

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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*Elena Ruth Sassower, Coordinator*

BY HAND

October 21, 1999

Robert M. Morgenthau, District Attorney  
New York County  
1 Hogan Place  
New York, New York 10012

ATT: Assistant District Attorney Thomas A. Wornam  
Deputy Chief, Special Prosecutions Bureau

- RE:
- (1) Intervention in *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. #99-108551)
  - (2) Criminal complaints against the NYS Attorney General for his litigation fraud in defense of the NYS Commission on Judicial Conduct, sued for corruption, and against the NYS Commission on Judicial Conduct for its complicity therewith;
  - (3) Supplemental criminal complaint against the NYS Commission on Judicial Conduct for its cover-up of judicial corruption and abuse of power;
  - (4) Criminal complaint against the NYS Commission on Judicial Nomination for corrupting the "merit selection" process to the NY Court of Appeals;
  - (5) Recusal of the Manhattan District Attorney and referral to the U.S. Justice Department's Public Integrity Section of its Criminal Division.

Dear Mr. Wornam:

This letter follows up our several phone conversations over these past months relating to the necessity of the Manhattan District Attorney's intervention in the Article 78 proceeding, *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. #99-108551) -- as to which the Manhattan District Attorney was served with Notice of Right to Seek Intervention on April 22, 1999.

In those conversations I advised you of the exigency of intervention – if for no other reason than to safeguard the integrity of the judicial process. I described for you the fact that the state Attorney General had NO legitimate defense to the Verified Petition's fact-specific, documented allegations of the Commission on Judicial Conduct's protectionism of politically-connected judges, including Albert Rosenblatt, now sitting on the New York Court of Appeals, and that he was, therefore, engaging in fraudulent litigation tactics to defend the Commission. Indeed, I told you that the Attorney General's litigation fraud in this proceeding was even more extreme than in the prior Article 78 proceeding against the Commission for protecting politically-connected judges, including then Appellate Division, Second Department Justice Rosenblatt [*Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY. Co. #95-109141)] -- as to which the Manhattan District Attorney's intervention had also been sought. As you know, the Attorney General's litigation misconduct in that prior proceeding, covered up by a fraudulent judicial decision, is detailed in CJA's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", (NYLJ, 8/27/97, pp. 3-4), annexed as Exhibit "B" to the Verified Petition in the current proceeding. For your convenience, a further copy is annexed hereto (Exhibit "A").

You have long had in your possession the proof of what took place in the prior Article 78 proceeding against the Commission. This, because I hand-delivered a copy of the litigation file to the Manhattan District Attorney's office under a March 5, 1996 letter, addressed to you. You never responded to that letter – or to the substantiating file it transmitted.

For your convenience, annexed hereto are copies of our prior correspondence:

**Exhibit "B":** CJA's January 31, 1996 letter detailing the Manhattan District Attorney's inaction and dereliction in regard to both CJA's May 19, 1995 criminal complaint against the Commission on Judicial Conduct and our September 19, 1995 supplement thereto based on the prior Article 78 proceeding and including a three-page analysis of the fraudulent decision of Justice Herman Cahn dismissing the case;

**Exhibit "C":** your February 7, 1996 letter purporting to respond to CJA's January 31, 1996 letter.

**Exhibit "D":** CJA's March 5, 1996 letter demonstrating your February 7, 1996 letter to be spurious and in bad-faith.

**Exhibit "E":** CJA's May 6, 1997 fax to you, noting your failure to respond to our March 5, 1996 letter and transmitting CJA's May 5, 1997 memorandum, annexing a copy of the previously transmitted three-page analysis of Justice Cahn's decision.

The three-page analysis of the decision is the same as is referred to at ¶¶TWELFTH - FOURTEENTH of the Verified Petition in the current Article 78 proceeding and annexed thereto with the May 5, 1997 Memorandum as Exhibit "A". As stated at ¶THIRTEENTH of the Verified Petition and reflected by "*Restraining 'Liars'*", none of the many public officers and other recipients of the May 5, 1997 Memorandum -- all of whom had copies of the file of the prior Article 78 proceeding -- ever denied or disputed the truth and accuracy of that analysis. This includes the Manhattan District Attorney.

