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— Anna Levine 2/25 4:20p

Received by Manhattan DA

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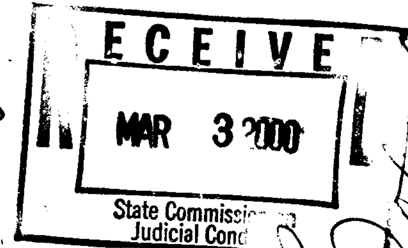

PART-50E FEB 25 2000

BY PRIORITY MAIL
CERTIFIED/RRR Z-509-073-742

February 23, 2000

Governor George Pataki
The Capitol
Albany, New York 12224

ATT: Nan Weiner, Executive Director
New York State Judicial Screening Committees

RE: Opposition to Court of Claims Judge William A. Wetzel and Supreme Court Justice Stephen G. Crane

Dear Ms. Weiner:

The Center for Judicial Accountability, Inc. (CJA) strenuously opposes the Governor's consideration of Court of Claims Judge William A. Wetzel for reappointment to that or any other court. Judge Wetzel sits as an Acting Supreme Court Justice in New York County and is a "holdover", his appointive term having expired *more than seven and a half months ago*.

CJA also strenuously opposes the Governor's consideration of Supreme Court Justice Stephen G. Crane for designation to the Appellate Division. Presently, Justice Crane is also Administrative Judge of the Civil Term of the Manhattan Supreme Court.

CJA's opposition, of which you were notified as early as January 13, 2000, with a follow-up letter on February 7, 1999 (Exhibit "A"), is based on *direct, first-hand* experience with both these judges in cases that were before them. Each judge has demonstrated his unfitness by disregard for principles of judicial impartiality and conflict-of-interest, disrespect for the rule of law and fundamental adjudicative standards, and by a readiness to render fraudulent judicial decisions for ulterior personal and political gain. This is documented by the files of those cases --

Received this letter 3/3/00 for the Attorney General — A. Patel

Rec'd For Chief Judge Judith Kaye 3/3/00

pertinent portions of which are being transmitted to enable you to *independently* verify the egregious official misconduct of each judge. This should suffice to convince the Governor that Justices Wetzel and Crane are not only unfit for reappointment or promotion, but that it is his duty to secure their removal and criminal prosecution.

Normally, matters involving judicial misconduct are reported to the New York State Commission on Judicial Conduct. However, thanks to the official misconduct of Justice Wetzel and Administrative Judge Crane in the 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) [hereinafter "the second Article 78 proceeding"], the Commission remains a corrupt façade, protecting powerful, politically-connected judges from disciplinary investigation.

That the Commission is corrupt is not new to the Governor. He is long aware of this *readily verifiable* fact because CJA has spent many years bringing it to his attention so that he could vindicate the public's rights. In May 1996, we provided the Governor with a copy of the file of another Article 78 proceeding against the Commission, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141) [hereinafter "the first Article 78 proceeding"], along with a petition signed by 1,500 New Yorkers calling upon him to set up an investigative commission to examine judicial corruption in the State of New York. That file is "hard evidence" that the Commission not only dismisses, *without* investigation, *facially-meritorious* judicial misconduct complaints – in violation of its mandatory investigative duty under Judiciary Law §44.1 – but that it survived the first Article 78 proceeding because it was the beneficiary of a fraudulent judicial decision. CJA has publicized these *readily-verifiable* facts in a Letter to the Editor, "*Commission Abandons Investigative Mandate*" (NYLJ, 8/14/95) (Exhibit "B-1"), as well as in two public interest ads, "*A Call for Concerted Action*" (NYLJ, 11/20/96, p. 3) (Exhibit "B-2"), and "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4) (Exhibit "B-3"). The latter ad highlights that the file is "hard evidence" of another *readily-verifiable* fact: that the State Attorney General, who represented the Commission in the first Article 78 proceeding, employed fraudulent defense tactics because he had NO legitimate defense to the evidence-supported allegations of the Commission's corruption. Over the years and on many occasions, we have sent the Governor copies of these published pieces, annexed to our correspondence to him.

More recently, the Governor has been made aware of the second Article 78 proceeding against the Commission. It was identified in CJA's September 7, 1999 criminal complaint against the Governor, which we filed with the U.S. Attorney for the Eastern District of New York (at p. 2), and in CJA's September 15, 1999 ethics complaint against him, which we filed with the New York State Ethics Commission (at p. 4)[1]. These highlighted that the second Article 78 proceeding arose from events particularized in an earlier ethics complaint against the Governor, dated March 26, 1999[2]. All these complaints involved the Governor's role in systemic governmental corruption. This included his corruption of the judicial appointment process to the lower state courts and Court of Appeals, as well as his complicity in the corruption of the Commission on Judicial Conduct. We sent the Governor copies of each of these three complaints[3].

From these, the Governor had notice that the second Article 78 proceeding relates to the Commission's dismissal, *without* investigation, of a *facially-meritorious* October 6, 1998 judicial misconduct complaint against then Appellate Division, Second Department Justice Albert Rosenblatt. The complaint alleged that Justice Rosenblatt, previously the subject of three *facially-meritorious* judicial misconduct complaints whose unlawful dismissals by the Commission had been challenged in the first Article 78 proceeding, and who was subsequently a defendant in a §1983 federal civil rights lawsuit arising from his on-the-bench misconduct[4], had likely perjured himself in his publicly-inaccessible application to the New York State Commission on Judicial Nomination in response to two questions: #30(a)-(b):

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[1] CJA's September 7, 1999 criminal complaint and September 15, 1999 ethics complaint are part of record of the second Article 78 proceeding: copies are annexed as Exhibits "H" and "G", respectively to petitioner's September 24, 1999 reply affidavit in support of her omnibus motion.

[2] CJA's March 26, 1999 ethics complaint is part of the record of the second Article 78 proceeding: a copy is annexed as Exhibit "E" to petitioner's July 28, 1999 affidavit in support of her omnibus motion. [*see*, in particular, pp. 20-22 of the ethics complaint].

[3] All complaints were sent to the Governor certified mail/return receipt. The receipt for the September 7, 1999 criminal complaint (Z-509-073-639) reflects delivery on September 13, 1999. The receipt for the September 15, 1999 ethics complaint (Z-509-073-642) reflects delivery on September 20, 1999. The receipt for the March 26, 1999 ethics complaint (Z-509-073-631) reflects delivery on March 31, 1999.

[4] That federal lawsuit, *Doris L. Sassower v. Hon. Guy Mangano, et al.*, (2nd Cir.) is the third of the three cases described in "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "B-3").

whether, to his knowledge, he had ever been the subject of a judicial misconduct complaint; and #32(d): whether, within the previous 10 years, he had been "a party in any litigation other than an Article 78 proceeding brought against [him] as a public officer". CJA notified the Governor of this October 6, 1998 judicial misconduct complaint *before* he nominated Justice Rosenblatt to the Court of Appeals and participated in the Senate's fraudulent confirmation[5].

Thereafter, the Governor received from CJA a December 2, 1999 letter[6], apprising him that because the second Article 78 proceeding implicated him in criminal conduct – by reason of his complicity in the Commission's corruption and knowledge of the subject October 6, 1998 judicial misconduct complaint – the petitioner therein had made a December 2, 1999 application to recuse the assigned judge, Justice Wetzel. This was based, *inter alia*, on Justice Wetzel's long-standing personal and professional relationship with the Governor, which was believed to have resulted in the Governor having nominated him to the Court of Claims in June 1995.

CJA's December 2, 1999 letter to the Governor pointed out that if Justice Wetzel did not recuse himself based on the application, petitioner intended to make a formal recusal motion. In anticipation of this, CJA requested certain information from the Governor, including: (1) a copy of the written report of Justice Wetzel's qualifications, which would have been prepared by the Governor's "temporary" judicial screening committee prior to the June 1995 nomination; (2) information about the screening procedures utilized by such "temporary" judicial screening committee; and (3) information as to why, with the expiration of Justice Wetzel's Court of Claims appointive term on June 30, 1999, the Governor had not reappointed him, but was, instead, maintaining him in office as a "holdover".

From the application for Justice Wetzel's recusal, enclosed with CJA's December 2, 1999 letter to the Governor, could be discerned its substantive nature. Petitioner argued that Justice Wetzel was disqualified both for interest and for the appearance of bias. Beyond the fact that the case criminally implicated the Governor, upon whom Justice Wetzel was dependent for reappointment and with whom Justice Wetzel had personal and professional ties (pp. 5-7), was something further. Justice

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5 *See* verified petition in the second Article 78 proceeding: Exhibit "E", at p. 2; and petitioner's July 28, 1999 affidavit in support of her omnibus motion: Exhibit "E", at pp. 20-22.

6 CJA's December 2, 1999 letter to the Governor is annexed as Exhibit "J" to petitioner's December 2, 1999 letter application for Justice Wetzel's recusal.

Wetzel had himself recently been the beneficiary of the Commission's dismissal of a *facially-meritorious* May 21, 1999 complaint against him – one based on his relationship with the Governor, including a 1994 fundraiser that then Village Town Justice Wetzel held in his home for then gubernatorial candidate Pataki (p. 7). Petitioner argued that, by reason of that unlawfully dismissed-complaint, Justice Wetzel had an interest in not revitalizing the Commission -- the goal of the proceeding -- because a revitalized Commission might *sua sponte* reopen the complaint and investigate it or do so on resubmission by the complainant[7].

Supporting petitioner's December 2, 1999 recusal application were pertinent documentary exhibits. These included: **Exhibit "D":** a copy of the Governor's certificate of nomination of Justice Wetzel to a term expiring on June 30, 1999; **Exhibit "E":** a picture of Justice Wetzel with the Governor, believed taken at the 1994 fundraiser at his home; **Exhibit "F":** the *facially-meritorious* May 21, 1999 judicial misconduct complaint against Justice Wetzel, filed by Clay Tiffany; **Exhibit "G":** the Commission's September 14, 1999 letter dismissing the complaint, *without* investigation; and **Exhibit "H":** Mr. Tiffany's November 4, 1999 guest editorial in a local newspaper paper about his May 21, 1999 complaint against Justice Wetzel and its dismissal by the Commission.

The December 2, 1999 recusal application asserted (at p. 9) that if Justice Wetzel did not recuse himself on the facts therein set forth as to the appearance and actuality of his self-interest and bias, his duty under §100.3F of the Chief Administrator's Rules Governing Judicial Conduct was to disclose the relevant particulars. Among the particulars petitioner requested Justice Wetzel to disclose: (1) whether and when Justice Wetzel had applied to be reappointed to the Court of Claims; (2) Justice Wetzel's personal and professional relationship with Mr. Pataki before he became Governor, including information about the 1994 fundraiser and subsequent relationship with the Governor, if any; (3) Justice Wetzel's knowledge of Mr. Tiffany's May 21, 1999 judicial misconduct complaint against him – dismissed by the Commission, *without* investigation -- as well as of any other judicial complaints against him that may have been filed with the Commission; and (4) Justice Wetzel's relationships with other politically-connected persons having an interest in the outcome of the Article 78 proceeding, now Court of Appeals Judge Albert Rosenblatt, among them.

