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TESTIMONY OF DORIS L. SASSOWER

In Opposition to NYS Senate Confirmation of the Reappointment of New York Court of Appeals Chief Judge Judith S. Kaye. Presented at the Public Hearing of the New York State Senate Judiciary Committee, March 6, 2007, The State Capitol, Albany, New York.

My name is Doris L. Sassower and I am Co-Founder and Administrator of the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization dedicated to achieving reform of our judicial selection and discipline processes.

I am testifying here today in an individual capacity in opposition to Senate confirmation of Governor Spitzer's reappointment of New York Court of Appeals Chief Judge Judith S. Kaye on behalf of myself and other innocent victims of her official misconduct – both in her judicial capacity as Chief Judge of our state's highest court and in her administrative capacity as head of the Unified Court System.

Chief Judge Kaye's on-the-job performance, which, after all, is the "acid test" of her mettle, is one of demonstrable corruption, as evidenced by what she did to me professionally and personally in a case that came before her at the Court of Appeals six separate times as I attempted to obtain appellate review of a completely lawless, retaliatory, politically-motivated "interim" suspension of my law license by the Brooklyn-based Appellate Division, Second Department.

To understand what she did to me, I must first set forth my professional credentials, which, if not known to Chief Judge Kaye independently, were in the record before her. Those credentials are additionally relevant to my providing expert testimony at this confirmation as to her fitness for any position of public trust.

After my graduation, *cum laude*, from New York University Law School in 1955, I devoted most of my professional life to the cause of legal and judicial reform. In 1956, until his untimely death in 1957, I worked as an assistant to Arthur T. Vanderbilt, then Chief Justice of New Jersey's highest court, credited as the leader of the reform of New Jersey's archaic judicial system, turning it into one of the most modern justice systems in the country.

As President of the New York Women's Bar Association from 1968 to 1969, I, likewise, sought to improve the quality of justice and the judiciary. In 1971, I served on one of the first pre-nomination judicial screening panels set up to improve selection of Supreme Court judges in the First Judicial Department. My article recounting that experience, published on the front page of the New York Law Journal, led to the renaming of the Judiciary Committee of the New York State Bar Association as the Judicial Selection Committee and to my appointment as the first

woman ever to serve on such a committee. In that capacity, from 1972 to 1980, I interviewed and evaluated the qualifications of every judicial candidate during that eight-year period for the Court of Appeals, as well as for the four Appellate Divisions and the Court of Claims.

I myself was nominated as a candidate for the Court of Appeals in 1972, at age 39, the first woman practitioner to be accorded that honor – and interviewed by the NYSBA Judiciary Committee. Throughout the years of my own private practice, I had the highest peer rating of "AV", bestowed by the Martindale-Hubbell Law Directory. A copy of my biographic listing, as it last appeared in its 1989 edition is annexed hereto. In June 1989, I was honored by election to the Fellows of the American Bar Foundation, "an honor reserved for less than one-third of one percent of the practicing bar in each State". A copy of a certifying letter is also annexed.

In September 1990, I became *pro bono* counsel to the Ninth Judicial Committee, the local predecessor of the Center for Judicial Accountability, Inc. (CJA), founded and chaired by Eli Vigliano, Esq. to challenge a 1989 written judicial cross-endorsements deal between the Republican and Democratic party leaders of the Ninth Judicial District which guaranteed the election of seven cross-endorsed judicial nominees over a three-year period, the cross-endorsed nominee for Westchester County Surrogate among them. The terms and conditions of the deal included contracted-for early judicial resignations to create judicial vacancies and a pledge by the judicial nominees to split judicial patronage. In 1989 and then again in 1990, the deal was implemented at illegally-conducted judicial nominating conventions, with perjurious certificates of nomination falsely attesting to compliance with Election Law requirements. In 1990, as *pro bono* counsel, I filed a lawsuit under the Election Law, entitled *Castracan and Bonelli* v. *Colavita, et al*, challenging the deal as illegal, unconstitutional, and unethical, also contesting that year's implementing judicial nominating conventions. The transcending issue was the constitutionally of judicial cross-endorsements, which I contended disenfranchised the voters, with the politically-controlled judicial nominating conventions further violating the sanctity of the franchise.

The record of the lawsuit shows that it was "thrown" by a fraudulent judicial decision in Supreme Court/Albany County and that such was affirmed by the Appellate Division, Third Department in Albany. The judges at both levels were themselves the product of undisclosed multiple cross-endorsements and/or endeavoring to benefit from cross-endorsement in future judicial elections.

