CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: judgewatch@aol.com
Website: www.judgewatch.org

Doris L. Sassower, Director
Elena Ruth Sassower, Coordinator

DATE: June 13, 2003

TO: American Bar Association
Carol E. Dinkins, Chairwoman
Standing Committee on Federal Judiciary

Association of the Bar of the City of New York
Jeh Charles Johnson, Chairman
Committee on the Judiciary

FROM: Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)

RE: Bringing accountability to the ABA and City Bar by calling upon them: (1) to justify their barebones ratings of Richard C. Wesley and P. Kevin Castel for federal judgeships by disgorging their findings pertaining to CJA's March 26, 2003 written statement; (2) to respond to the recommendations of the 1986 Common Cause report and the 1996 Miller Center Commission report for substantiated bar ratings [pp. 4-6]; (3) to confront the fundamental standards disqualifying candidates for judicial office articulated by CJA's March 26, 2003 statement [pp. 8-9]

This letter calls upon you to substantiate your barebones ratings of the qualifications of New York Court of Appeals Judge Richard C. Wesley, nominated to the Second Circuit Court of Appeals, and of P. Kevin Castel, nominated to the District Court for the Southern District of New York.

Such ratings, devoid of substantiating explanation, were communicated to the U.S. Senate Judiciary Committee in letters signed by each of you. Chairwoman Dinkins' letters, dated April 28, 2003 and April 16, 2003, purport that "as a result of our investigation", the ABA's Standing Committee on Federal Judiciary is of the "unanimous opinion" that Judge Wesley and Mr. Castel are

"Well Qualified"[1]. Chairman Johnson's letters, both dated April 10, 2003, purport that the City Bar's Committee on the Judiciary "Approved" each nominee[2].

These ratings are indefensible deceits -- and would be exposed as such by disclosure of the FINDINGS your Committees were required to have made with respect to their "investigations" of CJA's March 26, 2003 written statement. Such statement summarized our transmittal to you of documentary evidence establishing that Judge Wesley and Mr. Castel, each in positions of trust and leadership, wilfully and deliberately violated mandatory rules of ethical and professional responsibility pertaining to impartiality and integrity – and in Judge Wesley's case, mandatory statutory law as well – to cover up the very judicial and governmental corruption presented to them for redress. The result, as they each knew, was to perpetuate vast and irreparable injury to the People of the State of New York.

CJA's enclosed May 5, 2003 memorandum to Senate Judiciary Committee Chairman Orrin Hatch and Ranking Member Patrick Leahy requested that the Senate Judiciary Committee call upon you to justify your ratings by disclosing your Committee FINDINGS with respect to CJA's March 26, 2003 statement -- including as to conflicts of interest barring your evaluation of the nominees.

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[1] According to the ABA's pamphlet, "*Standing Committee on Federal Judiciary: What It Is and How It Works*",

> "To merit a rating of 'Well Qualified' the nominee must be at the top of the legal profession in his or her legal community, have outstanding legal ability, breadth of experience, the highest reputation for integrity and either have demonstrated, or exhibited the capacity for, judicial temperament." (emphasis added, at pp. 7-8).

[2] According to the Rules of Procedure of the City Bar's Judiciary Committee,

> "The rating 'Approved' shall be reserved for candidates who have affirmatively demonstrated qualifications which are regarded by the Committee to be necessary for the performance of the duties of the office for which they are being considered." (Section 5(a)).

The Committee's "Guidelines for Evaluating Candidates for Judicial Office" places "integrity and impartiality" as first in its list of criteria. (emphasis added) – a fact highlighted at the outset of CJA's March 26, 2003 statement (p. 2).

Instead, the Senate Judiciary Committee has "protected" you -- both by not doing this and by not itself investigating the statement and making findings thereon. Under such circumstance, CJA steps forward to vindicate the public interest by calling upon you to disgorge your FINDINGS as to CJA's March 26, 2003 statement.

As to the City Bar, its Judiciary Committee's Rules of Procedure, Section 5(b), expressly provide that "[i]n the discretion of the Committee" its "Approved" rating "may be accompanied by an explanatory comment". Additionally, Section 8 permits the Judiciary Committee or the City Bar's Executive Committee to order "all [Committee] proceedings and all investigative reports" released from confidentiality. CJA, therefore, invokes these two Sections in requesting "explanatory comment" and release from confidentiality of that portion of the Committee's "proceedings" and "investigative reports" as relates to our March 26, 2003 statement.

As to the ABA, I was informed by Chairwoman Dinkins, with whom I spoke on May 12th about the contents of this letter, then being drafted[3], that there are NO RULES for the Standing Committee on Federal Judiciary other than the description of its procedures in its pamphlet, *"Standing Committee on Federal Judiciary: What It Is and How It Works"*. This is rather hard to believe and CJA calls upon Ms. Dinkins to so-state, in writing – and, additionally, to state whether there are also NO GUIDELINES by which members of the Standing Committee on Federal Judiciary, as likewise its liaison from the ABA Board of Governors[4] and staff liaisons[5], are required to confront conflicts of interest.

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[3] Completion of the draft was interrupted by the extraordinary train of events chronicled by CJA's correspondence from May 19th onward with the Senate Judiciary Committee, Home-State Senators Schumer and Clinton, etc. This correspondence is posted on CJA's website, *www.judgewatch.org*.

[4] The ABA Board of Governors liaison to the Committee is Carolyn B. Lamm. Ms. Lamm's violative and boarish conduct during her 1995-1996 tenure as Chairwoman of the Committee is highlighted by CJA's May 27, 1996 letter to Chairman Hatch, reprinted in the record of the Senate Judiciary Committee's May 21, 1996 hearing on "The Roles of the American Bar Association in the Judicial Selection Process". Such reprinted letter is annexed as Exhibit "B" to CJA's May 5, 2003 memorandum to Chairman Hatch and Ranking Member Leahy.