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[7] *See* also petitioner's December 9, 1999 letter to Justice Wetzel, at p. 5.

From petitioner's December 2, 1999 application (at p. 10), the Governor could see that Justice Wetzel had been assigned the case *not* by "random selection"[8], but because he was "hand-picked" by Administrative Judge Crane. Indeed, petitioner's application requested that Justice Wetzel disclose his knowledge as to the basis upon which Administrative Judge Crane had done this – further inquiring whether Justice Wetzel had informed Judge Crane of any of the facts bearing upon the appearance and actuality of his disqualification, as set forth in her recusal application. The application reflected (at p. 10) that a copy was being sent to Administrative Judge Crane with a request that he disclose the basis upon which he had *twice* interfered with the random assignment of the case[9] – the second time sending it to Justice Wetzel – and whether, before doing so, he had been aware of the facts pertaining to Justice Wetzel's disqualification set forth in the application.

In fact, petitioner not only sent Administrative Judge Crane a copy of her December 2, 1999 application for Justice Wetzel's recusal, but a separate coverletter, excerpting from pages 9-10 of the application the pertinent paragraphs relating to him. This included her request that:

> "In view of the appearance and actuality of Judge Crane's *own* disqualifying bias and self-interest...Judge Crane...schedule a conference so that proper arrangements may be made to ensure that this Article 78 proceeding is assigned to a fair and impartial tribunal." (at p. 9, emphasis in the original)

Administrative Judge Crane did not respond – a fact confirmed by petitioner in a

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8 "... Assignments shall be made by the clerk of the court pursuant to a **method of *random selection*** authorized by the Chief Administrator. ..." (Part 202.3(b) of the Uniform Civil Rules for the Supreme Court and the County Court, emphasis added)

9 Administrative Judge Crane's interference with random selection is reflected by the computerized court record (Exhibit "C"-1). It shows that on May 24, 1999, after the case was randomly assigned to Supreme Court Justice Carol Huff (#003), Administrative Judge Crane made an "oral dir [directive]" (#004), referring it to Acting Supreme Court Justice Ronald Zweibel. It also shows (#007) that on November 9, 1999, the case was referred to Justice Wetzel "per order by KB [Kapnick] and dir [directive] of Admin Judge". Acting Supreme Court Justice Kapnick's November 5, 1999 order (Exhibit "C-6"), in which, *without reasons*, she recused herself, explicitly remands the proceeding "pursuant to the directive of the Administrative Judge to the Motion Support Office for reassignment to the Hon. William Wetzel" (emphasis in the original).

February 7, 2000 phone call to his chambers[10].

It may be presumed that the Governor knows that Administrative Judge Crane has long sought a seat on the Appellate Division, for which he needs the Governor's designation. From the standpoint of this dependency on the Governor, Administrative Judge Crane, like Justice Wetzel, has a self-interest in this proceeding. Similarly, he shares with Justice Wetzel the self-interest of every judge under the disciplinary jurisdiction of the Commission that it continue to dump *facially-meritorious* judicial misconduct complaints, lest it otherwise investigate such complaints against him. Plainly, too, a judge "protecting" the Commission from a legal challenge it could not otherwise survive might reasonably expect the Commission to return the favor by "protecting" him from investigation of judicial misconduct complaints against him[11].

Judiciary Law §45 shrouds the Commission's records in secrecy and prevents CJA from knowing whether Administrative Judge Crane is presently, or has previously been, the subject of judicial misconduct complaints. If, however, his conduct in the

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[10] Petitioner's February 7, 2000 phone conversation was with Ray Denton, who identified himself as Judge Crane's Administrative Assistant. He specifically acknowledged receipt of petitioner's December 2, 1999 letter, which had been sent to Administrative Judge Crane certified mail/return receipt (Z-294-568-945).

[11] The Commission's ability to selectively prosecute whichever judges it chooses is reflected by the testimony of former Bronx Surrogate Bertram R. Gelfand at the May 14, 1997 hearing at the Association of the Bar of the City of New York – the same hearing as is featured in "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "B-3). In pertinent part, Surrogate Gelfand stated:

> "...you may wonder why on a subject so critical to the professional life and death of jurists it is so difficult to obtain public imput from sitting judges. I can assure you the commission is a subject that is frequently, deeply and regularly discussed by sitting judges in private. These judges fear to express their views in public. This understandable timidity is evidenced by a comment made to me by the Commission's Administrator, Gerald Stern. His comment was that he has a file on every judge in the State and that he can get any judge of any court at any time. He warned me that trial judges should not draw any security from the review authority of the Court of Appeals."

Because of the importance of Surrogate Gelfand's written statement to the seminal issue of the Commission's corruption, a copy is annexed hereto as Exhibit "D".

second Article 78 proceeding and in the case of *Doris L. Sassower v. Kelly, Rode & Kelly, et al.* (NY Co. #93-120917) is illustrative, it is reasonable to believe that judicial misconduct complaints would have been filed against him.

It deserves note that in the summer of 1997, when the First Department Judicial Screening Committee was purportedly screening Justice Crane for designation to an Appellate Division vacancy, CJA opposed his candidacy based on the *Kelly, Rode* case and provided the Committee with pertinent portions of the record to support its statement as to what the full record showed:

> "Judge Crane's absolute unfitness, not only for his candidacy for elevation to the Appellate Division, but for the position he currently holds. His contempt for 'the rule of law' and fundamental due process merits removal!" (Exhibit "B-3" to CJA's January 7, 1998 letter to Chief Judge Judith Kaye).

Justice Crane may have become aware of such document-supported opposition, if not from the Committee itself, then from CJA's January 7, 1998 letter to Chief Judge Judith Kaye – copies of which were provided to a wide array of public persons and entities, including the Governor (Exhibit "E")[12].

In *Kelly, Rode & Kelly, et al.*, Justice Crane wholly subverted the judicial process by rendering and adhering to fraudulent judicial decisions – quite possibly because it fit within an overall scheme of judicial retaliation against judicial whistle-blowing attorney Doris Sassower. *Kelly, Rode* will be separately discussed. For present purposes, it is important because it shows that Administrative Judge Crane was not innocent as to what it takes for a judge to dump a meritorious case when personal or political considerations so mandate. All that is needed is a judge ready and willing to fabricate the facts and disregard the law in a fraudulent judicial decision.

Before steering the case to Justice Wetzel, Administrative Judge Crane knew, for a certainty, that the ONLY way the Commission was going to survive was by a fraudulent decision "throwing" the case. The record made that abundantly clear. In

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[12] As CJA's January 7, 1998 letter reflects (pp. 2-3), at the same time as the First Department Judicial Screening Committee was considering Justice Crane's candidacy for the Appellate Division, it was also considering the candidacy of New York Supreme Court Justice Herman Cahn, whose fraudulent judicial decision had "thrown" the first Article 78 proceeding. Consequently, CJA's opposition to Justice Crane was combined with opposition to Justice Cahn, as well.

a fully-documented omnibus motion, the petitioner had demonstrated that the Commission, represented by the Attorney General, had NO legitimate defense and that she was not only entitled to summary judgment, but to monetary sanctions and disciplinary and criminal referral against both the Commission and the Attorney General because of their flagrantly fraudulent defense conduct, of which not only the Commission was fully aware, but Attorney General Spitzer, *personally* through his highest ranking executive staff. Indeed, petitioner's omnibus motion demonstrated that Attorney General Spitzer's defense fraud followed the pattern particularized in "*Restraining 'Liars'*" (Exhibit "B-3") as its *modus operandi* – a *modus operandi* of which Mr. Spitzer had *direct personal knowledge*[13]. Thus, his post-default dismissal motion on behalf of the Commission was based on falsification, distortion, and concealment of ALL the material allegations of her verified petition AND, to support its fraudulent *res judicata*/collateral estoppel defense, on falsification, distortion, and concealment of ALL the material allegations of the verified petition in the first Article 78 proceeding, as well as of the facts pertaining to the decision dismissing it[14]. Also demonstrated were a series of *threshold* issues showing that the dismissal motion was not even properly before the court, *inter alia*: (1) Attorney General Spitzer was disqualified from representing the Commission both for violation of Executive Law §63.1 and multiple conflicts of interest[15]; (2) the Commission was in default, and had not met the legal requirement for being relieved of its default, i.e. a reasonable excuse for its default and a meritorious defense – which, moreover, it could not meet[16]; and (3) the judge who had wrongfully relieved the Commission of its default had no jurisdiction to do so, having *already* recused herself – and, further, the additional time she afforded it was "to answer"[17], not move. Indeed, the dismissal motion was

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13 *See* petitioner's July 28, 1999 affidavit in support of her omnibus motion, ¶¶46-50.

14 *See* petitioner's July 28, 1999 memorandum of law in support of her omnibus motion, and, in particular, pp. 38-58.

15 *See* petitioner's July 28, 1999 affidavit in support of her omnibus motion, ¶¶3-103; her July 28, 1999 memorandum of law, pp. 1, 33-37; and her September 24, 1999 reply memorandum of law, pp. 24-35.

16 *See* petitioner's July 28, 1999 affidavit in support of her omnibus motion, ¶¶104-113; her June 28, 1999 memorandum of law, pp. 1, 96-99; and her September 24, 1999 reply memorandum of law, pp. 36-43.

17 *See* petitioner's September 24, 1999 reply memorandum of law, pp. 36-37, 42; and her November 5, 1999 letter to Justice Kapnick, Exhibit "B", p. 2.

not before the court for yet another reason – it was NOT on the court's computerized record, having never been filed with the Clerk's office[18].

From the record before him, Administrative Judge Crane also knew that his previous attempt to "steer" the case had failed when his handpicked choice, Acting Supreme Court Justice Ronald Zweibel, had recused himself. The record showed the reason. It was in response to petitioner's oral application at the June 14, 1999 conference[19], held by Justice Zweibel upon being assigned to the case, that he had a proscribed interest in the proceeding within the meaning of Judiciary Law §14. This was not only due to the fact that he was under the disciplinary jurisdiction of the Commission, but that he was dependent on the Governor by reason of the expiration of his appointive Court of Claims term just two years away. Petitioner asserted that were Justice Zweibel to have "passing respect for the facts and the law in this case" he would necessarily expose the Governor's complicity in the Commission's corruption and in fraud in connection with Justice Rosenblatt's nomination and confirmation to the Court of Appeals (Exhibit "G", pp. 8-13; *see* p. 11, lns. 6-7). The transcript of that conference also reflected Justice Zweibel's legitimate concern by his inquiry of petitioner as to "what category of judge do you think would be appropriate to resolve this matter, since Court of Claims judges are up for appointment?" (Exhibit "G", p. 22, lns. 19-21) – as well as petitioner's response: judges whose appointive and elective terms are not nearing expiration (Exhibit "G", p. 23, ln. 9-16). This she subsequently expanded to include two additional categories: judges not seeking to be reappointed or re-elected at the expiration of their terms and already retired judges[20].

