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Elena Ruth Sassower, Coordinator

BY FAX: 212-475-8944 (16 pages)

September 28, 2001

Lisa Schneider, Intern
The Village Voice

RE: THE KIND OF JOURNALISM ON WHICH THE VILLAGE VOICE HAS BUILT ITS REPUTATION: An Expose of the NYS Commission on Judicial Conduct, Whose Ramifications Torpedo the Re-Election Prospects of Governor George Pataki and Attorney General Eliot Spitzer

Dear Ms Schneider:

Enclosed is the pertinent page from the 1977 report, Bringing the Bar to Justice: A Comparative Study of Six Bar Associations – under Mark Green's directorship – which, referring to the NYS Commission on Judicial Conduct, states:

> "The Commission was created largely in response to an article entitled 'The Ten Worst Judges in New York,' written by Jack Newfield and appearing in New York Magazine, October 1972. 'Newfield had a greater role to play than any other individual in the media or politics' in setting up the commission according to its chief administrator Gerald Stern..."

Upon information and belief, in the more than 25 years since the Commission's establishment, there has NEVER been an investigative expose of its operations. This includes by Jack Newfield, who, nonetheless, has taken repeated potshots at the Commission .

If Mr.Barrett has reviewed the appellate papers in the lawsuit against the Commission that I sent him last June – along with a coverletter to the Senate Judiciary Committee – he is well aware of their explosive nature – not only in bringing down the Commission as a corrupt façade, but in exposing the official

misconduct of both Governor Pataki and Attorney General Spitzer – each of whom will be facing the voters in 2002. Such official misconduct, *if exposed*, would rightfully put an end to their re-election prospects and, indeed, result in their criminal investigation and prosecution for corruption.

To assist you in locating these dispositive materials – and to enable you to glean their substantive nature -- enclosed is a copy of the "Introduction" from the Appellant's Brief and the "Pre-Argument Statement" from the Appendix.

If -- based on the appellate papers and letter to the Senate Judiciary Committee long in his possession -- Mr. Barrett is not intending to pursue this important and electorally-significant story, I would like to know why, including whether he suffers from conflicts of interest born of relationships with, among others, Victor Kovner, a former member and Chairman of the Commission, who has been counsel for The Voice.

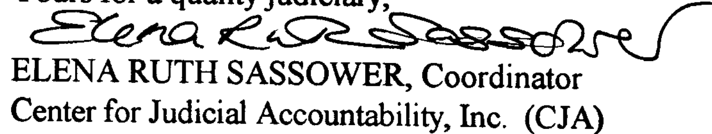
Under such circumstances, I am sure Mr. Barrett would readily recognize his professional duty, as a journalist, to promptly pass the story on to unconflicted journalists at The Village Voice and elsewhere – and to Mr. Newfield, his collaborator in City for Sale. As discussed, the appeal is now scheduled for the November Term of the Appellate Division, First Department. In that connection, enclosed is a copy of the petition presently being circulated relating to the oral argument.

Finally, on the subject of the unprecedented *without-notice*, *by-invitation-only* December 1998 Senate confirmation of Albert Rosenblatt to the New York Court of Appeals – whose believed perjury on his *publicly-inaccessible* application for that Court is embodied in the judicial misconduct complaint that generated the instant lawsuit against the Commission – enclosed is a copy of my Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*", published in the December 28, 1998 New York Post.

I look forward to hearing from you – if not from Mr. Barrett, directly.

Thank you.

Yours for a quality judiciary,



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

Enclosures

Bringing the Bar to Justice: A Comparative Study of Six Bar Associations
A Public Citizen Report 1977
Sharon Tisher, Lynn Bernabei
Mark Green, Project Director

filling out the questionnaires were racist. The lesson may be that any survey of sitting judges must be scrutinized carefully to see whether or not respondents' prejudices might have distorted the evaluation of judges' competence.

Disciplining Judges

Once judges are granted lifetime tenure, they have little need to fear being restrained in the exercise of their powers, inside or outside the courtroom. Which is why the New York State legislature in June, 1974 created a Temporary State Commission on Judicial Conduct to take complaints and prosecute any judge found to be unfit to carry out his or her judicial duties. The Commission was created largely in response to an article entitled "The Ten Worst Judges in New York," written by Jack Newfield and appearing in New York Magazine, October, 1972. "Newfield had a greater role to play than any other individual in the media or politics" in the setting up of the commission according to its chief administrator Gerald Stern. Paul DeWitt admits that "in an ideal situation...people shouldn't have to rely on Jack Newfield. They ought to be able to rely on the legal profession."