[5] The Committee's staff liaisons are Robert D. Evans, Director of the ABA's Governmental Affairs Office, as well as Denise Cardman, Senior Legislative Counsel. It was Ms. Cardman who I first telephoned (202-662-1761), following the President's announcement of his

Insofar as the ABA providing explanatory comment for its Standing Committee's investigations and ratings – NOT proscribed by its pamphlet -- the 1986 Common Cause report, Assembly-Line Approval, contains valuable discussion in support of its recommendation,

> "The [Senate Judiciary] Committee should ask the ABA to provide information on the scope of its investigation, a summary of the basis for its evaluation, and a summary of the controversial issues, if any, discovered concerning the nominee,"

This discussion, annexed as Exhibit "C" to CJA's May 5, 2003 memorandum, is as follows:

> "The [Senate] Judiciary Committee relies greatly on the ABA's simple categorical rating. It is inappropriate for the Committee to rely on the ABA rating without knowing the scope and nature of each investigation and what troublesome issues, if any, arose concerning the nominee...
>
> A summary of these matters need not breach the confidentiality of the ABA's sources or of the ABA's Committee members. In fact, the ABA has provided detailed information on its investigation and findings when it has concluded that a nominee is unqualified. In 1983, for example, after finding nominee Sherman Unger unqualified to be a United States Circuit Judge for the Federal Circuit, Mr. William Coleman, the committee member who conducted the investigation, testified before the Judiciary Committee against Mr. Unger. His statement on behalf of the ABA began by saying, 'I cannot shirk from the important, if personally unpalatable, task of presenting to the Senate Judiciary Committee the results of our investigation.' The statement, which was no mere summary, went on for another 34

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nominations of Judge Wesley and Mr. Castel, for information as to which Committee member(s) would be handling the "investigations" of their qualifications and for current information about the Committee's procedures. The phone messages I left for her on March 7th, March 10th, March 14th, March 18th, and March 19th were ALL unreturned. This necessitated my phoning Chairwoman Dinkins (March 14th, 713-758, 2529) and Mr. Evans (March 25th, 202-662-1765) for the basic information and assistance which Ms. Cardman (with knowledge of CJA's past advocacy exposing the ABA's faciliating role in the corruption of the processes of federal judicial selection and discipline) was failing to timely provide.

> pages, which were followed by 639 pages of exhibits.
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> Moreover, in past years, the ABA frequently shared the substance of its findings on district and appellate court nominees with the Judiciary Committee. Also, the ABA's own pamphlet, 'American Bar Association Standing Committee on Federal Judiciary: What It Is and How It Works" states that for Supreme Court nominees '[a]t the Senate Judiciary Committee's hearings, a spokesperson for the ABA Committee appears and makes an extensive report on the reasons for the Committee's evaluation of the nominee, while preserving the confidentiality of its sources.' There appears to be no principled reason against reviving the previous ABA practice, nor for distinguishing between Supreme Court and other federal judicial nominees in terms of the kinds of information available to the Judiciary Committee."

If the ABA previously responded to that 1986 Common Cause recommendation by providing "principled reason against reviving the previous ABA practice" and for "distinguishing between Supreme Court and other federal judicial nominees in terms of the kinds of information available to the Judiciary Committee", CJA requests same – in addition to a more current response, if different.

CJA also requests the ABA's response to the reasoning put forward by Professor Daniel Meador, on behalf of the Miller Center Commission on Federal Judicial Selection, when he testified on May 21, 1996 before the Senate Judiciary Committee on "The Role of the American Bar Association in the Judicial Selection Process". The pertinent excerpt from his testimony is annexed as Exhibit "D" to CJA's May 5, 2003 memorandum.

Explaining the Miller Commission's recommendation that the ABA "give reasons for its ratings", Professor Meador stated:

> "...this would serve three ends. One, it would help...the Senate better evaluate the qualifications of the nominee if it had explanations. Secondly, it would keep the ABA committee's focus more sharply fixed on professional competence and might constrain it from taking into account impermissible factors. Third, it might to some extent alleviate apprehensions and appearances that the committee was, in fact, taking into account improper

factors."

CJA calls upon the City Bar to likewise respond to this reasoning, as it applies with equal force to its own barebones ratings of federal judicial nominees.

As for the rationale for confidentiality, the ABA's pamphlet for its Standing Committee on Federal Judiciary states:

> "The preservation of confidentiality is essential to the [ABA] Committee's investigation of nominees. The Committee seeks information on a confidential basis and assures its sources that their identities will not be revealed to persons not on the Committee. It is the Committee's experience that only by assuring and maintaining such confidentiality can sources be persuaded to provide full and candid information." (at p. 11).

This rationale, presumably shared by the City Bar, is inapplicable to CJA's March 26, 2003 statement, which not only did *not* request confidentiality, but was *expressly* designated as a public document by our April 2, 2003 transmittal coverletter to Judge Wesley and Mr. Castel – copies of which were sent to each of you. Verifying its truth and accuracy did not require "seek[ing] information on a confidential basis" from anyone – and involved *no subjective credibility determinations*. Rather, verification involved reviewing the documentary evidence CJA provided *expressly* for that purpose – and making findings thereon. This evidence consisted, first and foremost, of the DOCUMENTS FOCALLY-DISCUSSED BY CJA's MARCH 26, 2003 STATEMENT:

(1) my October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief and my October 24, 2002 motion for leave to appeal in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York*, with the Court of Appeals' two December 17, 2002 decisions thereon; and

(2) CJA's September 18, 2000 letter to Mr. Castel and enclosed June 20, 2000 letter to City Bar President Evan Davis.

Copies of these focally-discussed documents were supplied to each of your Committees.

Secondarily, it consisted of the record in *Elena Ruth Sassower v. Commission*, contained in the FIVE CARTONS AND ONE REDWELD FOLDER deposited at the City Bar for its review and that of the ABA[6].