Additionally, you also have in your possession the bulk of the file of the current Article 78 proceeding against the Commission -- up to my July 28, 1999 omnibus motion. That motion, which seeks sanctions against the Attorney General personally, the Commission, and their culpable staff, as well as disciplinary and criminal referral against them for their litigation misconduct, as well as the Attorney General's disqualification based on his wilful violation of Executive Law §63.1 and multiple conflicts of interest, was hand-delivered to your office on August 6, 1999 (Exhibit "F"). Included with that omnibus motion were the free-standing file folders of substantiating documents, except for the file folder containing the prior Article 78 proceeding against Respondent, already in your possession

The omnibus motion documentarily establishes *everything* I described to you in our May 21<sup>st</sup> and August 4<sup>th</sup> phone conversations as to the Attorney General's defense misconduct in the current Article 78 proceeding. Indeed, as I pointed out to you in our August 17<sup>th</sup> phone conversation, pages 8-10 of my moving Memorandum of Law provide legal authority for the District Attorney's criminal prosecutions of the Attorney General and Commission. These include Judiciary Law §487, "Misconduct by Attorneys", which makes it a misdemeanor for an attorney to be guilty of "any deceit or collusion, or consents to any deceit or collusion with intent to deceive the court or any party", with punishment in accordance with the penal law; Penal Law §210.10, pertaining to perjury, which is a felony; Penal Law §105.05(1), "Conspiracy in the Fifth Degree", and Penal Law §195 "Official Misconduct", which is a misdemeanor.

As the time of our August 17<sup>th</sup> phone conversation, I stated to you that I had just received the Attorney General's August 13<sup>th</sup> opposition to my omnibus motion, and that it continued, unabated, his defense fraud. I have since demonstrated this in my September 24<sup>th</sup> Reply Memorandum of Law and reply affidavit, seeking further sanctions and disciplinary and criminal referral against the Attorney General and Commission based thereon. These documents, constituting the balance of the file of the current Article 78 proceeding<sup>1</sup>, are enclosed.

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<sup>1</sup> Also enclosed is my October 1st letter to Justice Zweibel, the third judge assigned to the current Article 78 proceeding, relative to his recusal. As discussed, Justice Zweibel recused himself at the outset of the October 8<sup>th</sup> oral argument. A fourth judge has not yet been assigned.

The foregoing file evidence from TWO Article 78 proceedings against the Commission is more than sufficient to sustain criminal prosecutions – and obtain convictions -- of the Attorney General, the Commission on Judicial Conduct, and culpable staff under Judiciary Law §487 and the above-cited provisions of the penal law, among others. CJA hereby initiates criminal complaints against them for that purpose – effectively updating and further supplementing our May 19, 1995 criminal complaint against the Commission and September 19, 1995 supplement.

As discussed in our October 13<sup>th</sup> phone conversation, I will shortly transmit file evidence from yet a THIRD Article 78 proceeding against the Commission, *Michael Mantell v. New York State Commission on Judicial Conduct*, (NY Co. #99-108655), whose dismissal was reported in a front-page story, “*State Commission Can Refuse to Investigate Judge*”, in the October 5th New York Law Journal (Exhibit “G”). Like Doris Sassower’s Article 78 proceeding, Mr. Mantell’s Article 78 proceeding was “thrown” by a fraudulent judicial decision, this one by Justice Edward Lehner, covering up that the Commission had NO legitimate defense and that the Attorney General’s defense advocacy was a knowing deceit.

This file evidence that a second Article 78 proceeding against the Commission has been “thrown” by a fraudulent judicial decision substantiates, beyond Doris Sassower’s Article 78 proceeding against the Commission, the concluding paragraph CJA’s Letter to the Editor, “*Commission Abandons Investigative Mandate*” (NYLJ, 8/14/95):

“The public and legal community are encouraged to access the papers in the Article 78 proceeding... What those papers unmistakably show is that the Commission protects judges from the consequences of their judicial misconduct – and, in turn, is protected by them” [See, *inter alia*, Exhibit “B” herein (at Ex. “A-1”)].

As such, it reinforces CJA’s September 19, 1995 supplement based on the prior Article 78 proceeding, our instant criminal complaints against the Commission and Attorney General, and the Manhattan District Attorney’s duty to initiate criminal investigations of both Justices Cahn and Lehner. It also reinforces the necessity of the Manhattan District Attorney’s intervention in the current proceeding so that it does not become the third in the sequence of Article 78 proceedings against the Commission to be “thrown” by a fraudulent judicial decision.