The process is time-consuming, with two full hearings required before discipline can be imposed on any judge. First the Temporary Commission holds a hearing to determine whether or not to recommend to the six-member Court on the Judiciary that a judge be removed or censured. If the Commission recommends discipline then the Court on the Judiciary holds a second hearing to see if the charges can be sustained by sufficient evidence.[26] (Furthermore, the Court on the Judiciary holds responsibility only for disciplining judges on the

NEW YORK POST, MONDAY, DECEMBER 28, 1998

NEW YORK POST
America's oldest continuously published daily newspaper

letters@nypost.com

An Appeal to Fairness: Revisit the Court of Appeals

•Your editorial "Reclaiming the Court of Appeals" (Dec. 18) asserts that Albert Rosenblatt will be judged by how well he upholds the democratic process "from those who would seek to short-circuit" it.

On that score, it is not too early to judge him. He permitted the state Senate to make a mockery of the democratic process and the public's rights when it confirmed him last Thursday.

The Senate Judiciary Committee's hearing on Justice Rosenblatt's confirmation to our state's highest court was by invitation only.

The Committee denied invitations to citizens wishing to testify in opposition and prevented them from even attending the hearing by withholding information of its date, which was never publicly announced.

Even reporters at the Capitol did not know when the confirmation hearing would be held until last Thursday, the very day of the hearing.

The result was worthy of the former Soviet Union: a rubber-stamp confirmation "hearing," with no opposition testimony — followed by unanimous Senate approval.

In the 20 years since elections to the Court of Appeals were scrapped in favor of what was purported to be "merit selection," we do not believe the Senate Judiciary Committee ever — until last Thursday — conducted a confirmation hearing to the Court of Appeals without notice to the public and opportunity for it to be heard in opposition.

That it did so in confirming Justice Rosenblatt reflects its conscious knowledge — and that of Justice Rosenblatt — that his confirmation would not survive publicly presented opposition testimony. It certainly would not have survived the testimony of our non-partisan citizens' organization.

This is why we will be calling upon our new state attorney general as the "People's lawyer," to launch an official investigation.

Elena Ruth Sassower
Center for Judicial Accountability
White Plains

To Be Argued By:
Elena Ruth Sassower

New York County Clerk's Index No.108551/99

NEW YORK SUPREME COURT
Appellate Division -- First Department

ELENA RUTH SASSOWER, Coordinator
of the Center for Judicial Accountability, Inc.,
acting *pro bono publico*,

Petitioner-Appellant,

-against-

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

PETITIONER-APPELLANT'S BRIEF

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*
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INTRODUCTION

Nothing is more fundamental to due process and the rule of law than a fair and impartial tribunal. Without a fair and impartial judge, justice can neither be done nor seem to be done. This is recognized by caselaw forming the bedrock of American and New York jurisprudence and is manifested by the Chief Administrator's Rules Governing Judicial Conduct, which, pursuant to Article VI, §§20 and 28(c), have the force of the New York State Constitution behind them.

There is no greater test of the judiciary's commitment to the foundation principle of a fair and impartial tribunal – and to the statutory bar to a judge participating in a matter "in which he is interested" -- than a case whose subject matter concerns the judiciary and whose outcome directly impacts individuals with whom the judiciary has personal, professional, and political relationships. Such is this case.

At bar is a lawsuit against the New York State Commission on Judicial Conduct – the sole state agency with disciplinary jurisdiction over virtually every judge in this State -- which is being sued for corruption. Directly at issue is its dismissal, *without* investigation and *without* reasons, of a *facially-meritorious* judicial misconduct complaint against justices of the Appellate Division, Second Department and, in particular, a justice who now sits on our State's highest Court, and who formerly had been this State's Chief Administrative Judge.

Yet, the criminal ramifications of this lawsuit extend far beyond the

Commission and the Appellate Division, Second Department justices whose unlawful conduct the Commission protected. The criminal ramifications reach the very persons on whom judges seeking reappointment and promotion to the State bench are most often dependent: the Governor and the Chairman of the State Senate Judiciary Committee.

Such a case imposes upon the judiciary a heightened responsibility to ensure the neutrality of the assigned tribunal – and certainly to scrupulously adhere to "random selection" rules that govern case assignments. That was not done here.

