

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY CERTIFIED MAIL/RRR: Z-471-049-573

April 23, 1999

New York State Ethics Commission
39 Columbus Street
Albany, New York 12207-2717

ATT: Walter Ayres, Public Information Officer

Dear Walter:

Enclosed, for PRESENTMENT to the Ethics Commissioners, is a Notice of Right to Seek Intervention in CJA's newly-commenced Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against the Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551).

Assumedly, it will be reviewed, initially, by the Ethics Commission's new Executive Director, Donald P. Berens, Jr.. As discussed, it was Mr. Berens' May 16, 1997 Letter to the Editor in the New York Law Journal which prompted CJA's public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4). The ad is Exhibit "B" to the Verified Petition, enclosed with the Notice of Right to Seek Intervention.

Mr. Berens' knowledge of that ad, in the period of his tenure as Deputy Assistant Attorney General to Mr. Vacco, may be presumed not only because it was prominently-placed, cited his Letter to the Editor in its *very first* sentence (on p. 4), and concerned a pattern of *readily-verifiable* litigation misconduct by the Attorney General's office, but because, within a week on its publication, I hand-delivered a copy for him to his Albany office. This is reflected by the enclosed signed acknowledgment.

Concerning CJA's March 26, 1999 letter to the Ethics Commission, which you stated had been presented at the Ethics Commissioner's April 14th meeting -- but as to which you had no response to report, enclosed are:

- (a) certified mail/return receipts to the indicated recipients;
- (b) hard copies of replacement pages 28-29, faxed to you on April 13th,
as well as replacement page 20 (correcting an upper case letter to lower case);
- (c) clearer xerox of Exhibit "D": New York Observer 2/8/99 column, "*Republicans Get a Pass from Spitzer -- For Now*"

Also enclosed, FYI, is the very inspiring "Legislative Declaration", which is Public Officers Law §84 (Article VI).

Thanks again for your help.

Yours for a quality judiciary,

Elena

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

Enclosures

Z 471 049 573

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	NYS ETHICS COMMISSION
Street & Number	39 Columbus Street
Post Office, State, & ZIP Code	Albany NY 12207-2717
Postage	\$ 4.30
Certified Fee	1.40
Special Delivery	
Restricted Delivery	
Return Receipt Showing Whom & Date Delivered	
Return Receipt Sent to Whom, Date, & Addressee's Address	25
TOTAL Postage & Fees	\$ 6.55
Postmark or Date	

reverse side? ADDRESS COM

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
 - Restricted Delivery
- Consult postmaster for fee.

3. Article Addressed to:

NYS ETHICS COMMISSION
ATT: Walter Byres
39 Columbus Street
Albany, NY 12207-2717

4a. Article Number

Z 471-049-573

4b. Service Type

- Registered
- Express Mail
- Return Receipt for Merchandise
- Certified
- Insured
- COD

7. Date of Delivery

APR 26 1999

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

James Deenfield

8. Addressee's Address (Only if requested and fee is paid)

**** U.S. POSTAL SERVICE ****
 MARTINE STA. 106019998
 359350 38.00
 IVYS G. # 03
 04-23-99 17:38:03

CUSTOMER RECEIPT

109 POST VAL IMP	6.95
TOTAL	6.95
CASH T	7.00
CHANGE	.05

PS Form 3811, December 1994

102595-98-B-0229

Domestic Return Receipt

PS Form 3800, April 1995

New York Law Journal

AUGUST 27, 1997

[at page 3]

RESTRAINING "LIARS IN THE COURTROOM" AND ON THE PUBLIC PAYROLL

On June 17th, The New York Law Journal published a Letter to the Editor from a former New York State Assistant Attorney General, whose opening sentence read "Attorney General Dennis Vacco's worst enemy would not suggest that he tolerates unprofessional or irresponsible conduct by his assistants after the fact". Yet, more than three weeks earlier, the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization, submitted a proposed Perspective Column to the Law Journal, detailing the Attorney General's knowledge of, and complicity in, his staff's litigation misconduct - before, during, and after the fact. The Law Journal refused to print it and refused to explain why. Because of the transcending public importance of that proposed Perspective Column, CJA has paid \$3,077.22 so that you can read it. It appears today on page 4.

