the Constitution" (Exhibit "B-3).[30]

47. Ironically, as the very time Doris Sassower's 1992 appeal of right was before the Court, it was hearing oral argument in *Wieder v. Skala*, 80 N.Y.2d 628 (1992), in which it would render a decision stating:

> "...the Legislature has delegated the responsibility for maintaining the standards of ethics and competence to the Departments of the Appellate Division... To assure that the legal profession fulfills its responsibility of self-regulation, DR 1-103(A) places upon each lawyer and Judge the duty to report to the Disciplinary Committee of the Appellate Division any potential violations of the Disciplinary Rules that raise a 'substantial question as to another lawyer's honesty, trustworthiness or fitness in other respects'. Indeed, one commentator has noted that, '[t]he reporting requirement is nothing less than essential to the survival of the profession' (Gentile, *Professional Responsibility – Reporting Misconduct By Other Lawyers*, NYLJ, Oct. 23, 1984, at 1, col 1; at 2, col 2; *see also*, Olsson, *Reporting Peer Misconduct: Lip Service to Ethical Standards is Not Enough*, 31 Ariz L Rev 657, 658-659.)" at p. 636 (underlining added for emphasis).

Nonetheless, the Court did not see fit to comply with "reporting requirement[s]" and self-regulation by any *sua sponte* order directing the Appellate Division, Second Department justices and their Grievance Committee appointees for disciplinary and criminal investigation in face of a record which starkly revealed their clear violations of disciplinary rules pertaining to "honesty, trustworthiness, [and] fitness" as well as of fundamental due process protections and safeguards. Indeed, two years later, when

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[30] Unaddressed by the Court's order were Doris Sassower's arguments that "finality" had been met (*see* her October 14, 1992 affidavit in support of jurisdiction for appeal as of right, p. 1, fn. 1).

Doris Sassower sought review of the *Mangano* Article 78 proceeding and presented the Court with an even more monstrous record of the Appellate Division, Second Department's corrupt and violative conduct – including its refusal to amend its interim suspension rule to provide for a prompt post-suspension hearing, consistent with *Russakoff*, the Court still did nothing. No matter that on her July 19, 1994 reargument motion therein Doris Sassower herself explicitly invoked §100.3(b)(3) of the Chief Administrator's Rules Governing Judicial Conduct to support her request for appropriate disciplinary and criminal referrals.

48. By 1995 and 1996, when Doris Sassower made her two final attempts to gain this Court's review of the June 14, 1991 suspension of her law license, the Court, under Chief Judge Kaye, had already approved a package of amendments to the Chief Administrator's Rules Governing Judicial Conduct, effective January 1, 1996. One of these amendments revised what had been §100.3(b)(3) under the rubric "Administrative responsibilities" and transposed it to §§100.3(D)(1) & (2) under a new rubric of "Disciplinary responsibilities":

> "(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action;
>
> (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action."

49. By then, the Chief Judge's Committee on the Profession and the Courts, which she had set up in December 1993, had issued its November 1995 Report

emphasizing the importance of self-regulation and an effective attorney disciplinary mechanism.

50. None of this had any effect on Chief Judge Kaye or Judge Smith, who, despite Doris Sassower's continuing entreaties, took no "appropriate action". Rather, they continued to "close their eyes" to the overwhelming record proof of the Appellate Division, Second Department's hijacking of the attorney disciplinary mechanism for savage retaliatory ends. This, at the very time that Chief Judge Kaye was propagandizing for public relations purposes, "The court system has zero tolerance for jurists who act unethically or unlawfully" (Perspective Column by Chief Judge Kaye, Gannett Suburban Newspapers, 3/22/96).

51. It was in these two final attempts to secure review that Doris Sassower went beyond suggesting, as she had in her *Mangano* Article 78 proceeding[31], that the Court was not fair and impartial and denying her equal protection rights. In a November 15, 1995 letter to the Clerk's Court (Exhibit "E-1"), in conjunction with her appeal of right, she expressly requested the Court's recusal, stating:

> "Since this is now the fifth time I am bringing up for the Court's review the Second Department's June 14, 1991 'interim' Order suspending my law license, the Court already has in its possession virtually the entire record of the disciplinary proceedings against me... That record establishes that the June 14, 1991 'interim' suspension Order is – as I have from the outset contended and shown it to be – petition-less, hearing-less, finding-less, and reason-less, entitling me to this Court's jurisdiction of right and to immediate vacatur relief, Matter of Nuey, 61 N.Y.2d 513 (1984); Matter of Russakoff, 79 N.Y.2d

[31] *See* Doris Sassower's July 19, 1994 motion for reargument, reconsideration, leave to appeal and other relief (at ¶¶36-37).

520 (1992); and that New York's attorney disciplinary law – as written and as applied – is flagrantly unconstitutional.

It is respectfully submitted that this Court's extraordinary four-time refusal to take jurisdiction over the substantial constitutional issues directly presented by my appeals – issues the Court plainly recognized when it took jurisdiction over the appeals of interimly-suspended attorneys Nuey and Russakoff – is egregiously violative of my constitutional rights as to be explicable only as a reflection of this Court's bias against me and its favored treatment and protection of the Justices of the Second Department, who, as the record unmistakeably shows, have utilized the disciplinary machinery of our State for their own ulterior and political purposes. I, therefore, respectfully submit that the Court should recuse itself to ensure that there is the actuality and appearance of an appropriate independent and impartial tribunal to hear the sensitive issues relating to this appeal – including those relating to this Court's subject matter jurisdiction..." (emphases in the original).

52. Doris Sassower's November 15, 1995 letter pointed out that recusal was also essential to preserving "public confidence" – the public being already aware of the Court's role in covering up the retaliatory suspension of her law license and the subversion of the Article 78 remedy by virtue of CJA's widely-circulated October 26, 1994 New York Times Op-Ed page ad, "*Where Do You Go When Judges Break the Law?*", a copy of which it annexed (Exhibit "E-1").

53. The Court's response to this November 15, 1995 letter and Doris Sassower's subsequent exchange of correspondence with its Clerk on the subject (Exhibits "E-2" and "E-3"), was its February 20, 1996 order omitting any mention of recusal and purporting to grant a motion to dismiss the appeal by counsel for the Ninth Judicial District Grievance Committee "upon the ground that the order appealed from does not finally determine the proceeding" (Exhibit "B-6"). This,

notwithstanding counsel for the Grievance Committee had raised NO such ground in its dismissal motion. Moreover, such counsel's motion had been shown by Doris Sassower's opposing papers to be "frivolous within the meaning of 22 NYCRR §130-1.1 et seq., and a deliberate deceit upon this Court within the meaning of Judiciary Law §487"[32].

54. Doris Sassower pointed this out in her March 27, 1996 motion for recusal, reargument, reconsideration, and leave to appeal, asserting that the February 20, 1996 order was so egregiously erroneous as to manifest the Court's actual bias. The Court's response, by its June 11, 1996 order (Exhibit "B-7"), was to deny recusal, *without* reasons, to deny reargument, *without* reasons, and to dismiss Doris Sassower's motion for leave to appeal upon the ground that the appealed-from order "does not finally determine the proceeding within the meaning of the Constitution and is not an order of the type provided for in CPLR §5602(a)(2)". In so doing, the Court did not trouble itself with explaining the simple fact that it had not deemed lack of "finality" as barring review to interimly-suspended attorneys Russakoff, Padilla, Gray, and Nuey, whose four separate leave applications it had promptly granted[33].

55. Needless to say, with each of Doris Sassower's six attempted appeals to this Court, over a five-year period, she not only documented the Appellate Division,

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[32] *See* Doris Sassower's December 26, 1995 affidavit in opposition to motion to dismiss appeal of right (at ¶2).

[33] As previously, the Court did not confront Doris Sassower's arguments on "finality", including by explicating the plain language of CPLR §5602(a)(2), seemingly applicable to her attempts to obtain review.