It was in face of Justice Zweibel's *own* recognition, reflected by his recusal on October 8, 1999 (Exhibit "H", p. 3, lns. 13-20)[21], that, at very least, his soon expiring Court of Claims term gave an appearance that his dependency on the Governor would interfere with his ability to be fair and impartial AND petitioner's

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18 *See* petitioner's December 17, 1999 letter to Justice Wetzel, Exhibit "B".

19 The full transcript of the June 14, 1999 conference is Exhibit "O" to petitioner's July 28, 1999 affidavit in support of her omnibus motion. Pertinent pages of the transcript are annexed hereto as Exhibit "G".

20 *See* petitioner's September 24, 1999 reply affidavit in support of her omnibus motion: Exhibit "D", at p. 6.

21 The October 8, 1999 transcript is also Exhibit "C" to petitioner's November 5, 1999 letter to Justice Barbara Kapnick.

stated view as to unobjectionable categories of judges best equipped to handle this politically-explosive case (Exhibit "G", pp. 23) that Administrative Judge Crane "steered" the case to Justice Wetzel, whose already expired Court of Claims term gave him an immediate and acute dependency on the Governor.[22]

From petitioner's December 2, 1999 recusal application, Administrative Judge Crane could see that within two weeks of having "steered" the case to Justice Wetzel, he was already manifesting his disqualifying self-interest and bias. As the application pointed out (at pp. 3-4), unlike three of his judicial predecessors, whose receipt of the case was marked by their *sua sponte* recognition of their duty to make disclosure and recuse themselves, Justice Wetzel made no disclosure as to issues whose relevance to the question of recusal was evident from the record before him. The most obvious issue was the date on which his Court of Claims term expired – about which petitioner had asked his staff on November 15, 1999, immediately upon learning of his assignment to the case. Not only had Justice Wetzel failed to *sua sponte* disclose the date, but he had allowed his law secretary to mislead petitioner about it. He then denied her request for a conference, whose purpose petitioner had identified as facilitating disclosure of information germane to recusal, and peremptorily fixed a December 6, 1999 date "after which time the matter will be fully submitted". This, without concern as to whether the non-lawyer *pro se* petitioner would have sufficient time to present a written application for his disqualification – for which she would have to obtain information from independent sources, in light of his wilful non-disclosure.

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[22] Each time Administrative Judge Crane interfered with random assignment of the proceeding, it was to direct it to gubernatorially-appointed Court of Claims judges whose terms were either nearing expiration or already expired. Obviously, he could just as easily have directed the case to non-appointed Supreme Court justices or to appointive judges with sufficient years on their terms to insulate them from political pressure. That appointed judges are particularly susceptible to pressures from appointive authorities is graphically described by the January 18, 2000 column of Juan Gonzalez in the Daily News, *"Pols Rule Courtrooms: Acting Judges Owe Their Jobs to Pataki, Rudy"*, quoting one veteran Brooklyn Supreme Court Justice as saying: "Most of the judges are scared, *and the actings are in total mortal fear*". (Exhibit "I"). Justices Zweibel and Wetzel are both Acting Supreme Court Justices.

As the record reflects, petitioner was completely unaware that Justice Zweibel had not been randomly-assigned until more than three weeks after he recused himself, when she learned that fact in the course of preparing the recitation appearing on the first page of her November 5, 1999 letter to Acting Supreme Court Justice Kapnick. (*See* also fn. 13 to petitioner's December 2, 1999 application for Justice Wetzel's recusal).

From petitioner's December 2, 1999 recusal application (at pp. 2-3), Administrative Judge Crane could also see the related issue petitioner had wished to present at the conference: an oral application that the proceeding be referred to Administrative Judge Crane with a recommendation for special assignment "to a retired or retiring judge, willing to disavow an intention of judicial and/or political appointment" – and that this application was based on:

> "judicial self-interest in covering up for a corrupted Commission on Judicial Conduct, already manifested by fraudulent judicial decisions 'throwing' two separate Article 78 proceedings against the Commission, each brought in Supreme Court, New York County, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141) and *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655)."

Even *before* "steering" the case to Judge Wetzel, Administrative Judge Crane knew that Doris Sassower's Article 78 proceeding against the Commission had been "thrown" by a fraudulent decision of New York Supreme Court Justice Herman Cahn. Quite apart from any independent source of that knowledge[23], the initial allegations of the verified petition in the second Article 78 proceeding concerned that fraudulent judicial decision, as to which a substantiating three-page analysis was annexed as part of Exhibit "A"[24]. The accuracy and correctness of the analysis

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23 In addition to CJA's very public advocacy on the subject (Exhibit "B"), and its less public opposition to Justice Cahn's Appellate Division candidacy, which was combined with opposition to Justice Crane's own Appellate Division candidacy (Exhibit "E", pp. 2-3), Administrative Judge Crane has his chambers (Room 669) in proximity with those of Justice Cahn (Room 615).

24 Administrative Judge Crane would have necessarily reviewed the verified petition at the outset of the proceeding *if*, as provided for in the May 18, 1999 recusal order of Justice Lebedeff (Exhibit "C-2"), he was consulted by IAS Motion Support for purposes of determining whether the second Article 78 proceeding was "identical, or virtually identical" to the first Article 78 proceeding and therefore should be referred to Justice Cahn. Absent such determination – and the propriety of such referral – there was *no* basis for Administrative Judge Crane to have interfered with random assignment of the case.

Even as to this, petitioner sought to object to Administrative Judge Crane's involvement – as reflected by the transcript of the May 17, 1999 proceeding before Justice Lebedeff (Exhibit "F", p. 11, ln. 24). It is because of Administrative Judge Crane's actual and apparent conflict of interest that petitioner's request to have him specially assign the case to a retired or retiring judges was in the context of her *explicit* request for a conference. This, so that any such assignment could be made openly, with due consideration to minimizing those conflicts. [*See* pp. 3, 9 of petitioner's December 2, 1999 application for Justice Wetzel's recusal].

was set forth in the verified petition itself (at ¶FOURTEENTH)– and it was not denied or disputed by either the Attorney General or Commission. Petitioner had also supplied a copy of the record of Doris Sassower's Article 78 proceeding as part of her omnibus motion[25].

Then, within the same week as Administrative Judge Crane received the December 2, 1999 letter alerting him to the fact that Mr. Mantell's Article 78 proceeding had also been "thrown", he received a hand-delivered copy of petitioner's December 9, 1999 letter to Justice Wetzel. The letter annexed as Exhibit "D" a 13-page analysis of the fraudulent judicial decision of New York Supreme Court Justice Edward Lehner in the case[26] and reflected (at p. 9) that petitioner had supplied a copy of the record of Mr. Mantell's proceeding to Justice Wetzel.

Administrative Judge Crane could also see from the December 2, 1999 recusal application (at pp. 8-9) that a further goal of petitioner's proposed conference, which Justice Wetzel had rejected, was to enable the court to discharge its mandatory "Disciplinary responsibilities" under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct. Such was essential in light of the defense misconduct of Attorney General Spitzer and the Commission, rising to a level of criminality, and the complete inaction of the public agencies and officers listed on petitioner's Notice of Right to Seek Intervention: the Manhattan District Attorney, the U.S. Attorney for the Southern District of New York, the New York State Ethics Commission, in addition to the Attorney General, as "the People's Lawyer" -- each of whom had received from CJA criminal and disciplinary complaints against Attorney General Spitzer *personally* and the Commission based on their litigation fraud in this second Article 78 proceeding, as well as in *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission* – substantiated by copies of the record of those cases.

As pointed out by petitioner's December 2, 1999 application for Justice Wetzel's recusal:

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25 An inventory of the file of Doris Sassower's Article 78 proceeding against the Commission is annexed to petitioner's July 28, 1999 affidavit in support of her omnibus motion.

26 Administrative Judge Crane also has his chambers (Room 669) within proximity of those of Justice Lehner (Room 629).

> "The Court's failure to even request that the proposed intervenors furnish a sworn statement of their intentions prior to imposing its arbitrary December 6th deadline 'after which time the matter will be considered fully-submitted' (emphasis in the original) – let alone to apprise them of the December 6th deadline so that they might be guided accordingly – supports a view that the Court, intent on 'throwing' the case to advance its own self-interest and that of the Governor, does not want to facilitate their intervention, which would prevent that from happening. Nor does it want to foster investigation of CJA's ethics and criminal complaints, since this would expose the fraudulent defense tactics which the Court must cover-up if this case is to be 'thrown'." (at p. 9).

It may be presumed that following receipt of petitioner's December 2, 1999 and December 9, 1999 letters[27], Administrative Judge Crane would have had contact with Justice Wetzel and/or Justice Wetzel would have had contact with him about the letters – if for no other reason than to ensure that they did not provide inconsistent responses. Certainly there had to be a response from Administrative Judge Crane since only he could answer petitioner's inquiry as to the basis upon which he had interfered with the random assignment of the case – *to which petitioner was plainly entitled*. Likewise, whether, prior to directing the case to Justice Wetzel, he was aware of the background facts about Justice Wetzel, as set forth in her December 2, 1999 recusal application. Presumably, Administrative Judge Crane would not have hesitated to respond IF there were a legal basis for what he had done and IF his selection of Justice Wetzel was either without knowledge of any of his disqualifying background history – or if Administrative Judge Crane disagreed that such history was disqualifying. Certainly, the December 2, 1999 recusal application afforded Administrative Judge Crane a sound basis to recall his "directive" as improvidently, if not unlawfully, given and to schedule a conference at which arrangements could be made to assign the case to a fair and impartial judge. From the record, it is fair to assume that the reason he wilfully ignored petitioner's legitimate inquiry and took no action to remove the case from Justice Wetzel was because he knew that letting the case go to a fair and impartial judge would be the "death knell" for the Commission and for Attorney General Spitzer *personally*, with criminal ramifications for a host of complicitous public officers – the highest being the Governor himself.

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[27] Additionally, Administrative Judge Crane was sent a copy of petitioner's December 17, 1999 letter to Justice Wetzel, to which – as with petitioner's December 2nd and December 9th letters – he was an indicated recipient.

The January 31, 2000 Decision/Order

By decision/order dated January 31, 2000, Justice Wetzel made manifest his actual bias by rendering the fraudulent judicial decision for which Administrative Judge Crane had "steered" him the case. Dispensing with his fact-finding function in favor of false characterization and defamatory innuendo, Justice Wetzel: (1) denied petitioner's December 2, 1999 recusal application; (2) dismissed the Article 78 proceeding; and, (3) without notice or opportunity to be heard, enjoined the petitioner and *non-party* Center for Judicial Accountability, Inc. from initiating any future "related" proceedings -- of whose "relatedness" Justice Wetzel designated himself judge.