Confidentiality is thus not an issue in relation to CJA's March 26, 2003 statement. The sole issues are whether, and to what extent, your Committees reviewed the substantiating documentary evidence CJA transmitted, made FINDINGS based thereon, and called upon Judge Wesley and Mr. Castel to account for their *documentarily-established* misconduct, including by responding to the specifics itemized by the "Conclusion" of CJA's statement (pp. 26-28)[7]. This, after each Committee confronted the multiple conflicts of interest with which its members and each bar association were afflicted.

Shockingly, on May 1, 2003, "Law Day", when I retrieved from the City Bar the FIVE CARTONS AND ONE REDWELD FOLDER, the documents inside appeared to be in the same "untouched by human hands" condition as when I had delivered them on March 26th. This included *the most essential underlying document in any "investigation" of Judge Wesley*: my May 1, 2002 disqualification/disclosure motion at the Court of Appeals, seeking the disqualification of its judges, including Judge Wesley, on the statutory grounds of interest, proscribed by Judiciary Law §14. It also included *the most essential underlying documents in any "investigation" of Mr. Castel*: my December 22, 2000 appellant's brief and appendix in the Appellate Division, First Department and the cert petition in *Doris L. Sassower v. Hon. Guy Mangano, et al.* – these reflecting the state of the record in my lawsuit against the Commission, for which, by CJA's June 20, 2000 letter to City Bar President Davis, provided to Mr. Castel under a September 18, 2000 coverletter, I had requested *amicus* and other legal assistance from the City Bar.

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[6] The office of the Standing Committee's Second Circuit representative, George Frazza, responsible for its investigation of Judge Wesley, is virtually around the corner from the City Bar.

[7] According to the ABA's pamphlet on the Standing Committee,

> "During the course of the investigation, the circuit member, and in appropriate cases one or more other members of the Committee, meet with the nominee. During the interview, the circuit member...raises any adverse information discovered during the investigation. The nominee is given a full opportunity to rebut the adverse information and provide any additional information bearing on it." (at p. 6, emphasis added).

As to the condition of the documents focally-discussed by CJA's March 26, 2003 statement, I cannot comment upon their condition as these remain in your Committees' possession[8]. As highlighted by CJA's March 26, 2003 statement (pp. 19-25), the focally-discussed documents were *sufficient, in and of themselves*, to enable verification of the statement's salient aspects, precluding ANY ratings other than that Judge Wesley and Mr. Castel were unfit for judicial office. That is,

> "[u]nless bar-promulgated and endorsed ethical rules of professional responsibility [were] to be totally stripped of meaning, and likewise the law embodying them."

Obviously, confidentiality does not prevent the ABA and City Bar from identifying standards of professional and official misconduct which, *prima facie*, would disqualify judicial nominees from favorable consideration – such as identified by CJA's March 26, 2003 statement. CJA, therefore, expressly calls upon you to articulate the circumstances under which your Committees deem wilful and deliberate violations of bar-promulgated and endorsed mandatory ethical rules of professional responsibility proscribing conflicts of interest and mandating the reporting of serious and substantial misconduct by lawyers and judges to be disqualifying. This, in addition to addressing CJA's expressly stated position (at p. 14): "there is NO reason why there should be a different standard in confirming judges than in disciplining them"[9] – with the standard for removal identified as:

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

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[8] In response to my May 6th phone call to Mr. Evans for the return of these materials, he told me on May 12th, when I called him again, that he had spoken to Chairwoman Dinkins, who saw no reason why they could not be returned. He further stated that he had sent an e-mail to that effect to Mr. Frazza and Mr. Hollis on or about May 8th. I have received nothing from either of them. Nor did I ever receive a return call from Mr. Frazza, for whom, on May 6th I left my own May 6th phone message with his secretary Bill Walton, inquiring the return of the materials.

As for my similar request to the City Bar, I was told by its Judiciary Committee's Administrative Assistant, Carolyn O'Hara, that they were being retained in the Committee's files.

[9] *Cf.* "Generally any violation of the judicial canons, such as those dealing with honesty and integrity call for disciplinary measures (*Matter of Bouanger*, 61 NY2d 89), without consideration of whether the judge's conduct in many, most, or all other matters may be above reproach (*Matter of Sardino v. State Comm. On Judicial Conduct*, 58 NY2d 286.)"

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

Insofar as your Committees purport to conduct "interviews" as part of their investigations -- *and* CJA's March 26, 2003 statement expressly identified that both I and CJA's Director, Doris L. Sassower, were "ready, willing, and able" to be interviewed and "to answer...questions, including under oath" (p. 28) -- I will here make public what your Committees did in this regard. At the same time, I will particularize the conflicts of interest of each bar association, precluding their evaluation of the nominees with respect to CJA's March 26, 2003 statement. This, in substantiation of the assertion in CJA's May 5, 2003 memorandum to Chairman Hatch and Ranking Member Leahy that:

> "the bar associations knew they had flagrantly violated the SAME vital mandatory rules of professional responsibility as Judge Wesley and Mr. Castel and that findings adverse to these nominees would necessarily expose their own leading roles in covering up and perpetuating the very systemic governmental corruption which *Elena Ruth Sassower v. Commission* sought to redress." (p. 4, emphasis in the original).

As for the ABA, its Second Circuit representative on its Standing Committee on Federal Judiciary, George Frazza, never interviewed me or Doris Sassower. My one and only contact with him was a phone conversation of about four minutes

on Tuesday, March 18th. At that time, Mr. Frazza returned my March 14th phone message to confirm that he would be investigating Judge Wesley -- but not, as I had thought, Mr. Castel. In response, I informed him that CJA had documentary evidence of Judge Wesley's on-the-bench judicial misconduct in an important public interest case recently before him at the New York Court of Appeals – and that this was most readily established by the final two motions in the case and the Court's decisions thereon, which I would send him. I may have provided Mr. Frazza some pertinent details about the motions and that the case was against the New York State Commission on Judicial Conduct. This, however, was the extent of our brief conversation. Indeed, with none of the substantiating documents before him, Mr. Frazza could not possibly "interview me"– and did not.