Instead, without giving Petitioner notice and opportunity to be heard, the administrative judge, without stated reasons,[1] twice interfered with "random selection" [A-122] – the second and final time to "steer" the case to a judge more disqualified than any of his five judicial predecessors, all of whom had recused themselves[2]. Both the administrative judge and the assigned judge then flouted their obligations to make pertinent disclosure, although expressly requested by Petitioner, whose written application to recuse the assigned judge was denied by him in the same Decision as dismissed this case.

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[1] Judicial notice may be taken of the fact that the administrative judge, Stephen G. Crane, has long sought gubernatorial appointment to the Appellate Division, First Department, including this year when, additionally, he sought gubernatorial appointment to the New York Court of Appeals. On the subject of his self-interest in this case, as well as his presumed bias against Petitioner, the Court has in its possession a copy of Petitioner's February 23, 2000 letter to the Governor. It is Exhibit "G" to Petitioner's September 21, 2000 affidavit in support of her motion to intervene in the appeal of *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #108655/99) (*see* pp. 6-14 of the letter).

[2] An additional judge was removed by Administrative Judge Crane, upon "oral directive" when he initially "steered" the case [A-122].

This appealed-from Decision is the concrete expression of how completely obliterated due process and the rule of law become in the hands of a self-interested and biased tribunal. As hereinafter shown, the Decision not only departs from cognizable adjudicative standards in substituting conclusory characterizations for factual findings, but, in *every* material respect, falsifies, fabricates, and distorts the record of the proceeding to deliberately assassinate Petitioner's character and deprive her of the relief to which the record resoundingly entitles her. As such, this Court's duty goes beyond reversing the Decision and granting Petitioner the relief warranted by the record. Consistent with the "Disciplinary Responsibilities" which §100.3D of the Chief Administrator's Rules Governing Judicial Conduct impose on every judge, this Court is required to "take appropriate action". Based on this Court's own caselaw, that would include steps to secure the assigned judge's removal from the bench – as likewise the removal or, at minimum, demotion, of the administrative judge:

> "*A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...*", italics added by this Court in *Matter of Capshaw*, 258 A.D. 470, 485 (1st Dept 1940), quoting from *Matter of Droege*, 129 A.D. 866 (1st Dept. 1909).[3]

[3] *See also* "*Judicial Independence is Alive and Well*" by the Commission's Administrator, NYLJ, 8/20/98 [A-59-60] citing *Matter of Bolte*, 97 A.D. 551 (1st Dept. 1904), wherein this Court held: "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, emphasis in original). "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).

The New York State Commission on Judicial Conduct is the state agency charged with the duty to protect the public from unfit New York judges. For the past two years, the Commission has been sued for corruption in an important public interest lawsuit. Oral argument of the appeal is scheduled for this November in New York's Appellate Division, First Department in Manhattan.

Recognizing the potential of this appeal to bring about much needed judicial accountability, People from throughout the state have expressed interest in being present at the oral argument. Some are too far away to make that feasible. Others cannot take time off from work or leave family responsibilities and other commitments. The solution is to record the appellate argument so that those unable to attend will have it available to them at a more convenient time and place. Yet, the Appellate Division has no tape recorder, no video camera, not even a court stenographer to record the appeals argued before its justices. This, notwithstanding the Appellate Division is a "court of record" (NYS Constitution, Article VI, §1b). Consequently, for the oral argument of the appeal against the Commission to be recorded, a special application will have to be made. Please support such application by signing this Petition.

We, citizens of the State of New York, hereby petition the justices of New York's Appellate Division, First Department in support of the application to allow a recording to be made of the appellate argument of the public interest lawsuit, *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* (NY Co. #108551/99), scheduled for the October 2001 Term.

SIGNATURE	PRINT NAME	ADDRESS	PHONE #	E-MAIL

* * Please duplicate and use for additional petitioners. Return Petitions with original signatures to:

Center for Judicial Accountability, Inc., Box 69, Gedney Station, White Plains, NY 10605-0069 [Tel: (914) 421-1200]. Thank you.

New York County Clerk's Index No.108551/99

NEW YORK SUPREME COURT
Appellate Division -- First Department

ELENA RUTH SASSOWER, Coordinator of the Center for Judicial Accountability, Inc., acting *pro bono publico*,

Petitioner-Appellant,

-against-

COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF NEW YORK,

Respondent-Respondent.