Denial of Petitioner's December 2, 1999 Recusal Application

Because any one of the grounds set forth in petitioner's December 2, 1999 recusal application was sufficient to require Justice Wetzel's recusal, his decision conceals *every* ground and the supporting evidentiary facts. Albeit conceding that the application and its attachments "contain specific allegations of impropriety" (at p. 3) – *not one* of these "specific allegations" is identified.

Indeed, it is only in a sentence *preceding* discussion of the December 2, 1999 application that Justice Wetzel's decision, referring to petitioner's alleged applications to disqualify each of his judicial predecessors, singles out from her unidentified so-called "potpourri"[28] of grounds against them:

> "petitioner's categorical allegation that this action somehow implicates the Governor, and, therefore all judges who are subject to reappointment by the Governor are ipso facto disqualified" (at p. 2).

Apart from the fact that this self-serving gloss falsely infers: (1) that petitioner was not

[28] One of the "potpourri" was that Court of Claims Judge Juanita Bing Newton was the Administrative Judge of the First Judicial District Supreme Court, Criminal Branch, having power over judges with criminal calendars in Supreme Court/NY County. Petitioner's June 14, 1999 oral application for Justice Zweibel's recusal had pointed out that Judge Newton was not only a Commission member, but that, based on her complicity in the Commission's corruption, CJA had opposed her reappointment to the Court of Claims (Exhibit "G", p. 13, ln. 8 – p. 14, ln. 9). This ground for recusal seems no less significant now that Judge Newton has been promoted to Deputy Administrative Judge for Justice Initiatives – as may be seen from the fact that Justice Wetzel, who – like Justice Zweibel, has a substantial criminal calendar -- goes out of his way to identify her by name in his decision (at p. 5).

specific as to how the Governor is implicated[29]; (2) **conceals that such is in criminal** conduct; and (3) expands the disqualification to apply to all gubernatorially-appointed judges, rather than all judges nearing expiration of their appointive or elective terms who were not retiring and not willing to disavow an interest in judicial and/or political appointment, *the decision never relates this gloss to the December 2, 1999 recusal application and Justice Wetzel.* Thus, the decision nowhere even mentions that Justice Wetzel is himself subject to gubernatorial reappointment – or its immediacy by virtue of his already-expired Court of Claims term – or that the repercussions of the case on the Governor were eminently clear to Justice Zweibel, who, with two years remaining to his Court of Claims term, had recused himself to preserve the appearance of impartiality.

In lieu of identifying and confronting the grounds for his recusal in petitioner's December 2, 1999 application and acknowledging the basis for Justice Zweibel's recusal, reflected by the record, Justice Wetzel diverts attention from these germane issues. He does this by portraying himself as one of petitioner's many victims:

> "It is noteworthy that this court finds itself in wide company as a target of allegations by this petitioner. These papers are replete with accusations against virtually the entire judiciary, the Attorney General, the Governor, and the respondent." (at p. 3)

Justice Wetzel then purposefully leaves these "allegations" and "accusations" unidentified so as to create the false impression that, for no good reason, petitioner is taking random buckshots at everyone. In fact, the opposite is true.

Thus, the December 2, 1999 recusal application contended that:

(1) virtually every state judge is under the Commission's disciplinary jurisdiction – with a resulting self-interest in the proceeding (at pp. 2-3) -- and that judges whose appointive or elective terms are nearing expiration have an additional self-interest by their dependency on political powers such as the Governor, who is implicated in the proceeding and controls judicial selection (pp. 4, 6);

(2) the Attorney General's fraudulent defense tactics on behalf of the Commission

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[29] *Cf.* petitioner's December 9, 1999 letter to Justice Wetzel, which compiled for him: "Record Support for the criminal implications of this Article 78 proceeding upon Governor Pataki: ¶¶ELEVENTH-SIXTEENTH (*See* Exhibits 'A' and 'B'), TWENTY-SEVENTH (*See* Exhibit 'E', p. 2), THIRTIETH of the Verified Petition; and pp. 20-22 of CJA's March 26, 1999 ethics complaint, annexed as Exhibit 'E' to [petitioner's] July 28, 1999 affidavit in support of [her] omnibus motion."

in this Article 78 proceeding, as well as in *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission* – known to Attorney General Spitzer *personally* -- required Justice Wetzel to discharge his mandatory disciplinary responsibilities under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct -- which, by his denial of petitioner's conference request and failure to make inquiry of the proposed intervenors either as to intervention or investigation of CJA's filed criminal and disciplinary complaints against the Attorney General and Commission, he showed his unwillingness to do (at pp. 8-9);

(3) the Governor had worked in the same law firm as Justice Wetzel, and, in 1994, Justice Wetzel held a fundraiser for him at his home. Thereafter, the Governor rewarded Justice Wetzel with a Court of Claims judgeship, whose appointive term expired on June 30, 1999 (pp. 5-8); and

(4) the Commission on Judicial Conduct was the beneficiary of fraudulent judicial decisions of the Supreme Court/New York County in *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission* – warranting steps to ensure the integrity of the judicial process in this proceeding by a recommendation to Administrative Judge Crane that petitioner's Article 78 proceeding be specially assigned to a retired or retiring judge, willing to disavow an intention of future judicial and/or political appointment (at pp. 3, 8).

By this combination of concealment and derogatory innuendo, Justice Wetzel is able to pretend that petitioner is "making accusations against a court" and that she has not presented an "objective basis" for recusal (p. 3, emphasis added), but "simply a litigant's bald assertion" (at p. 3). He then proclaims, *without* reference to a single recusal ground presented by the December 2, 1999 application, that "this court has no conflict, in fact or in 'appearance'" (at p. 3) and besmirches petitioner's application as "devoid of merit, in law or in fact" (at p. 4) and "a baseless recusal motion" (at p. 4).

These conclusions, for which Justice Wetzel provides *no* illustrative factual or legal support – and which fly in the face of the evidentiary facts and legal support in petitioner's application, *all* of which he conceals -- are laced with Justice Wetzel's self-praise for his fidelity to the highest standards required of a judge:

> "This Court must and indeed has ***seriously considered*** the application for recusal and is acutely aware that it is not only actual

> conflicts which compel recusal, but also the appearance of conflicts." (at p. 3, italics added, underlining in original).

This is a plain deceit -- as any *"serious[] consider[ation]"* of the application would have required Justice Wetzel to identify and discuss its content. Indeed, the decision in *U.S. v. Bayless*, NYLJ, 1/21/00, p. 25 -- the ONLY legal authority Justice Wetzel cites on the recusal issue (at p. 4) – shows the Second Circuit's repeated emphasis that judicial disqualification must be based on the "record facts", to which careful legal analysis is applied[30]. Justice Wetzel, however, does not use the decision for that relevant purpose – but, rather, to grandstand, *without* facts, that "recusal is not intended to be 'used by judges to avoid sitting on difficult or controversial cases"[31].

Justice Wetzel makes *no* mention of the alternative relief requested by petitioner's December 2, 1999 recusal application: (1) disclosure pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct; and (2) time within which to make a formal recusal motion incorporating that disclosure. Such unacknowledged requested relief, his decision denies *sub silentio*.

Dismissal of the Article 78 Proceeding

Having so self-servingly and disingenuously disposed of recusal, the next matter for Justice Wetzel's adjudication was petitioner's omnibus motion. Indeed, *as a matter of law*, the omnibus motion had to be decided next because, like recusal, it dealt with *threshold* issues. These were: (1) that Attorney General Spitzer was

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30 "... 'the existence of appearance of impropriety is to be determined... by examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge.'", citing *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1313 (2d Cir. 1988), citing legislative history of the federal recusal statute, 28 U.S.C. §455(a) (emphasis added). at p. 29 (col. 5).

31 The Second Circuit immediately follows this by the statement "In the instant case, the parties do not dispute this legal standard, but differ as to whether, on the facts before us, recusal was warranted." (at p. 29, col. 6, emphasis added). It then – as previously – recites the specific facts of the *Bayless* case and bases its decision on *those facts and those facts alone*: "We hold merely that, on the facts before us, Judge Baer's decision not to recuse himself was not plain error, in part because Bayless made a strategic choice not to move for his recusal until he had ruled against her." p. 30 (col. 1).; "We hold merely that, on these facts, Judge Baer's decision not to recuse himself, when he was not asked by the defendant to do so, was not plain error." p. 30 (col. 2).

disqualified from representing the Commission for violation of Executive Law §63.1 and multiple conflicts of interest; (2) that the Attorney General's ***uncalendared*** dismissal motion was not properly before the court because the Commission was in default -- of which it had been unlawfully relieved by a judge who had already recused herself and whose extension was "to answer", not move; and (3) that even were the dismissal motion properly before the court, it could not be granted because, from beginning to end and in virtually every line, it was fashioned on material falsification, distortion, and omission – mandating not merely costs and monetary sanctions pursuant to Part 130-1.1 of the Rules of the Chief Administrator, but disciplinary and criminal referral of the Attorney General and Commission based on their "fraud and deceit on the Court and Petitioner, as well as the crimes of, *inter alia*, perjury, filing of false instruments, conspiracy, obstruction of the administration of justice, and official misconduct"[32]. This, pursuant to the Court's mandatory "Disciplinary responsibilities" under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct[33].

Justice Wetzel makes *no* findings as to the omnibus motion, whose relief he incompletely and erroneously recites (at p. 2)[34] -- other than that it is "an inch thick" (at p. 3). Even this is untrue. The omnibus motion is perhaps the bulk of the Article 78 file, which the decision claims to "exceed fourteen inches in height and required two court officers to deliver to chambers" (at p. 3). Petitioner's 56-page moving affidavit, with annexed documentary exhibits, was itself **1-1/2 inches** and was substantiated by **6 inches** of additional documentation contained in four free-standing file folders. This included a copy of the file of *Doris L. Sassower v. Commission*, measuring 1-3/4 inches thick. Additionally, petitioner's 99-page moving memorandum of law, demonstrating, line-by-line, that the Attorney General's dismissal motion was founded on endless falsification and material omission, was just over **½ inch thick**. Petitioner's omnibus motion also included

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32 *See* petitioner's notice of motion for omnibus relief, at p. 2.

33 *See* petitioner's July 28, 1999 memorandum of law in support of her omnibus motion, pp. 5-12; petitioner's September 24, 1999 reply memorandum of law, pp. 13-20.