Second Department's flagrant violation of her due process rights – entitling her to review, by right, under this Court's own holding in *Valz v. Sheepshead Bay*, 249 N.Y. 122 (1928) -- which she cited[34] – and its complete denial of her equal protection rights to such an extent that among a list of 20 interimly-suspended attorneys, she alone had been denied a post-suspension hearing and a final order for purposes of appeal[35] -- but, increasingly the unconstitutionality of New York's attorney disciplinary law, both as written and as applied.

This Court's Records Destruction Policy Conceals Its Pattern and Practice of "Covering Up" Corruption and Other Judicial Misconduct in the Lower State Courts

56. Unlike the U.S. Supreme Court which preserves the thousands and thousands of "cert" petitions it receives, this Court has a policy of destroying ALL applications for appeals of right and by leave[36]. This, even where it accepts review. The Court thereby obliterates the evidence establishing its pattern and practice of protectionism, *to wit*, of accepting for review those appeals where less egregious constitutional violations can be brushed aside as if judicial "error" – as, for instance, in *Nuey* and *Russakoff* -- but of denying review where the constitutional violations

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[34] *See* Doris Sassower's October 14, 1992 affidavit in support of jurisdiction for appeal as of right (at ¶20); Doris Sassower's July 19, 1994 motion for reargument, reconsideration, leave to appeal, and other relief (at ¶22). NOTE: *Valz v. Sheepshead Bay* was also cited to support the appeal of right in *Castracan v. Colavita*: *see* Eli Vigliano's September 7, 1991 affirmation in opposition (at ¶11).

[35] This extraordinary and documented fact was first presented to this Court in Doris Sassower's appeal of right in the *Mangano* Article 78 proceeding [*See* January 24, 1994 Jurisdictional Statement (at p. 15)].

[36] Jurisdictional Statement are destroyed two years after disposition by the Court. Motions are destroyed after five years.

are, as presented by Doris Sassower, of such nature, magnitude, and duration that they cannot be disguised as anything but corrupt and retaliatory conduct by lower court judges.

57. The Court's destruction of its records further conceals its failure to discharge its mandatory disciplinary and reporting obligations pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct and DR 1-103(A) of New York's Disciplinary Rules of the Code of Professional Responsibility, as for example, in connection with Doris Sassower's six attempted appeals and the attempted appeal in the *Castracan v. Colavita* Election Law case -- each presenting documentary proof of violative and criminal conduct by judges and lawyers on the public payroll.

58. A copy of the papers submitted on Doris Sassower's six attempted appeals[37] are herewith transmitted and incorporated by reference. This, so that there is no question as to the protectionism and cover-up that have been practiced by Chief Judge Kaye and Judge Smith in their disposition of attempted appeals involving issues integral to the *facially-meritorious* September 19, 1994 judicial misconduct complaint (Exhibit "A") – and which would be exposed by investigation thereof. Even without benefit of comparison to the four motions for leave to appeal filed by attorneys Nuey, Padilla, Gray, and Russakoff, destroyed by this Court, the record of Doris Sassower's six attempted appeals relating to the June 11, 1991 interim

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[37] Due only to lack of time, a copy of the record in the attempted appeal of right in *Castracan v. Colavita* it is not furnished herewith. Upon request, it will be supplied.

suspension of her law license stands "on its own" as powerful evidence to indict Chief Judge Kaye and Judge Smith.

59. Such evidence both substantiates and supplements Doris Sassower's October 24, 1991 letter to then Governor Mario Cuomo (Exhibit "F"). Such letter requested the appointment of a Special Prosecutor in no small measure because of this Court's cover-up of judicial corruption. The October 24, 1991 letter was part of *Doris L. Sassower v. Commission*[38] – having been sent to the Commission, received by it as a judicial misconduct complaint, and thereafter dismissed by it, *without* investigation. It is brought up for review by my Second Claim for Relief [A-38-40]. By reason thereof, Chief Judge Kaye and Judge Smith have an added personal interest in this lawsuit – and all the more so as the October 24, 1991 judicial misconduct complaint was before them in the *Mangano* Article 78 proceeding.[39]

60. Finally, insofar as the subsequent section of this motion focuses on Chief Judge Kaye's administrative misconduct in covering up judicial corruption, the Court's records destruction policy also conceals the Chief Judge's failure to direct the invaluable, on-the-ground information the Court receives from appeals it rejects to appropriate governing structures and committees within the Office of Court

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[38] The *facially-meritorious* October 24, 1991 judicial misconduct complaint is Exhibit "D" to the verified petition in *Doris L. Sassower v. Commission*.

[39] The October 24, 1991 complaint was Exhibit "K" to Doris Sassower's July 19, 1994 motion for reargument, reconsideration, leave to appeal, and other relief, referred to at ¶34 of Doris Sassower's supporting affidavit and further described at ¶¶101-103 of the Chronology, annexed as Exhibit "J".

Administration insofar as they indicate serious inadequacies in the law or in its implementation.

61. Thus, notwithstanding Chief Judge Kaye set up her Committee on the Profession and the Courts in December 1993, it appears she took no steps to alert the Committee to the relevance of the *Mangano* Article 78 proceeding to the very issues of professionalism and attorney discipline it purported to be studying. The fact that the Committee never contacted Doris Sassower for information and documents during its two-year tenure is strong evidence that the Chief Judge never made such clearly appropriate referral.

62. In any event, following the Committee's issuance of its November 1995 Final Report and announcement by Chief Judge Kaye of a 90-day "comment period", Doris Sassower alerted the Chief Judge to the significance of the *Mangano* Article 78 proceeding. This, by the same November 15, 1995 letter to the Court's Clerk (Exhibit "E-1") that sought the Court's recusal. In response to the Committee's recommendation to open attorney disciplinary proceedings once formal charges are filed – the premise being that such charges are preceded by a "probable cause" finding -- the November 15, 1995 letter stated:

> "[A]s documented by my Article 78 proceeding, Sassower v. Mangano, et al, ... this is not so...
>
> ...the record of my Article 78 proceeding before this Court empirically documents...that this State's attorney disciplinary mechanism is corrupted and that opening them to the public would only further the injury to innocent attorneys, such as myself, who are being invidiously and maliciously prosecuted under an unconstitutional statute and court rules." (Exhibit "E-1", pp. 2-3, emphases in the original).

63. It was in face of such document-supported letter, thereafter annexed to Doris Sassower's March 27, 1996 motion for recusal, reargument, reconsideration, and leave to appeal, that Chief Judge Kaye adopted the Committee recommendation for opening attorney disciplinary proceedings.

64. As Chief Judge Kaye heads the Administrative Board, whose entire membership, other than herself, consists of the Presiding Justices of the four Appellate Divisions, even more astonishing is that she apparently took no steps to confront Appellate Division, Second Department's Presiding Justice Mangano with the file evidence from Doris Sassower's attempted appeals, chronicling his criminal misuse of the attorney disciplinary mechanism. This, notwithstanding the file evidence showed that it was Justice Mangano who had presided over every Appellate Division, Second Department panel in its misuse of its attorney disciplinary power against Doris Sassower[40]. Apparently, Chief Judge Kaye did not even take steps to ensure that the four Presiding Justices would change their constitutionally-infirm interim suspension rules so as to provide attorneys with prompt post-suspension hearings, consistent with the Court's ruling in *Russakoff*. As a result, a decade

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[40] Also presiding over every panel was Appellate Division Second Department Justice Bracken, who Chief Judge Kaye appointed in December 1993 to her Committee on the Profession and the Courts, on Presiding Justice Mangano's recommendation.