PETITIONER-APPELLANT'S APPENDIX

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*
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(914) 421-1200

NYS ATTORNEY GENERAL ELIOT SPITZER
Attorney for Respondent-Respondent
120 Broadway
New York, New York 10271
(212) 416-8595

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

--x

ELENA RUTH SASSOWER, Coordinator
of the Center for Judicial Accountability, Inc.,
acting *pro bono publico*,

Petitioner-Appellant,

- against -

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF NEW YORK,

Respondent-Respondent.

--x

PRE-ARGUMENT STATEMENT

NY Co. # 99-108551

1. CASE TITLE:

As set forth above.

2. FULL NAMES OF ORIGINAL PARTIES:

As set forth above.

3. NAME, ADDRESS, & TELEPHONE NUMBER OF PETITIONER:

Elena Ruth Sassower, Petitioner-Appellant *Pro Se*
Box 69, Gedney Station
White Plains, New York 10605-0069
(914) 421-1200

4. NAME, ADDRESS, & TELEPHONE NUMBER OF COUNSEL FOR RESPONDENT:

NYS Attorney General Eliot Spitzer, Counsel for Respondent-Respondent
120 Broadway
New York, New York 10271
(212) 416-8611

5. COURT AND COUNTY FROM WHICH APPEAL IS TAKEN:

Supreme Court of the State of New York, County of New York.

6. <u>DECISION, ORDER, & JUDGMENT APPEALED FROM</u>:

This is an appeal from a Decision, Order, & Judgment, dated January 31, 2000, by Acting Supreme Court Justice William A. Wetzel. The Decision, Order, & Judgment was entered on February 18, 2000 and served by mail with Notice of Entry on February 22, 2000.

7. <u>NATURE AND OBJECT OF THE CASE</u>:

This is an Article 78 proceeding, whose Verified Petition contains six separate Claims for Relief:

(1) declaring 22 NYCRR §7000.3, *as written*, unconstitutional and unlawful in contravening Article VI, §22a of the New York Constitution and Judiciary Law §44.1;

(2) declaring 22 NYCRR §7000.3 *as applied*, unconstitutional and unlawful in contravening Article VI, §22a of the New York Constitution and Judiciary Law §44.1;

(3) declaring Judiciary Law §45, *as applied* by Respondent, unconstitutional, and, in the event such relief is denied, that Judiciary Law §45, *as written*, is unconstitutional;

(4) declaring 22 NYCRR §7000.11 unconstitutional, *as written and as applied*, and, in the event such relief is denied, that Judiciary Law §§41.6 and 43.1 are unconstitutional, *as written and as applied*;

(5) declaring Respondent in violation of Judiciary Law §41.2 by the continued long-time chairmanship of Henry T. Berger and mandating his removal;

(6) commanding Respondent to formally "receive" and "determine" Petitioner's February 3, 1999 judicial misconduct complaint against Appellate Division, Second Department Justice Daniel W. Joy in conformity with Article VI, §22a of the New York Constitution and Judiciary Law §44.1;

The Verified Petition also seeks other relief against Respondent:

(7) a court request to the Governor to appoint a Special Prosecutor to investigate Respondent's complicity in judicial corruption by powerful, politically-connected judges through, *inter alia*, its pattern and practice of dismissing facially-meritorious judicial misconduct complaints against them, without investigation or reasons;

(8) a court referral of Respondent for appropriate criminal and disciplinary investigation by the New York State Attorney General, the United States Attorney, the Manhattan District Attorney, and the New York State Ethics Commission – all proposed intervenors in the proceeding; and

(9) imposition of the statutory fine of $250, payable to the State Treasurer, pursuant to Public Officers Law §79.

As part of its "other and further relief", the Notice of Petition specifies that as to those branches of relief seeking a declaration of the unconstitutionality of statutory provisions, the proceeding be converted to a declaratory judgment action to the extent required by law.

Following service of the Verified Petition, the nature and object of the case shifted as petitioner endeavored to ensure the integrity of the judicial process:

By omnibus motion, petitioner sought, *inter alia*: (1) to disqualify the Attorney General from representing Respondent for violation of Executive Law §63.1 and multiple conflicts of interest; and (2) to sanction the Attorney General and Respondent for their litigation misconduct, including their fraudulent dismissal motion, and to have them each referred for criminal and disciplinary action, *inter alia*, for the crimes of "perjury, filing of false instruments, conspiracy, obstruction of the administration of justice, and official misconduct" in connection with the litigation.

