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Elena Ruth Sassower, Coordinator

BY HAND

October 21, 1999

Andrew Dember, Chief
Public Corruption Unit
U.S. Attorney, Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

- RE:
- (1) Investigation of systemic state governmental corruption in which the NYS Attorney General is actively complicitous, including by his litigation fraud in defending state judges and the NYS Commission on Judicial Conduct, sued for corruption;
 - (2) Intervention in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, v. Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551);
 - (3) Recusal of the U.S. Attorney and referral to the Public Integrity Section of the U.S. Justice Department's Criminal Division.

Dear Mr. Dember:

Thank you for your prompt return call on Wednesday, September 29th and your invitation that I provide you with a summary of the allegations of systemic governmental corruption, for which the Center for Judicial Accountability, Inc. (CJA) seeks investigation and prosecution by the Public Corruption Unit or some other Justice Department entity. As you requested, this letter also identifies the evidentiary support for those allegations and summarizes CJA's prior contacts with the U.S. Attorney's Office for the Southern District of New York – as well as with other units of the Justice Department.

As you conceded, the Public Corruption Unit of the U.S. Attorney's Office, like the Justice Department's Public Integrity Section, has particular jurisdiction to investigate and prosecute state governmental corruption which, because it involves powerful officials and influential persons, is not investigated and prosecuted at the state level. That is what is involved here, where individuals at the highest echelons

of New York state government have corrupted their offices, yet are wholly insulated from accountability either because of their own political power and influence or because of the power and influence of those with whom they have personal and professional ties.

This letter also reiterates CJA's request for intervention in the pending Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, v. Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551) – in which the Commission on Judicial Conduct is being sued for covering up state judicial corruption and, in particular, the corruption of powerful, politically-connected state judges. The Justice Department has an interest in ensuring that the Commission is not corrupt, much as it has an interest in ensuring the efficacy of other state channels for review of complaints of state judicial corruption, such as those which should be available through the state District Attorneys, the state Attorney General, and the state judicial process. This, because the absence of state mechanisms for addressing claims of state judicial corruption results in aggrieved persons turning to the federal system: filing complaints with the U.S. Attorney, the Justice Department's Public Integrity Section, and the F.B.I., as well as burdening the federal courts with lawsuits against lawbreaking state judges and those complicitous in their misconduct under such statutes as 28 USC §1983. As herein demonstrated, when it comes to judicial corruption, federal agencies, no less than the federal courts, engage in dishonest pretense to deprive citizens of the redress to which they are lawfully entitled.

Because the requested investigation and intervention would expose systemic governmental corruption involving persons with whom staff of the U.S. Attorney's office have personal and professional relationships – among them, Michele Hirshman, formerly Chief of the Public Corruption Unit¹, and Paul Shechtman, whose positions at the U.S. Attorney's Office for the Southern District of New York included Chief Appellate Attorney, Chief of the General Crimes Unit, and Chief of the Criminal Division – request is made that the office of the U.S. Attorney for the Southern District of New York recuse itself and refer the matter to the Justice Department's Public Integrity Section. This would accord with the policy prominently set forth in the Public Integrity's Section's most recent Report to Congress under the heading "Recusals by United States Attorneys' Offices":

¹ You declined to identify whether Ms. Hirshman – in whom you expressed complete confidence -- was your direct predecessor.

“...if the United States Attorney or a prosecutor in his or her office has had a significant business, social, political, or personal relationship with a subject or principal witness in a corruption investigation, it may be difficult, and often inappropriate, for that United States Attorney’s Office to handle the investigation. Cases involving corruption allegations in which the conflict is substantial are usually referred to the Public Integrity Section for prosecution or direct operational supervision.” (Exhibit “A-1”: 1997 Report, p. 1)

Presumably, this policy implements 28 USC §528: “Disqualification of officers and employees of the Department of Justice”:

“The Attorney General shall promulgate rules and regulations² which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney’s staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.” (Exhibit “A-2”).

For your convenience, a Table of Contents to this letter follows:

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² Request is hereby made for a copy of said promulgated rules and regulations.

The Allegations of Systemic Governmental Corruption & Cover-Up

In the interest of saving time – both yours and mine – I refer you to CJA's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4) (Exhibit "B"). It describes the corruption of the judicial process, both federal and state, by New York's highest law enforcement officer, the state Attorney General and by state and federal judges – when the subject of the litigation involves issues of state judicial corruption.

Detailed are three public interest cases, each defended by the state Attorney General. In order of presentation in the ad, they are:

- (1) *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141): an Article 78 proceeding against the state Commission on Judicial Conduct for dismissing, *without* investigation, judicial misconduct complaints against politically-powerful state judges, where it had not determined that the complaints were facially lacking in merit -- the *only* basis upon which the Commission can lawfully dismiss complaints without investigation (Judiciary Law §44.1) -- and where the complaints at issue were not only facially-meritorious, but documented as to criminal conduct by sitting judges and judicial candidates;
- (2) *Doris L. Sassower v. Hon. Guy Mangano, et al.*: (AD 2d Dept, #93-02925; NY Ct of Appeals: Mo. No. 529, SSD 41; 933; US Sup. Ct. #94-1546): an Article 78 proceeding against the Appellate Division, Second Department for suspending Doris Sassower's law license, *without* written charges, *without* reasons, *without* findings, *without* a pre-suspension hearing – thereafter denying her *any* post-suspension hearing or appellate review as to the basis for her suspension -- in retaliation for her legal challenge to the political manipulation of judicial elections in the Ninth Judicial District of New York by both Democratic and Republican party leaders – a legal challenge "thrown" by fraudulent state judicial decisions;
- (3) *Doris L. Sassower v. Hon. Guy Mangano, et al.* (94 Civ. 4514 (JES); 2nd Cir. #96-7805): a federal action under 28 USC §1983 against the Appellate Division, Second Department based on its retaliatory suspension of the law license of the aforesaid judicial whistle-blowing attorney and its corruption of the Article 78 remedy in the *Sassower v. Mangano* Article 78 proceeding, in which it was aided and abetted by the state Attorney General, also a co-defendant in the federal action.

As described, the state Attorney General had NO legitimate defense to the pleaded allegations of corruption in these three cases. For that reason, he engaged in a *modus operandi* of litigation fraud. In addition to ignoring fundamental conflict of interest issues, he filed legally insufficient, factually perjurious dismissal motions in each case. Although these were made the subject of fully-documented sanctions applications, the courts ignored them in fraudulent judicial decisions dismissing the cases, thereby covering up the corruption of the state Commission on Judicial Conduct, politically-connected state judges, and the state Attorney General – documentarily established by the record before them.

CJA's efforts to obtain investigation of the corruption of the judicial process in the three public interest cases featured in "*Restraining 'Liars'*" have been unavailing. Likewise unavailing have been CJA's efforts to obtain investigation of the underlying corruption allegations that were the subject of these cases. These efforts, spanning nearly a decade, have included (1) requests to the state Attorney General personally for investigation and corrective action; (2) judicial misconduct complaints filed with the New York State Commission on Judicial Conduct; (3) ethics complaints filed with the New York State Ethics Commission; (4) criminal complaints filed with the District Attorneys of both New York and Kings Counties; (5) requests to Governor Cuomo for appointment of a special prosecutor – with presentment to Governor Pataki of petitions signed by 1,500 New Yorkers for appointment of an investigative commission; (6) requests to the New York State Legislature and, in particular, to the Assembly and Senate Judiciary Committees for an investigative inquiry; and (7) requests to other state officials, among them, Mayor Rudolph Giuliani and former Manhattan Borough President Ruth Messinger for investigative action. All these state agencies and officials have either ignored CJA's document-supported complaints and requests – which is what has generally occurred – or have sent us conclusory and demonstrably dishonest letters declining to investigate.

Because of the inaction and cover-up by state officials and agencies, the state judicial corruption challenged by the three lawsuits continues unabated. Indeed, it has metastasized to the "merit selection" process to the New York Court of Appeals. This has now led to a fourth lawsuit -- the current Article 78 proceeding against the Commission on Judicial Conduct, where, *inter alia*, Governor Pataki and the Chairman of the State Senate Judiciary Committee, long knowledgeable that the Commission is corrupt, are directly implicated in fraud in connection with the nomination and confirmation of Appellate Division, Second Department Justice Albert Rosenblatt to the New York Court of Appeals, against whom a facially-meritorious judicial misconduct complaint had been filed with the Commission relating to his Court of Appeals' candidacy (Exhibits "C", "E", "F-1" to the Verified Petition). As in the past,

the state Attorney General is representing the Commission and, once again, engaging in the same stratagem of litigation fraud as described in "*Restraining 'Liars'*" (Exhibit "B").

The Supporting Evidence

The litigation files of the three cases featured in "*Restraining 'Liars'*" provide the means to *readily verify* the corruption of the judicial process in those cases – a fact emphasized by the ad itself (Exhibit "B", p. 2). Likewise, the litigation file of the current Article 78 proceeding against the Commission provides the means to *readily verify* the Attorney General's litigation fraud in that proceeding, corrupting the judicial process.

The office of the U.S. Attorney for the Southern District of New York already possesses a substantial portion of these litigation files, which were transmitted to it to substantiate the necessity of its intervening in the current Article 78 proceeding against the Commission – if for no other reason than to uphold the integrity of the judicial process. These are:

- (1) a copy of the file of the current Article 78 proceeding against the Commission on Judicial Conduct, up to and including my July 28, 1999 omnibus motion for disqualification of the Attorney General and for sanctions against Mr. Spitzer personally, the Commission, and against their culpable staff, including disciplinary and criminal referral of them for their litigation misconduct;
- (2) a copy of the file of the prior Article 78 proceeding against the Commission on Judicial Conduct;
- (3) a copy of Doris Sassower's *unopposed* petition for a writ of certiorari and her supplemental brief in her §1983 federal action against the Appellate Division, Second Department and the state Attorney General (US S.Ct. #98-106).

The foregoing file evidence is ALL part of the record of the current Article 78 proceeding against the Commission. Specifically, it is part of my July 28th omnibus motion. This may be seen from the inventory of the free-standing file folders (I-III) substantiating that motion, annexed to my supporting July 28th affidavit³. For your

³ See, "File Folder I: Prior Article 78 Proceeding against Respondent", *to wit*, the file of the *Doris L. Sassower v. Commission* Article 78 proceeding; and "File Folder II: January 27,

convenience, a further copy of that inventory is annexed hereto as Exhibit "C-1".