It was less than a week after I announced in a New York Times Letter to the Editor that I was taking *Castracan* to the New York Court of Appeals that the Appellate Division, Second Department issued its June 14, 1991 order suspending my law license immediately, indefinitely, and unconditionally. The order gave no reason, made no findings, was not preceded by any notice of petition and petition, setting forth charges. Nor was it preceded by any hearing or provide for any post-suspension hearing. Likewise, it failed to provide for any right of appeal.

As a result, I had to close up my law practice literally overnight, as I was informed that I was required to do so "within 24 hours" and to notify all my clients that I could no longer represent them. This, of course, meant that I could not continue to represent the petitioners in the *Castracan* case. Mr. Vigliano came to the rescue by taking over the case and perfecting the

appeal to the Court of Appeals. Likewise he brought the companion Election Law case of *Sady v. Murphy*, challenging the 1991 third phase of the deal then being implemented by the party bosses and their judicial nominees. He also handled the appeal of that case in the Appellate Division, Second Department and brought it to the Court of Appeals, contemporaneous with *Castracan*.[1]

Meanwhile, at great cost, I had retained specialized civil rights counsel, who, after advising me that I had an excellent case, made a motion for leave to appeal to the Court of Appeals. At that time, Chief Judge Kaye, then an Associate Judge on the Court, already knew – without necessity of further legal research – that there was NO statutory authority for interim suspensions and that the lack of findings in the June 14, 1991 interim suspension order, on *its face*, required its vacatur, *as a matter of law*. This, because of two prior Court of Appeals decisions in which she had participated: the Court's 1984 decision in *Matter of* Nuey, 61 NY2d 513, and its 1986 decision in *Matter of Padilla and Gray*, 67 NY 2d 440. Nuey, Padilla, and Gray were three interimly-suspended attorneys to whom the Court had granted leave to appeal.

Yet, Judge Kaye did not dissent from the Court's one-sentence September 10, 1991 order denying my motion for leave to appeal, without reasons (Exhibit B-1).[2]

That any fair and impartial judge, not bent on covering up corrupt, politically-motivated judicial conduct, would have been compelled to grant such motion for leave to appeal is clear from the record before the Court on that motion, as well as from the record in the *Castracan v. Colavita* Election Law case, which was pending before the Court until October 15, 1991, when the appeal in that case was dismissed. The Court's one-sentence order in *Castracan* was its standard boilerplate, that "no substantial constitutional question is directly involved" (Exhibit B-2) – a deceit evident from the case record.

Tellingly, a mere four months after the Court denied my motion for leave to appeal, it granted a motion for leave to appeal made by another attorney interimly-suspended by the Appellate Division, Second Department. Its 1992 decision in *Matter of Russakoff*, 72 N.Y.2d 520, not only reiterated the findings requirement for interim suspension orders and, based on the lack thereof, vacated attorney Russakoff's interim suspension, but additionally identified the constitutional infirmity of interim suspension rules, such as those of the Appellate Division, Second Department, which make no provision for a prompt post-suspension hearing.

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[1] The full record in the *Castracan v. Colavita* and *Sady v. Murphy* Election Law cases is posted on CJA's website, www.judgewatch.org, accessible *via* the sidebar panel "Judicial Selection-NYS"

[2] The exhibit references in my testimony are to the bound volume of exhibits that accompanied my daughter's May 1 2002 motion for Judge Kaye's disqualification and that of the Court's other judges in her public interest Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico vs Commission on Judicial Conduct of the State of New York*. Such volume contains the Court's September 10, 1991 order – as likewise the Court's five other orders hereinafter described, as well as the Court's order *Castracan*. CJA's website posts my daughter's Article 78 proceeding against the Commission, accessible *via* the sidebar panel "Test Cases-State (*Commission*)".

Notwithstanding the clear and controlling nature of the Court's decision in *Russakoff*, the Appellate Division, Second Department denied my motion to vacate the findingless June 14, 1991 interim suspension of my law license and for a hearing, which it did without reasons. I thereupon made my second trip to the Court of Appeals, this time by an appeal of right. My papers showed that my right to vacatur was *a fortiorari* to that of Mr. Russakoff.