Like Presiding Justice Mangano, Justice Bracken fully participated in the retaliatory suspension of Doris Sassower's law license – as would have been clear to Chief Judge Kaye from the record of Doris Sassower's 1991 and 1992 attempts to secure review. Thereafter, Justice Bracken, while a member of the Committee, continued to fully participate in the Appellate Division, Second Department's retaliatory conduct against Doris Sassower – as should have been obvious to Chief Judge Kaye from the record in the *Mangano* Article 78 proceeding, before her in 1994, and in Doris Sassower's two subsequent attempted appeals in 1995 and 1996.

AFTER *Russakoff*, all Appellate Divisions, except for the First Department, continue to operate under constitutionally-infirm interim suspension rules which make NO provision for prompt post-suspension hearings.

The Disqualifying Interest of Chief Judge Kaye Resulting from Her Violation of §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct in Connection with the Evidence from this Lawsuit

65. Adding to Chief Judge Kaye's protectionism and cover-up of the lower judiciary's politicized and corrupt conduct, reflected by the aforedescribed seven attempted appeals to this Court, are her false and misleading public statements. These, assuredly, would be taken into account by a reconstituted Commission in assessing her disciplinary and criminal liability arising from these attempted appeals, as well as her official misconduct in connection with the *evidence from this lawsuit*, provided to her more than two years ago.

66. As noted (¶50 *supra*), during the very period in which the Court was rejecting Doris Sassower's fifth and sixth attempted appeals of the Appellate Division, Second Department's due process-less, retaliatory suspension of her law license, Chief Judge Kaye was publicly purporting "The court system has zero tolerance for jurists who act unethically or unlawfully". Such emphatic claim was not a verbal slip, inadvertently made at the spur of the moment, without reflection, but presented in a March 1996 column written by the Chief Judge upon invitation by Gannett Suburban Newspapers. Nor would a reconstituted Commission find it to be an isolated false assertion. Rather, it is consistent with Chief Judge Kaye's position,

further reflected in a speech she made at a Hofstra Law School symposium and reprinted in its Spring 1997 Law Review, that "the judiciary is fully accountable to the public"[41]. Indeed, a reconstituted Commission would find that Chief Judge Kaye regularly encourages the public to believe that she fills a leadership role in ensuring judicial integrity and that she is vigilant in addressing abuses by judges who "cross the line".

67. This, of course, is reinforced by the various committees, offices, and entities within the Office of Court Administration that Chief Judge Kaye sets up, at taxpayer expense, for the announced purpose of advancing attorney professionalism, accountability, and public confidence. As illustrative, the Committee on the Profession and the Court, which she appointed in 1993, whose chairman, Louis Craco, Esq., she put in charge of a permanent Judicial Institute on Professionalism in the Law in March 1999. In November 1998, she set up a Committee to Promote Public Trust and Confidence in the Legal System. In January 2000, following extensive media coverage of allegations of political influence in fiduciary appointments, Chief Judge Kaye announced in her State of the Judiciary Address, the creation of an office of Special Inspector General for Fiduciary Appointments and a blue-ribbon Commission on Fiduciary Appointments.

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[41] *See "Safeguarding A Crown Jewel: Judicial Independence and Lawyer Criticism of Courts"* by Chief Judge Kaye, 25 Hofstra Law Review 703 (Spring 1997). Among its copious and scholarly footnotes, fn. 57, citing the annotation to EC 8-6 of the Model Code of Professional Responsibility, that: "[E]very lawyer, worthy of respect, realizes that public confidence in our courts is the cornerstone of our governmental structure, and will refrain from unjustified attacks on the character of the judges, while recognizing the duty to denounce and expose a corrupt and

68. This is the backdrop to my *facially-meritorious*, indeed, fully-documented, August 3, 2000 judicial misconduct complaint against Chief Judge Kaye, which, if investigated by a reconstituted Commission, would result in her removal from office. Such complaint and outcome give the Chief Judge an even more direct and immediate interest in this proceeding.

69. The specific facts leading up to my August 3, 2000 complaint, hereinafter summarized, are best established by the documents to which my summary refers. Virtually all are already part of the record herein as exhibits to my August 17, 2001 motion before the Appellate Division, First Department, substantiating ¶¶32-48 of the motion. These pertain to Chief Judge Kaye's cover-up and complicity in the corruption exposed by this public interest lawsuit.

70. As documentarily shown, on March 3, 2000 I delivered to Chief Judge Kaye's New York office a copy of the lower court record herein – including the physically-incorporated copies of the lower court records in *Doris L. Sassower v. Commission* and in *Mantell v. Commission*. These were transmitted in substantiation of my March 3, 2000 letter[42] to the Chief Judge, whose "RE clause" read:

> "1. Meeting your Administrative and Disciplinary Responsibilities under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct
> 2. Designation of a Special Inspector General to Investigate the Corruption of the New York State Commission on Judicial Conduct"

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dishonest judge." from *Kentucky State Bar Association v. Lewis*, 282 S.W2d 321, 3326 (KY. 1995) (emphasis added).

[42] *See* Exhibit "K" to my August 17, 2001 motion.

71. Detailed by the letter were the documentarily-verifiable facts pertaining to the Commission's corruption. As stated therein:

> "The most salient and frightening fact about the Commission's corruption... is that in three specific Article 78 proceedings over the past five years, the Commission – whose duty it is to uphold judicial standards – has been the beneficiary of fraudulent judicial decisions of Supreme Court/New York County, without which it would not have survived the challenges brought by complainants whose *facially-meritorious* judicial misconduct complaints the Commission had dismissed *without investigation.* Indeed, the Commission had NO legitimate defense to *any* of these three proceedings, relying on litigation fraud by 'the People's lawyer', the State Attorney General, who represented the Commission in flagrant violation of Executive Law §63.1." (at p. 2, emphasis in the original).

72. Appointment of a "Special Inspector General" was "essential" because, as I showed, "public agencies and officers having criminal and disciplinary jurisdiction over the Commission are compromised by disabling conflicts of interest" (at p. 2).

73. Additionally, I requested that Chief Judge Kaye take steps to demote Administrative Judge Stephen G. Crane and to secure his removal from the bench and criminal prosecution based on his administrative misconduct in my lawsuit. The particulars of this administrative misconduct, including the documentary proof that he had "steered" the lawsuit to Justice Wetzel [A-122; 127], were set forth at pages 6-14 of my accompanying February 23, 2000 letter to Governor George Pataki[43], who was then considering elevating Judge Crane to the Appellate Division[44]. Such recitation

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[43] *See* Exhibit "F" to my August 17, 2001 motion.

[44] Just over a year later, after passing over Administrative Judge Crane for appointment to this Court, the Governor designated him to the Appellate Division, Second Department. *See* my August 17, 2001 motion, ¶¶25-31.

essentially foreshadowed that which would appear ten months later in my Appellant's Brief.

74. My letter to Chief Judge Kaye quoted extensively from her January 10, 2000 State of the Judiciary Address, whose pertinent pages I annexed. These related to her announced "Year 2000 Program" to "build public trust and confidence in our justice system" and about "being honest with the public".

75. I asserted that "being honest with the public" would require the Chief Judge to "put aside [her] substantial conflicts of interest, born of [her] personal and professional relationships with innumerable persons implicated in the corruption of the Commission, or the beneficiaries of it". As illustrative examples, I cited Judge Rosenblatt, as well as two former Commission members: Associate Judge Carmen Ciparick and Deputy Chief Administrative Judge for Justice Initiatives Juanita Bing Newton.

76. My March 3, 2000 letter to the Chief Judge pointed out (at p. 8) that such conflicts of interest would explain her silence and inaction over the years in which CJA's vigorous advocacy alerted her to the readily-verifiable evidence of the Commission's corruption, all of which she had chosen not to verify. Additionally, it stated that her silence and inaction might be attributable to the fact that she herself is under the Commission's disciplinary jurisdiction:

> "As such, you have your own self-interest that the Commission continue its pattern and practice of 'dumping' *facially-meritorious* complaints against high-ranking, politically-connected judges, which the cases of *Doris L. Sassower v. Commission* and *Elena Ruth Sassower v. Commission* expressly

challenged. This would make it less likely to investigate *facially-meritorious* judicial misconduct complaints against you and your fellow high-ranking colleagues. Certainly, based upon the record herein transmitted, a *facially-meritorious* judicial misconduct complaint might reasonably be filed against you should you fail and refuse to discharge your mandatory administrative and disciplinary responsibilities under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct." (at p. 8, emphases in the original).

