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STATEMENT OF ELENA RUTH SASSOWER, COORDINATOR AND CO-
FOUNDER OF THE CENTER FOR JUDICIAL ACCOUNTABILITY, INC.,
AT THE PUBLIC HEARING OF THE SPECIAL COMMITTEE ON
JUDICIAL CONDUCT OF THE ASSOCIATION OF THE BAR OF THE
CITY OF NEW YORK, MAY 14, 1997

My name is Elena Ruth Sassower and I am the coordinator and co-founder of the Center for Judicial Accountability, Inc. -- known as CJA. CJA is a New York-based non-partisan, non-profit citizens' organization, documenting the dysfunction, politicization, and corruption of the processes of judicial selection and discipline -- on national, state, and local levels. We exist because government agencies and officials, whose duty it is to protect the public from unfit judges, have betrayed that duty, while those in positions of power and prominence in the private sector -- prestigious bar association leaders, distinguished law school deans and professors, and eminent law firms -- have shirked and knowingly disregarded their ethical and professional obligations to take corrective steps. This specifically, and most egregiously, includes the Association of the Bar of the City of New York.

Since anyone complaining of corruption, conspiracies, and cover-up is typically dismissed as paranoid and delusional, CJA is meticulous in its documentation so that *all* such profoundly serious allegations can be *independently* verified. Indeed,

throughout the eight years since our founding in 1989 as a local grass-roots citizens group, CJA has always and repeatedly offered full substantiation of its serious charges of judicial and governmental corruption and cover-up and transmitted the documentary proof to those in leadership positions, both inside and outside government. The response to these documented charges invariably falls into two categories: either no response at all -- which is usual -- or the response is a boiler-plate, conclusory two or three sentences that ignore *all* factual and legal issues presented.

The massive, meticulously-documented materials I have placed on the table in front of you will enable you to confirm the foregoing for yourselves. As to the City Bar, its ignominious role in covering up the dysfunction and corruption of essential processes of judicial selection and discipline and its complicity in New York's unconstitutional attorney disciplinary law -- a law which is used to retaliate against judicial whistle-blowing lawyers -- will be clear for you to see. And what will also be clear is that the City Bar, like other bar associations, appears to be hi-jacked by a leadership, whose self-interest in staying in the good graces of the politically powerful who control the status quo and appointments, awards, and other emoluments clashes with the welfare of the rank and file members, whose absolute interest in the integrity of judicial selection and discipline processes and a constitutional attorney disciplinary law cannot be gainsaid. This leadership, it would appear, acts *without* consultation of the members of pertinent committees, who have no knowledge of what is being withheld from them and how it is being betrayed by those in the upper bar echelons.

This paradigm of corruption, complicity, and cover-up is certainly demonstrated in connection with the New York State Commission on Judicial Conduct -- a subject in which this Special Committee has expressed particular interest.

On information and belief, there has never been an organization "shadowing" the Commission and exposing it for what it is -- until now. Throughout its history of 20 plus years, the Commission has been able to evade meaningful scrutiny precisely because complaints filed with the Commission are statutorily confidential. Such confidentiality has prevented anyone from systematically examining the kinds of complaints the Commission summarily dismisses -- more than 85% by its own statistics. Instead, we have had to take Gerald Stern -- the Commission's Administrator since its inception -- at his word when he says that the overwhelming majority of complaints filed with the Commission are frivolous, do not allege judicial misconduct, or are merely seeking review of judicial decisions.

CJA has changed that. We not only bring together people who can testify from direct, first-hand experience as to judicial incompetence and misconduct -- and the devastation it has wrought on their lives -- but we collect copies of judicial misconduct complaints filed in the state and federal systems -- including, of course, complaints filed with the New York State Commission on Judicial Conduct. The result is that for the first time, the public -- and this Special Committee -- can *independently* evaluate how the Commission disposes of the complaints it receives -- and how it treats complainants. And what we are documenting, starkly and indisputably, is that the Commission is arrogant, dishonest, and dumps, *without* investigation, the very kinds of complaints of judicial misconduct that the

City Bar's guide "*How to Complain About Lawyers and Judges*" claims are within its purview, "Improper Demeanor", "Bias", "Conflict of Interest", "*Ex Parte* Communications".

Not surprisingly, our archive of judicial misconduct complaints is an outgrowth of our own direct, personal experience. Over the years, we ourselves had filed one complaint after another -- only to have the Commission dismiss each complaint, *without* investigation. These were not complaints alleging minor ethical breaches. Rather, our lawyer-presented complaints alleged criminal and corrupt conduct by high-ranking, powerful judges -- including by the Commission's own highest-ranking judge. Such complaints were not only facially-meritorious in alleging conduct which constituted misconduct, but they detailed those allegations. Indeed, they were documented to such an extent as to provide *prima facie* proof of the misconduct complained of. Nevertheless, each of these facially-meritorious, documented complaints -- eight since 1989 -- were summarily dismissed by the Commission.