Nonetheless, Judge Kaye participated in the Court's November 18, 1992 order, dismissing the appeal, *sua sponte*, upon the boiler-plate ground that "the order appealed-from does not finally determine the proceeding within the meaning of the Constitution" (Exhibit B-3) – not addressing the fact that the Court had not deemed lack of finality as barring review of the interim suspensions of attorneys Nuey, Padilla, Gray, and Russakoff or that the record in my case documented facts pertaining to my interim suspension exponentially more violative than those recited by the Court in their cases, all palpably making my case *a fortiori* to theirs.

It must be noted that at the very time my 1992 appeal of right was before the Court, it was hearing oral argument in *Wieder v. Skala*, 80 N.Y.2d 628 (1992), in which it would render a decision stating:

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

Yet, the Court did not see fit to comply with "reporting requirement[s]" and self-regulation by any *sua sponte* order directing referral of the Appellate Division, Second Department justices and their grievance committee appointees for disciplinary and criminal investigation in face of a record starkly revealing their unrestrained violations of disciplinary rules pertaining to "honesty, trustworthiness, [and] fitness" as well as of fundamental due process/equal protection safeguards.

Two years later, in 1994, I made my third trip to the Court of Appeals, this time seeking review of an Article 78 proceeding I had brought against the Appellate Division, Second Department, calling on them to account for their official misconduct. By then, Judge Kaye was Chief Judge Kaye – and the record before her and the Court showed that of 20 interimly-suspended attorneys on an Appellate Division, Second Department list, I alone had been denied a post-suspension

hearing and a final order for purposes of appeal.[3] Meanwhile, notwithstanding I was interimly-suspended, the Appellate Division, Second Department and its at-will grievance committee appointees had generated a succession of completely baseless, jurisdictionally-void disciplinary proceedings against me, as well as otherwise retaliating against me. For such compelling reasons, I brought the Article 78 proceeding against them – which, because of a flaw in the Article 78 statute, I was jurisdictionally required to bring before the very Appellate Division, Second Department judges I was suing. These judges then, without reasons or findings, refused to recuse themselves from my Article 78 petition. Instead, they dismissed it, granting the legally insufficient, factually false and perjurious dismissal motion of their own attorney, the State Attorney General.

As a result, I brought to the Court of Appeals an appeal of right, invoking treatise authority that "In an Article 78 proceeding in which the Appellate Division has original jurisdiction...appeal lies to the Court of Appeals", 24 Carmody-Wait 2d, 145:410 (1992 ed), 6 N.Y. Jur.2d 261. Among my other arguments was my assertion that denial of an appeal of right would not only make the Appellate Division, Second Department judge and jury in its own case – to which it was a party – but a court of first, last, and only resort. Such would be contrary to the settled public policy of the state, recognizing "the right of suitors to one appeal", 10 Carmody-Wait 2d, §70:4 (1992 ed.).[4]

The Court, with Chief Judge Kaye at the helm, ignored and disregarded this – and my fully-documented presentation of total lawlessness by the Appellate Division, Second Department. Its two-sentence May 12, 1994 order dismissed the appeal of right, *sua sponte*, on its stock boilerplate "no substantial constitutional question is directly involved", also relying, *sua sponte*, on its equally stock boilerplate that the appealed from order did "not finally determine the proceeding within the meaning of the constitution" (Exhibit B-4).

In so doing, Chief Judge Kaye made no disclosure with respect to my assertion that my ex-husband, George Sassower, was then engaged in pending litigation in federal court against her and Associate Judge Bellacosa, and that Mr. Sassower had also testified in opposition to Judge Bellacosa at this Committee's 1987 hearing on his Court of Appeals confirmation[5]. Additionally, the May 12, 1994 order concealed, by euphemistic language that Associate Judges Levine and Ciparick had "t[aken] no part" that these two judges had disqualified themselves from my case, doubtless because, as I had set forth in my motion papers, I had testified against each of them at this Committee's 1993 hearings on their confirmation to the Court.

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[3] A copy of the court papers in my six trips to the Court of Appeals was provided to the Court of Appeals on May 1, 2002, in two cartons accompanying my daughter's May 1, 2002 disqualification motion. One of these cartons, covered in red-white-and-blue, stars and stripes wrapping contains purple folders marked #1-#6. Citation references herein are to documents in those folders. See Folder #3: my January 24, 1994 Jurisdictional Statement, pp. 11.

[4] See Folder #3: my January 24, 1994 Jurisdictional Statement, ¶10.

[5] See Folder #3: March 14, 1994 supplementary letter, fn. 7.

