CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org

Elena Ruth Sassower, Coordinator

BY HAND
"Windows on the World"

May 11, 2001

Professor David D. Siegel, Honoree
Law Day Celebration/New York County Lawyers Association

RE: Clarifying Principles of New York Law

Dear Professor Siegel:

Congratulations on your well-deserved award, recognizing your extraordinary contribution to the law by your teaching and informative commentaries.

The Center for Judicial Accountability, Inc. (CJA) is a non-partisan, non-profit citizens' organization, documenting the dysfunction, politicization, and corruption of the closed-door processes of judicial selection and discipline on federal, state, and local levels. A copy of our informational brochure is enclosed.

Our members have long admired your work and consistently rely on it in litigation. We do not know how you select the cases from which you discern trends and developments in the law. However, we take the occasion of this Law Day celebration to bring to your attention a troubling series of cases against the New York State Commission on Judicial Conduct, which fly in the face of principles of law articulated in your commentaries.

The lower court records of two of these cases are *physically* encompassed in the appeal of the third, calendared for the September 2001 Term of the Appellate Division, First Department. To enable you to examine for yourself the many principles of law up-ended in these important cases -- and to buttress this request for your *amicus* support for those principles whose viability this appeal seeks to vindicate -- I have taken the liberty of enclosing a copy of the appellate papers in *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)[1]. Also enclosed are copies of my January 10th, April 18th, and May 3rd letters to the Commission's attorney, New York

[1] The Appellant's Brief cites your various commentaries at pages 38, 39, 58.

State Attorney General Eliot Spitzer, who, pursuant to Executive Law §63.1, should be disavowing his representation of the Commission and supporting the appeal.

Threshold on the appeal is the legal principle of "standing". Your New York Practice, §136 (1999 ed., pp. 223-5) states:

> "Although a question of 'standing' is not common in New York, its infrequent appearance is likely to be where administrative action is involved. A good example is *Dairylea Cooperative, Inc. v. Walkley*... The court said that '[o]nly where there is a clear legislative intent negating review... or lack of injury in fact will standing be denied.' The test today is a liberal one, according to *Dairylea*, and the right to challenge administrative action, articulated under the 'standing' caption, is an expanding one.
>
> ...With the taxpayer suit having been expressly adopted in New York, and with the Court of Appeals having acknowledged that in general 'standing' is to be measured generously, the occasion for closing the court's doors to a plaintiff by finding that his interest is not even sufficient to let him address the merits, which is what a 'standing' dismissal means, should be infrequent. Ordinarily only the most officious interloper should be ousted for want of standing."

Nevertheless, the Attorney General's Point I appellate argument is that "Petitioner Has No Standing to Sue the Commission"[2]. For this proposition, our State's highest legal officer does *not* address your above-quoted commentary from New York Practice – which, *verbatim*, is part of the appellate record: having been placed before the lower court in opposition to the Attorney General's dismissal motion which had asserted a defense based on "standing" – a defense the lower court implicitly rejected by its decision predicating dismissal on other grounds [A-9-14]. Instead, his Respondent's Brief, *without* citation to any commentary, cites only a single New York case. This case is the Appellate Division, First Department's decision in *Michael Mantell v. Commission on Judicial Conduct*, 715 N.Y.S.2d 316 (1st Dept. 2000) – one of the two cases against the Commission, whose lower court record is part of the instant appeal.

You may already be familiar with the Appellate Division's two-paragraph, unsigned decision in *Mantell*-- as it was highlighted in the front-page "Update" of the November 20, 2000 New

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[2] *See* Respondent's Brief, "Point I", pp. 14-15

York Law Journal[3]. By that decision, the Appellate Division held, *without* citation to any legal authority – and in face of an appellate record containing your above-cited commentary from New York Practice[4], "Petitioner *lacks standing* to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct". (emphasis added). Such holding, ignoring that Mr. Mantell was seeking investigation of HIS facially-meritorious judicial misconduct complaint, was an add-on to the lower court's decision [A-299-307], which implicitly rejected a defense based on "standing", asserted by the Attorney General's dismissal motion.

My opposition to the Attorney General's Point I is particularized at pages 40-47 of my enclosed critique to his Respondent's Brief. This recites your above-quoted commentary on "standing" from New York Practice, as well as your commentary on declaratory actions, also from New York Practice. Especially if you are unable to provide *amicus* assistance, I would greatly appreciate if – at very least -- you would be good enough to review my argument, set forth in those seven pages, and provide me with the benefit of your evaluative comments. This, so I can vindicate the public's right to redress, through the courts, of legitimate grievances against a corrupted State Commission on Judicial Conduct.

Needless to say, I would also greatly appreciate your evaluative comments as to the other transcending principles of law presented by this public interest appeal. Should you wish to see the underlying lower court record and the *Mantell* appellate record containing my intervention motion, I would be pleased to transmit copies to you.

With sincerest respect and thanks.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosures
cc: Robert L. Schulz, Chairman
We the People Foundation for Constitutional Education, Inc.

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[3] A copy of the front-page "Update" and decision, as published in the Law Journal, is annexed to CJA's December 1, 2000 letter to the Commission and Attorney General, attached to my enclosed January 10th letter to Attorney General Spitzer.

[4] Your commentary on "standing" from New York Practice was before the Appellate Division on the *Mantell* appeal by way of my motion to intervene therein, which set it forth in opposition to the Attorney General's Respondent's appellate argument as to Mr. Mantell supposed lack of "standing". The Appellate Division denied my intervention motion, *without* reasons.

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Professor David D. Siegel
Albany Law School
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