Later that March 18th day, I mailed Mr. Frazza the two final motions and the Court's two decisions thereon. Yet, I did not hear from him at any time thereafter – including after I hand-delivered CJA's March 26, 2003 statement to his office. Such delivery, on March 26th, was accompanied by a copy of CJA's correspondence to the ABA from March 2, 2001 to November 14, 2001, requesting its *amicus* and other assistance in the appeal of my lawsuit against the Commission -- most specifically from its Standing Committee on Judicial Independence, whose staff director, Luke Bierman, directs the ABA Justice Center. Transmitted to Mr. Frazza with this correspondence was the same copy of the substantiating appeal papers in the lawsuit as had been furnished to the Standing Committee on Judicial Independence – and which, upon my request, Mr. Bierman had only just then returned[10]. The significance of this document-substantiated correspondence in establishing the ABA's conflict of interest, as well as Mr. Frazza's own conflicts, would have been immediately obvious to

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[10] This correspondence with the ABA and the substantiating appeal papers are the "additional documents" to which, on the conflict of interest issue, CJA's May 5, 2003 memorandum refers (at p. 4) as having been "simultaneously transmitted to the ABA on March 26th". An inventory of this document-substantiated correspondence is appended hereto.

As to the further reference in CJA's May 5, 2003 memorandum -- also on the conflict of interest issue -- to cert papers in *Doris L. Sassower v. Hon. Guy Mangano, et al.*, the pertinent ABA correspondence in connection therewith is reprinted in the appendix of the supplemental brief, *to wit*, Doris Sassower's January 26, 1998 letter to ABA President Jerome Shestack [SA-90]; Doris Sassower's August 11, 1998 letter to ABA President Philip S. Anderson [SA-102]. *Also*, CJA's April 24, 1998 testimony before the Commission on Structural Alternatives to the Federal Courts of Appeals [SA-29]).

Mr. Frazza – quite apart from anything told to him by his secretary, Bill Walton, with whom I briefly discussed the correspondence prior to delivery.

Thus, from this correspondence, Mr. Frazza would have readily seen that he could NOT make FINDINGS as to the serious and substantial nature of my lawsuit, such as were essential to assessing the gravity of Judge Wesley's judicial misconduct and the vast injury he caused to the People of the State of New York, without exposing the violative conduct of the ABA's Standing Committee on Judicial Independence and its Justice Center in refusing to provide me with *any* assistance, failing to make *any* referrals, and spurning CJA as a collaborative partner in its endeavors. He could see that notwithstanding the panoply of issues presented by the lawsuit went "to the very heart of the Standing Committee's stated mission and purpose" [my 9/26/01 ltr, p. 2], Mr. Bierman and those with supervisory responsibilities over him, such as Judge Norma Shapiro, Chairwoman of the Justice Center, and D. Dudley Oldham, Chairman of the Standing Committee on Judicial Independence, would not even comment on them. Nor would they recognize *any* professional responsibility pursuant to *expressly* cited mandatory ethical rules[11], where the transmitted appeal papers *readily-established* that the Commission was then the beneficiary of three fraudulent judicial decisions, without which it would not have survived three separate legal challenges, and that the State Attorney General's defense of the Commission was by litigation misconduct so extreme and pervasive as to be grounds for his disbarment.

That Mr. Frazza had professional, if not personal, relationships with Mr. Bierman, Judge Shapiro, and Mr. Oldham – whose violations of the same ethical rules as violated by Judge Wesley and Mr. Castel would be exposed by FINDINGS as to the record of my lawsuit – is clear from the November 14, 2001 letter of Judge Shapiro, rejecting my pleas for her supervisory intervention. Written on stationary of the ABA Special Committee on Judicial Independence – the predecessor to its Standing Committee on Judicial Independence[12] – the letterhead shows that Mr. Frazza had been a member of

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[11] CJA's May 30, 2001 letter to Mr. Bierman, p. 3, fn. 3.

[12] The Standing Committee on Judicial Independence has the identical mission and purpose as the Special Committee on Judicial on Judicial Independence. Indeed, not only is the Standing Committee's website a *verbatim* recitation from the Special Committee's informational booklet – excepting that the adjective "Standing" replaces "Special" – but it obliterates that a predecessor Special Committee ever existed by subsuming its identity as its own, *to wit*, "In 1997, the ABA

the Special Committee along with Judge Shapiro and Mr. Oldham, and that the Special Committee had operated from the Justice Center under Mr. Bierman. These relationships are not just past, but on-going. Last August, ABA President Alfred P. Carlton, Jr., former Chairman of the Special Committee on Judicial Independence, named Mr. Frazza to the ABA Commission on the 21st Century Judiciary, likewise operating from the Justice Center under Mr. Bierman.

That the Commission on the 21st Century Judiciary is supposed to "study, report and make recommendations" with respect to "fairness, impartiality, and accountability" in the state judiciary, examining, as well, judicial selection and tenure should have further impelled Mr. Frazza to call me for an interview. From the original appeal papers transmitted with the correspondence, he would have seen that my lawsuit was a gold-mine as to these very issues – offering the kind of "on-the-ground" empirical evidence that would need to be incorporated in the ABA Commission's work -- if it were doing any sort of honest job. If, however, the Commission on the 21st Judiciary was simply to be another ABA façade, preordained to assert the judiciary's overall integrity and to give rhetorical support to the importance of codes of professional conduct and mechanisms of enforcement, Mr. Frazza had a further conflict of interest. This, because the only FINDINGS possible from the record of my lawsuit were of systemic judicial lawlessness in the New York courts, including at the "merit-selected" New York Court of Appeals, with ALL mechanisms for enforcing the most fundamental mandatory codes of judicial and attorney conduct reduced to utter worthlessness – not the least reason because of the shameless disregard for ethical and professional obligations by bar associations such as the ABA and City Bar.