Likewise part of my July 28th omnibus motion is evidence of CJA's exhaustive efforts to obtain investigation and prosecution by Attorney General Spitzer himself, as "the People's Lawyer", including by Mr. Spitzer's so-called "public integrity unit", and by the New York State Ethics Commission – the state agency having disciplinary jurisdiction over *both* the state Attorney General and the state Commission on Judicial Conduct. This evidence consists of my sworn factual recitation at ¶¶24-35, 40-103 of my July 28th moving affidavit, substantiated by documentary proof. As it relates to Attorney General Spitzer, this documentary proof consists of CJA's correspondence with him and his office, annexed as Exhibits "B", "C", "D", "F", "G", "I", and "J" to that affidavit. As it relates to the Ethics Commission, the documentary proof consists of CJA's ethics complaints against the Attorney General and Commission on Judicial Conduct:

- (1) CJA's March 26, 1999 ethics complaint against, *inter alia*, Attorney General Spitzer personally (at pp. 27-29) and the Commission on Judicial Conduct (at pp. 25-27), based on the events giving rise to this Article 78 proceeding. By reason of the Ethics Commissioners' disqualifying conflicts of interest, as therein particularized (at pp. 4-7), the complaint seeks referral of the ethics complaint to Attorney General Spitzer's "public integrity unit" and, upon determination of his own disqualifying conflicts of interest, referral to the Public Integrity Section of the U.S. Justice Department's Criminal Division. The March 26, 1999 ethics complaint is annexed as Exhibit "E" to my July 28th affidavit;
- (2) CJA's September 14, 1995 ethics complaint against the Attorney General and Commission on Judicial Conduct, based on their litigation fraud in the prior Article 78 proceeding and failure to take corrective steps. The September 14, 1995 ethics complaint, to which is annexed CJA's March 22, 1995 ethics complaint against the Commission for its protectionism of politically-powerful judges, is contained in "File Folder I: Rifkin Docs" (#1);
- (3) CJA's December 16, 1997 ethics complaint against the Attorney General, based on his litigation misconduct in the §1983 federal action and failure

1999 Letter", to wit, the cert petition and supplemental brief in the *Doris L. Sassower v. Mangano* federal action.

to take corrective steps. The December 16, 1997 ethics complaint is contained in "File Folder I: Rifkin Docs" (#9).

These documentary materials establish the active complicity of the Attorney General and the Ethics Commission in the systemic governmental corruption for which CJA has sought investigation. This systemic corruption is most comprehensively detailed by CJA's March 26, 1999 ethics complaint – which is not only directed against the Commission on Judicial Conduct (at pp. 25-27) and the Attorney General (at pp. 27-29), but against an array of public officers and agencies, the most powerful being Governor Pataki (at pp. 2, 14-22) and including the Ethics Commissioners (at pp. 7-11), most particularly, their Chairman, Paul Shechtman (at pp. 2, 14-20), and their former Executive Director, Richard Rifkin – now Mr. Spitzer's Deputy Attorney General for State Counsel (at pp. 1, 12-14) – and the New York State Commission on Judicial Nomination (at pp. 22-24).

The balance of the file of the current Article 78 proceeding – subsequent to my July 28th omnibus motion – establishes both the continuing litigation fraud of the Attorney General in this Article 78 proceeding, directly attributable to Mr. Spitzer himself, and the continuing complicity of the Ethics Commission. These further materials⁴ consist of: (1) the Attorney General's August 13th Memorandum in opposition to my omnibus motion; and (2) my September 24th Reply Memorandum and reply affidavit. Among the pertinent exhibits annexed to my reply affidavit are:

- (1) CJA's September 15, 1999 letter to the Ethics Commission, constituting a supplement to the March 26, 1999 ethics complaint, and detailing the Ethics Commission's wilful nonfeasance in connection therewith, as well as in connection with this Article 78 proceeding – as to which the Ethics Commission's intervention was sought by Notice of Right to Seek Intervention. The September 15, 1999 letter is Exhibit "G" to my reply affidavit;
- (2) CJA's September 7, 1999 letter to Andrew Weissmann, Deputy Chief of the Criminal Division of the U.S. Attorney for the Eastern District of New York, transmitting a copy of CJA's March 26, 1999 ethics complaint, with ALL the voluminous documentation it enclosed – in conjunction with its criminal investigation of Governor Pataki. By

⁴ Also transmitted is my October 1st letter to Justice Zweibel, the third judge assigned to the current Article 78 proceeding, relative to the threshold issue of his recusal. On October 8th, Justice Zweibel recused himself.

reason of the high-level corruption detailed by the March 26, 1999 ethics complaint, involving the state's highest elected official and its highest law enforcement officer – in addition to members of the state legislature -- the letter (at p. 5) *expressly* requested that the complaint be referred to the U.S. Justice Department's Public Integrity Section for investigation and prosecution. The September 7, 1999 letter is Exhibit "H" to my reply affidavit.