I then made a fourth trip to the Court of Appeals: a motion for leave to appeal, combining it with a motion to reargue the Court's May 12, 1994 order dismissing my appeal of right. My notice of motion additionally requested:

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

I stated that the Court had:

> "sub silentio and without articulation of any reasons therefore, altered the well-settled and accepted rule that appeal lies of right from an order or judgment in an Article 78 proceeding originating in the Appellate Division."

And that:

> "In permitting accused judges to adjudicate their own case – and to do so, as here – in the context of an Article 78 proceeding against them – this Court has not only flouted the historic origin and legislative intent behind the Article 78 statute, but has disregarded a vast body of law relative to judicial disqualification – including that incorporated in our State Constitution and codified in Judiciary Law §14, as well as that which has been constitutionalized by decisional law of the United States Supreme Court, including Aetna v. Lavoie, 475 U.S. 813, 106 S.Ct. 1580 (1986) and Liljeberg v. Health Services , 486 U.S. 487, 108 S.Ct. 2194 (1988)."[6]

I asserted that "an impartial tribunal is recognized as the most fundamental component of due process". As I had in 1992, in seeking an appeal of right, I again cited to *Valz v. Sheepshead Bay* for the proposition that "where the decisive question is whether a judgment is the result of due process, an appeal lies to the Court of Appeals as a matter of right".[7]

I also questioned whether there might not be a public perception that the Court was retaliating against me for exercising my First Amendment rights. As to Chief Judge Kaye, I noted further

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[6] See Folder #4: my July 19, 1994 motion for reargument, reconsideration, leave to appeal, and other relief, ¶11.

[7] See Folder #4: my July 19, 1994 motion for reargument, reconsideration, leave to appeal, and other relief, ¶22.

that I had critically commented upon what had taken place at her 1993 confirmation hearing to be Chief Judge when I subsequently testified in opposition to Judge Ciparick's confirmation.[8]

Finally, I reiterated the Court's "affirmative duty" to report misconduct by judges and lawyers which the Article 78 proceeding had put before it,[9] including by a 56-page chronology, providing all the factual particulars, cross-referenced to the transmitted disciplinary files.[10] My last submission to the Court in the Article 78 proceeding closed with the paragraph:

> "...this Court must not shirk its duty to direct appropriate criminal and disciplinary investigation of the Attorney General and his clients, which the record...shows to be warranted. To do otherwise would not only eliminate any normative ethical standard for the State's highest legal officer and its second highest court, but would convey the message to the public and the lower courts that the reporting requirements of the Chief Administrator's Rules of Judicial Conduct, approved by this Court, are not adhered to by this Court itself."[11]

Judge Kaye's response, with the Court, was a two-sentence September 29, 1994 order denying reargument of my appeal of right, as likewise denying me leave to appeal – both without reasons (Exhibit B-5). Omitted was any mention of my request for disciplinary and criminal referrals against the Appellate Division, Second Department, its at-will appointees, and the Attorney General – relief which was the Court's absolute duty based on the appalling record before it.

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[8] See Folder #4: my July 19, 1994 motion for reargument, reconsideration, leave to appeal, and other relief, ¶37. My pertinent observations appear at pages 5-6 of my written testimony at Judge Ciparick's confirmation, posted on CJA's website, accessible *via* the sidebar panel "Judicial Selection-NYS": "The Corruption of 'Merit Selection' to New York's Highest State Court".

[9] See Folder #4: my July 19, 1994 motion for reargument, reconsideration, leave to appeal, and other relief, ¶¶60-64.

[10] The 56-page chronology is Exhibit J to my July 19, 1994 motion for reargument, reconsideration, leave to appeal and other relief and referred to therein at ¶¶29-34. Such chronology, without its parenthesized record cross-references, is the "Factual Allegations" portion of the verified complaint in my §1983 federal action, *Doris L. Sassower v. Hon. Guy Mangano, Presiding Justice of the Appellate Division, Second Department, and the Associate Justices Thereof, et al.*. – a copy of which was furnished to the Court of Appeals in connection with my fifth trip [see accompanying red expanding folder, with inventory of underlying papers: DLS 3/27/95 motion to the Appellate Division, Second Department, Ex. D thereto].

CJA's website posts the verified complaint and record in the §1983 federal action, accessible *via* the sidebar panel "Test Cases-Federal (*Mangano*)".

[11] See Folder #4: my August 8, 1994 affidavit in reply and in further support of reargument, reconsideration, leave to appeal, and other relief, ¶27.