[at page 4]

RESTRAINING "LIARS IN THE COURTROOM" AND ON THE PUBLIC PAYROLL

- a \$3,077.22 ad presented, in the public interest, by the Center for Judicial Accountability, Inc. -
(continued from page 3)

In his May 16th Letter to the Editor, Deputy State Attorney General Donald P. Berens, Jr. emphatically asserts, "the Attorney General does not accept and will not tolerate unprofessional or irresponsible conduct by members of the Department of Law."

A claim such as this plainly contributes to the view - expressed in Matthew Lifflander's otherwise incisive Perspective Column "Liars Go Free in the Courtroom" (2/24/97) - that the State Attorney General should be in the forefront in spearheading reform so that the perjury which "pervades the judicial system" is investigated and deterrent mechanisms established. In Mr. Lifflander's judgment, "the issue is timely and big enough to justify creation of either a state Moreland Act Commission investigation by the Governor and the Attorney General, or a well-financed legislative investigation at the state or federal level", with "necessary subpoena power". Moreover, as recognized by Mr. Lifflander and in the two published letter responses (3/13/97, 4/2/97), judges all too often fail to discipline and sanction the perjurers who pollute the judicial process.

In truth, the Attorney General, our state's highest law enforcement officer, lacks the conviction to lead the way in restoring standards fundamental to the integrity of our judicial process. His legal staff are among the most brazen of liars who "go free in the courtroom". Both in state and federal court, his Law Department relies on litigation misconduct to defend state agencies and officials sued for official misconduct, including corruption, where it has no legitimate defense. It files motions to dismiss on the pleadings which falsify, distort, or omit the pivotal pleaded allegations or which improperly argue against those allegations, without any probative evidence whatever. These motions also misrepresent the law or are unsupported by law. Yet, when this defense misconduct - readily verifiable from litigation files - is brought to the Attorney General's attention, he fails to take any corrective steps. This, notwithstanding the misconduct occurs in cases of great public import. For its part, the courts - state and federal - give the Attorney General a "green light."

Ironically, on May 14th, just two days before the Law Journal published Deputy Attorney General Berens' letter, CJA testified before the Association of the Bar of the City of New York, then holding a hearing about misconduct by state judges and, in particular, about the New York State Commission on Judicial Conduct. The Law Journal limited its coverage of this important hearing to a three-sentence blurb on its front-page news "Update" (5/15/97).

Our testimony described Attorney General Vacco's defense misconduct in an Article 78 proceeding in which we sued the Commission on Judicial Conduct for corruption (N.Y. Co. #95-109141). Law Journal readers are already familiar with that public interest case, spearheaded by CJA. On August 14, 1995, the Law Journal printed our Letter to the Editor about it, "Commission Abandons Investigative Mandate" and, on November 20, 1996, printed our \$1,650 ad, "A Call for Concerted Action".

The case challenged, as written and as applied, the constitutionality of the Commission's self-promulgated rule, 22 NYCRR §7000.3, by which it has converted its mandatory duty under Judiciary Law §44.1 to investigate facially-meritorious judicial misconduct complaints into a discretionary option, unbounded by any standard. The petition alleged that since 1989 we had filed eight facially-meritorious complaints "of a profoundly serious nature - rising to the level of criminality, involving corruption and misuse of judicial office for ulterior purposes - mandating the ultimate sanction of removal". Nonetheless, as alleged, each complaint was dismissed by the Commission, without investigation, and without the determination required by Judiciary Law §44.1(b) that a complaint so-dismissed be "on its face lacking in merit". Annexed were copies of the complaints, as well as the dismissal letters. As part of the petition, the Commission was requested to produce the record, including the evidentiary proof submitted with the complaints. The petition alleged that such documentation established, "prima facie, [the] judicial misconduct of the judges complained of or probable cause to believe that the judicial misconduct complained of had been committed".

Mr. Vacco's Law Department moved to dismiss the pleading. Arguing against the petition's specific factual allegations, its dismissal motion contended - unsupported by legal authority - that the facially irreconcilable agency rule is "harmonious" with the statute. It made no argument to our challenge to the rule, as applied, but in opposing our Order to Show Cause with TRO falsely asserted - unsupported by law or any factual specificity - that the eight facially-meritorious judicial misconduct complaints did not have to be investigated because they "did not on their face allege judicial misconduct". The Law Department made no claim that any such determination had ever been made by the Commission. Nor did the Law Department produce the record - including the evidentiary proof supporting the complaints, as requested by the petition and further reinforced by separate Notice.

