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Elena Ruth Sassower, Coordinator

BY HAND

February 16, 2001

Bruce Green, Director
Louis Stein Center for Law and Ethics
Fordham University School of Law
140 West 62nd Street
New York, New York 10023

RE: (1) The Ethical Obligation of New York's Legal Ethics Community to Address the New York State Attorney General's Unrestrained Violations of Ethical Codes of Professional Responsibility – and the Corruption of Oversight Mechanisms
(2) *Amicus* and other assistance in the appeal of the public interest Article 78 proceeding, *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; Appellate Division, First Dept. Cal #2000-5434)

Dear Professor Green:

This follows up our January 24th phone conversation in which I outlined for you some of the transcendent legal ethics issues for which, on behalf of the public interest, I seek your assistance in your capacity as Director of Fordham Law School's Louis Stein Center for Law and Ethics and as Chairman of the New York State Bar Association's Committee on Professional Ethics.

First and foremost of these issues is the *readily-verifiable* evidence that New York's highest law enforcement officer, our State Attorney General, wilfully violates ethical codes of professional responsibility and engages in conduct which, if committed by a private attorney, would be grounds for disbarment. This includes disregarding fundamental conflict of interest rules and subverting the judicial process by litigation misconduct, including perjury and fraud, to defend state judges and the State Commission on Judicial Conduct, sued for corruption.

The Attorney General's *modus operandi* of litigation misconduct is *readily verifiable* from litigation files. This is highlighted by CJA's \$3,000 public interest ad, "*Restraining 'Liars in the*

Courtroom' and on the Public Payroll' (New York Law Journal, 8/27/97, pp. 3-4: Exhibit "A"), identifying three cases in which the Attorney General made legally insufficient and factually perjurious dismissal motions because he had NO legitimate defense. In each he was rewarded with fraudulent judicial decisions in his clients' favor – as to which, notwithstanding written notice, he has taken no corrective steps.

As discussed, Attorney General Eliot Spitzer is directly knowledgeable of the ad's allegations of the official misconduct of his Attorney General predecessors – and of his ethical obligations in connection therewith. Illustrative is my public exchange with him at the Association of the Bar of the City of New York on January 27, 1999. This was less than a month after he was sworn in as Attorney General. The transcript of that exchange (Exhibit "B") shows that in response to my question as to what steps Mr. Spitzer was going to take concerning the ad's allegations that "the Attorney General's office uses fraud to defend state judges and the State Commission sued in litigation", he stated "Anything that is submitted to us we will look at it." It was in this context that I immediately walked up to the podium and publicly handed Mr. Spitzer a letter¹ whose opening paragraph read:

"This letter is to put you on notice of your mandatory obligations under professional and ethical rules, to take corrective steps to vacate the fraudulent judicial decisions in the three lawsuits detailed in the Center for Judicial Accountability's \$3,000 public interest ad, '*Restraining 'Liars in the Courtroom' and on the Public Payroll'*, NYLJ, 8/27/97 (Exhibit "A") -- lawsuits in which the Attorney General's office itself corrupted the judicial process by defense strategies based on fraud and other misconduct."

Expressly identified by the letter were pertinent professional and ethical rules defining Mr. Spitzer's obligations:

"New York State Bar Association's Code of Professional Responsibility: DR-1-102 'Misconduct' [22 NYCRR 1200.3]; DR-103 'Disclosure of Information to Authorities' [22 NYCRR 1200.4]; DR-104 'Responsibilities of a Supervisory Lawyer' [22 NYCRR 1200.5]; DR 7-102 'Representing a Client Within the Bounds of the Law' [22 NYCRR 1200.33]; EC 7-14 'A government lawyer in a civil action...has the responsibility to seek justice and to develop a full and fair record, and should not use his or her position or the economic power of the government to harass parties or to bring about unjust settlements or results'; See also, ABA Model Rules of Professional Conduct, Rule 3.1

¹ This letter is part of the lower court record in *Elena Ruth Sassower v. Commission*: See Exhibit "D" to my affidavit in support of my July 28, 1999 omnibus motion to disqualify the Attorney General and for sanctions, etc.

'Meritorious Claims and Contentions'; Rule 3.3 'Candor Toward the Tribunal'; Rule 5.1 'Responsibilities of a Partner or Supervisory Lawyer'; Rule 8.3 'Reporting Professional Misconduct'; Rule 8.4 'Misconduct'."

Nevertheless, Mr. Spitzer ignored all my follow-up phone calls and letters as to the outcome of his review of the three case files, all in his possession. More egregious, in two subsequently commenced lawsuits against the Commission on Judicial Conduct, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York* (NY Co. #108551/99) and *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #108655/99), Mr. Spitzer allowed his Law Department to repeat the identical *modus operandi* of legally insufficient and factually perjurious dismissal motions detailed in "*Restraining 'Liars'*". For this, he too has been rewarded with fraudulent judicial decisions in his client's favor – as to which, despite written notice, he – like his predecessors before him -- has taken no corrective steps.