The Court's denial was so indefensible and shocking that I personally paid for CJA's $16,770 public interest ad, "*Where Do You Go When Judges Break the Law?*", published on the Op-Ed page of The New York Times on October 26, 1994 and reprinted, on November 1, 1994 in the New York Law Journal, at an additional cost of $2,280 (attached to Exhibit E-1).

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

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

By then, Chief Judge Kaye's Committee on the Profession and the Courts, which she had set up in December 1993, had issued its November 1995 Report emphasizing the importance of self-regulation and an effective attorney disciplinary mechanism.

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

In late 1995, on my fifth trip to the Court of Appeals, I sought another appeal of right. I now went beyond suggesting, as I had in my Article 78 proceeding,[12] that the Court was not fair and impartial and was denying me my constitutional right to equal protection of the law. By letter application, I expressly requested the Court's recusal, stating:

> "Since this is now the fifth time I am bringing up for the Court's review the Second Department's June 14, 1991 'interim' Order suspending my law license, the Court already has in its possession virtually the entire record of the disciplinary proceedings against me... That record establishes that the June 14, 1991 'interim' suspension Order is – as I have from the outset contended and shown it to be – petition-less, hearing-less, finding-less, and

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[12] *See* Folder #4: my July 19, 1994 motion for reargument, reconsideration, leave to appeal and other relief, ¶¶36-37.

> reason-less, entitling me to this Court's jurisdiction of right and to immediate vacatur relief, Matter of Nuey, 61 N.Y.2d 513 (1984); Matter of Russakoff, 79 N.Y.2d 520 (1992); and that New York's attorney disciplinary law – as written and as applied – is flagrantly unconstitutional.
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> It is respectfully submitted that this Court's extraordinary four-time refusal to take jurisdiction over the substantial constitutional issues directly presented by my appeals – issues the Court plainly recognized when it took jurisdiction over the appeals of interimly-suspended attorneys Nuey and Russakoff – is egregiously violative of my constitutional rights as to be explicable only as a reflection of this Court's bias against me and its favored treatment and protection of the Justices of the Second Department, who, as the record unmistakably shows, have utilized the disciplinary machinery of our State for their own ulterior and political purposes. I, therefore, respectfully submit that the Court should recuse itself to ensure that there is the actuality and appearance of an appropriate independent and impartial tribunal to hear the sensitive issues relating to this appeal – including those relating to this Court's subject matter jurisdiction..." (underlining in the original).[13]

The Court's response was a two-sentence February 20, 1996 order omitting any mention of my requested recusal and purporting to grant a motion to dismiss the appeal by grievance committee counsel "upon the ground that the order appealed from does not finally determine the proceeding" (Exhibit B-6). This, notwithstanding NO such ground had been raised by grievance committee counsel in his dismissal motion, whose motion I had shown to be "frivolous within the meaning of 22 NYCRR §130-1.1 et seq., and a deliberate deceit upon this Court within the meaning of Judiciary Law §487".[14]

I thereupon took my sixth trip to the Court of Appeals: a motion for leave to appeal, combining it with my formal motion for the Court's recusal and for reargument of its denial of my appeal of right. In so doing, I asserted that the February 20, 1996 order was so egregiously erroneous as to manifest the Court's actual bias.

Chief Judge Kaye's response, by the Court's two-sentence June 11, 1996 order, denied recusal, *without* reasons, denied reargument, *without* reasons, and dismissed my motion for leave to appeal upon the ground that the appealed-from order "does not finally determine the proceeding within the meaning of the Constitution and is not an order of the type provided for in CPLR §5602(a)(2)" (Exhibit B-7). In so doing, the Court did not trouble itself with explaining why it had not deemed lack of "finality" as barring review to interimly-suspended attorneys Russakoff, Padilla, Gray, and Nuey, whose four separate leave applications it had promptly granted.[15]

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[13] *See* Folder #5: my November 15, 1995 letter, pp. 1-2.

[14] *See* Folder #5: my December 26, 1995 affidavit in opposition to motion to dismiss appeal of right, ¶2.