It was because of the Commission's arrogant refusal to explain its inexplicable summary dismissals of our facially-meritorious and documented complaints that we undertook an examination of the pertinent statutory and constitutional provisions governing the Commission's operations. Lo and behold, we discovered that the Commission had *no* such authority under the controlling statute, Judiciary Law §44.1, for what it has been doing. That statute imposes upon the Commission a mandatory duty to investigate *every* complaint it receives, the only exception being where it determines that a complaint on its face lacks merit. Since all our complaints were facially-meritorious, we were plainly entitled to an

investigation under the Judiciary Law statute which created the Commission. Indeed, the controlling force of what is now Judiciary Law §44.1 is reinforced by the fact that notwithstanding Judiciary Law 2-A was twice amended following passage of the two constitutional amendments establishing the Commission, the mandatory duty to investigate facially-meritorious complaints was retained *intact*.

It took the Commission to undo that mandatory investigative language -- which it did by promulgation of 22 NYCRR §7000.3, which essentially rewrote the Judiciary Law §44.1. Under such rule, the Commission's statutory investigative duty was transformed into a discretionary option, such that, unbounded by any standard, the Commission could either dismiss a complaint or investigate it. Although both the statute and constitution explicitly restrict the Commission's promulgation of implementing rules and procedures to those which are "not inconsistent with law", and the rule and statute are, on their face, inconsistent, the Commission refused to explain how the rule and statute could be harmonized.

This is the background to our ground breaking 1995 lawsuit against the Commission, challenging the constitutionality of its rule §7000.3, *as written and as applied*. The most cursory examination of our Article 78 petition shows that there was no way the Commission could survive our litigation challenge: §7000.3 being *facially* irreconcilable with Judiciary Law §44.1 and the eight facially-meritorious, summarily-dismissed complaints against high-ranking judges, annexed to the petition, all substantiating our contention that, *as applied*, the Commission has used its unfettered discretion under §7000.3 to protect such judges -- including its own highest-ranking judicial member -- from disciplinary investigation

and prosecution.

How then did the Commission survive? It engaged in litigation misconduct through its attorney, the highest law enforcement officer in the State, the New York State Attorney General. Notwithstanding the State Attorney General is the People's attorney, paid for by the tax-payers to protect the People's interests, the Attorney General simply disregarded that duty -- albeit reinforced by the Notice of Right to Seek Intervention we had served upon him. With neither facts or law on which to found a defense, the Attorney General filed a legally insufficient and factually perjurious dismissal motion and, additionally, simply ignored that the Commission was in default, with our formal default application pending against it.

Supreme Court Justice Herman Cahn then engaged in judicial misconduct: he "threw" the case by a knowingly dishonest decision. He ignored *all* the threshold issues developed in the record before him: the Attorney General's conflict of interest, its default in timely responding or moving to the Article 78 petition, its legally insufficient and perjurious dismissal motion. These, in addition to the further issue as to whether his palpable bias did not require the transfer of this case to a retired or out-of-state judge, not within the Commission's jurisdiction and not politically dependent on the interests that want to keep the Commission dysfunctional.

In justifying the constitutionality of §7000.3, *as written*, Justice Cahn advanced his own interpretation, which he falsely ascribed to the Commission -- an interpretation not only belied by the explicit published definitions section of the Commission's rules, but

which, in fact, did nothing to resolve the irreconcilable facial inconsistency between the rule and statute. As to the constitutionality of §7000.3, *as applied*, as represented by the Commission's summary dismissal of the complaints annexed to the petition, Justice Cahn falsely claimed, without the slightest fact or law, that the issue was "not before the court".

It has been almost two years since the public was defrauded of its rights by the travesty that took place in our Article 78 proceeding against the Commission. And, throughout that time, we have repeated -- mantra-like -- the dispositive significance of the Article 78 file. As clear as clear can be, it establishes three things: (1) that the Commission is corrupt ; (2) that it corrupted the judicial process; and (3) that it is the beneficiary of a fraudulent court decision without which it could not have survived our Article 78 challenge. Indeed, on August 14, 1995, after Justice Cahn's dismissal decision was cited on the front-page of the New York Law Journal as a "Decision of Interest" and printed in full, the Law Journal published our Letter to the Editor, "*Commission Abandons Investigative Mandate*". In that Letter, we described the legally unfounded and factually fabricated nature of the decision and invited the public and legal community to examine the file of the case -- the County Clerk index number for which we supplied -- so as to verify that "the Commission protects judges and, in turn, is protected by them". Thereafter, lest the inconvenience of accessing the file be too great an obstacle to those in government charged with safeguarding the public welfare or with specific oversight over the Commission, CJA duplicated and transmitted copies to Governor Pataki and Mayor Giuliani, who spent much of 1996 posturing themselves as protectors of the public from unfit judges, to the Assembly Judiciary