CJA's Prior Complaints to the Public Corruption Unit of the U.S. Attorney for the Southern District of New York and to the Public Integrity Section of the U.S. Justice Department's Criminal Division

The corruption of the judicial process in the three public interest cases featured in "*Restraining 'Liars'*" (Exhibit "B") has been the subject of previous complaint by CJA to both the Public Corruption Unit of the U.S. Attorney for the Southern District of New York and the Public Integrity Section of the U.S. Justice Department's Criminal Division – each complaint transmitting the relevant case files to substantiate the allegations of fraud committed by the state Attorney General and state and federal judges. These complaints are part of my July 28th omnibus motion in the current Article 78 proceeding against the Commission – and in your possession.

¶¶36-38 of my July 28th moving affidavit detail CJA's contacts with Michele Hirshman, formerly Chief of the Public Corruption Unit and now Attorney General Spitzer's First Deputy Attorney General. The relevant documents, referred to in those paragraphs, are contained in "File Folder I: Hirshman Docs" (Exhibit "C-1"). They are:

- (1) CJA's initial August 1, 1995 complaint concerning the corruption of the judicial process by the state Attorney General and state judges in the prior Article 78 proceeding against the Commission and in the Article 78 proceeding against the Appellate Division, Second Department -- the two Article 78 proceedings subsequently featured in "*Restraining 'Liars'*" (Exhibit "A"). Substantiating this complaint were copies of the relevant court papers: the file of the Commission case and the cert papers in the Article 78 proceeding against the Appellate Division, Second Department. Additionally, and demonstrating the cover-up on the state level, the complaint transmitted CJA's unresponded-to March 14, 1995 letter to the Brooklyn District Attorney, particularizing the nonfeasance and

misfeasance of his Corruption Investigation Division in connection with CJA's criminal complaint against the Appellate Division, Second Department justices who had subverted the Article 78 remedy in the case against themselves and participated in the retaliatory order suspending Doris Sassower's law license;

- (2) CJA's August 17, 1995 note as to the necessity of the U.S. Attorney's intervention in the prior Article 78 proceeding against the Commission to halt the subversion of the state judicial process, covering up state judicial corruption. The note was written on a copy of CJA's published Letter to the Editor, "*Commission Abandons Investigative Mandate*" (NYLJ, 8/14/95);
- (3) CJA's May 6, 1997 letter to Ms. Hirshman, transmitting a three-page analysis of the fraudulent judicial decision in the prior Article 78 proceeding against the Commission under a May 5, 1997 memorandum identifying a long list of government offices and public leaders who had failed to respond to the file evidence of the corruption that had occurred in that case – the U.S. Attorney for the Southern District of New York among them. The May 5, 1997 memorandum with its appended analysis is Exhibit "A" to the Verified Petition in the current Article 78 proceeding. Additionally, the May 6, 1997 letter requested confirmation as to whether Ms. Hirshman had received a copy of CJA's March 5, 1996 letter to the Manhattan District Attorney, particularizing the nonfeasance and misfeasance of his Special Prosecutions Bureau in connection with the criminal complaint CJA had filed against the Commission on Judicial Conduct;
- (4) Ms. Hirshman's May 19, 1997 letter to CJA, which, by a bald, single sentence, stated: "there did not appear to be a basis to initiate a federal criminal investigation" – without confronting CJA's file proof of the corruption of the judicial process in the two Article 78 proceedings against the Commission on Judicial Conduct and against the Appellate Division, Second Department;
- (5) Ms. Hirshman June 27, 1997 letter to CJA, returning: (a) the enclosures to CJA's August 1, 1995 letter including the files of the two Article 78 proceedings and CJA's March 14, 1995 letter to the Brooklyn District Attorney; and (b) CJA's August 17, 1995 note annotating its Letter to the Editor, "*Commission Abandons Investigative Mandate*" (NYLJ, 8/14/95).

As identified in ¶37 of my July 28th moving affidavit, these returned materials were "in uncreased, apparently unread condition". As identified in ¶38, they were thereafter mailed to Lee Radek, Chief of the Justice Department's Public Integrity Section under a July 27, 1998 letter so that he could "see this for [him]self – and make [his] own independent assessment of these documents" (at p. 5). The letter, which annexed all the relevant correspondence with Ms. Hirshman (as Exhibit "G" thereto), is contained in File Folder I: Hirshman Docs." (#4).

The primary purpose of the July 27, 1998 letter, however, was to obtain criminal investigation and prosecution of the Second Circuit judges who had wholly corrupted the federal judicial/appellate/disciplinary processes in the *Sassower v. Mangano* §1983 federal action – the third case featured in "*Restraining 'Liars'*" (Exhibit "B") – and to obtain the Public Integrity Section's endorsement of Doris Sassower's request for the Solicitor General's *amicus curiae* support for her petition for a writ of certiorari then pending before the Supreme Court⁵. For these reasons, the July 27, 1998 complaint enclosed a full copy of the Second Circuit record in the case. The letter also chronicled (at pp. 3-6) -- and documented by correspondence annexed as exhibits -- CJA's attempts, beginning in 1991, to obtain federal investigation of the underlying political manipulation of judicial elections in the Ninth Judicial District of New York, of the fraudulent state court decisions that had "thrown" two Election Law challenges, including the one brought by Ms. Sassower, of the retaliatory suspension of her law license by the Appellate Division, Second Department, and of the Attorney General's corruption of the Article 78 remedy both in Ms. Sassower's Article 78 proceeding against the Appellate Division, Second Department and in her Article 78 proceeding against the Commission on Judicial Conduct.