Although CJA's sanctions application against the Attorney General was fully documented and uncontroverted, the state judge did not adjudicate it. Likewise, he did not adjudicate the Attorney General's duty to have intervened on behalf of the public, as requested by our formal Notice. Nor did he adjudicate our formal motion to hold the Commission in default. These threshold issues were simply obliterated from the judge's decision, which concocted grounds to dismiss the case. Thus, to justify the rule, as written, the judge advanced his own interpretation, falsely attributing it to the Commission. Such interpretation, belied by the Commission's own definition section to its rules, does nothing to reconcile the rule with the statute. As to the constitutionality of the rule, as applied, the judge baldly claimed what the Law Department never had: that the issue was "not before the court". In fact, it was squarely before the court - but adjudicating it would have exposed that the Commission was, as the petition alleged, engaged in a "pattern and practice of protecting politically-connected judges...shield[ing] them] from the

Received 9/2/97
10:30am
Beth A. Perrella
Copies to
William Flynn
Deputy A.G.
Donald P. Berens, Jr.
Deputy A.G.
Barbara
Filed
Solicitor
General

disciplinary and criminal consequences of their serious judicial misconduct and corruption".

The Attorney General is "the People's lawyer", paid for by the taxpayers. Nearly two years ago, in September 1995, CJA demanded that Attorney General Vacco take corrective steps to protect the public from the combined "double-whammy" of fraud by the Law Department and by the court in our Article 78 proceeding against the Commission, as well as in a prior Article 78 proceeding which we had brought against some of those politically-connected judges, following the Commission's wrongful dismissal of our complaints against them. It was not the first time we had apprised Attorney General Vacco of that earlier proceeding, involving perjury and fraud by his two predecessor Attorneys General. We had given him written notice of it a year earlier, in September 1994, while he was still a candidate for that high office. Indeed, we had transmitted to him a full copy of the litigation file so that he could make it a campaign issue -- which he failed to do.

Law Journal readers are also familiar with the serious allegations presented by that Article 78 proceeding, raised as an essential campaign issue in CJA's ad "Where Do You Go When Judges Break the Law?". Published on the Op-Ed page of the October 26, 1994 New York Times, the ad cost CJA \$16,770 and was reprinted on November 1, 1994 in the Law Journal, at a further cost of \$2,280. It called upon the candidates for Attorney General and Governor "to address the issue of judicial corruption". The ad recited that New York state judges had thrown an Election Law case challenging the political manipulation of elective state judgeships and that other state judges had viciously retaliated against its "judicial whistle-blowing", *pro bono* counsel, Doris L. Sassower, by suspending her law license immediately, indefinitely, and unconditionally, *without charges, without findings, without reasons, and without a pre-suspension hearing*, -- thereafter denying her *any* post-suspension hearing and *any* appellate review.

Describing Article 78 as the remedy provided citizens by our state law "to ensure independent review of governmental misconduct", the ad recounted that the judges who unlawfully suspended Doris Sassower's law license had refused to recuse themselves from the Article 78 proceeding she brought against them. In this perversion of the most fundamental rules of judicial disqualification, they were aided and abetted by their counsel, then Attorney General Robert Abrams. His Law Department argued, *without legal authority*, that these judges of the Appellate Division, Second Department were not disqualified from adjudicating their own case. The judges then granted their counsel's dismissal motion, whose legal insufficiency and factual perjuriousness was documented and uncontroverted in the record before them. Thereafter, despite repeated and explicit written notice to successor Attorney General Oliver Koppell that his judicial clients' dismissal decision "was and is an outright lie", his Law Department opposed review by the New York Court of Appeals, engaging in further misconduct before that court, constituting a deliberate fraud on that tribunal. By the time a writ of certiorari was sought from the U.S. Supreme Court, Mr. Vacco's Law Department was following in the footsteps of his predecessors (AD 2nd Dept. #93-02925; NY Ct. of Appeals: Mo. No. 529, SSD 41; 933; US Sup. Ct. #94-1546).

Based on the "hard evidence" presented by the files of these two Article 78 proceedings, CJA urged Attorney General Vacco to take immediate investigative action and remedial steps since what was at stake was not only the corruption of two vital state agencies -- the Commission on Judicial Conduct and the Attorney General's office -- but of the judicial process itself.

What has been the Attorney General's response? He has ignored our voluminous correspondence. Likewise, the Governor, Legislative leaders, and other leaders in and out of government, to whom we long ago gave copies of one or both Article 78 files. No one in a leadership position has been willing to comment on either of them.