77. Chief Judge Kaye's response was a four-sentence March 27, 2000 letter by Michael Colodner, Counsel to the Unified Court System[45], which (a) *omitted* any reference to §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct and my request pursuant thereto that Chief Judge Kaye discharge her administrative and disciplinary responsibilities; (b) *omitted* any reference to corruption and my request by reason thereof for a "Special Inspector General"; and (c) *omitted* any reference to my assertion as to Chief Judge Kaye's actual and apparent conflicts of interest. Instead, Mr. Colodner simplistically advised that the Chief Judge has "no jurisdiction to investigate" the Commission and that "[s]hould [I] object to the handling of [my] case in Supreme Court, [my] proper avenue of redress is by appeal of that decision to an appellate court".

78. I thereupon hand-delivered to Chief Judge Kaye's office a 13-page April 18, 2000 letter to the Chief Judge[46]. Its "RE: clause" identified that it was both a "Formal Misconduct Complaint" against Mr. Colodner and a "Request for Clarification of [her] Supervisory Power as Chief Judge and [her] Administrative and

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[45] *See* Exhibit "L-1" to my August 17, 2001 motion.

[46] *See* Exhibit "L-2" to my August 17, 2001 motion.

Disciplinary Responsibilities under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct". Particularizing the bad-faith of Mr. Colodner's four-sentence letter, I requested information as to the procedures for securing the demotion of an administrative judge such as Administrative Judge Crane, as well as yearly redesignation, pointing out (at p. 5) that:

> "Even a successful appeal will *not* result in Justice Crane's demotion as Administrative Judge of the Civil Term of the Manhattan Supreme Court. His demotion, like his promotion, is the product of an administrative process that you control." (emphasis in the original)

79. I also noted (at p. 7) that Mr. Colodner's claim that the Chief Judge had no "jurisdiction" to investigate the Commission did "not relieve [her] of the obligation to ensure that an investigation was initiated by a jurisdictionally-proper body", when the evidence presented by the case file showed that the Commission was corrupt and had been protected by a corrupted judicial process. At the same time, I challenged the Chief Judge's supposed lack of "jurisdiction", as to which I requested further information:

> "Judiciary Law §212 would also seem to confer upon you jurisdiction to investigate publicly-available evidence of the Commission's corruption. In view of the ambiguity of Mr. Colodner's seemingly contrary statement that you have 'no jurisdiction', CJA requests that you clarify your position. (at p. 9)
> ...
> In the unlikely event that you have any doubt as to your duty, as New York's Chief Judge, to either investigate or to refer for investigation *readily-verifiable proof* of the corruption of the New York State Commission on Judicial Conduct, covered up state judges whose fraudulent decisions have thwarted legitimate

> citizen challenge to that corruption, CJA requests that you obtain an advisory opinion from the Advisory Committee on Judicial Ethics, pursuant to Part 101 of the Chief Administrator's Rules. Such advisory opinion should include the propriety of your continuing to direct victims of judicial misconduct, who turn to you for help, to the Commission, while, simultaneously, taking no action on the *proof* of its corruption." (at p. 11, emphases in the original).

80. So that Chief Judge Kaye would have no doubt that the Commission's corruption was continuing unabated, I annexed documentary proof: the Commission's April 6, 2000 letter[47], dismissing, *without* investigation, *without* reasons, and without the slightest acknowledgment of its own patent self-interest, the *facially-meritorious* March 3, 2000 complaint I had filed against Administrative Judge Crane and Justice Wetzel for their judicial misconduct in my lawsuit against the Commission[48], a copy of which I had provided the Chief Judge on March 3, 2000. My April 18, 2000 letter then concluded as follows:

> "In view of the ongoing, irreparable injury to the People of this State caused by a corrupted Commission – and by the continued service of state judges such as Administrative Judge Crane and Acting Supreme Court Justice Wetzel who, for illegitimate personal and political gain, have perpetuated its corruption by corrupting the judicial process — your expeditious attention is required. Considering the speed with which you publicly announced creation of a Special Prosecutor for Fiduciary Appointments in the wake of media-publicized *allegations* of impropriety in Brooklyn, 'Law Day', May 1, 2000, is not too soon to expect some public announcement responding to the irrefutable *proof* of the Commission's corruption, long in your possession. Certainly, 'Law Day' would be a most appropriate occasion." (at p. 13, emphases in the original).

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47 *See* Exhibit "M-2" to my August 17, 2001 motion.

48 *See* Exhibit "M-1" to my August 17, 2001 motion.

81. "Law Day" 2000 came and went with no response from the Chief Judge. Three weeks later, I encountered Chief Judge Kaye and Chief Administrative Judge Jonathan Lippman at the Association of the Bar of the City of New York and asked the Chief Judge when her response would be forthcoming to my April 18, 2000 letter. Our conversation is recounted at the outset of my June 30, 2000 letter to the Chief Judge[49], hand-delivered to her office on that date with an additional copy hand-delivered to the office of Chief Administrative Judge Lippman:

> "In the presence of Chief Administrative Judge Lippman, you breezily told me that you didn't know when you would be responding to the letter. To this, I voiced my expectation that your response be forthcoming and, specifically, that it identify the legal authority by which Administrative Judge Stephen Crane interfered with the random assignment of my Article 78 proceeding against the New York State Commission on Judicial Conduct to 'steer' it to Acting Supreme Court Justice William Wetzel. CJA's request for such legal authority appears at page 6 of the April 18th letter (*see* fn. 10 therein)." (my June 30, 2000 letter, at p. 2)

82. My June 30, 2000 letter (at p. 8) additionally itemized a series of questions regarding the involvement of the Chief Judge's Deputy Counsel, Susan Knipps, in reviewing the March 3, 2000 and April 18, 2000 letters. Ms. Knipps, who had just been appointed by Mayor Rudolph Giuliani to a Civil Court vacancy, was to face a July 6, 2000 confirmation hearing before the Mayor's Advisory Committee on the Judiciary and my expressed intention was to incorporate the Chief Judge's answers in testimony to the Advisory Committee.

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[49] *See* Exhibit "N" to my August 17, 2001 motion.

83. Much as the Chief Judge wilfully failed to respond to my April 18, 2000 letter, so she likewise wilfully failed to respond to my June 30, 2000 letter. In ignoring her official duty, she further demonstrated her readiness to protect and exempt from accountability those within her direct supervisory control -- be it Administrative Judge Crane, Unified Court System Counsel Colodner, or her Deputy Counsel Knipps – and to abdicate her duty to this State's citizens to ensure the adequacy of mechanisms to protect them from judicial misconduct.

84. For this reason, I filed the *facially-meritorious* August 3, 2000 judicial misconduct complaint "against Chief Judge Kaye, in her capacity as Chief Judge of the State of New York"[50]. My complaint was expressly based on

> "her wilful refusal to discharge the official duties imposed upon even the lowliest judge under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct pertaining to administrative and disciplinary responsibilities, as well as her wilful refusal to discharge her supervisory duties as "chief judicial officer" of the Unified Court System (NYS Constitution, Article VI, §28(a); Judiciary Law §210.1)",

and, additionally, on her "wilful and deliberate violation of §100.2 of the Chief Administrator's Rules Governing Judicial Conduct" pertaining to conflicts of interest. The complaint reviewed (at pp. 4-6) the standard for imposing discipline – and demonstrated that discipline against Chief Judge Kaye was not only warranted, but "that discipline must include her removal from the bench".

