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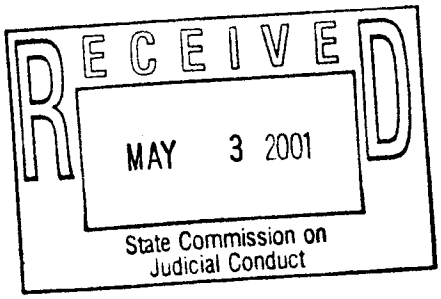

BY HAND

May 3, 2001

New York State Attorney General Eliot Spitzer
120 Broadway
New York, New York 10271-0332

RE: Meeting your Obligations under New York's Disciplinary Rules of the Code of Professional Responsibility and under Executive Law §63.1 in the appeal of *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York*
(S. Ct. NY Co. #108551/99;
Appellate Division, First Dept.: September 2001 Term)

Dear Mr. Spitzer:

This follows our memorable exchange – both public and private – at the April 18th "Fair Trial-Free Press" annual meeting at the Columbia School of Journalism, in which I directly protested to you your office's fraudulent defense tactics in my public interest lawsuit against the New York State Commission on Judicial Conduct.

So that you could see this defense fraud for yourself – and its effect in subverting the judicial process so as to deprive me – and the public interest I represent --of a "fair trial" on the important issues in the case, I gave you, *in hand*, a copy of my Appellant's Brief and Appendix, as well as a copy of your office's Respondent's Brief. Additionally, I gave you a April 18th coverletter, in which I stated:

> "I have placed the Solicitor General's office on notice that unless the Respondent's Brief is withdrawn, I will be making a motion for sanctions. Although the fraudulence of the Respondent's Brief is obvious from the most cursory comparison of it and my Appellant's Brief, I have been requested to supply the Solicitor General's office with a written presentation. This, I am in the process of preparing."

Ex "T-3"

That written presentation – a critique of the Respondent's Brief -- has now been completed. A copy is enclosed so that you, who have ultimate supervisory responsibilities, can direct that the Respondent's Brief be withdrawn. This, as a first step to meeting your mandatory obligations, not only under New York's Disciplinary Rules of the Code of Professional Responsibility, but under Executive Law §63.1.

The utter fraudulence of your Respondent's Brief, established by my critique, demonstrates that you have NO legitimate defense to this appeal. Under such circumstances, your duty under Executive Law §63.1, which requires that your litigation advocacy be predicted on the "interests of the state", is to disavow your representation of the Commission and to join in support of the appeal. This is what my January 10th letter asked of you – and what I reiterate now.

Finally, please consider the appellate papers I gave you, *in hand*, and the within critique in further support of my public statement to you on January 27, 1999 at the Association of the Bar of the City of New York. At that time, I not only repeated the assertion detailed by CJA's $3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", that "the Attorney General's office uses fraud to defend state judges and the State Commission on Judicial Conduct sued in litigation", but asked "what steps are you going to take...?" You responded, "Anything that is submitted to us, we will look at it."[1]

In our April 18th conversation, you remembered that public exchange, now well over two years old. I told you that despite having submitted to you substantiating documentation, followed up by many, many follow-up phone calls and letters inquiring as to the status of your review, no one had ever gotten back to us. You told me that someone would be calling.

I await that much overdue call.

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[1] For your convenience, a copy of "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" and the pertinent transcript pages from our exchange on January 27, 1999 at the City Bar are attached.

Yours for a quality judiciary,

Elena Ruth Sassower

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*

Enclosures

cc: Office of New York State Solicitor General Preeta D. Bansal
ATT: Deputy Solicitor General Michael S. Belohlavek
Assistant Solicitor General Carol Fischer
Commission on Judicial Conduct of the State of New York
ATT: Chairman Henry T. Berger & Commissioners

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New York Law Journal

January 29, 1999 Friday edition

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Breakfast with Eliot Spitzer

Hosted by the New York Law Journal and the Association of the Bar of the City of New York

January 27, 1999

MR. COOPER: Good morning. My name is Mike Cooper. I'm the president of the Association of the Bar, and it's my great pleasure to welcome you to meet and hear the Attorney General, the chief legal officer of the State of New York, Eliot Spitzer.

Eliot was here a little over four months ago with three other candidates in the Democratic primary, and took that occasion to tell you something about his vision for the office of Attorney General and the changes that he would make in its operation. And I guess that message got through, because he bested three other candidates in the primary and then defeated the incumbent.