Committee, to the Senate Judiciary Committee, to the New York State Ethics Commission, to Manhattan District Attorney Morgenthau, to Manhattan Borough President Messinger, and to the U.S. Attorney for the Southern District of New York. And to further simply their verifying the fraudulence of the court decision, we provided them with a concise 3-page analysis, cross-referenced to the file, and with the relevant, rule, statutory, and constitutional provisions attached. We also transmitted the file and the 3-page analysis, with attached provisions, to pre-eminent bar associations and professional and civic groups rhetorically supportive of the Commission, among them, this bar association, the New York State Bar Association, the so-called "Committee to Preserve the Independence of the Judiciary", consisting of 23 area bar associations and 5 law school deans, whose home is the New York County Lawyers' Association, and the Fund for Modern Courts, which, though touting itself as working for reform, is run by the same establishment figures that control the bar associations, the law schools and the major law firms.

Our voluminous correspondence with each of them, which you see on the table before you, asked that they verify the readily and easily verifiable: that the Commission on Judicial Conduct, which purports to impose ethical standards on judges, was the knowing beneficiary of a fraudulent court decision, and that it -- and its counsel, the State Attorney General -- had failed to take corrective steps. The response was an earth-shattering silence. This was highlighted in our \$1,650 paid ad, "*A Call for Concerted Action*", published in the November 20, 1996 New York Law Journal, which stated that we had been unable to find "anyone in a leadership position willing to even comment on the Commission file".

Because the public has a right to expect that those in leadership will respond to the *prima facie* evidence of corruption presented by the Commission file, CJA formally called upon each of the foregoing government officials, agencies, and bar associations and organizations to present testimony here today and, specifically to respond to our 3-page analysis. Our written notice to them dated May 5, 1997, with the 3-page analysis attached, together with the rule, statutory, and constitutional provisions, is incorporated herein by reference.

No one is here to respond to that notice -- including the City Bar, which, plainly is too far away and without the legal resources to address the file of our extraordinary Commission case and 3-page analysis, both of which have been in its possession for the past 15 months, since I hand-delivered them to the City Bar in January 1996. I would urge each member of this Committee to examine CJA's correspondence with the leadership of the City Bar on the subject of that file and analysis -- and, if its despicable conduct therein particularized does not make you want to vomit -- you should get off this Committee so that it can do an honest job.

That honest job will require you to answer, once and for all, whether the Commission is the beneficiary of a fraudulent court decision and the related, but separate question, as to whether §7000.3 is constitutional, *as written and as applied*.

You can begin that job by requiring Mr. Stern, who is scheduled to be the last presenter at these hearings, to finally -- and for the first time -- respond responsively to the 3-page analysis of the court decision, which has had for the past 16 months. Yesterday, we

faxed Mr. Stern, as well as Henry Berger, the Commission's Chairman, and, through them, Judge Juanita Bing Newton, a former Commission member, written notice that they would be expected to respond to our serious and very public charges against the Commission. Mr. Stern faxed back that he "will answer questions that the Committee may ask".

It will take citizen courage on your part to review the documentary proof represented by the Commission file, and our related correspondence because, very, very rapidly you will see before your eyes the incontrovertible proof of a pervasive network of corruption infesting not just the Commission, but the oversight mechanisms of government and the private sector -- including the bar associations, chief among which is the City Bar.

In closing, it is incumbent upon me to state, publicly, that it would appear that your Chairman, Robert Jossen, does not want you to find that courage. Over three months ago, we had the file of our Commission case and our pertinent City Bar correspondence transmitted to Mr. Jossen. Subsequently, Mr. Jossen received from us copies of two profoundly serious letters, dated February 10, 1997 and March 7, 1997, addressed, respectively, to City Bar General Counsel, Alan Rothstein, and to City Bar President, Michael Cardozo. These letters described how City Bar leadership had concealed documentary materials -- including the file of our Commission case -- from relevant City Bar committees. The last thing we would have expected was for Mr. Jossen to then conceal such materials from you, the members of this so-called Special Committee on Judicial Conduct. Yet, last month, when we called committee member Lawrence Zweifach in connection with this public hearing, he knew nothing about our Commission case or the file

of our long past correspondence with the City Bar. This was set forth by us in a April 25, 1997 letter to Mr. Jossen, which asked him what he had been doing with those materials in all this time and, additionally inquired as to "the date on which the Special Committee on Judicial Conduct was formed, the circumstances leading up to its formation, and information regarding the designation of its members". Such basic information should have been forthcoming and, indeed, Mr. Zweifach told me that we would be getting a response from Mr. Jossen. The fact that Mr. Jossen did not see fit to respond raises serious questions about the leadership and integrity of this Committee, which you as its members should resolve forthwith.