34 The decision (at p. 2) omits that petitioner's omnibus motion requested conversion of the Attorney General's dismissal motion to a motion for summary judgment in petitioner's favor pursuant to CPLR §3211(a). It also falsifies that the omnibus motion sought nullification of an "order" of Justice Lebedeff granting the Commission an extension of time – when, as highlighted by petitioner's reply memorandum of law (at p. 37) no "order" was alleged by the omnibus motion, as none existed.

her 9-page reply affidavit, whose annexed exhibits added **¾ inch**, and her 63-page reply memorandum of law, adding another **¼ inch** by its line-by-line showing of the flagrant falsification and material omission in the Attorney General's reply/opposing memorandum.[35]

Nor does Justice Wetzel make *any* findings as to the Attorney General's dismissal motion -- which, in the penultimate paragraph of the decision (at p. 6), he grants "in all respects". This, *without* ever having identified, let alone discussed, even one of those "respects"[36]. Indeed, Justice Wetzel *never* refers to the dismissal motion in the brief two paragraphs of the decision (at pp. 4-5) in which, following denial of the recusal application, he exclusively rests on Justice Cahn's decision in *Doris L. Sassower v. Commission* and Justice Lehner's decision in *Michael Mantell v. Commission* to dismiss the petition.

In pretending that Justice Cahn's decision bars petitioner on *res judicata* and collateral estoppel grounds, Justice Wetzel does *not* identify a single supporting evidentiary fact nor the fundamental adjudicative standards required of a court in determining whether the factual predicates for those preclusive defenses exist. Such standard is reflected in *Gramatan Home v. Lopez*, 46 NY2d 481 (1979), a case twice cited in the Attorney General's dismissal motion:

> "Collateral estoppel... is but a component of the broader doctrine of *res judicata*... As the consequences of a determination that a party is collaterally estopped from litigating a particular issue are great, *strict requirements for application of the doctrine must be satisfied* to insure that a party not be precluded from obtaining at least one full hearing on his or her claim. ... First, it must be shown that the party against whom collateral estoppel is sought to be invoked had a full and fair opportunity to contest the decision said to be dispositive of the present controversy. Additionally, there must be proof that the issue in the prior action is identical, and thus decisive, of that in issue in the current action [*Schwartz v. Public Administrator of County of Bronx*], (24 NY2d, at p. 71)." (*Gramatan*, at 485, emphasis added).

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35 Petitioner's submission of a copy of the file of *Michael Mantell v. Commission*, which she provided with her December 9, 1999 letter to Justice Wetzel, added another 1 inch to the record of this proceeding.

36 Immediately after granting the Attorney General's dismissal motion "in all respects", the decision states "All of petitioner's other requests for relief are denied" (at p. 6). This is without having identified or discussed *any* of the facts pertaining to those "other requests for relief".

In addition to citing NO legal authority whatever to support his application of ***res judicata*** and collateral estoppel dismissal, Justice Wetzel conceals the absence of the factual predicates for such defenses. He does this by substituting bald conclusions based on falsifications even more flagrant than those in the Attorney General's dismissal motion. Thus, by identifying Doris Sassower's Article proceeding against the Commission only as "Sassower v. Commission on Judicial Conduct, Index No. 109141/95", Justice Wetzel purports:

> "In that case, *the same petitioner* sought ***virtually the same relief*** requested herein, and the decision addressed the *same issues*." (at p. 4, emphasis added)

Even the Attorney General's dismissal motion had not pretended, as does Justice Wetzel, that the named petitioners in the two Article 78 proceedings were "the same" – contenting himself with misrepresenting that both the individually-commenced Article 78 proceeding of Doris L. Sassower and the individually-commenced Article 78 proceeding by Elena Sassower were on behalf of the corporation, Center for Judicial Accountability, Inc. (CJA). Petitioner's memorandum of law in support of her omnibus motion (at pp. 65-66) showed this to be completely untrue.

Nor had the Attorney General's dismissal motion, which sought to bar petitioner's claims "in whole or in part", done more than pretend that the first three of her six claims for relief had been raised by petitioner and addressed by Justice Cahn's decision in the first Article 78 proceeding. Petitioner's memorandum of law in support of her omnibus motion detailed this (at pp. 66-67), with clarifying facts as to those first three (at pp. 62-65, 67, 85-6).

Justice Wetzel's wholly conclusory and legally-deficient invocation of *res judicata* to dismiss petitioner's proceeding in its entirety, in ***utter disregard*** of the identity of the different parties and the different and more extensive issues raised in the second Article 78 petition – and without *any* examination of the issues Justice Cahn's decision actually determined in relation to that prior petition – is only surpassed by his completely bald declaration that "the doctrine of collateral estoppel applies" (at p. 4). Such invocation not only flies in the face *Gramatan, supra,* but the legal authority presented by petitioner[37], that the first inquiry on collateral

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[37] *See* p. 59 of petitioner's September 24, 1999 reply memorandum of law in support of her omnibus motion

estoppel is "whether it is being used only against one who has already had his day in court" – for which, together with a careful analysis to establish "identity of issues", "all the circumstances of the prior action must be examined to determine whether the estoppel is to be allowed." Siegel, New York Practice, §462 (1999 ed., pp. 742-3).

Justice Wetzel examines *none* of the circumstances pertaining to Doris Sassower's Article 78 proceeding – either for *res judicata*/collateral estoppel purposes or for his additional endorsement of Justice Cahn's decision as "sound authority in its own right for the dismissal of the petition." It certainly cannot be "sound authority" when, as detailed in petitioner's *uncontroverted* analysis of the decision, annexed as part of Exhibit "A" to the verified petition, it is fraudulent. Justice Wetzel wholly conceals petitioner's analysis – as to which he makes *no* findings – concealing, as well, petitioner's undisputed assertion that fraud vitiates *res judicata* and collateral estoppel[38].

Likewise, in endorsing Justice Lehner's decision in Mr. Mantell's proceeding as "a carefully reasoned and sound analysis of the very issue raised in the within petition" (at p. 5), Justice Wetzel wholly conceals petitioner's *uncontroverted* analysis that Justice Lehner's decision is also fraudulent, as to which he likewise makes *no* findings. This includes that portion of petitioner's analysis pertaining to "Justice Lehner's finding that mandamus is unavailable to require the respondent to investigate a particular complaint"[39] – which "finding" Justice Wetzel "adopts" *without* discussion.

The extent of Justice Wetzel's acknowledgement of petitioner's position concerning *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission* is a single sentence: "petitioner seeks to distinguish or disregard these two cases on the basis that they were 'corrupt' decisions and both cases were 'thrown'" (at p. 5) – which he rejects in the very same sentence, as "a contention which speaks volumes about the frivolousness of this petition" (at p. 5).

This is not just a non-sequitur, it is a deceit. Petitioner's *uncontroverted*, fact-specific, file-supported analyses represent more than a "contention". Nor is there

[38] *See* petitioner's July 28, 1999 memorandum of law in support of her omnibus motion, pp. 62-65; petitioner's September 24, 1999 reply memorandum of law, pp. 57-58.

[39] *See* petitioner's analysis of Justice Lehner's decision, annexed to her December 9, 1999 letter to Justice Wetzel: Exhibit "D", at pp. 5-13.

anything "frivolous" about the verified petition, as may be seen from Justice Wetzel's failure to discuss *any* of its six separate claims for relief. Indeed, Justice Wetzel obscures these six claims for relief by his summary at the outset of the decision (at pp. 1-2), taken *verbatim* from defendant's dismissal motion[40], notwithstanding its false and misleading nature was objected-to in petitioner's omnibus motion.[41] Discussion of these claims for relief would make evident their substantive nature. It would also make plain that despite the decision's repeated use of the singular "issue"[42] to create the false impression that the verified petition presents only one, the verified petition presents a series of issues which, quite apart from the fraudulent decisions of Justice Cahn and Lehner, are *not* precluded by the decisions in either case[43].

Enjoining Petitioner and the Non-Party CJA and Appointing Himself Judge of their Compliance

Having perverted fundamental adjudicative standards and falsified the factual record to deny petitioner's December 2, 1999 recusal application and to dismiss the petition – and having ignored the flagrant and unremitting defense fraud and misconduct of the Attorney General and Commission, which, pursuant to §100.3D

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40 *See*, the identical recitations appearing at p. 2 of Assistant Attorney General Michael Kennedy's affirmation in support of the dismissal motion and pp. 2-3 of the "Preliminary Statement" in his memorandum of law. Justice Wetzel's *verbatim* repetition even includes the Attorney General's erroneous use of "Harold" (in #3) as the first name for Commission Chairman, Henry Berger, and the exhibit reference for petitioner's February 3, 1999 complaint (in #4). Justice Wetzel makes only one change to the Attorney General's simplistic and misleading recitation: at #5 he changes the word "requests the Governor to appoint a special prosecutor" to "directs the Governor".

41 Petitioner's objections to this recitation appears at pp. 16-19 of her July 28, 1990 memorandum of law in support of her omnibus motion. Pp. 66-67 reflects its detrimental consequences in obscuring that the Attorney General's invocation of *res judicata*/collateral estoppel to bar petitioner's claims "in whole or in part" were actually limited to the first three claims.

42 *See* p. 4 of Justice Wetzel's decision: "The *issue* raised in this Article 78 proceeding is a matter which was previously resolved by Justice Cahn of this Court..." (emphasis added) and p. 5: "Judge Lehner's decision is a carefully reasoned and sound analysis of the very *issue* raised in the within petition." (emphasis added).

43 For the distinctions between Michael Mantell's petition and Elena Sassower's petition, *See* fn. 14 (at p. 8) of petitioner's December 9, 1999 letter to Justice Wetzel.

of the Chief Administrator's Rules Governing Judicial Conduct, required him "to take appropriate action" against them[44] -- Justice Wetzel proceeds to his ultimate outrage. He enjoins petitioner and the *non-party* Center for Judicial Accountability, Inc.[45] "from instituting any further actions or proceedings relating to the issues decided herein" and -- to forestall the possibility that such "actions" or "proceedings" might land before a fair and impartial judge -- appoints himself judge of their relatedness (at p. 5)

Here, too, Justice Wetzel, acts entirely on his own. The Attorney General made *no* request for an injunction in his dismissal motion or in any other submission. Nor had he requested any lesser sanctions. Justice Wetzel fails to identify that his injunction is entirely *sua sponte* and affords neither petitioner nor the *non-party* CJA the slightest notice or opportunity to be heard.

Justice Wetzel bases the supposed necessity of his injunction on the pretense that: "given the history of this litigation and its progeny, this court is compelled to put an end to the petitioner's badgering of the respondent and the court system." (at p. 6). It is for purposes of this despicable culminating falsehood that Justice Wetzel has constructed the entirety of his decision: melding a complete lack of specificity about this Article 78 proceeding and Doris Sassower's Article 78 proceeding with knowingly false and defamatory characterizations.