Thereafter, when Ms. Sassower filed a supplemental brief with the Supreme Court, highlighting, *inter alia*, that the Attorney General had waived opposition to the cert petition, thereby conceding the truth of its recitation of the corruption of the federal judicial/appellate/disciplinary processes, a copy of the supplemental brief was transmitted to Mr. Radek under CJA's September 4, 1998 memorandum. This memorandum also pointed out that whereas the cert petition had detailed the breakdown of checks within the Judicial Branch to address corrupt federal judicial conduct, the supplemental brief chronicled "the breakdown of checks on federal judicial misconduct within the Legislative and Executive branches of government". The Public Integrity Section's non-response to the July 27, 1998 complaint was included as part

⁵ Doris Sassower's *amicus curiae* request to the Solicitor General was by letter dated July 20, 1998 – a copy of which was enclosed with the July 27, 1998 letter to Mr. Radek.

of the Executive branch breakdown, as was the Solicitor General's inappropriate response to Doris Sassower's *amicus curiae* request⁶.

Thereafter, by a November 6, 1998 memorandum, CJA transmitted to Mr. Radek a copy of Doris Sassower's petition for rehearing⁷, demonstrating that the breakdown of checks within the Judicial Branch extended to the Supreme Court. This included the Justices' refusal to discharge their supervisory and ethical duty, when faced with a record that not only showed the Second Circuit's annihilation of *all* adjudicative standards to protect corrupt high-ranking state judges and the state Attorney General, but the breakdown of checks in *all* three branches of the federal government to address the criminal conduct by federal judges here at issue. Such a record required, at very least, that if the Justices did not grant the cert petition, that they refer the subject judges and state officers for disciplinary and criminal investigation – alternative relief expressly requested by both the cert petition and supplemental brief.

Of course, the Justices could only discharge this duty if they were a fair and impartial tribunal – which is why Doris Sassower filed a written application that they disclose the facts bearing upon the appearance of their lack of impartiality, as required by federal law and ethical rules applicable to them. Among the facts identified by Ms. Sassower's application as bearing upon the appearance of the Justices' lack of impartiality were those relating to their personal and professional relationships with the Second Circuit judges and the defendant state judges, as well as their animus against George Sassower – the former husband of Doris Sassower -- by reason of his long-standing whistle-blowing against the Supreme Court for covering up the corruption of federal and state judges and other public officials, which, for many, many years, he had been presenting to the Justices for review. Since the Justices could not address these facts without exposing their disqualifying biases -- which they were determined to act upon -- they simply ignored the written disclosure/recusal application and proceeded to deny the cert petition without any disciplinary or criminal referrals.

⁶ See pp. 8-10 of the supplemental brief.

⁷ The petition for rehearing is not part of the record before the Court in the current Article 78 proceeding -- although part of the massive evidentiary proof supporting CJA's March 26, 1999 ethics complaint. Because of its importance, a copy is enclosed, together with CJA's November 6, 1998 memorandum – also part of the March 26, 1999 ethics complaint (at pp. 4-5, fn. 2).

By letter dated April 12, 1999 (Exhibit "D"), the Public Integrity Section's Deputy Chief, Jo Ann Farrington responded, simultaneously returning all the transmitted materials – except for the July 27, 1998 complaint and CJA's November 6, 1998 memorandum, substantiated by the rehearing petition. All the materials Ms. Hirshman had returned were among the materials returned by Ms. Farrington.

Without addressing *any* of the document-supported facts in the *unopposed cert* petition, supplemental brief, and rehearing petition, and without identifying the November 6, 1998 memorandum, Ms. Farrington's April 12, 1999 letter pretended that CJA's July 27, 1998 complaint and September 4, 1998 memorandum had complained about "incorrectly decided" "court rulings". In so doing, Ms. Farrington employed the same mischaracterization as she had in dismissing an earlier criminal complaint against Second Circuit judges, which she also pretended was about "individual disagreement" with "rulings". In fact, the earlier complaint was about the Second Circuit's corruption of the judicial process by a fraudulent and retaliatory judicial decision, intended to injure the family of George Sassower, whose whistle-blowing advocacy against Second Circuit judges was within the direct, personal knowledge of the Justice Department.

Although Ms. Farrington's April 12, 1999 letter refers to the Public Integrity Section's May 17, 1996 letter dismissing that earlier complaint, she does not disclose that it was she who signed it – or that the July 27, 1998 complaint expressly criticized her (at p. 7), by name, for the May 17, 1996 letter, protesting her mischaracterization of the earlier complaint.

Indeed, the July 27, 1998 complaint stated:

"At best, Ms. Farrington's [May 17, 1996] letter reinforces that the Public Integrity Section is in dire need of guidance as to when judicial decisions are properly the subject of criminal investigation. The straightforward governing principle, set forth at pp. 25-26 of the enclosed *Sassower v. Mangano* petition and relevant to our request herein for criminal investigation and prosecution of the Second Circuit, is that 'judges who render dishonest decisions – which they *know* to be devoid of factual or legal basis – are engaging in criminal and impeachable conduct.'" (at p. 7)

Although it is the record before the court that establishes if a judicial decision is factually fabricated – and the extent thereof – Ms. Farrington's April 12, 1999 letter does not discuss the record of the *Sassower v. Mangano* federal action – let alone identify that it was among the "materials" transmitted with the July 27, 1998

complaint.