In view of the self-interest of every state judge under Respondent's disciplinary jurisdiction in the outcome of the proceeding and the fact that the proceeding criminally implicates Governor Pataki in Respondent's corruption, petitioner requested that the proceeding be specially assigned to a retired or retiring judge, willing to disavow future political and/or judicial appointment. In support, petitioner identified that the two most recent other Article 78 proceedings against Respondent, both in Supreme Court/New York County, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141) and *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co.

#99-108655) had each been "thrown" by fraudulent judicial decisions – for which she provided written analyses of the decisions, substantiated by copies of the record of those two Article 78 proceedings, which she physically incorporated in the record of her Article 78 proceeding.

Thereafter, upon Justice Wetzel's assignment to the case, petitioner made a written application for his recusal, based on the appearance and actuality of his self-interest and bias. This was not only because Justice Wetzel, an Acting Supreme Court Justice, was a Court of Claims "hold-over", sitting at the pleasure of the Governor, who had appointed him in 1995 and with whom he had had a professional and personal relationship, but because Justice Wetzel had recently been the beneficiary of Respondent's dismissal, without investigation, of a facially-meritorious judicial misconduct complaint against him – a complaint based, in part, on a 1994 fundraiser that then village town justice Wetzel had held at his home for then gubernatorial candidate Pataki. Petitioner's recusal application included an alternative request that in the event Justice Wetzel did not recuse himself, he disclose the facts as to the grounds for his disqualification specified in the application and that he afford petitioner time to incorporate such disclosure in a formal recusal motion.

Simultaneously, petitioner made a written request to Administrative Judge Stephen G. Crane for the legal authority for his interference with "random selection" in "directing" the case to Justice Wetzel, the basis for his having done so, and whether, before making such "direction", he was aware of the facts pertaining to Justice Wetzel's disqualification, as identified in the recusal application.

8. RESULT BELOW:

Administrative Judge Crane did not respond to petitioner's written request for information pertaining to his interference with "random selection" and his "direction" of the case to Justice Wetzel.

Thereafter, in a single Decision, Order, & Judgment, Justice Wetzel:

(1) denied petitioner's written recusal application, without identifying any of the grounds it had set forth as warranting his recusal and without making any factual findings with respect thereto;

(2) ignored, without mention, Petitioner's alternative request for disclosure and time to make a formal recusal motion, thereby implicitly denying it;

(3) denied petitioner's omnibus motion, without reasons or factual findings;

(4) dismissed the Verified Petition, based on the decisions in *Doris L. Sassower v. Commission* and in *Michael Mantell v. Commission* – without identifying the existence of petitioner's record-supported written analyses of those decisions, without making any factual findings with respect thereto, and without examining whether those decisions were germane to the Verified Petition's six separate Claims for Relief;

(5) enjoined petitioner and the ***non-party*** Center for Judicial Accountability, Inc. from instituting "related" actions or proceedings, of whose "relatedness" Justice Wetzel designated himself the judge – without any factual findings to support the injunction nor legal authority for appointing himself arbiter of the "relatedness" of any future actions or proceedings.

9. <u>GROUNDS FOR SEEKING REVERSAL</u>:

The Decision, Order, & Judgment violates the most *fundamental* standards of adjudication and due process. It substitutes unwarranted aspersions and characterizations for factual findings and, in *every* material respect, falsifies, fabricates, and distorts the record of the proceeding. This, to wholly subvert the judicial process and deprive petitioner of the relief to which she is entitled by her Verified Petition, omnibus motion, and recusal application. As such, it is more than *prima facie* proof of Justice Wetzel's disqualifying actual bias and self-interest, it is a criminal act by him, in which Administrative Judge Crane is complicitous.

10. <u>RELATED PROCEEDINGS</u>:

A Notice of Appeal to the Appellate Division, First Department has been filed in *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #99-108655) by the petitioner therein, dated November 5, 1999. Such Article 78 proceeding against the same Respondent is "related", *inter alia,* because notwithstanding petitioner's uncontroverted record-supported analysis showing that the decision therein was a legally insupportable and contrived cover-up, Justice Wetzel's Decision, Order, & Judgment refers to the decision as "a carefully reasoned and sound analysis of the very issue raised in the within petition" and specifically adopts its "finding" that "mandamus is unavailable to require the respondent to investigate a particular complaint."

Dated: White Plains, New York
March 23, 2000

ELENA RUTH SASSOWER
Petitioner-Appellant *Pro Se*
Box 69, Gedney Station
White Plains, New York 10605-0069

TO: New York State Attorney General
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TRANSMISSION VERIFICATION REPORT

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