Thus, to present a false picture of petitioner as a harassing, vexatious litigant – essential to his ultimate injunction goal -- Justice Wetzel prefaces the issue of his recusal with a pretense that "the proceeding has been marked by petitioner's deluge of applications seeking recusal of each of the various assigned judges" (at p. 2),

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[44] In addition to petitioner's omnibus motion, including reply papers, seeking sanctions and disciplinary and disciplinary and criminal referral of the Attorney General and Commission, *see* petitioner's December 9, 1999 and December 17, 1999 letters to Justice Wetzel, seeking *additional* penalties against them for their continued fraudulent and deceitful conduct.

[45] As attested to by petitioner's July 28, 1999 affidavit in support of her omnibus motion (¶¶114-119) and her September 24, 1999 reply affidavit (at ¶¶16-19) and highlighted by her July 28, 1999 memorandum of law (at pp. 59-61) and her September 24, 1999 reply memorandum of law (at pp. 46-46), petitioner is NOT suing "as Coordinator of the Center for Judicial Accountability, Inc." (CJA), but individually. This fact was also attested to by CJA's Director, Doris L. Sassower in two affidavits, dated July 28, 1999 and September 24, 1999. Nonetheless, without addressing that fact or making any factual findings, Justice Wetzel opens his decision (at p. 1) by falsely stating that petitioner is suing "*as* the 'coordinator' of the Center for Judicial Accountability, Inc. (CJA)" (emphasis added).

thereafter fostering the impression that these applications account for some of the volume of petitioner's papers, "exceeding fourteen inches in height and requir[ing] two court officers to deliver to chambers" (at p. 4). *No* specificity is provided by Justice Wetzel as to this "deluge of applications" that petitioner has supposedly made. In fact, it does *not* exist.

Except for petitioner's December 2, 1999 application for Justice Wetzel's recusal, petitioner's ONLY other recusal application was to Justice Zweibel – and this she made orally (Exhibit "G", pp. 8-14). As to the four other judges who recused themselves, ALL did so *sua sponte*. Indeed, in addition to the three *sua sponte* recusals of Acting Supreme Court Justices Lebedeff, Tolub, and Weissberg – which petitioner's December 2, 1999 recusal application itself expressly identified (at pp. 3-4) – Acting Supreme Court Justice Kapnick also recused herself *sua sponte*[46].

Moreover, all the *sua sponte* recused judges -- with the exception of Justice Kapnick – made *sua sponte* disclosures. In the cases of Justices Lebedeff[47] and Weissberg[48], these disclosures were of disqualifying facts petitioner would have been completely unaware but for their forthright disclosures and in the case of

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46 Justice Kapnick's recusal, four days after being randomly-assigned to the case, was by a November 5, 1999 order (Exhibit "C-6"), which stated *no* reasons and which was issued *prior* to her receipt of petitioner's November 5, 1999 letter requesting a conference at which recusal issues, among others, might be discussed. It would appear that the decision is referring to this letter when it refers to a letter with "upwards of ten exhibits" (at p. 3) – since it is the only one fitting that description. However, its volume is not, as the decision claims, "in excess of two inches" (at p. 3), but is one inch.

47 Acting Supreme Court Justice Lebedeff recused herself *sua sponte* on May 17, 1999, the first time the case was on before her, after *sua sponte* disclosing her friendship and past professional relationship with the Commission's highest-ranking member, Justice Joy – against whom the verified petition sought specific relief. This is reflected by the transcript of the May 17, 1999 proceeding – which is the "record" to which Justice Lebedeff's May 18, 1999 recusal order refers (Exhibit "C-2"). [Pages 1-13 of the transcript are annexed hereto as Exhibit "F". The full transcript is Exhibit "K" to petitioner's July 28, 1999 affidavit in support of her omnibus motion.]

48 Acting Supreme Court Justice Franklin Weissberg recused himself *sua sponte*, four days after being randomly-assigned to the case. His October 29, 1999 recusal order (Exhibit "C-5") discloses, as its reason, that his "law secretary who was formerly a New York State Assistant Attorney General, supervised an appeal handled by that office in a related case involving the Sassower family."

Justice Tolub[49], disclosure was of facts of which petitioner only became aware subsequently.

Having distorted the record to falsely make it appear that petitioner is to blame for the supposedly unjustified recusals of all of his judicial predecessors, Justice Wetzel next tries to posture himself as a hero, standing up – where they did not – to petitioner's calumny. He is going to put a "halt" to "this squandering of judicial resources" resulting from their recusals (at p. 4). By refusing to recuse himself, he will courageously "join the long list of public officials and judges who are the objects of petitioner's relentless vilification." (at p. 4). "My oath of office does not permit me to unnecessarily grant a baseless recusal motion merely to avoid this unwanted and unwarranted ridicule." (at p. 4). *Nothing* in the record supports this gross defamation of petitioner.

The record is devoid of *any* "vilification" by petitioner of the judges in this case, "relentless" or otherwise. Nor would it make any sense for petitioner to vilify or subject to "unwanted and unwarranted ridicule" judges who, *sua sponte*, recused themselves within days of receiving the case or, as with Justice Carol Huff, was removed by Administrative Judge Crane – and whose May 24, 1999 assignment to the case (Exhibit "C-1", #003) was completely unknown to petitioner until more than five months later. Indeed, as to Justice Zweibel, who had the case the longest, from May 24, 1999 to October 8, 1999, the record shows petitioner expressing her appreciation to him throughout the proceeding -- including at the October 8, 1999 court appearance at which he recused himself:

> "May I take the occasion to thank the Court for its concern for the appearance of impartiality, which, of course ,is the foremost standard. Thank you very much, and for your courtesies extended to me during the course of this litigation. Thank you." (Exhibit "H", p. 4, lns. 3-8)

Even as to Justice Kapnick, who relieved the Commission of its default *after* recusing herself, the record shows that petitioner framed her objections in a perfectly proper fashion, both at the May 17, 1999 appearance before Justice Kapnick and, thereafter, in her omnibus motion[50].

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[49] Acting Supreme Court Justice Walter Tolub recused himself *sua sponte*, two days after being randomly-assigned to the case. His May 20, 1999 order (Exhibit "C-3") discloses, as its reason, "because petitioner's father, on a prior occasion, attempted to initiate a proceeding before the Commission."

[50] *See* petitioner's omnibus motion: her July 28, 1999 affidavit, ¶¶86, 104-113; Exhibit "K", pp. 13-16; her July 29, 1999 memorandum of law, pp. 1, 96-99; petitioner's September 24,

As with everything else, the decision provides *no* specificity as to which judges petitioner is allegedly "vilif[ying]", but, certainly it is the judges handling this proceeding who would be relevant to whether petitioner's conduct herein has been harassing and abusive.

Even as to other judges, however – and the decision claims that petitioner's "papers are replete with *accusations against virtually the entire judiciary...*" (at p. 3, emphasis added) – the record shows neither "vilification" nor "accusations". Rather, it shows petitioner's fact-specific, document-supported presentation in the context of her omnibus motion to disqualify the Attorney General for conflict of interest, in which she argued that the three cases featured in "*Restraining 'Liars'*" (Exhibit "B-3") – each integral to the Article 78 proceeding and each defended by the Attorney General by litigation fraud -- were "thrown" by fraudulent judicial decisions[51]. Petitioner's argument as to the first of these featured cases, *Doris L. Sassower v. Commission*, was additionally to show that Justice Cahn's decision therein could not serve as a basis for the *res judicata*/collateral estoppel defenses asserted in the Attorney General's dismissal motion – because fraud vitiates such defenses[52]. Thereafter, petitioner's addition of a fourth case, *Michael Mantell v. Commission*, was similarly substantiated by a fact-specific, document-supported presentation, both as to the Attorney General's litigation fraud in that Article 78 proceeding, and, thereafter, his litigation fraud in this proceeding where, in the face of explicit notice from petitioner that Justice Lehner's decision was a fraud, he nonetheless urged it upon Justice Wetzel[53].

That Justice Wetzel should rely on the decisions of Justice Cahn and Justice Lehner as the SOLE bases to dismiss petitioner's Article 78 proceeding reflects the relevance of petitioner's presentations.

It is in the complete absence *any* facts to support his false, defamatory, and wholly conclusory characterizations that Justice Wetzel cites the case of *Sassower v. Signorelli*, 99 AD2d 358 (2nd Dept. 1984) (at p. 6) as precedential legal authority

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1999 reply memorandum of law, pp. 36-43.

51 *See* petitioner's July 28, 1999 affidavit in support of her omnibus motion, ¶¶10-53.

52 *See* petitioner's July 28, 1999 memorandum of law in support of her omnibus motion, pp. 62-65.

53 *See* petitioner's November 5, 1999 letter to Justice Kapnick, at pp. 5-7; and petitioner's December 9, 1999 letter to Justice Wetzel, at pp. 8-10 and Exhibits "C" and "D" thereto.

for his injunction. Here, too, he purposefully omits *any* first name for the plaintiff, knowing full well that it will foster the misimpression that petitioner is that Sassower plaintiff and, thus, that his imposition of draconian injunction penalties is not the first against her. Petitioner's memorandum of law in support of her omnibus motion pointed out (at pp. 35-36) that the plaintiffs in *Sassower v. Signorelli* were petitioner's judicial whistle-blowing parents suing the Suffolk County Surrogate for his official misconduct and, further, that "[u]pon information and belief, such decision was without any hearing having been held by the lower court or Appellate Division as to the facts allegedly supporting the defamatory conclusory statements therein.".

The ONLY significance of *Sassower v. Signorelli* -- which the Attorney General cited in his dismissal motion, *without* discussion, as the sole case interpreting Executive Law §63.1, to support his rhetorical claim:

> "Any challenge that petitioner may raise to the authority of the Attorney General to represent the Commission in this proceeding is frivolous. The Commission is entitled to such representation and the Attorney General is statutorily authorized to defend this proceeding." (Attorney General's memorandum of law in support of his dismissal motion, p. 1, fn. 1)[54]

-- is that it shows the court therein misrepresenting the plain language of Executive Law §63.1. Thus, although the court in *Sassower v. Signorelli* asserts that "The Attorney-General, by statute (Executive Law §63, subd 1) is 'required to represent'" Surrogate Signorelli – for which it provides *no* analysis or discussion of the statute -- Executive Law §63.1, in fact, predicates the Attorney General's participation in litigation on the "interests of the state". Petitioner's omnibus motion highlighted this, pointing out that the Attorney General had nowhere even claimed that his defense of the Commission was consistent with the "interests of the state"[55], which, by his resort to fraud and deceit in constructing a defense, it plainly was not.

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[54] A virtually identical paragraph was used by the Attorney General in his subsequent motion to dismiss Mr. Mantell's Article 78 proceeding. This is discussed at pages 6-7 of petitioner's November 5, 1999 letter to Justice Kapnick, with copies of the pertinent pages of the Attorney General's dismissal motions in both proceedings annexed thereto as Exhibits "F-1" and "F-2".