85. Although I sent copies of my *facially-meritorious* August 3, 2000 complaint to Chief Judge Kaye, as well as to Chief Administrative Judge Lippman

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[50] *See* Exhibit "O-1" to my August 17, 2001 motion.

and Mr. Colodner[51], neither of them responded. Nor did they ever subsequently respond to my unresponded-to April 18, 2000 and June 30, 2000 letters, including to the minimal degree of providing the requested information as to yearly redesignation procedures for administrative judges.

86. Thereafter, Administrative Judge Crane was redesignated by a December 29, 2000 Administrative Order of Chief Administrative Judge Lippman[52], expressly reflecting "the approval of the Chief Judge".

87. Obviously, for the Court to review this appeal would mean it would be verifying everything set forth in my March 3, 2000 letter to Chief Judge Kaye regarding Administrative Judge Crane's administrative misconduct herein – the subject of my first "Question Presented" by my Appellant's Brief and my Point I (pp. 1, 39-42) – as well as the fraudulence of the decisions of Justices Cahn, Lehner, and Wetzel of which the Commission had been the beneficiary and the Attorney General's litigation misconduct in connection therewith. On top of this, the Court would be articulating the duties of judges pursuant to §100.3D of the Chief Administrator's Rules, ignored by Justice Wetzel and the Appellate Division, First Department panel. All this would reinforce the seriousness of Chief Judge Kaye's official misconduct – the subject of my August 3, 2000 *facially-meritorious*, fully-documented complaint against her – and of her subsequent official misconduct in face of notice that the

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51 *See* Exhibit "Q-1" to my August 17, 2001 motion.

52 *See* Exhibit "Q-2" to my August 17, 2001 motion.

Attorney General was continuing his litigation misconduct on the appellate level to defeat Mr. Mantell's appeal[53], as likewise my own[54]. The public would rightfully demand her removal from the bench – quite apart from demanding her removal for her complicity in corrupting and covering up the corruption of the Commission on Judicial Nomination and the "merit selection" process to this Court.

88. Just as the disciplinary and criminal consequences of this lawsuit to Judge Rosenblatt raise reasonable question as to whether ANY of his colleagues on this Court can be fair and impartial in assessing my entitlement to this Court's review, so too do the disciplinary and criminal ramifications of this lawsuit on Chief Judge Kaye raise reasonable question as to whether ANY of her colleagues on this Court's bench could be fair and impartial.

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[53] On September 27, 2000, Chief Judge Kaye and I crossed paths on Central Park West, enabling me to personally give her, *in hand*, a copy of a letter of that date to Attorney General Spitzer (Exhibit "G-1") – to which she was an indicated recipient. Such letter alerted the Chief Judge to the fact that during the six months of her inaction since my March 3, 2000 letter to her, the Attorney General's litigation misconduct in defense of the Commission had "metastasized to the Appellate Division, First Department" in the *Mantell* appeal and that the conflicts of interest afflicting state agencies and public officers charged with oversight was ongoing.

[54] Chief Judge Kaye presided with Judge Rosenblatt at the April 18, 2001 Fair Trial Free Press Conference at Columbia School of Journalism – where she unsuccessfully tried to prevent me from speaking. The audiotape should reflect this, as well as my substantive comments regarding the Commission's corruption, its corruption of the judicial process, and the cover-up by public officers charged with oversight. These comments may have included reference to the Attorney General's on-going litigation misconduct in the appeal of my lawsuit -- details of which I had set forth in an April 18, 2001 letter to Attorney General Spitzer, a participant at the Conference (Exhibits "T-2" and "T-3" to my August 17, 2001 motion). Certainly, the audiotape should reflect that Mr. Spitzer interrupted my public comments.

I have attempted to listen to the audiotape, hand-delivering two letter requests to Chief Judge's New York office (Exhibits "G-2", "G-3"). The copy of the audiotape I thereafter obtained from the OCA inexplicably contains the equivalent of the Nixon era's "18-minute gap" (Exhibit "G-4").

The Disqualifying Interest of Chief Judge Kaye Resulting from her Complicity in the Corruption of "Merit Selection" to this Court – Exposed by this Lawsuit

89. There is reason to believe that the Commission on Judicial Nomination's October 2000 inclusion of Administrative Judge Crane on its shortlist of nominees to fill the vacancy on this Court, ultimately filled by Judge Graffeo, was the result of affirmative misrepresentation or concealment to the Commission on Judicial Nomination by Chief Judge Kaye and/or Chief Administrative Judge Lippman. This is set forth at pages 14-15 of CJA's October 16, 2000 Report on the Commission on Judicial Nomination's abdication of "merit selection" principles (Exhibit "H", at pp. 14-15) – a Report *based on the evidence from this lawsuit.*

90. The October 16, 2000 Report, a copy of which I hand-delivered to Chief Judge Kaye's office, chronicled the Commission on Judicial Nomination's clear violations of "merit selection" requirements. Further, it showed (at pp. 7-10) that the very concept of "merit selection" becomes an impossibility when the Commission on Judicial Conduct dismisses, *without* investigation, *facially-meritorious* judicial misconduct complaints in violation of Judiciary Law §44.1. This, because the Commission on Judicial Nomination, which relies on the Commission on Judicial Conduct for information about its mostly judicial candidates, cannot obtain information about dismissed complaints pursuant to Judiciary Law §45.

91. That the Commission on Judicial Nomination had thus nominated a candidate against whom a *facially-meritorious* judicial misconduct complaint had been unlawfully dismissed by the Commission on Judicial Conduct was demonstrated

(Exhibit "H": pp. 11-16) by its nomination of Administrative Judge Crane, against whom my *facially-meritorious* March 3, 2000 complaint, based on his misconduct in this lawsuit, had been unlawfully dismissed, *without* investigation.

92. Consequently, in an October 24, 2000 letter to the Chief Judge[55], hand-delivered to her New York office, I urged that she:

> "finally discharge [her] mandatory duty to the People of this State to protect them from the systemic governmental corruption reflected by CJA's October 16, 2000 Report, involving the New York State Commission on Judicial Conduct and New York State Commission on Judicial Nomination – state agencies responsible for safeguarding judicial integrity, to which [she] appoint[s] members."

93. Six weeks later, at the forum "How to Become a Judge", sponsored by the Association of the Bar of the City of New York, I gave Chief Judge Kaye, *in hand*, a copy of CJA's companion Report, dated November 13, 2000, detailing the complicitous role of the bar associations, the City Bar included, in the corruption of "merit selection" to this Court. In an accompanying December 9, 2000 coverletter[56], I expressly requested that she present the Report to her Committee to Promote Public Trust and Confidence in the Legal System so that it could take appropriate steps, specifically including:

> "call[ing] on the Chief Judge, the Legislature, and the Governor – 'the appointing authorities who designate the members of both the Commission on Judicial Nomination and the Commission on Judicial Conduct – to launch an official investigation of these two

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55 *See* Exhibit "P-2" to my August 17, 2001 motion.

56 *See* Exhibit "P-3" to my August 17, 2001 motion.

state agencies on which so much of the judicial process and 'Rule of Law' in New York rest.'"

94. Nevertheless, nearly three months later, upon telephoning Patricia Bucklin, then counsel to the Committee to Promote Public Trust and Confidence in the Legal System, to ensure that the serious issues detailed by the November 13, 2000 Report would be on the agenda of the Committee's next meeting, Ms. Bucklin told me she knew nothing about the Report. Consequently, on March 1, 2001, I hand-delivered a letter to Chief Judge Kaye's office (Exhibit "I-1"), asking the Chief Judge to advise as to its whereabouts. Chief Judge Kaye never responded – thereby fostering the inference and impression that she had withheld it from her Committee[57].