As for Ms. Farrington's pretense that the "materials" supporting the complaint -- which she does not identify -- were "carefully reviewed", the materials she returned, like the materials Ms. Hirshman returned nearly two years earlier, were "in unincreased, apparently unread" condition. This not only includes the copy of the underlying Second Circuit record, but the bound volumes of the petition for a writ of certiorari and supplemental brief, whose bindings showed *no* sign of ever having been bent back. Those exact volumes are already in the possession of the U.S. Attorney's office -- having been transmitted as part of my omnibus motion in the current Article 78 proceeding against the Commission, where they are in "File Folder II: January 27, 1999 Letter" (Exhibit "C-1"). As for the Second Circuit record and the other papers returned by Ms. Farrington, they are transmitted herewith, for your inspection, in the same box in which they were returned to us -- with the addition of a duplicate copy of CJA's November 6, 1998 memorandum and substantiating rehearing petition, which Ms. Farrington's April 12, 1999 letter neither returned nor referred to.

This is the background to CJA's contacts with the Civil Division of the U.S. Attorney's office for the Southern District of New York in connection with CJA's request for its intervention in my Article 78 proceeding against the Commission on Judicial Conduct.

CJA's Prior Contacts with the Civil Division of the U.S. Attorney Concerning Intervention in the Current Article 78 Proceeding against the NYS Commission on Judicial Conduct

The Civil Division of the U.S. Attorney for the Southern District of New York was served with the Verified Petition, Notice of Petition, and Notice of Right to Seek Intervention on Thursday, April 22, 1999. The return date, as reflected by the Notice of Petition, was May 14th.

On Wednesday, May 5th, having received no response from the U.S. Attorney's Office, I telephoned the office [212-637-2735 (at 11:55 am.)] and spoke to Ellen Villalobos, Chief Clerk of the Civil Division. Ms. Villalobos informed me that the case had not yet been assigned, but stated that she would bring it to the attention of the Civil Division's Chief, Jane Booth. The next day, Thursday, May 6th, the same day as I filed the proofs of service with the Court, I delivered to the U.S. Attorney

a corrected copy of the Verified Petition and Notices⁸. At the same time, I delivered the same copy of the file of the prior Article 78 proceeding against the Commission as had been transmitted to Ms. Hirshman under CJA's August 1, 1995 coverletter; which she returned under her June 27, 1997 coverletter; thereafter sent to Mr. Radek as part of the July 27, 1998 complaint; and returned by Ms. Farrington under her April 12, 1999 coverletter. Reflecting CJA's delivery of the file to the U.S. Attorney on May 6, 1999 are stamped receipts on copies of coversheets (Exhibit "C-2").

On Monday, May 10th, hearing nothing back from the U.S. Attorney's Office, I telephoned and again spoke to Ms. Villalobos. She told me that the papers were going to go to Kay Gardiner, one of the Civil Division's Deputy Chiefs. She informed me that Ms. Gardiner, just back from maternity leave, was expected to be in later in the day.

The following day, Tuesday, May 11th, I called Ms. Gardiner [212-637-2696 (11:10 a.m.)], and spoke with her briefly. She stated she had gotten the papers from Ms. Villalobos at 5:00 p.m. the day before and would call me the next day.

I received no telephone call from Ms. Gardiner the next day. Consequently, on Thursday, May 13th, I called her (11:35-11:50 a.m.). This was the day before the return date of the Article 78 Petition. I emphasized to Ms. Gardiner that the Commission had NO legitimate defense to the proceeding and that the only way it could survive the lawsuit is if the case were "thrown" by a fraudulent judicial decision – as had happened in the prior Article 78 proceeding against the Commission – evidenced by the copy of the file of that proceeding that I had delivered to the U.S. Attorney the week before (Exhibit "C-2"). I emphasized the need for the U.S. Attorney's intervention to safeguard the integrity of the judicial process – which was now even more exigent by reason of the Attorney General's increasingly evident litigation misconduct in the proceeding, replicating his litigation misconduct in the prior proceeding, which I discussed with her. Ms. Gardiner stated that she had sent a memo to Ms. Booth, but that the case had not yet been assigned.

I did not hear back from Ms. Gardiner and, on Friday, May 21st (3:45 p.m.), left a voice mail message for her inquiring as to who had been assigned the case. I

⁸ Among the corrections was the address of the U.S. Attorney to reflect the address of the Civil, rather than Criminal, Division. This, because when my process server tried to serve the Notice of Right to Seek Intervention, etc. on the Criminal Division, he was turned away and directed to the Civil Division.

emphasized that the Attorney General's litigation misconduct was now even more pronounced, necessitating the U.S. Attorney's intervention.