We are very pleased this morning at the Association to co-host this event with the New York Law Journal, who were our co-hosts back at the candidates debates in early September. And without further ado, I would like to present the president and chief executive officer of the American Lawyer Media, Bill Pollak.

MR. POLLAK: Thank you, Michael. And thank you all for coming to the second of what we hope will be a continuing series of programs in which the Law Journal and the City Bar join to shed light on issues in this state and city's legal and judicial arenas.

The Attorney General is the state's chief legal officer. It's a position that the bar has a unique interest in and concern about. Administrator of a vast legal bureaucracy of about 500 attorneys and more than 1,800 employees, the Attorney General is the lawyer chiefly

So, yes we will examine those cases and we have already moved to expand the range of cases that will be handled by the Civil Rights Bureau. Without looking backward, I think there is nothing to be gained any more by retrospective analysis of what happened in the past four years. I can merely say there will be a much more aggressive civil rights agenda over the next four years.

We have already begun a significant number of cases, which I am not at liberty to talk about. We have already begun looking at some very tough issues and we will move quickly on them.

MS. HOCHBERGER: Thank you. Go ahead.

MS. SASSOWER: My name is Elena Sassower, I'm the coordinator of the Center for Judicial Accountability. I want to congratulate you and thank you for making as your first priority here the announcement of a public integrity unit. Indeed, that was the first question that I submitted by E-mail and by fax, what had become of that pre-election proposal. So, I am really delighted and overjoyed.

Let me just though skip to my third question that I had proposed today, and that is, that I would hope that a public integrity section would also examine the practices of the Attorney General's office in defending state judges and state agencies sued in litigation.

As you know, we ran a $3,000 public interest ad about the fraudulent defense tactics of the Attorney General's office.

MS. HOCHBERGER: Is there a question?

MS. SASSOWER: Yeah.

MS. HOCHBERGER: Could we get to the question.

MS. SASSOWER: What steps are you going to take in view of those allegations that the Attorney General's office uses fraud to defend states judges and the State Commission on Judicial Conduct sued in litigation.

MR. SPITZER: Anything that is submitted to us we will look at it.

MS. SASSOWER: I have it. I have it right here.

MR. SPITZER: Okay. Why did I suspect that? Thank you.

MS. HOCHBERGER: This one also came in over E-mail.

What are your views on the unauthorized practice of law generally, and specifically with respect to the unauthorized practice of immigration law in New York? How will your office deal with it?

MR. SPITZER: It is an area where the Attorney General's office has enforcement authority, as I was reminded this morning by my very good friend Ed Meyer. We have co-authority to enforce those rules with the Board of Regents, and we will do so aggressively.

I think it does raise interesting issues in areas of the law where there is, frankly, not sufficient representation. And immigration law in particular is one such area. So I know there have been some grave proposals over the years to permit some non-licensed lawyers to give advice up to a certain threshold in those areas, but it's obviously an area where we will be aggressive in our enforcement where it's appropriate.

MS. HOCHBERGER: Yes.

A SPEAKER: Good morning. It sounds like we're ready for an E-ride for those of you that remember Disney.

What role do you see or foresee for the judicial system, meaning the courts, the bar, your office and other offices with respect to the YK issues that may or may not manifest themselves.

MR. SPITZER: Well, the first thing I have done is to try to see where the Attorney General's office is in terms of being prepared for this problem. And I don't yet have a clear answer in terms of where we are in terms of getting our computer systems ready for the -- for that moment. And obviously people are more worried about hospitals and getting paychecks and the banking system crashing. But, I think we will be prepared.

What role generally there is for lawyers, I really haven't thought about that in particular.

New York Law Journal

AUGUST 27, 1997

[at page 3]

RESTRAINING "*LIARS IN THE COURTROOM*" AND ON THE PUBLIC PAYROLL

On June 17th, The New York Law Journal published a Letter to the Editor from a former New York State Assistant Attorney General, whose opening sentence read "Attorney General Dennis Vacco's worst enemy would not suggest that he tolerates unprofessional or irresponsible conduct by his assistants after the fact". Yet, more than three weeks earlier, the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization, submitted a proposed Perspective Column to the Law Journal, detailing the Attorney General's knowledge of, and complicity in, his staff's litigation misconduct -- before, during, and after the fact. The Law Journal refused to print it and refused to explain why. Because of the transcending public importance of that proposed Perspective Column, CJA has paid $3,077.22 so that you can read it. It appears today on page 4.