Additionally, because the current Article 78 proceeding exposes the corruption of the New York State Commission on Judicial Nomination, whose Manhattan office is within the criminal jurisdiction of the Manhattan District Attorney, CJA initiates a criminal complaint against it for subverting the “merit selection” process in connection with Justice Rosenblatt’s candidacy to the Court of Appeals. This subversion – in which the Commission on Judicial Conduct is complicitous -- is reflected by ¶¶TWENTY-SECOND – THIRTY-SECOND of the Verified

Petition. It is particularized at pages 22-24 of CJA's March 26, 1999 ethics complaint, filed with the New York State Ethics Commission, which is Exhibit "E" to my July 28<sup>th</sup> moving affidavit in support of my omnibus motion. That ethics complaint is updated at page 4 of CJA's September 15, 1999 supplement, which is Exhibit "G" to my September 24<sup>th</sup> reply affidavit in support of my omnibus motion. The evidentiary support for CJA's March 26, 1999 ethics complaint, as it relates to the Commission on Judicial Nomination, is already in your possession: contained in File Folder III supporting the July 28<sup>th</sup> omnibus motion. A copy of the inventory of that File Folder is annexed hereto as Exhibit "H-1", along with an inventory of the evidentiary support for CJA's September 15, 1999 supplement thereto (Exhibit "H-2"), transmitted herewith. These fully warrant criminal investigation and prosecution of the Commission on Judicial Nomination based thereon.

Just as Attorney General Spitzer is complicitous in the corruption of the Commission on Judicial Conduct, so too is he complicitous in the corruption of the Commission on Judicial Nomination. This is detailed at pages 5-7 and 27-29 of CJA's March 26, 1999 ethics complaint, as well as by ¶¶43-52 of my moving affidavit in support of my omnibus motion, both highlighting the Attorney General's wilful failure and refusal to respond to CJA's requests for criminal investigation of the Commission on Judicial Nomination. This includes CJA's January 27, 1999 letter to Mr. Spitzer<sup>2</sup> formally requesting an investigation, which I presented him, in hand, before an assembled audience at the Association of the Bar of the City New York following my public question to him as to what he was going to do about the allegations of "*Restraining Liars*" that the Attorney General uses fraud to defend state judges and the Commission on Judicial Conduct, sued in litigation.

Since investigation of any of the three criminal complaints -- against the Commission on Judicial Conduct, against the Attorney General, and against the Commission on Judicial Nomination -- as likewise intervention in the current Article 78 proceeding -- would expose not only the official misconduct of the Attorney General's office, but of Mr. Spitzer personally, please advise the procedures in place at the Manhattan District Attorney's office for addressing conflict of interest. As discussed with you in both our August 17<sup>th</sup> and October 13<sup>th</sup> phone conversations, not only can members of the Manhattan District Attorney's staff be presumed to have professional and personal relationships with members of the Attorney General's staff -- many of whom have previously worked at the Manhattan District Attorney's office -- but District Attorney Morgenthau himself has professional and personal relationships with Attorney General Spitzer. Mr. Spitzer was an Assistant District Attorney in Mr. Morgenthau's office from 1986-1992, rising to Chief of the Labor Racketeering Unit. Mr. Morgenthau can hardly be expected to investigate and prosecute criminal allegations involving his protégé, who lauds him publicly and who, moreover, is now his superior,

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<sup>2</sup> CJA's January 27, 1999 letter is annexed as Exhibit "D" to my July 28<sup>th</sup> affidavit in support of my omnibus motion.

with power to investigate complaints of official misconduct and conflict of interest against Mr. Morgenthau.

Likewise, Mr. Morgenthau and members of his staff have professional and personal relationships with others involved in the systemic governmental corruption at issue herein. Chief among these is Paul Shechtman, Mr. Morgenthau's counsel from 1986 to 1993, who, as a member and Chairman of the New York State Ethics Commission – the state agency with disciplinary jurisdiction over the Commission on Judicial Conduct, the Attorney General, and the Commission on Judicial Nomination – has covered up their criminal conduct, as well as the criminal conduct of Governor Pataki, who appointed him to the Ethics Commission and with whom he is actively complicitous. This is detailed by the March 26, 1999 ethics complaint (at pp. 2, 10-11, 14-20) and September 15, 1999 supplement (at p. 1, 6-8).