Over the next two months, I heard nothing from Ms. Gardiner or anyone else at the U.S. Attorney's office. Meantime, I worked on my July 28th omnibus motion to disqualify the Attorney General and for sanctions against him and the Commission for their litigation misconduct. On Tuesday, August 3rd, with that motion completed, I telephoned Ms. Gardiner (10:10 a.m.). From her recorded voice message, I learned that she was on vacation until August 16th and that in her absence matters were to be referred to Ed Smith [212-637-2726]. I thereupon called Mr. Smith and left a message on his voice mail that I would be dropping off a copy of the file in the Article 78 proceeding in further support of my request for the U.S. Attorney's intervention – as to which I had received no response. The following day, Wednesday, August 4th (10:05 a.m.), I spoke with Mr. Smith, who advised that he was just temporarily filling in for Ms. Gardiner. He promised that the Article 78 proceeding “will be the first thing she sees when she comes back” on Aug. 16th

On Friday, August 6th, I delivered a copy of what was then the full file of the Article 78 proceeding, ending with my July 28th omnibus motion. Included therewith were the free-standing file folders of documentary proof in support of that motion (Exhibit “C-1”), excepting “File Folder I: Prior Article 78 proceeding against Respondent”, hand-delivered to the U.S. Attorney on May 6th (Exhibit “C-2”). Mr. Smith, who was called to authorize receipt of my August 6th delivery, refused to stamp coversheets reflecting the transmittal, notwithstanding I pointed out that the May 6th transmitted materials had been receipted, as likewise the April 22nd Notice of Right to Seek Intervention.

On Thursday, August 19th, I telephoned Ms. Gardiner, leaving a message on her voice mail, inquiring as to who was reviewing my intervention request, the outcome of her memo to Ms. Booth, and the U.S. Attorney's procedures for handling the conflict of interest issues presented by the fact that the omnibus motion chronicled the official misconduct of Mr. Spitzer's second in command Ms. Hirshman while Chief of the U.S. Attorney's Public Corruption Unit – misconduct giving rise to this proceeding. Six days later, on Wednesday, August 25th, I again called Ms. Gardiner, leaving a similar voice mail message for her. On Friday, August 27th, I left a further voice mail message for Ms. Gardiner, stating that unless I heard from her by the end of the day, I would be contacting Ms. Booth directly.

On Monday, August 30th, before calling Ms. Booth, I tried yet again to reach Ms. Gardiner – this time with success. Ms. Booth informed me that she was now Chief

of the Environmental Unit⁹ and that the case was being reviewed by Sara Shudofsky, Chief of the Civil Rights Unit, who would be sending me a letter. I stated that I expected that Ms. Shudofsky would want to speak with me before sending me a letter and that I would be calling her. Ms. Booth asked me to elaborate on the conflict of interest issue, which I did.

In a letter dated and postmarked the next day, August 31st (Exhibit "E"), Ms. Shudofsky advised that the information I had submitted "alleging civil rights violations" by the Commission on Judicial Conduct and Attorney General had been "carefully reviewed", but that this information "did not implicate the federal civil rights laws over which this Office has jurisdiction." The letter made no mention of CJA's intervention request other than to state "It is apparent from the materials that you have provided that you are currently pursuing your allegations against these entities in a litigation that you have filed in New York State Supreme Court."

In response, I telephoned Ms. Shudofsky on Friday, September 10th [212-637-2693 (9:12 a.m.)], leaving a voice mail message that she should call me concerning her August 31st letter, which I described as "incomprehensible", further stating that the transmitted litigation papers should not be returned. I left another voice message for her on Monday, September 13th (1:30 p.m.) to the same effect and then again, two weeks later, on Monday, September 27th (9:55 a.m.), in which I inquired as to why the case had been directed to the Civil Rights Division, rather than the Public Corruption Unit, where it properly belonged.

On Wednesday, September 29th, having received no return call from Ms. Shudofsky (11:25 a.m.), I telephoned Ms. Booth, leaving a message with her secretary about the mishandling of this important public corruption case by Ms. Gardiner and Ms. Shudofsky. In response to my inquiry as to who was the head of the U.S. Attorney's Public Corruption Unit, I was told that it was Andrew Lachow and given his phone number [212-637-2550]. I immediately telephoned Mr. Lachow and was informed by his voice mail message that he is on extended leave, with his cases reassigned to you. It was then that I called you [212-637-2563], leaving a voice mail message. Shortly thereafter, you returned the call, spending nearly half an hour in conversation with me.

At your express request, I did not arrange to have the file of the current Article 78 proceeding against the Commission transferred to you from the Civil Division of the

⁹ I understand that Ms. Gardiner was formerly Chief of the U.S. Attorney's Tax and Bankruptcy Unit.

U.S. Attorney's office, as I had offered to do when we spoke. However, on Tuesday, October 5th, when Ms. Shudofsky belatedly telephoned me (2:45 p.m.) – 3-1/2 weeks after the first of my three voice mail messages for her¹⁰ – it seemed logical to request that she transfer the file to you so that you would have it in conjunction with this letter.

Concluding Comments & Recusal Issues

During Ms. Shudofsky's October 5th telephone conversation with me, I called her attention to the front-page story that appeared in that day's New York Law Journal, "State Commission Can Refuse to Investigate Judge" (Exhibit "F"), about the dismissal of another Article 78 proceeding against the Commission on Judicial Conduct – this one brought by Michael Mantell, Esq. I told her that I had already spoken to Mr. Mantell, a CJA member, had made arrangements to obtain from him a copy of the file of his Article 78 proceeding, and that I believed that Mr. Mantell's case was yet a further example of how state courts protect a dysfunctional and corrupted Commission on Judicial Conduct, aided and abetted by the state Attorney General.