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[57] What is known for a certainty is that Chief Judge Kaye did not remove William Thompson as co-chairman of her Committee to Promote Public Trust and Confidence in the Legal System, as my December 9, 2000 letter had requested. As therein identified, William Thompson's lawless and corrupt conduct as an Appellate Division, Second Department justice "was the subject of four *facially-meritorious* judicial misconduct complaints filed with the Commission on Judicial Conduct, whose unlawful dismissals precipitated the two separate Article 78 proceedings *Doris L. Sassower v. Commission* and *Elena Ruth Sassower v. Commission*". Indeed, these four complaints against Justice Thompson are the same four complaints against Judge Rosenblatt. [A-28, ¶ "SEVENTEENTH"].

Chief Judge Kaye's 1998 appointment of Justice Thompson to co-chair her Committee to Promote Public Trust and Confidence in the Legal System was in face of the record of Doris Sassower's six attempted appeals to this Court showing that he had participated in ALL of that court's criminal and retaliatory conduct against Doris Sassower, sought to be reviewed. In fact, he was the Presiding Justice in the *Mangano* Article 78 proceeding (Exhibit "A", pp. 5-6).

Such appointment was not the first Justice Thompson received from Chief Judge Kaye. In March 1994, she had appointed him to the Commission on Judicial Conduct. At that point Doris Sassower had already twice sought the Court's review of the Appellate Division, Second Department's June 11, 1991 interim suspension order and her *Mangano* Article 78 proceeding was then pending before the Court.

In any event, the result of maintaining William Thompson as co-chair of the Committee to Promote Public Trust and Confidence in the Legal System, combined with the ambitions of Ms. Bucklin to be the State Bar Association's new Executive Director, is that after I sent her a duplicate copy of CJA's November 13, 2000 Report, CJA's October 16, 2000 Report, and other related materials under a March 2, 2000 coverletter (Exhibit "I-2") so that there would be no delay in placing the serious issues therein presented on the agenda of the Committee's meeting, scheduled for the following week, I received no response. Indeed, it was only after placing numerous phone calls for Ms. Bucklin that I finally received a May 9, 2000 letter from the

95. A copy of CJA's October 16, 2000 Report is annexed hereto (Exhibit "H"), albeit without its voluminous appended exhibits. These exhibits, along with the two File Folders of documents further substantiating the October 16, 2000 Report, are separately transmitted with this motion, as likewise CJA's November 13, 2001 Report, with its appended exhibits. All such exhibits and documents have long been in Chief Judge Kaye's possession[58].

96. The most cursory examination of these two document-supported Reports shows, *based on evidence from this lawsuit*, an emergency situation: the wilful corruption of the "merit selection" process by the Commission on Judicial Nomination, by bar associations leaders, by Governor George Pataki, and ultimately by Senate Judiciary Committee Chairman James Lack, both insofar as the 1998 "merit selection" appointment of Associate Judge Rosenblatt and the 2000 "merit selection" evaluation that resulted in Associate Judge Graffeo's appointment. For this Court to review this appeal would mean verifying the very evidence presented to Chief Judge Kaye as establishing this emergency situation, on which she wilfully failed to act in her official capacity as Chief Judge of the Unified Court System.

97. To date, Chief Judge Kaye has made no public comment about either the October 16, 2000 or November 13, 2000 Reports. Nor has she taken any discernible corrective steps. Quite the contrary, the Chief Judge's public response, following her

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Committee's Co-Chair, Supreme Court Justice Evelyn Frazee, purporting that the Committee had been "redesignated" (Exhibit "I-3").

[58] *See* Exhibit "P-2" to my August 17, 2001 motion.

receipt of the October 16, 2000 Report and knowledge that it had also been received by the Governor, was to provide the Governor with an endorsement for his press release announcement of Judge Graffeo's appointment:

> "...We are all looking forward to welcoming her at the Court of Appeals. Governor Pataki, for the third time, has made a terrific choice for the Court of Appeals"[59].

98. As this lawsuit exposes the charade of "merit selection" to this Court, it is one in which each of this Court's judges has a direct personal interest. Presumably, every judge of this Court would greatly prefer – as did Chief Judge Kaye --that the public believes he occupies his present position as a result of an exacting judicial selection process, designed to choose the most qualified judges – rather than a process that is dysfunctional and politicized at every level, *as the evidence from this lawsuit empirically shows*. By her cover-up of this evidence, embodied in CJA's two Reports, Chief Judge Kaye has yet again demonstrated that she puts her own private interest above her duty to safeguard the public's rights[60].

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[59] As pointed out by CJA's November 13, 2000 Report (at p. 27, fn. 25):

> "Even apart from CJA's October 16, 2000 report, such endorsement violates §100.5A(e) of the Chief Administrator's Rules Governing Judicial Conduct, proscribing a judge from 'publicly endorsing...another candidate for public office'".

Such public advocacy remarks by the Chief Judge could only have an inhibiting, chilling effect on citizens, particularly lawyers, contemplating opposing Judge Graffeo's confirmation.

[60] Chief Judge Kaye's unwillingness to rise above her own self-interest was demonstrated at her own confirmation hearing to be Chief Judge by her acquiesence in the Senate Judiciary Committee's improper truncating of important testimony by a citizen-objector. (*See* the joint

The Disqualifying Interest and Bias of Associate Judge Victoria Graffeo, Arising from her Complicity in the Corruption of "Merit Selection" to this Court – Exposed by this Lawsuit

99. Like Chief Judge Kaye, Judge Graffeo has also *already* demonstrated her cover-up of *the evidence from this lawsuit*, presented by CJA's October 16, 2000 and November 13, 2000 Reports, from which a reconstituted Commission could properly adjudge her complicitous in the systemic corruption therein documented.

100. By letter dated November 13, 2000 (Exhibit "J"), transmitting to Judge Graffeo full copies of these two Reports, I requested that she "put[] aside her substantial self-interest in favor of the public interest" by taking action consistent both with the position on this Court to which Governor Pataki had appointed her, as well as with her membership on Chief Judge Kaye's Committee to Promote Public Trust and Confidence in the Legal System. Specifically, I asked that she insist that Chairman Lack, to whom the letter was also addressed – and who, like herself, was a member of the Chief Judge's Committee to Promote Public Trust and Confidence in the Legal System – "not 'ram through' her Senate confirmation as he 'rammed through' Judge Rosenblatt's Senate confirmation in 1998 [A-101]. This, by "a no-notice, by-invitation-only, confirmation hearing, at which no opposition testimony was permitted". I also asked that she herself "publicly address the serious issues particularized by CJA's reports as to the corruption of the 'merit selection' process to our State's highest court."

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testimony I presented with Doris Sassower at Judge Ciparick's December 15, 1993 Senate Judiciary Committee confirmation hearing (Exhibit "M", p. 3).

101. Judge Graffeo's response was to do neither. In fact, she was completely silent when, prior to the close of her November 29, 2000 Senate Judiciary Committee confirmation hearing, I attempted to be heard in opposition. This, despite her absolute knowledge, based on the October 16, 2000 and November 13, 2000 Reports, of my good and sufficient grounds to object to her confirmation, starting with the non-conformity of the Commission on Judicial Nomination's report nominating her with the "findings" requirement of Judiciary Law §63.3.

102. Only Judge Graffeo knows whether her silence and inaction in connection with my November 13, 2000 letter (Exhibit "J") was born of her self-interested desire to be a member of this Court or her desire to protect Chief Judge Kaye and her other friends and benefactors, such as Governor Pataki, implicated by the evidence presented by the October 16, 2000 and November 13, 2000 Reports. Most likely, it was a combination of both.

103. Upon information and belief, at the time Judge Graffeo received my November 13, 2000 letter, she knew of at least one judicial misconduct complaint that had been filed against her with the Commission on Judicial Conduct and dismissed by it *without* investigation. She further knew that the complainant, a lawyer and former litigant, had made this known to the Commission on Judicial Nomination before it put Judge Graffeo on its short-list of nominees.

