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BY HAND

March 7, 2001

Louis A. Craco, Chairman
Institute on Professionalism in the Law
140 Grand Street, 7th Floor
White Plains, New York 10601

ATT: Antonio E. Galvao, OCA Liaison to the Institute

RE: Holding the Bar Associations and Their Culpable Lawyers to Account for their Complicitous Role in the Corruption of "Merit Selection" to the New York Court of Appeals

Dear Chairman Craco:

Following up our conversation at the March 1st meeting of the New York State Fellows of the American Bar Foundation, this is to request that the Institute on Professionalism in the Law "weigh in" on the important issues presented by CJA's enclosed November 13, 2000 report on "The Complicitious Role of the Bar Associations in the Corruption of 'Merit Selection' to the New York Court of Appeals" – filed with the First Department Disciplinary Committee, by letter dated November 14, 2000, as a complaint of professional misconduct against the bar associations and the culpable attorneys acting in their name[1].

For starters, CJA requests that in keeping with the Institute's mandate to "monitor and comment on the methods of enforcing standards of professional conduct for lawyers in the state" and to "recommend measures, including... proposed legislation, rules of practice, and modifications of the Code of Professional Responsibility"[2], it evaluate the First Department Disciplinary Committee's response to the complaint by its Chief Counsel. For the convenience of the Institute, a copy of CJA's February 26, 2001 letter to the Chief Counsel, particularizing the many

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1 As reflected by CJA's November 14, 2000 letter, it also transmitted CJA's October 16, 2000 report to the bar associations, substantiated by File Folders "A" and "B". These are herein enclosed.

2 *See* Chief Judge Kaye's March 3, 1999 Administrative Order creating the Institute, #4G and J.

Ex "I-4"

deficiencies of his response, is enclosed.

Among these deficiencies, (1) the Chief Counsel's failure to address the threshold conflict of interest issues presented by CJA's November 14, 2000 letter; (2) the Chief Counsel's claim, unsupported by legal authority or argument, that the Disciplinary Committee has no jurisdiction over bar associations; (3) the Chief Counsel's failure to make any referral to the jurisdictionally-proper body; (4) the Chief Counsel's obliteration of the fact that CJA's complaint was also against the bar association's culpable individual attorneys -- over whom the Disciplinary Committee has jurisdiction; and (5) the Chief Counsel's claim, likewise unsupported by legal authority or argument, that bar ratings of judicial candidates are merely "expressions of opinion" – inferring that fundamental conflict of interest rules and evidentiary and evaluative standards are inapplicable to bar associations performing a semi-official role in the "merit selection" process to New York's highest state court.

These and other deficiencies in the Chief Counsel's response are in face of notice, set forth at pages 2-3 and 27-28 of CJA's November 13, 2000 report and reflected by CJA's November 14, 2000 letter, that copies were being provided to the Institute on Professionalism in the Law and to the Committee to Promote Public Trust and Confidence in the Legal System[3]. As both bodies recognize the importance of an effective attorney disciplinary system to ensuring professionalism and public confidence[4], this suggests the Chief Counsel believed that neither would do anything – possibly borne of his knowledge that their members, even more than those of the Disciplinary Committee, are compromised by personal and professional relationships with the bar associations and prominent lawyers who are the subject of the complaint, or with the public officials protected by their violative conduct.

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[3] CJA's March 2, 2001 coverletter to the Committee to Promote Public Trust and Confidence in the Legal System is enclosed herewith.

[4] *See* the November 1995 Final Report to the Chief Judge of the Committee on the Profession and the Courts, page 45: "The legal profession, by virtue of being accorded the privilege of self-regulation, is obligated to maintain an attorney disciplinary process that ensures the public's confidence in the legal system is both safeguarded and deserved. ...It is the Committee's assessment that there are significant opportunities for improvements in the present system of attorney discipline that would enhance both its effectiveness and public confidence in its operation. Clients, practitioners, judges and ethicists all expressed serious reservations regarding the current disciplinary process...These concerns are real, and they give rise to the perception, no less damaging by virtue of being a perception, that the profession is unable or unwilling to regulate itself."; *See* May 1999 Report to the Chief Judge and Chief Administrative Judge of the Committee to Promote Public Trust and Confidence in the Legal System:, page 33: "Make the public aware that errant attorneys and judges are accountable and subject to sanctions by opening to the public disciplinary proceedings once a *prima facie* case has been established...The benefits of such a procedure are that it eliminates the perception that lawyers and judges are a closed group that look to protect themselves..."

As illustrative, ALL members of the Institute on Professionalism and the Committee to Promote Public Trust and Confidence are appointed by, and serve at the pleasure of, Chief Judge Kaye, whose serious official misconduct, warranting her removal from office, would be exposed by investigation of the complaint.[5]

Consequently, please advise as to what steps the Institute for Professionalism in the Law will take to ensure the fair and impartial handling of CJA's November 13, 2000 report – the accuracy of whose recitation of professional misconduct by the bar associations and their lawyers has been entirely *undenied* by them.

Yours for a quality judiciary,

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

Enclosures
cc: Committee to Promote Public Trust and Confidence in the Legal System
First Department Disciplinary Committee

[5] The Chief Judge's wilful refusal to discharge her mandatory administrative and disciplinary responsibilities under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct has produced the chain of events leading to CJA's November 13, 2000 report. *See* page 27 of CJA's November 13, 2000 report, referencing pages 14-15 of CJA's October 16, 2000 report and correspondence with Chief Judge Kaye, dated March 3, 2000, April 18, 2000, and June 30, 2000, culminating in CJA's August 3, 2000 judicial misconduct complaint against the Chief Judge – copies of which are in File Folder "A". NOTE: Upn information and belief, the copy of the substantiating files of the three Article 78 proceedings against the New York State Commission on Judicial Conduct, transmitted to Chief Judge Kaye with CJA's March 3, 2000 letter to her, is in the possession of Sherrill Spatz, Inspector General for Fiduciary Appointments.