It must be noted that the only other New York member of the ABA's Commission on the 21st Century Judiciary is Patricia Hynes. Because of this – and the fact that Ms. Hynes was Chairwoman of the ABA Standing Committee on Federal Judiciary during the first year that Mr. Frazza was its Second Circuit representative (August 2000-2001) -- it is likely that Mr. Frazza would have shared with her information about my lawsuit, as well as the manner in which it came to his attention. If so, he may have learned that Ms. Hynes already knew about the lawsuit – as it had twice come before her in the positions of public trust she occupied. Had he probed further, he might have

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formed the Standing Committee on Judicial Independence." It was the Special Committee that was formed in 1997.

learned that on each occasion Ms. Hynes had turned her back on the documentary proof of systemic judicial and governmental corruption it exposed. Like Judge Wesley and Mr. Castel, she wilfully violated not only her mandatory professional obligations, as an individual attorney, to take appropriate action, but the duties she owed as a public officer[13].

Mr. Frazza may have also learned that this was not Ms. Hynes' first contact with CJA. That had been years earlier, in 1995, when, as the Standing Committee's Second Circuit representative she had covered-up, by non-investigation, the documentary evidence CJA had hand-delivered to her office establishing the corrupt, politically-motivated conduct of Albany Supreme Court Justice Lawrence Kahn, thereafter nominated to the District Court for the Northern District of New York. This is reflected by CJA's May 27, 1996 letter to Chairman Hatch in connection with the Senate Judiciary Committee's hearing on "The Role of the American Bar Association in the Judicial Selection Process"– which is Exhibit "B" to CJA's May 5, 2003 memorandum to Chairman Hatch and Ranking Member Leahy.

Obviously, Mr. Frazza's personal and professional relationships with Ms. Hynes, as with other ABA members and staff who had covered-up the documentary evidence of corruption presented by my lawsuit against the Commission, would compromise his willingness to investigate CJA's March 26, 2003 statement. Likewise, his personal and professional relationships with City Bar leaders whose even more egregious cover-up and complicity was

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[13] The first time was on July 6, 2000, when Ms. Hynes -- the only member of Mayor Guiliani's Advisory Committee on the Judiciary, other than its Chairman -- was present at a hearing before that body in which I alone was testifying. In that capacity, she became knowledgeable of, and put her imprimatur to, the official misconduct of New York Chief Judge Judith Kaye that would be embodied in CJA's *facially-meritorious* August 3, 2000 judicial misconduct complaint, filed with the Commission, against the Chief Judge. Such complaint, cited by both my reargument motion (¶8) and motion for leave to appeal (p. 13), was focal to my May 1, 2002 disqualification/disclosure motion (¶¶68-88), covered up by Judge Wesley.

The second time was on December 7, 2000, when Ms. Hynes -- this time as a member of Chief Judge Kaye's Commission on Fiduciary Appointments -- was present at a hearing before that body at which I was testifying. The Commission on Fiduciary Appointment's cover-up report in December 2001, "protecting" the Commission on Judicial Conduct, as likewise such other public officers as Chief Judge Kaye, was the subject of my published Letter to the Editor, "*Judicial Reforms*" (Daily News, 12/7/01) – Exhibit "N-4" to my May 1, 2002 disqualification/disclosure motion.

highlighted in that portion of CJA's March 26, 2003 statement devoted to Mr. Castel (pp. 20-28), with the particulars presented by the focally-presented documents therein: CJA's September 18, 2000 letter to Mr. Castel, enclosing CJA's June 20, 2000 letter to City Bar President Evan Davis -- courtesy copies of which were hand-delivered to Mr. Frazza's office on March 26th.

As for Sheila Slocum Hollis, the Standing Committee's representative for the Federal Circuit investigating Mr. Castel, she did not interview Doris Sassower. Nor was her March 28th[14] phone "interview" of me informed by review of *any* documentary evidence. Indeed, in response to my question as to whether she had received the package containing the March 26, 2003 statement and the focally-presented documents discussed therein, hand-delivered to Mr. Frazza's office two days earlier for transmittal to her, she told me that the only thing she had was the statement *via* e-mail[15]. As to this, my impression was that Ms. Hollis had not yet read it because she began the conversation by asking me to describe "three things wrong" with Mr. Castel. My response of at least 20 minutes was a reprise of pages 20-28 of CJA's March 26, 2003 statement as to Mr. Castel's cover-up and participation in the City Bar's complicity in systemic governmental corruption, particularized by the focally-presented September 18, 2000 and June 20, 2000 letters. I believe I also told Ms. Hollis that the ABA had been no less complicitous in this systemic governmental corruption – and that I had provided Mr. Frazza with a copy of CJA's past correspondence with the ABA corroborative of that fact[16].

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[14] This was my second phone conversation with Ms. Hollis. My first conversation was a week earlier, on March 21st, when Ms. Hollis returned my phone call to her (202-776-7810). In that first very brief conversation, Ms. Hollis confirmed that she was investigating Mr. Castel. I told her that I would be sending her a written statement, supported by documentary evidence, to establish his unfitness. I also said that I would be willing to send these express mail, if she would provide me with an express mail account to which to charge it. Ms. Hollis responded that she would get back to me about that – but did not do so.

[15] I had e-mailed the statement on March 26th to Mr. Evans (rdevans@staff.abanet.org), requesting that it be forwarded to Chairwoman Dinkins, Mr. Frazza, and Ms. Hollis – "if not to each and every member of [the] ABA Sanding Committee on Federal Judiciary". Shortly thereafter Mr. Frazza acknowledged having "forwarded the materials to the 3 members of our committee."