104. I do not know whether, in reviewing the documentation transmitted with my November 13, 2000 letter, including, for example, the description in "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "C-1") [A-

55a], Judge Graffeo recollected her role as Solicitor General under then Attorney General Dennis Vacco in thwarting U.S. Supreme Court review in the *Mangano* Article 78 proceeding by fraudulent pretenses (Exhibits "C-2", "C-3"), or whether she believed I would include that in my testimony, if given the opportunity to testify.

105. In any event, based on the recusals of Judge Levine and Judge Ciparick from this Court's consideration of Doris Sassower's two attempted appeals in the *Mangano* Article 78 proceeding in 1994 and of her two subsequent attempted appeals in 1995 and 1996 (Exhibits "B-4" "B-5" "B-6" and "B-7") -- presumably to "preserve the appearance of impartiality" because of Doris Sassower's opposition to their Senate confirmation -- I would expect that Judge Graffeo will likewise recuse herself herein for the same reason, *to wit*, my opposition to her Senate confirmation.

106. My opposition to Judge Graffeo's confirmation, reported by the media at the time, was most recently reported in the Fall 2001 issue of the New York State Bar Association's Government, Law and Policy Journal, in the article, "*Fine Results, But a Flawed Process*", by John Caher, Albany Bureau Chief of the New York Law Journal (Exhibit "K").

The Disqualification of Associate Judges Howard Levine and Carmen Ciparick, for Bias, as well as for Interest Arising from the Disciplinary and Criminal Consequences of their Participation in Events Giving Rise to this Lawsuit

107. Much as Associate Judges Levine and Ciparick recused themselves from Doris Sassower's attempted appeals (Exhibits "B-4", "B-5", "B-6" and "B-7"), I

expect they would also recuse themselves herein to preserve "the appearance of impartiality".

108. As reflected in John Caher's article (Exhibit "K"), I actively participated with my mother in opposing Judge Levine's confirmation at his Senate Judiciary Committee hearing. I also participated with her in opposing Judge Ciparick's confirmation at her Senate Judiciary Committee hearing – in fact, reading from a joint written opposition statement, which bears my name (Exhibit "M"). In any event, both Judges Levine and Ciparick are disqualified for interest.

109. As identified in my March 3, 2000 letter to Chief Judge Kaye (at p. 8), CJA's opposition to Judge Ciparick's confirmation rested, *inter alia*, on "her participation in the Commission's corruption." Indeed, Judge Ciparick, a Commission member from 1985 until her 1993 appointment to this Court, participated in the Commission's unlawful dismissals of the first four of the eight *facially-meritorious* complaints against powerful, politically-connected judges, annexed to the Verified Petition in *Doris L. Sassower v. Commission*[61].

110. As may be seen, *inter alia*, from my Second Claim for Relief [A-38: ¶FIFTY-FOURTH], these eight complaints are an integral part of this lawsuit, establishing that the Commission's

> "purported dismissal of the October 6, 1998 judicial misconduct complaint is more than an isolated 'fail[ure] to perform a duty enjoined on it by law', more than a 'violation of lawful procedure', and more than 'arbitrary and capricious', but, rather, part of a pattern and practice

[61] These four *facially-meritorious* complaints are Exhibits "C", "D", "E", and "F" to the Verified Petition in *Doris L. Sassower v. Commission*.

> of [the Commission's] wilful and deliberate protectionism of powerful, politically-connected judges from the disciplinary and criminal consequences of their corrupt judicial conduct".

Such is the basis for my seeking a court order requesting the Governor's appointment of a Special Prosecutor and referral of the Commission's members and culpable staff for appropriate criminal and disciplinary investigation by the New York State Attorney General, the United States Attorney, the District Attorney of New York, and the New York State Ethics Commission [A-19; A-24].

111. Obviously, investigation of the Commission would require testimony from Commission members as to their role in the unlawful dismissals, without investigation, of *facially-meritorious* complaints. Judge Ciparick would be a material witness to the Commission's operations in the eight years of her tenure (*Cf.* §100.3E(1)(d)(iv) of the Chief Administrator's Rules Governing Judicial Conduct). She certainly has "personal knowledge of disputed evidentiary facts concerning the proceeding", requiring disqualification pursuant to §100.3E(1)(a)(ii) of the Chief Administrator's Rules Governing Judicial Conduct

112. The four *facially-meritorious* complaints, dated October 5, 1989, October 24, 1991, January 2, 1992, December 4, 1992, in whose dismissals Judge Ciparick participated, present the background to Doris Sassower's judicial "whistle-blowing". It is this background that gave rise to the Appellate Division, Second Department's vicious retaliatory conduct, covered up by its self-interested and fraudulent decision in the *Mangano* Article 78 proceeding. Indeed, the *facially-*

meritorious September 19, 1994 complaint (Exhibit "A"), arising from the *Mangano* Article 78 proceeding, is the fifth complaint of this eight-complaint series. The September 19, 1994 complaint itself summarizes these earlier complaints, *to wit*,

> "This Commission dismissed, without investigation, my documented complaints as to the judicial 'cover-up' that took place in Castracan v. Colavita and in the companion case of Sady v. Murphy to protect the judges, would-be judges, and political leaders involved [in the three-year deal and illegally-conducted judicial nominating conventions]. The Commission, likewise, dismissed, without investigation, my documented complaints against Supreme Court Justice Samuel G. Fredman, credited as 'the chief architect' of the deal, who was also its principal beneficiary.
>
> Such dismissals of my aforesaid prior complaints – without investigation – notwithstanding documentary evidence showed prima facie judicial misconduct – has plainly emboldened the Appellate Division, Second Department, led by a judicial member of this Commission, to act as if it were above the law and rules of ethics." (Exhibit "A", p. 7, emphases in the original)

113. Two of the four unlawfully-dismissed complaints from Judge Ciparick's tenure at the Commission – the complaints of October 24, 1991 and January 2, 1992 -- concern the judicial cover-up in *Castracan v. Colavita*. Inasmuch as Judge Levine participated in that judicial cover-up as a member of the Appellate Division, Third Department appellate panel in *Castracan*, these two *facially-meritorious* complaints, and especially the October 24, 1991 complaint (Exhibit "F"), involve him. He has a direct interest that they not be investigated.

114. Judge Levine is fully aware of the particulars of the appellate cover-up committed in *Castracan* as it was described and detailed in Doris Sassower's written statement in opposition to his confirmation (Exhibit "L"). Although the Senate

Judiciary Committee cut off Doris Sassower's presentation after ten minutes, notwithstanding she was the only speaker in opposition, the bound stenographic record of the September 7, 1993 hearing contains the full statement[62].

115. Copies of CJA's statements in opposition to the confirmation of Judges Levine and Ciparick are annexed hereto and incorporated by reference (Exhibits "L" and "M"). The substantiating compendia of documents, each containing the *facially-meritorious* October 24, 1991 and January 2, 1992 judicial misconduct complaints, are also transmitted herewith.

The Duty of this Court's Judges to Make Disclosure of Pertinent Facts Bearing Upon their Interest and Bias

116. On a statistical level, the Commission has been reputationally protecting this Court's judges. Each year, the Commission's Annual Reports provide separate statistical tables pertaining to disposition of complaints against judges of the various lower courts, excepting the Appellate Divisions and this Court, whose statistics are bundled together. This disparate practice was criticized by former Bronx Surrogate Bertram R. Gelfand in the statement he presented to the Association of the Bar of the City of New York at its May 14, 1997 public hearing on the Commission[63]. The "Recommendations" section to his statement contained the following:

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[62] It would appear that Judge Levine received a copy of the stenographic record of his confirmation hearing as Judge Wesley, at his January 14, 1997 Senate Judiciary Committee confirmation hearing, refers to Judge Levine having been "gracious enough to send me a copy of the transcript of his hearing..." [at p. 27, lns. 22-23].

