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May 22, 1997

Ruth Hochberger, Editor-in-Chief
New York Law Journal
345 Park Avenue South
New York, New York 10010

RE: Perspective Column/Letter to the Editor

Dear Ms. Hochberger:

The following is for publication as a Perspective Column or, alternatively, as a Letter to the Editor. We would appreciate prompt notification confirming that the Law Journal will be publishing it, in either format, so that, if necessary, other arrangements can be made to get this extraordinary information -- *all of it documented* -- to the public and legal community. Should editorial changes be required, you may be assured of our complete cooperation.

By now, you should be already in receipt of the pertinent materials we had hand-delivered to your office: my testimony before the City Bar's Special Committee on Judicial Conduct at its May 14th hearing and our May 5th letter to the Governor, Attorney General, legislative leaders, bar associations, etc., referred to in my testimony and made a part thereof.

Should you wish to see the files of the two Article 78 proceedings or the §1983 federal action, referred to in my proposed Perspective Column/Letter to the Editor, we would be most pleased to supply them. They are shocking beyond words.

Thank you.

Yours for a quality judiciary,

Elena Ruth Sassower

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosure

PROPOSED PERSPECTIVE COLUMN/LETTER TO THE EDITOR

Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc.
May 22, 1997
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In his May 16th letter, Deputy State Attorney General Donald P. Berens, Jr. emphatically asserts that "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 three months ago 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, has neither the moral authority nor conviction to lead the way in restoring standards fundamental to the integrity of our judicial process. His legal staff are 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. Indeed, when such facts -- readily verifiable from litigation files -- are brought to the Attorney General's attention, he fails to take any corrective steps. This, notwithstanding the defense misconduct occurs in cases of great public import and involves proven perjury and fraud. For such perjury and fraud, the courts -- state and federal -- give the Attorney General a "green light".

Ironically, on May 14th, just two days before publication of Deputy Attorney General Berens' letter, I testified before the Association of the Bar of the City of New York, which was holding a hearing about misconduct by state judges and, in particular, about the New York State Commission on Judicial Conduct. Unfortunately, the Law Journal limited its coverage of this important hearing to a 3-sentence blurb on its front-page news "Update" (5/15/97).

My testimony included a description of the Attorney General's defense misconduct in an Article 78 proceeding in which we sued the Commission on Judicial Conduct for corruption. Law Journal readers are already familiar with that public interest case, spearheaded by the non-partisan, non-profit citizens' action organization of which I am coordinator and co-founder, the Center for Judicial Accountability, Inc. (CJA). On August 14, 1995, the Law Journal published my Letter to the Editor about it, "*Commission Abandons Investigative Mandate*" and, on November 20, 1996, printed (at p. 3) CJA's $1,650 paid ad, "*A Call for Concerted Action*". Those published pieces did not identify the role played by the Attorney General, but focused on the state judge's legally insupportable and factually

fabricated dismissal decision, as verifiable from the file of the case (N.Y. Co. #95-109141) -- copies of which we provided to a virtual "Who's Who" in and out of government. This includes our Governor and legislative leaders.

My testimony further described how the judge deliberately failed to adjudicate the Attorney General's misconduct and obliterated the issue from his decision -- although it was fully developed in the record before him. The judge did this because adjudicating it would have exposed that the Attorney General had *no* law or fact upon which to found a defense of the Commission and that the Attorney General's absolute duty was to intervene on behalf of the public, as our formal Notice had requested him to do.

Supporting my testimony was the Article 78 file, as well as documentary proof of the Attorney General's subsequent disregard of his professional and ethical obligations to protect the public from the combined "double-whammy" of fraud by his Law Department and by the state judge. Such proof included a hand-delivered September 19, 1995 letter to Attorney General Vacco, which not only notified him of his staff's misconduct in that Article 78 proceeding, but reminded him of his predecessors' misconduct in a prior Article 78 proceeding in which we had sued high-ranking state court judges for corruption (A.D. 2d Dept. #93-02925; NY Ct. of Appeals: Mo. No. 529, SSD 41; 933; U.S. Sup. Ct. #94-1546). We pointed out that in each Article 78 proceeding the Law Department had filed dismissal motions which were legally insufficient and factually perjurious. This, in addition to trashing the most elementary rules relating to conflict of interest and disqualification. In both proceedings, the state judges collusively disregarded the Law Department's defense

misconduct so as to defraud the public of its legitimate rights.

Based on the "hard evidence" presented by the files of those two Article 78 proceedings -- each in the Attorney General's possession -- CJA urged Attorney General Vacco to take immediate investigative action and remedial steps since what was at stake was no less than the corruption of a vital state agency, indeed more than one, and of the judicial process itself.

What was Attorney General Vacco's response? Total silence and inaction. In the 20 months that have since elapsed, he, as well as the leaders in and out of government to whom we long ago provided copies of the Commission file have ignored our voluminous correspondence on the subject. As set forth in our November 20, 1996 Law Journal ad -- and still true today, more than six months later -- "we cannot find anyone in a leadership position willing even to comment on the Commission file".

Indeed, in advance of the City Bar's May 14th hearing, we wrote to all the leaders and government agencies to whom we had given the file, as well as to the Attorney General, who has his own file, challenging them to deny or dispute our serious and very public allegations about what it shows, as further particularized in our correspondence with them. None appeared -- except for the Attorney General's client, the Commission on Judicial Conduct. Conspicuously, both the Commission's Chairman, Henry Berger, and its Administrator, Gerald Stern, each of whom received that letter challenge, as well as a letter challenge personally addressed to them, and who, additionally, were present during my very explicit testimony, avoided making *any* statement about the case. For its part, the City Bar

Committee sponsoring the hearing failed to ask Mr. Stern *any* questions about it, although the sole purpose for his appearance at the hearing, as stated by him, was to answer the Committee's questions. Instead, the Committee's Chairman, to whom a copy of the Article 78 file was 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 I rose to protest the Committee's failure to make such inquiry, the importance of which I had emphasized in my testimony.

Meantime, in a §1983 federal civil rights action in which we are suing the Attorney General as a party defendant for subverting the state Article 78 remedy and for his complicity in state court corruption, the Law Department has once again shown that there is no depth of misconduct below which it will not sink in defending the Attorney General, high-ranking state judges, and other state officials. This includes filing the standard fraudulent dismissal motion -- which works so well in state court and, indeed, no less well in federal court. Here too, the judge simply obliterated from his dismissal decision the issue of the Attorney General's fraud, fully documented in the record before him -- because doing otherwise would have exposed that the Attorney General had *no* legitimate defense.

Once more, although we directly notified Attorney General Vacco of his Law Department's fraudulent conduct, covered up by a federal judge, he took no corrective steps. To the contrary, he permitted his Law Department to pursue an identical stratagem of misconduct on the appellate level. Thus far, the Second Circuit has maintained a "green light". It has denied, *without* reasons, our fully-documented sanctions motion seeking

disciplinary and criminal referral of the Attorney General and his Law Department. Our already perfected appeal, seeking similar sanctions relief, including against the District Judge, is yet to be argued (#96-7805).

We agree with Mr. Lifflander that "what is called for now is action". Yet, as the documentary proof we presented at the City Bar hearing shows, the impetus to root out the perjury, fraud, and misconduct that imperils our judicial process is not going to come from our elected leadership -- least of all from the Attorney General, the Governor, or legislative leaders. Nor will it come from the leadership of the organized bar and 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 file evidence.* The above-cited three cases are a powerful step in the right direction.

* — add:
— at our own expense, if necessary.