[16] In any event, Mr. Frazza may be presumed to have independently recognized his obligation to apprise Ms. Hollis of that correspondence and to provide it for her review, as her FINDINGS as to the seriousness of Mr. Castel's misconduct would also require her to make FINDINGS as to my lawsuit, as well as to its federal counterpart and predecessor, *Doris L.*

According to the ABA's pamphlet about the Standing Committee (p. 7), upon conclusion of their "investigations", Mr. Frazza and Ms. Hollis would have each prepared a "written informal report", including "summaries of all interviews". This would have been reviewed for "thoroughness" by Chairwoman Dinkins. In my May 12th phone conversation with Chairwoman Dinkins, she would not disclose, on grounds of confidentiality, anything about these reports – including whether they had identified any of the conflict of interest issues. Similarly, she would give no information about whether the "formal or final written report[s]" that Mr. Frazza and Ms. Hollis would have thereafter prepared for "all members of the Committee" had identified the conflicts of interest issues. Presumably, such written reports – formal and informal – contained the FINDINGS that Mr. Frazza and Ms. Hollis made relating to CJA's March 26, 2003 statement, including as to conflicts of interest. To that extent, CJA requests their disclosure.

Because the ABA's pamphlet identifies (p. 7) that the final formal report sent to all Committee members may be accompanied by "copies of any other relevant information", CJA further specifically requests to know whether the March 26, 2003 statement was deemed "relevant information" to be personally reviewed by each of the Committee's 15 members -- as likewise whether these 15 Committee members were provided with any of CJA's other transmitted documents for personal review, such as our March 2001 –November 2001 correspondence with the ABA from which its conflict of interest – and that of Mr. Frazza -- would have been readily discernible to them.

Chairwoman Dinkins should also disclose any facts bearing upon her *own* impartiality in handling the Committee's ratings relative to Judge Wesley and Mr. Castel. This would include the "coincidence" that on March 25, 2003, she was honored by Albany Law School, along with New York Court of Appeals Judge Carmen Ciparick, a former member of the New York State Commission on Judicial Conduct and Judge Wesley's colleague on the New York Court of Appeals. Chairwoman Dinkins surely interacted with Judge Ciparick at that

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Sassower v. Hon. Guy Mangano, et al.– with adverse ramifications for the ABA. Indeed, it was to enable Mr. Frazza and Ms. Hollis to most constructively share in their interconnected FINDINGS that I had provided Mr. Frazza with a courtesy copy of CJA's September 18, 2000 letter to Mr. Castel, with its enclosed June 20, 2000 letter to City Bar President Davis (w/o exhibits) and provided Ms. Hollis with a copy of my final two motions in my lawsuit against the Commission and the Court of Appeals' two December 17, 2002 decisions thereon.

time and, not unlikely, with other Court of Appeals brethren, Judge Wesley among them, all participants in the impeachable conduct particularized by CJA's March 26, 2003 statement.

Notably, Chairwoman Dinkins' response to my May 16th phone messages inquiring about: (1) Albany Law School's March 25, 2003 event; (2) when and which ABA President appointed Mr. Frazza to the Standing Committee on Federal Judiciary; and (3) whether I had correctly understood her to say that the Standing Committee had no written rules of procedure, other than its pamphlet, was a May 22nd letter, which, without identifying any of these inquired-about matters, curtly stated:

> "I am in receipt of the message you left with my office on Friday, May 16th, 2003. The Standing Committee on Federal Judiciary submitted its ratings of Judge Richard Wesley and Kevin Castel to the Senate Judiciary Committee on April 28, 2003 and April 16, 2003, respectively.
>
> We have afforded you time and courtesy in the Standing Committee's work to rate these nominees to the federal judiciary.
>
> We now ask that you not contact us again, as consideration of these nominations is before the Senate Judiciary Committee.
>
> We will appreciate your honoring this request."

As to the City Bar, no one from its Judiciary Committee contacted Doris Sassower or myself following my March 26th delivery of the statement and substantiating FIVE CARTONS AND ONE REDWELD FOLDER. The Committee's only "interview" was prior thereto, on March 25th, when I received a phone call from Andrew Plunkett[17], head of its subcommittee investigating Judge Wesley. Although Mr. Plunkett stated he had reviewed my previously-

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[17] Mr. Plunkett assured me, in response to my query, that he is NOT related to Kevin Plunkett – in whose law firm George Pataki worked before he became New York's Governor – and who the Governor appointed to chair his so-called judicial screening committee for the Second Judicial Department. In that capacity – and by his membership on the Governor's State judicial screening committee, as well – Kevin Plunkett has participated in the Governor's political manipulation of judicial appointments, documented by the record of my lawsuit against the Commission. [*See, inter alia*, Exhibit "C" to CJA's March 26, 2003 written statement: ¶¶31-32].

delivered October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure, & other relief, as well as the Court of Appeals' December 17, 2002 decision thereon[18], he lacked recognition of their significance. Indeed, it almost appeared as if Mr. Plunkett believed that because my May 1, 2002 disqualification/disclosure motion had not particularized Judge Wesley's disqualification for interest, he was not so-disqualified and, therefore, "off the hook"[19]. Likewise, he lacked recognition of the significance of my previously-delivered October 24, 2002 motion for leave to appeal – as to which he had not yet verified the *readily-verifiable* fact from the exhibits annexed to the motion and highlighted in its text that

> "the Commission [was] the beneficiary of five fraudulent [lower court] judicial decisions without which it would not have survived three separate legal challenges -- with four of these decisions, two of them appellate, contravening th[e] Court's own decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980)."

Upon Mr. Plunkett's receipt of CJA's March 26, 2003 statement he would have immediately seen that the fundamental FINDINGS these two motions required him to make as to the systemic governmental corruption exposed by the lawsuit – including as to the fraudulent judicial decisions of which the Commission has been the beneficiary, the Attorney General's pivotal role in connection therewith, the Governor's cover-up of the Commission's corruption and his manipulation and corruption of judicial selection, including of "merit selection" to the Court of Appeals -- in which the City Bar was a direct participant -- would establish the City Bar's wilful and deliberate violations of fundamental rules of professional responsibility, summarized by pages 20-28 of the statement relating to Mr. Castel – and reinforced by the documents focally-discussed therein: CJA's September 18, 2000 letter to Mr. Castel and June 20, 2000 letter to City Bar President Davis.[20].