Indeed, in advance of the City Bar's May 14th hearing, CJA challenged Attorney General Vacco and these leaders to deny or dispute the file evidence showing that the Commission is a beneficiary of fraud, without which it could not have survived our litigation against it. None appeared -- except for the Attorney General's client, the Commission on Judicial Conduct. Both its

Chairman, Henry Berger, and its Administrator, Gerald Stern, conspicuously avoided making *any* statement about the case -- although each had received a personalized written challenge from CJA and were present during our testimony. For its part, the City Bar Committee did not ask Mr. Stern *any* questions about the case, although Mr. Stern stated that the sole purpose for his appearance was to answer the Committee's questions. Instead, the Committee's Chairman, to whom a copy of the Article 78 file had been transmitted more than three months earlier -- but, who, for reasons he *refused* to identify, did *not* disseminate it to the Committee members -- abruptly closed the hearing when we rose to protest the Committee's failure to make such inquiry, the importance of which our testimony had emphasized.

Meantime, in a §1983 federal civil rights action (*Sassower v. Mangano, et al*, #94 Civ. 4514 (JES), 2nd Cir. #96-7805), the Attorney General is being sued as a party defendant for subverting the state Article 78 remedy and for "complicity in the wrongful and criminal conduct of his clients, whom he defended with knowledge that their defense rested on perjurious factual allegations made by members of his legal staff and willful misrepresentation of the law applicable thereto". Here too, Mr. Vacco's Law Department has shown that there is no depth of litigation misconduct below which it will not sink. Its motion to dismiss the complaint falsified, omitted and distorted the complaint's critical allegations and misrepresented the law. As for its Answer, it was "knowingly false and in bad faith" in its responses to *over 150* of the complaint's allegations. Yet, the federal district judge did not adjudicate our fully-documented and uncontroverted sanctions applications. Instead, his decision, which obliterated any mention of it, *sua sponte*, and *without notice*, converted the Law Department's dismissal motion into one for summary judgment for the Attorney General and his co-defendant high-ranking judges and state officials -- where the record is wholly devoid of *any* evidence to support anything but summary judgment in favor of the plaintiff, Doris Sassower -- which she expressly sought.

Once more, although we gave particularized written notice to Attorney General Vacco of his Law Department's "fraudulent and deceitful conduct" and the district judge's "complicity and collusion", as set forth in the appellant's brief, he took no corrective steps. To the contrary, he tolerated his Law Department's further misconduct on the appellate level. Thus far, the Second Circuit has maintained a "green light". Its one-word order "DENIED", *without reasons*, our fully-documented and uncontroverted sanctions motion for disciplinary and criminal referral of the Attorney General and his Law Department. Our perfected appeal, seeking similar relief against the Attorney General, as well as the district judge, is to be argued THIS FRIDAY, AUGUST 29TH. It is a case that impacts on every member of the New York bar -- since the focal issue presented is the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*. You're all invited to hear Attorney General Vacco *personally* defend the appeal -- if he dares!

We agree with Mr. Lifflander that "what is called for now is action". Yet, the impetus to root out the perjury, fraud, and other misconduct that imperils our judicial process is not going to come from our elected leaders -- least of all from the Attorney General, the Governor, or Legislative leaders. Nor will it come from the leadership of the organized bar or from establishment groups. Rather, it will come from *concerted* citizen action and the power of the press. For this, we do not require subpoena power. We require only the courage to come forward and publicize the readily-accessible case file evidence -- *at our own expense, if necessary*. The three above-cited cases -- *and this paid ad* -- are powerful steps in the right direction.

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Governmental integrity cannot be preserved if legal remedies, designed to protect the public from corruption and abuse, are subverted. And when they are subverted by those on the public payroll, including by our State Attorney General and judges, the public needs to know about it and take action. That's why we've run this ad. Your tax-deductible donations will help defray its cost and advance CJA's vital public interest work.

Example query for statute: "Public Officers" /5 100

Also, see the WESTLAW Electronic Research Guide following the Explanation.

§ 84. Legislative declaration

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible.

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

(Added L.1977, c. 933, § 1.)

Historical Note

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.	Derivation. Former section 85, added L.1974, c. 578, § 2; amended L.1974, c. 579, § 1; repealed by L.1977, c. 933, § 1.
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Library References

American Digest System

Freedom of information laws in general, see Records ¶50 et seq.

Encyclopedia

Access to and right to use records, see C.J.S. Records § 35.