[at page 4]

RESTRAINING "*LIARS IN THE COURTROOM*" AND ON THE PUBLIC PAYROLL

-- a $3,077.22 ad presented, in the public interest, by the Center for Judicial Accountability, Inc. --
(continued from page 3)

In his May 16th Letter to the Editor, Deputy State Attorney General Donald P. Berens, Jr. emphatically asserts, "the Attorney General does not accept and will not tolerate unprofessional or irresponsible conduct by members of the Department of Law."

A claim such as this plainly contributes to the view -- expressed in Matthew Lifflander's otherwise incisive Perspective Column "*Liars Go Free in the Courtroom*" (2/24/97) -- that the State Attorney General should be in the forefront in spearheading reform so that the perjury which "pervades the judicial system" is investigated and deterrent mechanisms established. In Mr. Lifflander's judgment, "the issue is timely and big enough to justify creation of either a state Moreland Act Commission investigation by the Governor and the Attorney General, or a well-financed legislative investigation at the state or federal level", with "necessary subpoena power". Moreover, as recognized by Mr. Lifflander and in the two published letter responses (3/13/97, 4/2/97), judges all too often fail to discipline and sanction the perjurers who pollute the judicial process.

In truth, the Attorney General, our state's highest law enforcement officer, lacks the conviction to lead the way in restoring standards fundamental to the integrity of our judicial process. His legal staff are among the most brazen of liars who "go free in the courtroom". Both in state and federal court, his Law Department relies on litigation misconduct to defend state agencies and officials sued for official misconduct, including corruption, where it has *no* legitimate defense. It files motions to dismiss on the pleadings which falsify, distort, or omit the pivotal pleaded allegations or which improperly argue *against* those allegations, without *any* probative evidence whatever. These motions also misrepresent the law or are unsupported by law. Yet, when this defense misconduct -- readily verifiable from litigation files -- is brought to the Attorney General's attention, he fails to take any corrective steps. This, notwithstanding the misconduct occurs in cases of great public import. For its part, the courts -- state and federal -- give the Attorney General a "green light."

Ironically, on May 14th, just two days before the Law Journal published Deputy Attorney General Berens' letter, CJA testified before the Association of the Bar of the City of New York, then holding a hearing about misconduct by state judges and, in particular, about the New York State Commission on Judicial Conduct. The Law Journal limited its coverage of this important hearing to a three-sentence blurb on its front-page news "Update" (5/15/97).

Our testimony described Attorney General Vacco's defense misconduct in an Article 78 proceeding in which we sued the Commission on Judicial Conduct for corruption (N.Y. Co. #95-109141). Law Journal readers are already familiar with that public interest case, spearheaded by CJA. On August 14, 1995, the Law Journal printed our Letter to the Editor about it, "*Commission Abandons Investigative Mandate*" and, on November 20, 1996, printed our $1,650 ad, "*A Call for Concerted Action*".

The case challenged, *as written and as applied*, the constitutionality of the Commission's self-promulgated rule, 22 NYCRR §7000.3, by which it has converted its mandatory duty under Judiciary Law §44.1 to investigate facially-meritorious judicial misconduct complaints into a discretionary option, unbounded by *any* standard. The petition alleged that since 1989 we had filed eight facially-meritorious complaints "of a profoundly serious nature -- rising to the level of criminality, involving corruption and misuse of judicial office for ulterior purposes -- mandating the ultimate sanction of removal". Nonetheless, as alleged, each complaint was dismissed by the Commission, *without* investigation, and *without* the determination required by Judiciary Law §44.1(b) that a complaint so-dismissed be "on its face lacking in merit". Annexed were copies of the complaints, as well as the dismissal letters. As part of the petition, the Commission was requested to produce the record, including the evidentiary proof submitted with the complaints. The petition alleged that such documentation established, "*prima facie*, [the] judicial misconduct of the judges complained of or probable cause to believe that the judicial misconduct complained of had been committed".