[63] Former Surrogate Gelfand's full statement, wherein he describes the Commission as "an exercise in institutional corruption" and provides illustrative examples, is annexed as Exhibit "D" to my February 23, 2000 letter to Governor Pataki, a copy of which – with exhibits – is contained

> "In its annual reports the Commission should no longer bunch in a single category dismissed complaints as to Appellate Division Justices and Judges of Court of Appeals. This practice of the Commission precludes insight into the extent that it is dismissing matters involving the only Judges who can criticize its performance, decisions, and methods. Upon information and belief past and present members of the Court of Appeals may have had significant conflicts of interest in reviewing the conduct of the State Commission on Judicial Conduct." (at p. 8)

117. Indeed, in 1989, the New York State Comptroller, in a report on the Commission, "*Not Accountable to the Public: Resolving Charges Against Judges is Cloaked in Secrecy*", recognized (at pp. 6-7) that members of the Court, each under the Commission's disciplinary jurisdiction, have "an inherent conflict of interest" in addressing matters involving the Commission.

118. Because Judiciary Law §45 restricts the Commission from disclosing complaints – including the identities of the complained-against judges – I am unaware of other complaints filed against judges of this Court other than those hereinabove recited against Judges Rosenblatt, Kaye, Graffeo, and Levine, dismissed by the Commission *without* investigation. However, they may be aware of other complaints – particularly from the period in which they sat on lower state courts – and all except Chief Judge Kaye, who had no prior judicial experience, served on lower state courts.

119. I would expect that any judge of this Court who does not recuse himself based on the facts already recited would disclose whether, to his knowledge, he has ever been the subject of judicial misconduct complaints filed with the Commission.

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in File Folder "A" in substantiation of CJA's October 16, 2000 Report on the Commission on Judicial Nomination's subversion of "merit selection" to this Court.

The existence of such complaints would plainly give him an additional direct interest in this proceeding.

120. Likewise, I would expect that any judge of this Court not recusing himself would disclose any other facts bearing upon his interest or impartiality. Of particular importance are dependencies on, and personal, professional, and political relationships with, those implicated in the Commission's corruption or in the systemic judicial and governmental corruption exposed by this lawsuit. As illustrative, it may be assumed that Judge Smith, having been appointed to this Court from the Appellate Division, First Department, and Judge Ciparick, having been a First Department Supreme Court Justice, have had significant personal and professional relationships and interractions with present and past First Department justices whose official misconduct and fraudulent decisions are at issue on this appeal. It may also be assumed that Judge Graffeo, as Solicitor General to former Attorney General Vacco, has had substantial personal, professional, and political relationships with him that would interfere with her ability to address the issues highlighted in "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" [A-55-56]– integral to this lawsuit – and impacting on Mr. Vacco *personally*. This is additionally so as the litigation misconduct of her Solicitor General's office is part of the litigation misconduct of his office, of which he was made aware[64]. Similarly, it may be assumed that Associate Judge Richard Wesley, who was Governor Pataki's first

[64] *See, inter alia*, my July 28, 1999 omnibus motion: Exhibit "D" thereto, my January 27, 1999 letter to Attorney General Spitzer, annexing copies of my hand-delivered September 19, 1995 and January 13, 1998 letters to Attorney General Vacco.

appointee to this Court, has had close personal, professional, and political relationships with him going back to the years in which they were together in the State Legislature.

121. Finally, as to Chief Judge Kaye, it is obvious that she has extensive personal and professional relationships with the "Who's Who" of this State's leaders, in and out of government, implicated in the systemic corruption exposed by this lawsuit. These would include Governor Pataki, Attorney General Spitzer, Senate Judiciary Committee Chairman Lack, and the bar establishment. Likewise those she has appointed to her various committees and other entities within the Office of Court Administration. Clear from *the evidence from this lawsuit* is that these committees and entities have been following the Chief Judge's "lead", *to wit*, functioning as "fronts" to allow the judiciary and organized bar to "talk ethics and professionalism", while permitting heinous corruption of our most essential governmental processes[65].

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[65] This is evident from the fact that neither her Committee to Promote Public Trust and Confidence in the Legal System nor her State Judicial Institute on Professionalism in the Law saw themselves as duty-bound to take *any* "appropriate action" based on the full copies of CJA's October 13, 2000 and November 16, 2000 Reports and related materials they received. Copies of my correspondence with them are annexed (Exhibits "I"). Also annexed are copies of my correspondence with Chief Judge Kaye's Special Inspector General for Fiduciary Appointments, Sherrill Spatz (Exhibit "N") – since promoted to Inspector General.

Ms. Spatz, to whom I forwarded copies of my March 3, 2000, April 18, 2000, June 30, 2000 letters to Chief Judge Kaye, as well as my August 3, 2000 judicial misconduct complaint against Chief Judge Kaye, has, for more than two years, had physical possession of the copy of the three-in-one lower court record of this lawsuit that I had transmitted to Chief Judge Kaye with my March 3, 2000 letter. Her cover-up, as reflected by her December 3, 2001 Report on Fiduciary Appointments in New York, as likewise the cover-up of the Commission on Fiduciary Appointments by its December 2001 Report, were the subject of my Letter to the Editor – specifically critical of Chief Judge Kaye – published in the December 7, 2001 Daily News under the title "*Judicial Reforms*" (*See* Exhibit "N-4").

CONCLUSION

122. The members of this Court know that contrary to John Caher's view (Exhibit "K", p. 30), it was not Judge Levine's Senate Judiciary Committee confirmation hearing that marked a "shift" in the conduct of such hearings. The subsequent confirmation hearings of Judge Ciparick and Judge Wesley make evident that the "shift" came afterward. It came with Judge Rosenblatt's *no-notice, by-invitation-only* confirmation hearing at which, for the first time, *no opposition testimony* was permitted. It remains the only confirmation hearing held *without* notice.

123. This public interest lawsuit not only presents the scandalous facts underlying that unprecedented affront to citizens' rights – but, by this motion, provides massive empirical evidence rebutting John Caher's penultimate paragraph:

> "The fact that there has never been a scandal arising from an appointed Court of Appeals judge's official performance... suggests that the ["merit selection" appointive] process has yielded positive results."

How this Court responds to this fact-specific, document-supported motion – and the example it sets for lower court judges when confronted with motions/applications for their disqualification for interest and bias -- will be a decisive measure of this Court's "official performance"[66], especially in light of the transcending significance of this appeal to the People of this State.

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[66] Judge Smith has taken a similar view in holding that the Court's ability to uphold judicial independence is the mark by which to assess the selection of its judges:

WHEREFORE, this Court's duty, pursuant to Judiciary Law §14 and §§100.3D, E, and F of the Chief Administrator's Rules Governing Judicial Conduct, is to grant the relief requested in my accompanying Notice of Motion in all respects.

ELENA RUTH SASSOWER
Petitioner-Appellant, *Pro Se*

Sworn to before me this
1st day of May 2002, "Law Day"

Notary Public

> "While there are those who argue that a Judicial Nominating Commission and appointment by a Governor do not remove politics from the selection process, there are few who would argue that the process in New York has not worked well. Though the immediate reason for the change in New York, the elimination of the negative aspects of politics cannot be forgotten, any system of judicial selection to the State's highest court must preserve its ability to both state what the law is and to protect the rights guaranteed to the people by the Federal and State Constitutions. To fulfil that role, the judiciary must remain independent. Only time will tell whether this method of selection will continue to contribute to the independence of the judiciary." "*Choosing Judges for a State's Highest Court*", 48 Syracuse Law Review 1493, 1498 (1998).

By this lawsuit and threshold disqualification motion, the "time", long overdue, has arrived for assessment of this Court's contribution to the "crown jewel" of judicial independence -- which cannot exist when judges forgo their obligations of impartiality and utilize their judicial offices to further their personal interests and biases.