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

As noted, during the very period in which the Court was rejecting my fifth and sixth attempted appeals of the Appellate Division, Second Department's due process-less, retaliatory suspension of my law license, Chief Judge Kaye was publicly purporting "*The court system has zero tolerance for jurists who act unethically or unlawfully*". Such emphatic claim was made by Chief Judge Kaye in a March 1996 newspaper column, she had written and was not an isolated false assertion. It is consistent with Chief Judge Kaye's rhetoric, further reflected in a speech she made at a Hofstra Law School symposium and reprinted in its Spring 1997 Law Review, that "the judiciary is fully accountable to the public"[16] and that "judges must disqualify themselves when their impartiality might reasonably be questioned." Indeed, Chief Judge Kaye regularly encourages the public to believe that she fills a leadership role in ensuring judicial integrity and that she is vigilant in addressing abuses by judges who "cross the line". This, of course, is reinforced by the various committees, offices, and entities within the Office of Court Administration that Chief Judge Kaye sets up, at taxpayer expense, for the announced purpose of advancing attorney professionalism, accountability, and public confidence.[17]

The foregoing recitation of the record before the Court of Appeals with respect to the Appellate Division, Second Department's June 14, 1991 suspension order is extracted from my daughter's May 1, 2002 motion to disqualify Chief Judge Kaye and her Court of Appeals colleagues made in her public interest Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico vs Commission on Judicial Conduct of the State of New York*, which I incorporate herein by reference. Of the five cartons that my daughter brought to the Court of Appeals on that date – which was Law Day – two contained the record of my six attempts to obtain Court of Appeals' review of the June 14, 1991 interim suspension order. This, to substantiate the comparable recitation in the disqualification motion (pp. 16-41) that Chief Judge Kaye was disqualified for interest under Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and that a functioning Commission on

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[16] *See* "*Safeguarding A Crown Jewel: Judicial Independence and Lawyer Criticism of Courts*" by Chief Judge Kaye, 25 Hofstra Law Review 703 (Spring 1997). Among its copious and scholarly footnotes, fn. 57, citing the annotation to EC 8-6 of the Model Code of Professional Responsibility, that: "[E]very lawyer, worthy of respect, realizes that public confidence in our courts is the cornerstone of our governmental structure, and will refrain from unjustified attacks on the character of the judges, while recognizing the duty to denounce and expose a corrupt and dishonest judge." from *Kentucky State Bar Association v. Lewis*, 282 S.W2d 321, 3326 (KY. 1995) (emphasis added).

[17] This includes Chief Judge Kaye's Commission to Promote Public Confidence in Judicial Elections – to which was delivered, in 1993, a full copy of the record in *Castracan v. Colavita* and *Sady v. Murphy* Election Law cases, a full copy of the record of *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico vs Commission on Judicial Conduct of the State of New York*, and my petition to the U.S. Supreme Court for a writ of certiorari and supplemental brief in my §1983 federal action *Doris L. Sassower v. Hon. Guy Mangano, Presiding Justice of the Appellate Division, Second Department, and the Associate Justices Thereof, et al.*. SEE: my daughter's February 4, 2004 memo to Commission Chair John Feerick & Vice Chair Patricia Salkin, posted on CJA's website, accessible *via* the sidebar panel "Searching for Champions (Correspondence)-NYS", which brings up a webpage linking to Chief Judge Kaye's Commission to Promote Public Confidence in Judicial Elections.

Judicial Conduct would have evidence from which to draw the only conclusion possible, *to wit*, her criminal complicity in the Appellate Division, Second Department's corrupt and politically-motivated judicial retaliation against me,[18] mandating her removal and criminal prosecution.

The May 1, 2002 disqualification motion required Chief Judge Kaye to confront the evidence of her crimes against me with respect to these six separate attempts to gain Court of Appeals' review. That she could not do so is evident from the Court's September 12, 2002 order disposing of the motion – and is meticulously demonstrated in my daughter's 35-page affidavit supporting her October 15, 2002 motion to reargue and vacate the order for fraud, lack of jurisdiction, disclosure, and other relief. The Court's one-sentence December 17, 2002 order, denying that motion without reasons, further reflects that Chief Judge Kaye has no defense.

This Committee must not, and cannot, properly proceed with confirmation of this corrupt and contemptible judge without questioning her as to each and every one of the Court of Appeals' six orders denying me appellate review and vacatur of the June 14, 1991 interim suspension order. Following her responses, if any, findings must be made by the Committee based on the pertinent casefile records contained within the Commission case, which my daughter has brought for that purpose to this hearing.

I am available to answer any questions by this Committee and to assist in your review of the files. Until such review and the Committee's report to the Senate based thereon, Senate confirmation must be TABLED.

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[18] See, *inter alia*, ¶42 of my daughter's May 1, 2002 disqualification/disclosure motion, which is the first paragraph under the section heading "The Disqualification for Interest of Chief Judge Kaye and Associate Judge [George Bundy] Smith Resulting from their Disciplinary and Criminal Liability Arising out of Related Prior and Subsequent Appeals to this Court".