While I appreciate your candid disclosure of your friendship with Mr. Spitzer going back to your days in the U.S. Attorney's Office for the Southern District of New York, I am sure you would agree that your ethical duty as Director of the Stein Center for Law and Ethics and as Chairman of the State Bar's Ethics Committee does not end with disclosure. By virtue of these leadership positions, you are obligated to take steps to ensure that evidence-supported allegations of official misconduct by our State's highest law enforcement officer – causing irreparable and on-going injury to the People of this State – do not escape scrutiny. Such steps are all the more critical because, as discussed, I have been completely unable to find anyone in a position of leadership, in or out of government, not compromised by personal and professional relationships – which, invariably, they neither disclose nor acknowledge. Indeed, the one person who did disclose a relationship with Mr. Spitzer – Professor Patricia Salkin of the Albany Law School's Government Law Center – referred me to you.

I am most impressed with the brochure description of the Stein Scholars Program, including that it "works to ensure that students grapple with difficult and controversial ethical issues". As such, CJA requests that Stein Scholars be given the opportunity to grapple with the ethical issues presented by "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "A"). That these issues are "difficult" may be gleaned from the fact that, to date, despite widespread dissemination of that prominently-placed ad, there hasn't been a peep from the legal ethics community nor, for that matter, from any quarter of the established bar.

The case of *Elena Ruth Sassower v. Commission*, now on appeal to the Appellate Division, First Department, is the perfect vehicle for Stein Scholars to explore the ad – and Attorney General Spitzer's duty with respect thereto. Indeed, *Elena Ruth Sassower v. Commission* represents the confluence of the three cases featured in "*Restraining 'Liars'*". This is detailed by the enclosed

copy of the lower court file, containing my July 28, 1999 omnibus motion to disqualify the Attorney General from representing the Commission based on his violation of Executive Law §63.1 and multiple conflicts of interest². Such motion, additionally, provides a blow-by-blow description of Mr. Spitzer's wilful refusal to address the ad's allegations in the wake of my January 27, 1999 public exchange with him, his refusal to discharge his duty as "the People's Lawyer" to investigate the facts giving rise to *Elena Ruth Sassower v. Commission* so as to obviate the necessity of the lawsuit or to himself bring it, and his refusal to require his Law Department to adhere to fundamental ethical and legal standards once the burden fell to me to commence the suit³.

The case file in *Elena Ruth Sassower v. Commission* not only resoundingly establishes that the flagrant defense misconduct of the Attorney General's office, on behalf of the Commission, is attributable to Mr. Spitzer himself, who, at every stage of the proceeding, was made knowledgeable of what was being done in his name⁴, but the corruption of ALL enforcing mechanisms for ensuring the Attorney General's compliance with ethical and legal standards. Obviously, the courts are the primary enforcers of such standards in the litigation context. The lower court's corruption, as evidenced by its factually fabricated and legally insupportable decision, is detailed by my enclosed Appellant's Brief (pp. 42-68). As to other enforcing mechanisms, these include the New York State Ethics Commission, with ethics jurisdiction over both the Attorney General and the Commission on Judicial Conduct. As discussed, the Ethics Commission has been completely immobilized by its conflicts of interest. These conflicts are summarized in a comprehensive ethics complaint, filed almost a month before *Elena Ruth Sassower v. Commission* was commenced – and then supplemented to include the Attorney General's litigation misconduct therein and in *Mantell v. Commission*. To date, the Ethics Commission has neither acknowledged nor dismissed these ethics complaints – which are physically part of the lower court record in *Elena Ruth Sassower v. Commission* and discussed therein⁵.

² See ¶¶10-53 of my July 28, 1999 affidavit in support of my omnibus motion.

³ See ¶¶48-50, 55-103 of my July 28, 1999 affidavit in support of my omnibus motion.

⁴ See, *inter alia*, my September 24, 1999 Reply Memorandum of Law (pp. 1-12) and my December 17, 1999 letter to Justice Wetzel (pp. 1-2).

⁵ See CJA's March 26, 1999 ethics complaint: Exhibit "E" to my July 28, 1999 affidavit in support of my omnibus motion; CJA's September 15, 1999 supplemental complaint: Exhibit "G" to my September 24, 1999 reply affidavit; CJA's October 27, 1999 supplemental complaint: Exhibit "J" to my November 5, 1999 letter to Justice Kapnick.

The U.S. Attorney and the Manhattan District Attorney are other enforcing mechanisms, each having criminal jurisdiction over the State Attorney General and the Commission on Judicial Conduct. They, too, suffer from conflicts of interests. These conflicts are summarized in criminal complaints that CJA filed with them – also part of the lower court record in *Elena Ruth Sassower v. Commission*⁶. It is without addressing – or even acknowledging -- the existence of these threshold conflicts of interest, that the U.S. Attorney for the Southern District of New York and the Manhattan District Attorney have purported to dismiss these criminal complaints, while the U.S. Attorney for the Eastern District of New York, without addressing the conflict of interest issue, is supposedly reviewing the complaint.