Assumedly, the Manhattan District Attorney has a policy for resolving conflicts of interest similar to that of the U.S. Attorney, recited at pages 2-3 of my enclosed letter of this date to the U.S. Attorney for the Southern District of New York and reflected by Exhibits "A-1" and "A-2" thereto. Please advise as to what that policy is where, additionally, there may be a conflict of interest created by the Manhattan District Attorney's duty to criminally investigate Manhattan Supreme Court Justices Cahn and Lehner, before whose colleagues he may have cases. Pertinent is the policy of the U.S. Attorney:

"Allegations involving federal judges and other judicial officers almost always required local recusal, a procedure through which the local United States Attorney steps aside as primary prosecutor. There are important policy and practical reasons for recusal by the local Office in these cases. In addition to possible professional or social ties with a judge who is the subject or target of the investigation, local prosecutors are likely to have official responsibilities before the judge on their other cases, both during and after the investigation. Having the case handled outside the local Office eliminates the possible appearance of bias, as well as the practical difficulties and the awkwardness that would arise if a prosecutor investigating a judge were to appear before the judge on other matters. Thus, as a matter of established Department practice, judicial corruption cases are generally handled by the Public Integrity Section." (Public Integrity Section's 1997 Report to Congress, p. 1: Exhibit "A-1" to CJA's October 21, 1999 letter to Andrew Dember, Chief of the Public Corruption Unit, U.S. Attorney for the Southern District of New York).

On the state level, the comparable investigative and prosecutorial body would be the state Attorney – and, particularly, a "public integrity unit" within the state Attorney General's office. Indeed, one of the justifications for the "Public Integrity Unit" that Mr. Spitzer has purported to have established is to take on cases of public corruption which District Attorneys are loathe to pursue, either because of lack of resources or because of the powerful interests or persons

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involved. Here, however, referral to the Attorney General's office would create the ultimate conflict of interest: requiring Mr. Spitzer to investigate himself. As chronicled by my July 28<sup>th</sup> moving affidavit and September 24<sup>th</sup> reply affidavit (at ¶¶2, 6), Mr. Spitzer has already demonstrated his wilful refusal to investigate the *readily-verifiable* litigation misconduct of his Law Department, which is his duty to do under ethical and professional codes of responsibility. This, in addition to his wilful refusal to investigate the corruption of the "merit selection" process by the Commission on Judicial Nomination, the Governor, and the Chairman of the State Senate Judiciary Committee in connection with Albert Rosenblatt's appointment to the Court of Appeals – which, based on the evidence presented by CJA's January 27, 1999 letter, is his duty, as "the People's Lawyer". The most cursory inspection of my omnibus motion (*inter alia* ¶¶40-53 of my July 28<sup>th</sup> moving affidavit) establishes Mr. Spitzer's flagrant betrayal of the People of this state and his utter unwillingness to separate himself from his influential friends and benefactors by investigating the *readily-verifiable* high-level governmental corruption of which they are a part. At best, his "Public Integrity Unit" – supposedly headed by Peter Pope<sup>3</sup> – is a facade to conceal that fact.

Although the Public Corruption Unit of the U.S. Attorney's Office for the Southern District of New York is an obvious choice for referral of these criminal complaints and this intervention request, it too suffers from conflicts of interest. This is particularized at pages 2-3, and 19-20 of my accompanying letter to its Chief, Andrew Dember, requesting that he direct CJA's federal criminal complaint of systemic governmental corruption and our intervention request to the Public Integrity Section of the U.S. Justice Department's Criminal Division. The Manhattan District Attorney should do likewise with respect to CJA's criminal complaints and intervention request – since his conflicting personal and professional interests and that of his staff plainly compromise his ability to discharge his official duties herein consistent with the public interest he was elected to serve.

Yours for a quality judiciary,



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

Enclosures

cc: See next page

<sup>3</sup> Mr. Pope served in the Manhattan District Attorney's office from 1988-1993, including as Deputy Chief of the Labor Racketeering Unit headed by Mr. Spitzer.

cc: U.S. Attorney for the Southern District of New York/Criminal Division  
ATT: Andrew Dember, Chief, Public Corruption Unit  
U.S. Attorney for the Eastern District of New York  
ATT: Andrew Weissmann, Deputy Chief, Criminal Division  
New York State Attorney General Eliot Spitzer  
ATT: David Nocenti, counsel  
Peter Pope, Chief, "Public Integrity Unit"  
William Casey, Chief of Investigations, "Public Integrity Unit"  
New York State Ethics Commission