My review of the file and the dismissal decision in Mr. Mantell's case has now fully substantiated my initial belief that the dismissal decision is a fraudulent cover-up and that the Attorney General engaged in litigation misconduct in that case as well. Once I have completed a written analysis of the decision, I will send it to you, along with the file.

Since the Manhattan District Attorney was – like the U.S. Attorney for the Southern District of New York – served on April 22, 1999 with Notice of Right to Seek Intervention in the current Article 78 proceeding – and likewise received a hand-delivered copy of the July 28th omnibus motion on August 6th, I enclose CJA's letter of today's date to the Manhattan District Attorney. Said letter, *inter alia*, initiates criminal complaints against the Attorney General and Commission on Judicial Conduct, based on their subversion of the judicial process in the current Article 78 proceeding. Annexed thereto, as exhibits, is CJA's prior correspondence with the Manhattan District Attorney¹¹, including CJA's initial May 19, 1995

¹⁰ It was unclear to me whether Ms. Shudofsky's belated call was prompted by her knowledge that I had been in contact with you – and/or the result of my otherwise unreturned telephone message for Ms. Booth.

¹¹ Among that correspondence is CJA's unresponded-to March 5, 1996 letter to the Manhattan District Attorney, to which the U.S. Attorney for the Southern District was an indicated

criminal complaint against the Commission and a description of CJA's September 19, 1995 supplemental complaint, based on the prior Article 78 proceeding. From these you can see for yourself the Manhattan District Attorney's record of protectionism of the Commission and Attorney General -- necessitating the U.S. Attorney's investigation and prosecution of these criminal complaints, as well as of the broader criminal complaint presented herein of systemic governmental corruption, reaching beyond the Manhattan District Attorney's jurisdiction to include the Governor, state Ethics Commission, and the Chairman of the Senate Judiciary Committee, among others.

Obviously, both the office of the U.S. Attorney for the Southern District of New York and the office of the Manhattan District Attorney have substantial conflicts of interest in objectively evaluating these complaints and intervention in the current Article 78 proceeding against the Commission. Staff in both offices have personal and professional relationships with those implicated in the corruption and cover-up here at issue. In addition to relationships with your predecessor, Michele Hirshman, now serving as Mr. Spitzer's First Deputy Attorney General, are relationships with Paul Shechtman, Chairman of the state Ethics Commission, whose long-standing protectionism of the Attorney General and Commission on Judicial Conduct is highlighted by CJA's March 26, 1999 ethics complaint (at pp. 1-2, 7-14), updated by CJA's September 15, 1999 supplement thereto (at pp. 1, 6- 10), itself supplemented by ¶¶3, 7-12 of my September 24th reply affidavit. Mr. Shechtman worked for *both* the U.S. Attorney for the Southern District and the Manhattan District Attorney. Indeed, between the time he was Chief Appellate Attorney and Chief of the General Crimes Unit of the U.S. Attorney's office for the Southern District of New York (1981-1985) and Chief of the Criminal Division of the U.S. Attorney's office for the Southern District of New York (1993-1995), Mr. Shechtman was counsel to Mr. Morgenthau (1987-1993)¹². Under such circumstances, representing the most visible of what are, undoubtedly, numerous disqualifying relationships and interests, there is a clear appearance, if not the actuality, that neither the U.S. Attorney for the Southern District of New York nor

recipient and about which CJA's May 6, 1997 letter to Ms. Hirshman had expressly inquired -- without response from her (at p. 10, *supra*).

¹² This information is from the April 28, 1997 press release announcing Mr. Shechtman's appointment to the Ethics Commission, as well as from the prior backdated April 14, 1997 press release. These two press releases, referred to in CJA's September 15, 1999 supplementary ethics complaint (at p. 2), are annexed thereto. The September 15, 1999 supplementary complaint is Exhibit "G" to my September 24, 1999 reply affidavit.

October 21, 1999

the Manhattan District Attorney could not be fair and impartial in their evaluations, requiring referral to the Justice Department's Public Integrity Section.

One final note as to the status of the current Article 78 proceeding against the Commission, relevant to the timeliness of intervention. No substantive determinations have been made. The proceeding is presently awaiting assignment of a judge: the first three assigned justices having recused themselves.

Yours for a quality judiciary,



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

Enclosures

cc: U.S. Attorney for the Southern District of New York/Civil Division

ATT: Jane Booth; Chief, Civil Division

Kay Gardiner; Chief, Environmental Protection

Edward Smith, Chief, Tax and Bankruptcy

Sara Shudofsky, Chief, Civil Rights

Ellen Villalobos, Chief Clerk, Civil Division

U.S. Attorney for the Eastern District of New York

ATT: Andrew Weissmann, Deputy Chief, Criminal Division

District Attorney Morgenthau New York County

ATT: Tom Wornam, Deputy Chief, Special Prosecutions Bureau

New York State Attorney General Eliot Spitzer

ATT: David Nocenti, counsel

Peter Pope, Chief, "Public Integrity Unit"

William Casey, Chief of Investigations, "Public Integrity Unit"

New York State Ethics Commission