[55] *See* petitioner's July 28, 1999 memorandum of law, pp. 33-36.

Finally, and perhaps the most egregious of the conclusory and fraudulent claims in his decision, is Justice Wetzel's pretense that an injunction would "best serve the interests of justice" (at p. 6). The most cursory examination of the record of the proceeding shows that it is to defeat justice – and to advance the illegitimate personal and political interests reflected by petitioner's December 2, 1999 recusal application -- that Justice Wetzel has issued the injunction, depriving the public of its most formidable champions against a corrupt Commission.

* * *

As hereinabove stated, Justice Wetzel's denial of petitioner's December 2, 1999 recusal application, concealed – and implicitly denied -- her alternative request that he meet his disclosure obligations pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, and disclose the pertinent facts bearing upon the grounds for recusal identified by her application. He also implicitly denied her alternative request for time to make a formal recusal motion.

Among the disclosure requested by the December 2, 1999 application was Justice Wetzell's knowledge of Mr. Tiffany's media-publicized May 21, 1999 judicial misconduct complaint against him, dismissed by the Commission *without* investigation, by letter dated September 14, 1999, as well as of other judicial misconduct complaints against him, filed with the Commission.

CJA has since become aware that in the 3-1/2 months during which Mr. Tiffany's May 21, 1999 complaint against Justice Wetzel was pending before the Commission, a series of three *facially-meritorious* judicial misconduct complaints, dated May 27, 1999, June 25, 1999, and July 23, 1999, were filed by another complainant against Justice Wetzel (Exhibits "J-1", "J-3", "J-5"). The complainant, Kamau Bey, a Vietnam War veteran, who had honorably served in the U.S. Air Force, was a defendant in a criminal case before Justice Wetzel relating to his arrest by his employer, the New York City Department of Correction. Mr. Bey alleged that Justice Wetzel was violating his fundamental constitutional and due process rights and described Justice Wetzel's demeanor as "very personal and political".

The Commission dismissed Mr. Bey's judicial misconduct complaints, without investigation, by two letters, dated September 17, 1999 and September 28, 1999 (Exhibits "J-7" and "J-8"). Upon information and belief, an investigation of Mr. Bey's complaints by the Commission would have not only exposed whether Justice Wetzel engaged in abusive conduct to Mr. Bey, but whether it was part of a pattern

and practice of conduct, extending to more than 25 of Mr. Bey's co-workers, whose separate criminal cases were before Justice Wetzel. Like Mr. Bey, these defendants had been suspended under suspect circumstances by their employer, the New York City Department of Correction for alleged income tax evasion. All were Black or Hispanic, and had 10 years or more tenure with the Department of Correction. An investigation would have also exposed whether, as the defendants believed, their criminal cases -- which they contended were part of an unlawful scheme to replace over 300 predominantly Black corrections officers earning top salaries after more than a decade's service with new, lower paid employees -- were "steered" to Justice Wetzel after another judge dismissed similar criminal cases against some of their fellow Black and Hispanic corrections officers.

At the time the Commission received Mr. Tiffany's May 21, 1999 complaint and Mr. Bey's May 27, 1999 and subsequent complaints, Justice Wetzel had been an Acting Supreme Court Justice for almost four years. Upon information and belief, the Commission "has a file on every judge in the State"[56] – which contain newspaper clippings suggestive of misconduct, incompetence or disability. This, because, pursuant to Judiciary Law §44.2, the Commission has the power to *sua sponte* initiate its own complaint against a judge.

As reflected by Exhibit "I" to petitioner's December 2, 1999 recusal application, Steve Dunleavy's November 26, 1999 column, "*Justice Takes a Holiday for Real Cybersex Victim*", Justice Wetzel presided over the criminal trial of Oliver Jovanovic, a Columbia University graduate student accused of the sexual torture of a woman he met on the internet. The enormous media coverage of the case included publicity raising serious questions about Justice Wetzel's conduct. Among them, an April 17, 1996 New York Post article by Ann Bollinger, "*Observers Say Judge Doomed Defense*" (Exhibit "K-1"), which reported that Justice Wetzel's unabashed hostility to "criminal defense titan", Jack Litman, may have caused the guilty verdict and was "the talk of the Manhattan Criminal Courts building". It described that:

> "One judge in the building said he was 'embarrassed by Wetzel's behavior in this case.'
>
> 'The way he treated the defense is unheard of,' the judge said."

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[56] *See* statement of former Bronx Surrogate Bertram Gelfand: Exhibit "D", pp. 9-10, quoted at fn. 11, *supra*.

The article also reported questions of Judge Wetzel's competence, in addition to his judicial misconduct:

> "The talk of the courthouse also centered on Wetzel's 'back-door' journey to the Criminal Court bench – a journey that included no experience in criminal law, lawyers say.
>
> He was affiliated with the law firm of Plunkett and Jaffe – Gov. Pataki's former firm.
>
> When Pataki won election, he appointed Wetzel to the Court of Claims. Wetzel immediately was assigned to state Supreme Court as an acting justice – skipping the lower Criminal Court altogether.
>
> That, according to some lawyers, put Wetzel in over his head."

This article and other published pieces, such as Steve Dunleavy's May 30, 1998 Post column, "*Wacko Wetzel Left Oliver's Lawyer Defenseless*" (Exhibit "K-2"), in which Mr. Dunleavy stated "Never in all my time of covering courts have I seen a sitting judge tie a lawyer's arms and legs and put a gag on his mouth", reported Justice Wetzel's misbehavior in the *Jovanovic* case to include inappropriate demeanor in front of the jury, in addition to stunningly prejudicial rulings.

It is unknown whether, based on the *Jovanovic* case, any judicial misconduct complaints were filed against Justice Wetzel – or whether the Commission initiated a *sua sponte* complaint against him. However, the Commission's dismissals, *without* investigation, of Mr. Tiffany's and Mr. Bey's simultaneously-pending complaints, must be seen against the backdrop of its knowledge of the serious questions about Justice Wetzel's performance in the publicized *Jovanovic* case[57].

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[57] Among the reporters regularly covering the *Jovanovic* trial, witnessing Judge Wetzel's conduct therein and the questions being raised as to its propriety was Barbara Ross of the Daily News. (*See* Exhibit "K-3": "*Cybersex Defense Wants Trial Halted*", March 24, 1998). Ms. Ross is the wife of Robert Tembeckjian, the Commission on Judicial Conduct's Deputy Administrator and Deputy Counsel.

Meantime, thousands of miles away in Mexico, Justice Wetzel's conduct in the Jovanovic case was not passing unnoticed – as may be seen from the article by Professor Sandro Cohen entitled, "*Oliver Jovanovic: First Sacrifice of the Digital Age*", which appeared in the May 19, 1998 issue of the Mexican newspaper, La Jornada (Exhibit "K-4"). Copies of the article were circulated locally and were also accessible through the website of the case: *www*.cybercase.org.

Certainly, from the copy of Mr. Dunleavy's November 26, 1999 column, annexed to petitioner's December 2, 1999 recusal application, Justice Wetzel might well have recognized that if his misconduct in the *Jovanovic* case had not yet spurred a judicial misconduct complaint against him, one might yet be filed. The Appellate Division, First Department's December 21, 1999 decision in *People v. Oliver Jovanovic*, 700 NYS2d 156, remanding the case for a new trial, reinforced that possibility.

CONCLUSION

Justice Wetzel's false and fraudulent decision in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. the Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551), is *readily-verifiable* as a wilful and deliberate subversion of the judicial process, constituting a criminal act.

As the record shows, Justice Wetzel was not alone in this criminal act. He was aided and abetted by Administrative Judge Crane, who wilfully and deliberately "steered" the case to Justice Wetzel, refused to respond to petitioner's legitimate inquiry as to the basis therefor, and failed to take corrective steps in the face of petitioner's notice to him of Justice Wetzel's disqualifying bias and self-interest – already manifested in the proceeding.

Without more, this second Article 78 proceeding, whose purpose – like the first Article 78 proceeding -- was to protect the public by exposing the *readily-verifiable* corruption of the Commission on Judicial Conduct, suffices to establish the corruption of both Justices Wetzel and Crane and the necessity that they be immediately removed and criminally prosecuted.

Inasmuch as Justice Wetzel is a holdover, the Governor can easily obtain his removal from office simply by appointing a successor to fill his Court of Claims seat [Court of Claims Act, §2, subdiv. 4]. CJA requests that the Governor do this expeditiously. As for Administrative Judge Crane, his removal from the Supreme Court bench[58] will require either proceedings by the Commission on Judicial Conduct or by the Legislature [NY Constitution, Article VI, §§22, 23(a), 24]. CJA

[58] By separate letter to Chief Judge Judith Kaye, CJA will request that she take immediate steps to demote Justice Crane as Administrative Judge of the Civil Term of the Manhattan Supreme Court, based on his conduct in this second Article 78 proceeding and, likewise, take steps to secure his removal as a Supreme Court justice and his criminal prosecution.

requests that the Governor expeditiously initiate such proceedings by filing appropriate complaints with the Commission and the Legislature. Precedent for this is the Governor's February 1996 judicial misconduct complaint against Judge Lorin Duckman, which he filed with the Commission, accompanied by public threats that, unless the Commission acted, he would seek Judge Duckman's removal through the Legislature since his duty, as Governor, was to protect the public from wrongdoing judges.

The misconduct of Justices Crane and Wetzel in this second Article 78 proceeding is exponentially more serious than Judge Duckman's purported misconduct. In contrast to Judge Duckman, they are utterly dishonest and have knowingly and collusively murdered the rule of law for ulterior personal and political gain with full knowledge of its far-reaching and detrimental consequences to the public. Indeed, by their misconduct, they robbed the public of the essential right the proceeding *expressly* sought to vindicate: its right to have *facially-meritorious* judicial misconduct investigated by the state agency created for that purpose and funded by its tax dollars. The result is to leave the public without a disciplinary remedy against incompetent, abusive, and corrupt judges.

Insofar as securing the criminal prosecution of Justices Wetzel and Crane, CJA requests that the Governor promptly file complaints with the Manhattan District Attorney, the U.S. Attorney for the Southern District of New York, as well as with the Attorney General's so-called "Public Integrity Unit" – each of whom have copies of this Article 78 proceeding against the Commission, as well as the other two Article 78 proceedings: *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission* – which are part of the record of this proceeding.

These are minimal requests. Based on the record herein, the People of this State have a right to expect more: that the Governor will immediately appoint a Special Prosecutor, as the petitioner in the second Article 78 proceeding requested[59], or an investigative commission, as requested by the 1,500 New Yorkers who signed the petition, which CJA gave to the Governor four years ago, after the first Article 78 was "thrown" by Justice Cahn's fraudulent judicial decision. Such Special Prosecutor or investigative commission is essential because the aforesaid agencies, officers, and the legislative branch of government all suffer from disqualifying

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[59] *See* petitioner's April 22, 1999 Notice of Article 78 Petition: (7) "requesting the Governor to appoint a Special Prosecutor to investigate Respondent's complicity in judicial corruption by powerful, politically-connected judges by, *inter alia*, its pattern and practice of dismissing facially-meritorious judicial misconduct complaints against them, without investigation or reasons", repeated, *verbatim* at ¶FIFTH(7) of the Verified Petition.

conflict of interest.