To enable Stein Scholars to evaluate for themselves the wholesale disregard for conflict of interest rules by public agencies and officers charged with enforcing ethics and legal standards of conduct – resulting in the corruption of their oversight and investigative functions -- CJA's follow-up correspondence with them is enclosed⁷. These, together with the enclosed lower court and appellate record in *Elena Ruth Sassower v. Commission*⁸, should be made a part of a library collection of empirical proof so that Stein Scholars can understand that in the "real world" outside the classroom, ethics and the rule of law mean nothing when judicial self-interest is involved.

I note that Stein Scholars "choose the topics, recruit the panelists and moderate" the Wednesday afternoon "roundtable discussions". The enclosed primary source materials should engender many powerful "roundtable discussions", to which panelists from the Attorney General's office, the Commission on Judicial Conduct, the Ethics Commission, and the offices of the U.S. Attorney and the Manhattan District Attorney, among others, could be recruited.

⁶ See CJA's October 21, 1999 criminal complaint to the Manhattan District Attorney: Exhibit "G" to my November 5, 1999 letter to Justice Kapnick; CJA's October 21, 1999 criminal complaint to the U.S. Attorney for the Southern District of NY: Exhibit "H" to my November 5, 1999 letter to Justice Kapnick; CJA's September 7, 1999 criminal complaint to U.S. Attorney for the Eastern District of NY: Exhibit "H" to my September 24, 1999 reply affidavit.

⁷ Follow-up correspondence with the Manhattan District Attorney: CJA's February 25, 2000 memorandum-notice and CJA's March 17, 2000 and April 24, 2000 letters to District Attorney Robert Morgenthau; Follow up correspondence with U.S. Attorney for Southern District of NY: CJA's August 9, 2000 and September 6, 2000 letter to U.S. Attorney Mary Jo White; Follow-up correspondence with U.S. Attorney for Eastern District of NY: CJA's August 14, 2000 and September 6, 2000 letters to U.S. Attorney Loretta Lynch.

⁸ So as not to overwhelm you, only one of the free-standing file folders to the lower court record in *Elena Ruth Sassower v. Commission* is transmitted herewith. Such file, containing CJA's correspondence with the NYS Ethics Commission and with the U.S. Attorney for the Southern District of NY, documents the Attorney General's conflict of interest, as detailed by ¶¶24-53 of my July 28, 1999 omnibus motion, as well as the conflict of interest of the Ethics Commission and U.S. Attorney for the Southern District of NY, as detailed by CJA's ethics and criminal complaints, *supra*. The other file folders, containing, *inter alia*, the physically-incorporated lower court records in *Doris L. Sassower v. Commission* and in *Michael Mantell v. Commission*, are available upon request.

As discussed, CJA requests your help in obtaining *amicus* and other assistance from the Stein Center for Law and Ethics and from the New York State Bar Association. Examination of the Appellant's Brief and Appendix, substantiated by the transmitted lower court record, will convince you that the Attorney General has been unlawfully representing the Commission, in violation of Executive Law §63.1 and conflict of interest rules, has NO legitimate defense to this appeal, and that the *only* way the Commission can survive the evidence of its corruption, documented by the file, is if the Appellate Division replicates the lower court's corruption of the judicial process by a factually fabricated, legally insupportable decision. The involvement of the Stein Center for Law and Ethics and of the New York State Bar Association will help ensure that this does not happen. Such involvement will be an important component in building a coalition of organizational support and in garnering media coverage for the transcending issues of governmental integrity this appeal presents. This will make it more difficult for the Appellate Division to "throw" the appeal, as it "threw" the appeal of *Mantell v. Commission* last November

A copy of the Appellate Division's decision in *Mantell v. Commission*, as reported by the November 20, 2000 New York Law Journal, is enclosed, annexed to CJA's December 1, 2000 memorandum to the Attorney General and Commission, calling upon them to move to vacate that decision for fraud.

The status of *Elena Ruth Sassower v. Commission* is that the Attorney General requested additional time to respond to the Appellant's Brief. The January 11th stipulation I signed, giving the Attorney General until March 23rd and myself until April 27th, puts the appeal over to the June term. A copy of the stipulation is enclosed. Also enclosed is my January 10th letter to Attorney General Spitzer, calling upon him to disavow his representation of the Commission and to join in support of the appeal and in a motion to ensure that it is heard by a fair and impartial tribunal. Additionally, enclosed is my January 11th letter transmitting my faxed signature on the stipulation.

At your earliest convenience, I would appreciate the opportunity to meet with you personally about securing the participation of the legal ethics community in this historic public interest case.

Yours for a quality judiciary,

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

Enclosures:

As indicated, plus CJA's informational brochure