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[18] *See* footnote 1 to CJA's March 26, 2003 written statement (p. 1).

[19] My oral response to Mr. Plunkett included the content of the sentences at the top of page 8 of CJA's March 26, 2003 statement – which were written with Mr. Plunkett in mind.

[20] A courtesy copy of this focally-discussed correspondence was in the envelope containing CJA's statement, addressed to Mr. Plunkett and hand-delivered to the City Bar for him on March 26th. The statement was also e-mailed for him on that date c/o Carolyn O'Hara, the Judiciary

As for the City Bar's subcommittee investigating Mr. Castel's qualifications, it never contacted either myself or Doris Sassower – reflective of its knowledge that it was so hugely and directly conflicted that it dared not make contact. These conflicts are starkly evident from pages 20-28 of CJA's March 26, 2003 statement, wherein the very grounds of Mr. Castel's unfitness are his cover-up and participation in the City Bar's aiding and abetting of systemic governmental corruption. Compounding this was the even more direct conflict of subcommittee head, Terryl Brown, whose boss is none other than New York Attorney General Eliot Spitzer, a key player in the systemic governmental corruption at issue. It was Attorney General Spitzer's official misconduct which both generated and perpetuated my lawsuit against the Commission[21] -- as to which Ms. Brown herself played a supporting role. I described this, at length, to Carolyn O'Hara, Administrative Assistant for the City Bar's Judiciary Committee, on March 25th, offering to furnish the substantiating documentary proof: copies of my correspondence with Ms. Brown from October 15, 1999 to June 26, 2001[22], wherein, as Attorney General Spitzer's Records Access Officer, she delayed and ignored my Freedom of Information Law [F.O.I.L.] requests for records pertaining to the Attorney General's defense of lawsuits against the Commission, as well as his office procedures for ensuring the integrity of such defense[23]. Ms. O'Hara responded that she would immediately

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Committee's Administrative Assistant.

[21] *See*, for example, the motions I made, at every court level, for Attorney General Spitzer's disqualification, for sanctions against him, personally, for his fraudulent submissions, and for disciplinary and criminal referrals of him, personally, *to wit*, (1) my July 28, 1999 motion in Supreme Court/New York County; (2) my August 17, 2001 motion in the Appellate Division, First Department; and (3) my June 17, 2002 motion in the New York Court of Appeals.

[22] An inventory of this correspondence is appended hereto.

[23] As noted in the record of my lawsuit, Ms. Brown's final June 27, 2001 letter is a confusing response which furnished only resumes and no documents responsive to my March 26, 2001 F.O.I.L. request for:

> "...any publicly available documents relating to the handling of appeals by the Attorney General's office, including documents as to procedures for ensuring the integrity of appellate submissions and supervisory oversight."

It also did not furnish documents responding to my related December 9, 1999 F.O.I.L. request, reiterated repeatedly – including in my March 26, 2001 F.O.I.L. request – for any publicly-available documents as to:

inform Chairman Johnson as to my objection to Ms. Brown's participation – and has confirmed to me that she did inform him. Nonetheless, and in the face of the Judiciary Committee's express Rule of Procedure, "RECUSAL/DISQUALIFICATION"

> "It is the Committee's intention that the process by which it evaluates judicial candidates be fair both to the public and to the candidate, and that the process be perceived as fair as well..." [Section 10(a)],

Chairman Johnson did *not* contact me about Ms. Brown's direct conflict of interest, did *not* request that I provide the substantiating correspondence, and allowed Ms. Brown to not only participate on the subcommittee, but to continue as its head. He has since failed to return my phone messages requesting to speak with him – and *not* responded to my repeated requests, *via* Ms. O'Hara, that he call me.

Unlike the ABA, which generally utilizes a single circuit member to conduct "investigations" of nominees to the district and circuit courts, the City Bar forms subcommittees. Ms. O'Hara has informed me that the two subcommittees investigating Judge Wesley and Mr. Castel each consisted of four persons. I have asked her for the identities of the six additional persons on these two subcommittees participating its their "investigations"[24], but she advised me that Chairman Johnson denied these two requests. CJA herein reiterates that request – and, if again denied, the justification for withholding such basic information.

> "the Attorney General's procedures for ensuring the workproduct of assistant attorneys general assigned to defense of Article 78 proceedings, and in particular, those against the New York State Commission on Judicial Conduct".

See ¶8 of my October 15, 2001 reply affidavit in further support of my August 17, 2001 motion in the Appellate Division, First Department.

[24] Pursuant to Section 3 of the Committee's Rules, the three additional members would have been one member from the appropriate courts committee of the City Bar – in this case, its Federal Courts Committee – and two members from eligible county bar associations.

Also herein reiterated is my request, which Ms. O'Hara told me Chairman Johnson had also denied, for the identities of the Committee members who voted on the ratings. Unlike the ABA's Standing Committee, each of whose 15 members votes on its ratings -- and whose identities are listed on the Committee's stationary -- it is impossible to remotely glean either the identities of the members of the City Bar's Judiciary Committee who voted or their number, which may be as few as 12 or as many as the combined "elected, ex-officio, or adjunct" members eligible to vote – a number that can approach 70[25].

It may be noted that as the City Bar's past presidents are all *ex officio* members of the Judiciary Committee, they could have participated in constituting a quorum and voted. These include the succession of past City Bar presidents whose facilitating role in judicial and governmental corruption is chronicled by CJA's June 20, 2000 letter to City Bar President Davis and September 18, 2000 letter to Mr. Castel, *to wit*, Conrad Harper, John Feerick, Barbara Paul Robinson, Michael Cardozo, Michael Cooper, and Evan Davis. While this is admittedly a far-fetched scenario, it is consistent with the self-interested and utterly depraved conduct of City Bar leadership which these letters chronicle[26]. Certainly, that Chairman Johnson would permit Ms. Brown to continue to head the subcommittee investigating Mr. Castel, notwithstanding she is so plainly disqualified for interest, AND that she would continue in that capacity shows that "anything goes".