Mr. Vacco's Law Department moved to dismiss the pleading. Arguing *against* the petition's specific factual allegations, its dismissal motion contended -- *unsupported* by legal authority -- that the facially irreconcilable agency rule is "harmonious" with the statute. It made no argument to our challenge to the rule, *as applied*, but in opposing our Order to Show Cause with TRO falsely asserted -- *unsupported* by law or *any* factual specificity -- that the eight facially-meritorious judicial misconduct complaints did not have to be investigated because they "did not on their face allege judicial misconduct". The Law Department made no claim that any such determination had ever been made by the Commission. Nor did the Law Department produce the record -- including the evidentiary proof supporting the complaints, as requested by the petition and further reinforced by separate Notice.

Although CJA's sanctions application against the Attorney General was fully documented and uncontroverted, the state judge did not adjudicate it. Likewise, he did not adjudicate the Attorney General's duty to have intervened on behalf of the public, as requested by our formal Notice. Nor did he adjudicate our formal motion to hold the Commission in default. These threshold issues were simply obliterated from the judge's decision, which concocted grounds to dismiss the case. Thus, to justify the rule, *as written*, the judge advanced his own interpretation, falsely attributing it to the Commission. Such interpretation, belied by the Commission's own definition section to its rules, does nothing to reconcile the rule with the statute. As to the constitutionality of the rule, *as applied*, the judge baldly claimed what the Law Department never had: that the issue was "not before the court". In fact, it was squarely before the court -- but adjudicating it would have exposed that the Commission was, as the petition alleged, engaged in a "pattern and practice of protecting politically-connected judges...shield[ing them] from the

disciplinary and criminal consequences of their serious judicial misconduct and corruption".

The Attorney General is "the People's lawyer", paid for by the taxpayers. Nearly two years ago, in September 1995, CJA demanded that Attorney General Vacco take corrective steps to protect the public from the combined "double-whammy" of fraud by the Law Department and by the court in our Article 78 proceeding against the Commission, as well as in a prior Article 78 proceeding which we had brought against some of those politically-connected judges, following the Commission's wrongful dismissal of our complaints against them. It was not the first time we had apprised Attorney General Vacco of that earlier proceeding, involving perjury and fraud by his two predecessor Attorneys General. We had given him written notice of it a year earlier, in September 1994, while he was still a candidate for that high office. Indeed, we had transmitted to him a full copy of the litigation file so that he could make it a campaign issue -- which he failed to do.

Law Journal readers are also familiar with the serious allegations presented by that Article 78 proceeding, raised as an essential campaign issue in CJA's ad "*Where Do You Go When Judges Break the Law?*". Published on the Op-Ed page of the October 26, 1994 New York Times, the ad cost CJA $16,770 and was reprinted on November 1, 1994 in the Law Journal, at a further cost of $2,280. It called upon the candidates for Attorney General and Governor "to address the issue of judicial corruption". The ad recited that New York state judges had thrown an Election Law case challenging the political manipulation of elective state judgeships and that other state judges had viciously retaliated against its "judicial whistle-blowing", *pro bono* counsel, Doris L. Sassower, by suspending her law license immediately, indefinitely, and unconditionally, *without* charges, *without* findings, *without* reasons, and *without* a pre-suspension hearing, -- thereafter denying her *any* post-suspension hearing and *any* appellate review.

Describing Article 78 as the remedy provided citizens by our state law "to ensure independent review of governmental misconduct", the ad recounted that the judges who unlawfully suspended Doris Sassower's law license had refused to recuse themselves from the Article 78 proceeding she brought against them. In this perversion of the most fundamental rules of judicial disqualification, they were aided and abetted by their counsel, then Attorney General Robert Abrams. His Law Department argued, *without* legal authority, that these judges of the Appellate Division, Second Department were not disqualified from adjudicating their own case. The judges then granted their counsel's dismissal motion, whose legal insufficiency and factual perjuriousness was documented and uncontroverted in the record before them. Thereafter, despite repeated and explicit written notice to successor Attorney General Oliver Koppell that his judicial clients' dismissal decision "was and is an outright lie", his Law Department opposed review by the New York Court of Appeals, engaging in further misconduct before that court, constituting a deliberate fraud on that tribunal. By the time a writ of certiorari was sought from the U.S. Supreme Court, Mr. Vacco's Law Department was following in the footsteps of his predecessors (AD 2nd Dept. #93-02925; NY Ct. of Appeals: Mo. No. 529, SSD 41; 933; US Sup. Ct. #94-1546).