The Commission and the Attorney General, as the *direct* beneficiaries of the judicial misconduct of Justices Crane and Wetzel, are plainly conflicted. As for the Legislature, even were its impeachment/removal mechanism not moribund, the Legislature is unlikely to activate it for Administrative Judge Crane, when his misconduct has served to "throw" a case which would have exposed the Legislature's complicity in the Commission's corruption, of which it has long had knowledge, and the Senate Judiciary Committee's fraud in connection with Justice Rosenblatt's Court of Appeals candidacy. As for the Manhattan District Attorney and the U.S. Attorney for the Southern District, their multiple conflicts are detailed in CJA's criminal complaints against the Commission and the Attorney General, which CJA filed with them during the course of the Article 78 proceeding[60]. The nonfeasance and misfeasance of these public officers in connection with those complaints, as likewise their nonfeasance in connection with petitioner's request for their intervention left a clear path for the Article 78 proceeding to be "thrown" – which, from the copy of the record in their possession, they knew was the *only* way the Commission and Attorney General could survive.

The file of the second Article 78 proceeding, herein transmitted[61], presents overwhelming evidence to warrant appointment of a special investigative commission and/or special prosecutor to protect the People of this State from the corruption of the *only* State agency that exists to enforce standards of judicial integrity – corruption in which this State's highest law enforcement officer, Attorney General Spitzer, is *personally* complicitous. CJA hereby requests that the Governor put aside his own monumental conflicts of interest and make such appointment forthwith. Failure to do so would not only constitute official misconduct but further evidence of his complicity in the systemic governmental corruption that CJA long ago made the subject of its ethics and criminal complaints

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[60] These criminal complaints, each dated October 21, 1999, are annexed as Exhibits "G" and "H" to petitioner's November 5, 1999 letter to Justice Kapnick. The Manhattan District Attorney's conflicts of interest are identified at Exhibit "G", pp. 5-7. The U.S. Attorney's conflicts of interest are identified at Exhibit "H", pp. 2-3.

[61] A full copy of the file of the second Article 78 proceeding is herein transmitted – with the exception of the four free-standing file folders which accompanied petitioner's July 28, 1999 omnibus motion, available upon request. The inventory of those free-standing file folders is attached to petitioner's July 28, 1999 affidavit in support of her omnibus motion. The first of these free-standing folders contains a copy of the file of the first Article 78 proceeding – which has been in the Governor's possession since May 1996.

against him[62].

Yours for a quality judiciary,

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

cc: Justice William A. Wetzel
Administrative Judge Stephen G. Crane
Judith Kaye, Chief Judge of New York
New York State Commission on Judicial Conduct
New York State Attorney General Spitzer
District Attorney, New York County
U.S. Attorney, Southern District of New York
U.S. Attorney, Eastern District of New York
New York State Ethics Commission
Association of the Bar of the City of New York
Patricia Salkin, Director, Government Law Center/Albany Law School
Former Bronx Surrogate Judge Bertram R. Gelfand
Media

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62 *See* fn. 1 and fn. 3, *supra.*

Exhibits to CJA's February 23, 2000 letter to Governor George Pataki:

Exhibit "A": CJA's February 7, 2000 fax to Nan Weiner, Executive Director, Governor Pataki's State Judicial Screening Committee, enclosing February 7, 2000 memorandum-notice to Attorney General and Commission on Judicial Conduct

Exhibit "B-1": "*Commission Abandons Investigative Mandate*, Letter to the Editor, New York Law Journal, August 14, 1995, p. 2

"B-2": "*A Call for Concerted Action*", public interest ad, New York Law Journal, November 20, 1996, p. 3

"B-3": "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", public interest ad, New York Law Journal, August 27, 1997, pp. 3-4

Exhibit "C-1": Computerized court record of Article 78 proceeding, *E.R. Sassower v. Commission* (NY Co. #99-108551)

"C-2": May 18, 1999 recusal order of Acting Supreme Court Justice Diane Lebedeff

"C-3": May 20, 1999 recusal order of Acting Supreme Court Justice Walter Tolub

"C-4": October 8, 1999 recusal order of Acting Supreme Court Justice Ronald Zweibel

"C-5": October 29, 1999 recusal order of Acting Supreme Court Justice Franklin Weissberg

"C-6": November 5, 1999 recusal order of Acting Supreme Court Justice Barbara Kapnick

Exhibit "D": Statement of former Bronx Surrogate Bertram R. Gelfand at the public hearing on judicial conduct and discipline held at the Association of the Bar of the City of New York, May 14, 1997

Exhibit "E": CJA's January 7, 1998 letter to Chief Judge Judith Kaye

Exhibit "F": pp. 5-13 of the transcript of the May 17, 1999 proceedings before Justice Lebedeff

Exhibit "G": pp. 8-17, 22-23 of the transcript of the June 14, 1999 conference before Justice Zweibel

Exhibit "H": Transcript of the October 8, 1999 proceedings before Justice Zweibel

Exhibit "I": "*Pols Rule Courtroms: Acting Judges Owe Their Jobs to Pataki, Rudy*", column by Juan Gonzalez, Daily News, January 18, 2000, p. 8

Exhibit "J-1": Kamau Bey's May 27, 1999 judicial misconduct complaint against Justice Wetzel

"J-2": Commission's June 2, 1999 acknowledgment letter

"J-3": Kamau Bey's June 25, 1999 judicial misconduct complaint against Justice Wetzel

"J-4": Commission's June 30, 1999 acknowledgment letter

"J-5": Kamau Bey's July 23, 1999 judicial misconduct complaint against Justice Wetzel

"J-6": Commission's September 17, 1999 dismissal letter

"J-7": Commission's September 28, 1999 dismissal letter

Exhibit "K-1": "*Observers Say Judge Doomed Defense*", by Ann Bollinger, New York Post, April 17, 1998, p. 7

"K-2": *Wacko Wetzel Left Oliver's Lawyer Defenseless*", column by Steve Dunleavy, New York Post, May 30, 1998

"K-3": "*Cybersex Defense Wants Trial Halted*", by Barbara Ross and Corky Siemaszko, Daily News, March 24, 1998

"*Defense in Sexual Torture Case Says Court Let the Accuser Lie*", by John Sullivan, The New York Times, March 24, 1998

"K-4": "*Oliver Jovanovic: First Sacrifice of the Digital Age*" by Sandro Cohen, La Journada, May 19, 1998

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)**

Petitioner's December 9, 1999 letter to Acting Supreme Court Justice William Wetzel -- enclosing copy of the file of the Article 78 proceeding,
Michael Mantell v. New York State Commission on Judicial Conduct
(NY Co. #99-108655)

INVENTORY of Mantell Article 78 Proceeding

1. Petitioner's Notice of Petition and Verified Petition, dated April 22, 1999

2. Attorney General's May 14, 1999 letter

3. Signed stipulation extending time, dated May 14, 1999

4. Attorney General's Notice of Cross-Motion to Dismiss the Petition, dated June 3, 1999

5. Attorney General's Memorandum of Law in Support of the Cross-Motion to Dismiss the Petition, dated June 3, 1999

6. Petitioner's June 15, 1999 letter

7. Signed stipulation extending time, dated June 15, 1999

8. Petitioner's Amended Petition, dated June 15, 1999

9. Attorney General's Notice of Cross-Motion to Dismiss the Amended Petition, dated June 23, 1999

10. Attorney General's Memorandum of Law in Support of the Cross-Motion to Dismiss the Amended Petition, dated June 23, 1999

11. Petitioner's Reply Affidavit, dated July 14, 1999

12. Petitioner's Memorandum of Law, served July 14, 1999

13. Decision & Judgment of Edward H. Lehner, dated September 30, 1999

14. Short-Form Order of Justice Lehner, dated September 30, 1999

Inventory of Transmittal: CJA's February 23, 2000 letter to Governor Pataki

File of the Article 78 proceeding: E.R. Sassower v. Commission on Judicial Conduct

(NY Co. #99-108551)

1. Petitioner's Notice of Right to Seek Intervention, Notice of Petition, and Verified Petition (April 22, 1999)

2. Attorney General's Affirmation (Carolyn Cairnes Olson) in Support of Respondent's Application Pursuant to CPLR §3012(d) (May 17, 1999)

3. Attorney General's Dismissal Motion (May 24, 1999), consisting of:
   (a) Notice of Motion, with Affirmation of Assistant Attorney General Michael Kennedy and Affidavit of Albert Lawrence, Clerk of the Commission on Judicial Conduct;

   (b) Memorandum of Law in Support of Motion to Dismiss, signed by Assistant Attorney General Carolyn Cairns Olson

4. Petitioner's Omnibus Motion (July 28, 1999), consisting of:
   (a) Notice of Motion, with Affidavit of Petitioner and Affidavit of Doris L. Sassower, CJA's Director;
   (b) Memorandum of Law in Opposition to Respondent's Dismissal Motion & in Support of Petitioner's Motion for Disqualification of the Attorney General, Sanctions, a Default Judgment, and Other Relief
   [*w/o freestanding File Folders*: see inventory annexed to Petitioner's Affidavit]

5. Attorney General's Reply Memorandum in Further Support of a Motion to Dismiss and in Opposition to Petitioner's Motion for "Omnibus Relief", signed by Assistant Attorney General Carolyn Cairns Olson (August 13, 1999)

6. Petitioner's Papers in Reply and in Further Support of her Omnibus Motion (September 24, 1999), consisting of:
   (a) Petitioner's Reply Affidavit
   (b) Petitioner's Reply Memorandum of Law

7. Petitioner's November 5, 1999 letter to Acting Supreme Court Justice Barbara Kapnick

8. Petitioner's December 2, 1999 letter to Acting Supreme Court Justice William Wetzel

9. Petitioner's December 2, 1999 letter to Administrative Judge Stephen Crane

10. Petitioner's December 9, 1999 letter to Acting Supreme Court Justice William Wetzel
    [*with* file of Article 78 proceeding, *Mantell v. Commission* (NY Co. #99-108655)]

11. Petitioner's December 17, 1999 letter to Acting Supreme Court Justice William Wetzel

12. Decision/Order of Acting Supreme Court Justice William Wetzel, dated January 31, 2000

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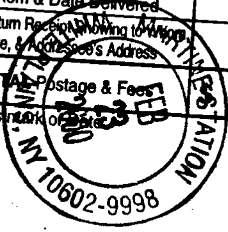

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