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[25] I thank Ms. O'Hara for her professional assistance in helping me understand who gets to vote. In addition to the 39 "elected" Committee members, the "*ex-officio*" members are the City Bar's past presidents and the chairs of the 9 courts committees with which the Judiciary Committee works. The "adjunct" members are the three persons designated by each of the five county bar associations of New York City. All five county bar associations would have been eligible to contribute their combined total of 15 "adjunct" members to the vote on Judge Wesley's rating for the Second Circuit Court of Appeals. For Mr. Castel's rating for the District Court for the Southern District of New York, the bar associations for Manhattan and Bronx would have been eligible to contribute their combined 6 members.

[26] This is further particularized by CJA's November 13, 2000 report on the City Bar's complicity in the corruption of "merit selection" to the New York Court of Appeals, which is part of the record of my lawsuit against the Commission – indeed, integral to my May 1, 2002 disqualification/disclosure motion (¶¶13, 89-102). This important report, as likewise the October 16, 2000 report to which it is the continuation, are posted on CJA's website, *www.judgewatch.org*.

cc: President George W. Bush
Senate Majority Leader William Frist
Senate Minority Leader Thomas Daschle
Vermont Senator James Jeffords (2nd Circuit)
Connecticut Senator Joseph Lieberman (2nd Circuit)
Connecticut Senator Christopher Dodd (2nd Circuit)
Senator Orrin G. Hatch, Chairman, U.S. Senate Judiciary Committee
Vermont Senator Patrick J. Leahy, Ranking Member,
U.S. Senate Judiciary Committee
New York Home-State Senator Charles E. Schumer
New York Home-State Senator Hillary Rodham Clinton
Judge Richard C. Wesley
P. Kevin Castel, Esq.
The Press

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1001 Fannin Street
Houston, Texas 77002-6760

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2300 First City Tower
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Houston, TX 77002-6760 JUN 18 2003
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Lee Montalvo

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City, State, ZIP+4 NY NY 10036-6

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Jeh Charles Johnson,
Chair, Judiciary
Committee
City Bar
42 West 44th Street
NY NY 10036-6689
Att: Carolyn O'Hara

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INVENTORY OF CJA's DOCUMENT-SUPPORTED CORRESPONDENCE WITH THE ABA, TRANSMITTED TO GEORGE FRAZZA ON MARCH 26, 2003, FROM WHICH THE ABA's DIRECT CONFLICTS OF INTEREST, AS WELL AS HIS OWN, WOULD HAVE BEEN IMMEDIATELY EVIDENT*

CJA's March 2, 2001 letter to Luke Bierman

Mr. Bierman's March 12, 2001 letter

CJA's April 25, 2001 letter to Mr. Bierman

Mr. Bierman's May 3, 2001 letter to CJA

CJA's May 30, 2001 letter to Mr. Bierman

CJA's September 26, 2001 letter to Mr. Bierman

Mr. Bierman's September 27, 2001 letter to CJA

CJA's October 19, 2001 letter to Mr. Bierman

CJA's October 30, 2001 letter to Mr. Bierman

CJA's October 30, 2001 letter to Judge Norma Shapiro, D. Dudley Oldham, Esq.

Mr. Bierman's November 7, 2001 letter to CJA

Judge Shapiro's November 14, 2001 letter to CJA

Luke Bierman's March 19, 2003 hand-written note

Appellate papers in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct:* (1) Appellant's December 22, 2000 brief & appendix; (2) Respondent's March 22, 2001 opposing brief; (3) Appellant's August 17, 2001 reply brief; (4) Appellant's August 17, 2001 disqualification/disclosure/sanctions motion; (5) Assistant Solicitor General Carol Fischer August 30, 2001 opposing affirmation & opposing memorandum of law; (6) Appellant's October 15, 2001 reply affidavit in further support of motion.

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* Possibly also included were CJA's June 1, 2001 letter to Paul R. Verkuil, Chairman, ABA Advisory Counsel/Dean, Cardozo Law School, and CJA's June 1, 1001 letter to Ellen C. Yaroshefsky, Director, Jacob Burns Ethics Center at Cardozo Law School

INVENTORY OF CJA's CORRESPONDENCE WITH TERRYL BROWN AS RECORDS ACCESS OFFICER TO ATTORNEY GENERAL ELIOT SPITZER, OFFERED TO THE CITY BAR ON MARCH 25, 2003, FROM WHICH HER DIRECT CONFLICT OF INTEREST WOULD HAVE BEEN IMMEDIATELY EVIDENT

CJA's October 15, 1999 letter to Terryl Brown

Ms. Brown's October 15, 1999 letter to CJA

CJA's December 6, 1999 letter to Ms. Brown

Ms. Brown's December 14, 1999 letter to CJA

Ms. Brown's January 19, 2000 letter to CJA

Ms. Brown's February 1, 2000 letter to CJA

CJA's February 25, 2000 letter to Ms. Brown

Ms. Brown's March 13, 2000 letter to CJA

CJA's March 22, 2000 letter to Ms. Brown

CJA's April 24, 2000 letter to Ms. Brown

CJA's March 26, 2001 letter to Ms. Brown

Ms. Brown's March 27, 2001 letter to CJA

CJA's May 9, 2001 letter to Ms. Brown

Ms. Brown's June 26, 2001 letter to CJA

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TO: Robert Evans, Liaison, ABA Standing Committee on
Federal Judiciary
Carolyn, O'Hara, Administrative Assistant, City Bar's
Judiciary Committee

Attached is CJA's June 13th memo to Chairwoman Carol Dinkins and Chairman Jeh Johnson -- "hard copies" of which have been mailed to each of them, along with CJA's May 5th memo to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy.

CJA requests that this June 13th memo be e-mailed to each and every member of the ABA and City Bar Committees involved in the "investigation" and rating of Judge Wesley and Mr. Castel -- as well as to the Presidents of each Bar Association.

Thank you.