Based on the "hard evidence" presented by the files of these two Article 78 proceedings, CJA urged Attorney General Vacco to take immediate investigative action and remedial steps since what was at stake was not only the corruption of two vital state agencies -- the Commission on Judicial Conduct and the Attorney General's office -- but of the judicial process itself.

What has been the Attorney General's response? He has ignored our voluminous correspondence. Likewise, the Governor, Legislative leaders, and other leaders in and out of government, to whom we long ago gave copies of one or both Article 78 files. No one in a leadership position has been willing to comment on either of them.

Indeed, in advance of the City Bar's May 14th hearing, CJA challenged Attorney General Vacco and these leaders to deny or dispute the file evidence showing that the Commission is a beneficiary of fraud, without which it could *not* have survived our litigation against it. None appeared -- except for the Attorney General's client, the Commission on Judicial Conduct. Both its Chairman, Henry Berger, and its Administrator, Gerald Stern, conspicuously avoided making *any* statement about the case -- although each had received a personalized written challenge from CJA and were present during our testimony. For its part, the City Bar Committee did not ask Mr. Stern *any* questions about the case, although Mr. Stern stated that the sole purpose for his appearance was to answer the Committee's questions. Instead, the Committee's Chairman, to whom a copy of the Article 78 file had been transmitted more than three months earlier -- but, who, for reasons he *refused* to identify, did *not* disseminate it to the Committee members -- abruptly closed the hearing when we rose to protest the Committee's failure to make such inquiry, the importance of which our testimony had emphasized.

Meantime, in a §1983 federal civil rights action (*Sassower v. Mangano, et al*, #94 Civ. 4514 (JES), 2nd Cir. #96-7805), the Attorney General is being sued as a party defendant for subverting the state Article 78 remedy and for "complicity in the wrongful and criminal conduct of his clients, whom he defended with knowledge that their defense rested on perjurious factual allegations made by members of his legal staff and wilful misrepresentation of the law applicable thereto". Here too, Mr. Vacco's Law Department has shown that there is no depth of litigation misconduct below which it will not sink. Its motion to dismiss the complaint falsified, omitted and distorted the complaint's critical allegations and misrepresented the law. As for its Answer, it was "knowingly false and in bad faith" in its responses to *over 150* of the complaint's allegations. Yet, the federal district judge did not adjudicate our fully-documented and uncontroverted sanctions applications. Instead, his decision, which obliterated any mention of it, *sua sponte*, and *without* notice, converted the Law Department's dismissal motion into one for summary judgment for the Attorney General and his co-defendant high-ranking judges and state officials -- where the record is wholly devoid of *any* evidence to support anything but summary judgment in favor of the plaintiff, Doris Sassower -- which she expressly sought.

Once more, although we gave particularized written notice to Attorney General Vacco of his Law Department's "fraudulent and deceitful conduct" and the district judge's "complicity and collusion", as set forth in the appellant's brief, he took no corrective steps. To the contrary, he tolerated his Law Department's further misconduct on the appellate level. Thus far, the Second Circuit has maintained a "green light". Its one-word order "DENIED", *without* reasons, our fully-documented and uncontroverted sanctions motion for disciplinary and criminal referral of the Attorney General and his Law Department. Our perfected appeal, seeking similar relief against the Attorney General, as well as the district judge, is to be argued **THIS FRIDAY, AUGUST 29TH**. It is a case that impacts on every member of the New York bar -- since the focal issue presented is the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*. You're all invited to hear Attorney General Vacco *personally* defend the appeal -- if he dares!

We agree with Mr. Lifflander that "what is called for now is action". Yet, the impetus to root out the perjury, fraud, and other misconduct that imperils our judicial process is not going to come from our elected leaders -- least of all from the Attorney General, the Governor, or Legislative leaders. Nor will it come from the leadership of the organized bar or from establishment groups. Rather, it will come from *concerted* citizen action and the power of the press. For this, we do not require subpoena power. We require only the courage to come forward and publicize the readily-accessible case file evidence -- *at our own expense, if necessary*. The three above-cited cases -- *and this paid ad* -- are powerful steps in the right direction.

CENTER for JUDICIAL ACCOUNTABILITY, Inc.

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Governmental integrity cannot be preserved if legal remedies, designed to protect the public from corruption and abuse, are subverted. And when they are subverted by those on the public payroll, including by our State Attorney General and judges, the public needs to know about it and take action. That's why we've run this ad. Your tax-deductible donations will help defray its cost and advance CJA's vital public interest work.