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NARRATIVE STATEMENT OF ELENA RUTH SASSOWER, DIRECTOR CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA) IN SUPPORT OF ORAL TESTIMONY

In Opposition to Senate Confirmation of the Reappointment of New York Court of Appeals Chief Judge Judith S. Kaye. Presented at the Public Hearing of the New York State Senate Judiciary Committee, Tuesday, March 6, 2007, Albany, New York.

My name is Elena Ruth Sassower and I am director and co-founder of the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization dedicated to safeguarding the public interest in judicial selection and discipline.

CJA vigorously opposes Senate confirmation of Governor Spitzer's reappointment of New York Court of Appeals Chief Judge Judith S. Kaye because – as herein summarized – she is a corrupt, lying judge – both in her administrative capacity as Chief Judge of the State of New York and in her judicial capacity as head of our state's highest court. The result has been vast and irreparable damage to our state and destruction of the lives of countless innocent persons, mine and my family's among them. Indeed, Chief Judge Kaye would long ago have been removed from the bench had the mechanisms of judicial oversight been remotely functional. Certainly, too, she would not have been reappointed to the Court of Appeals had the "merit selection" appointments process worked at any level. That both the disciplinary and "merit selection" processes are sham – as likewise a panoply of committees, commissions, offices, and institutes which Chief Judge Kaye set up, at taxpayer expense[1] – is thanks largely to Chief Judge Kaye – and resoundingly

[1] These include: (1) Chief Judge Kaye's Committee on the Profession and the Courts, which she appointed in 1993 and whose chairman she put in charge of a permanent Judicial Institute on Professionalism in the Law in 1999; (2) Chief Judge Kaye's Committee to Promote Public Trust and Confidence in the Legal System, which she appointed in 1998; and (3) Chief Judge Kaye's establishment of an Inspector General for Fiduciary Appointments in 2000, which in 2002 was "consolidated" into an Office of Inspector General, and her appointment of a Commission on Fiduciary Appointments, also in 2000. It additionally includes her much-in-the-news Commission to Restore Public Confidence in Judicial Elections, whose demonstrably flawed and deceitful report and recommendations form the basis for so many purported "reforms" currently being talked about and implemented. CJA's correspondence with these entities is posted on CJA's website, www.judgewatch.org, most directly accessible *via* the sidebar panel "Searching for Champions (Correspondence)-NYS", which brings up webpages with links for the "Office of Court Administration-

proven by the record of the Article 78 proceeding: *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico vs Commission on Judicial Conduct of the State of New York.*

Let me emphasize that Judge Kaye's corruption in office – sufficient to have warranted and to now warrant that she be criminally prosecuted – is neither hyperbole nor opinion. It is *readily-verifiable* from the record of this one public interest lawsuit, as to which this Committee, in discharge of its "advice and consent" function, has the duty to make findings of fact in advance of its vote on confirmation and report to the Senate[2]. Likewise the press, in discharge of its own watchdog and monitoring role, has the duty to make its own independent findings.

To enable this Committee and the press to discharge their constitutional responsibilities to the public, I have brought the entire lawsuit record with me.[3] Indeed, it is <u>not</u> a copy, but the <u>same</u> lawsuit record, in the <u>same</u> boxes covered in red-white-and-blue, stars-and-stripes American flag wrapping and topped with a ribbon, as I had delivered to the New York Court of Appeals on Law Day, May 1, 2002 in support of my simultaneously-filed appeal of right and accompanying motion. That motion was to disqualify Chief Judge Kaye and the other Court of Appeals judges for interest and bias, for disclosure by them of facts impinging on their ability to be fair and impartial, and for

> "such other and further relief as may be just and proper, including disciplinary and criminal referrals, pursuant to §§100.3D(1) & (2) of the Chief Administrator's Rules Governing Judicial Conduct and DR 1-103A of New York's Disciplinary Rules of the Code of Professional Responsibility of the documentary proof [which the casefile record] presented of longstanding and ongoing systemic corruption by judges and lawyers on the public payroll." (p. 2, notice of motion for disqualification and disclosure, May 1, 2002).

Unified Court System" and "Chief Judge Kaye's Commission to Promote Public Confidence in Judicial Elections".

[2] Legislative history to the "advice and consent" function for New York Court of Appeals appointments appears in a 1998 report of the Association of the Bar of the City of New York on nomination and confirmation of Court of Claims judges as follows:

> "...when a constitutional amendment authorizing the Governor to appoint Court of Appeals judges with the advice and consent of the Senate was first proposed in the early 1970's, it was contemplated that before acting on nominees for the Court of Appeals, the Senate would 'receive a report from its Judiciary Committee, which will have held public hearings, with the nominee asked to appear for questioning by Committee members and with interested citizens invited to be heard.' Report of the Joint Legislative Committee on Court Reorganization, State of New York Legislative Document No. 24, at 12 (1973). Senate confirmation – with public input – was viewed as an essential element to the appointive method of judicial selection." (at p. 2).

[3] The lawsuit record is also posted on CJA's website, accessible *via* the sidebar panel "Test Cases-State (*Commission*)".

What was the lawsuit about? It was about the unlawful, corrupt manner in which the Commission on Judicial Conduct operates. First and foremost, its promulgation of a rule converting its mandatory duty under Judiciary Law §44.1 to investigate *facially-meritorious* complaints into a discretionary option, unbounded by any standard. The result was – as it still is – that the Commission has dumped, without investigation, thousands of *facially-meritorious*, indeed fully documented, complaints. Especially is this so where the complaints are against powerful, politically-connected, high-level judges. Among these judges: then Appellate Division, Second Department Justice Albert Rosenblatt, against whom CJA had filed multiple judicial misconduct complaints – including one, in October 1998, based on his believed perjury on the publicly-inaccessible questionnaire he completed for the Commission on Judicial Nomination in connection with his candidacy for the Court of Appeals. As detailed by the verified petition, the Commission on Judicial Conduct sat on this *facially-meritorious* complaint while the Commission on Judicial Nomination, with knowledge of the pending complaint, passed Justice Rosenblatt's name to Governor Pataki, who – likewise with knowledge of the complaint – appointed him to the Court of Appeals in December 1998, aided and abetted by the bar associations, which were also knowledgeable of it. The Senate then confirmed Justice Rosenblatt's appointment after an unprecedented, no-notice, by-invitation-only confirmation "hearing" by this Committee that deprived CJA of the opportunity to testify, which we had requested. Thereupon, the Commission on Judicial Conduct dismissed our *facially-meritorious* complaint against the now Judge Rosenblatt, *without* investigation and *without* reasons.

Thus, at issue in the lawsuit was an uninvestigated *facially-meritorious* complaint which stood to expose not only the corruption of the Commission on Judicial Conduct, but the corruption of "merit selection" to the Court of Appeals, involving our state's highest public officers and the legal establishment.

What became of the lawsuit after it was commenced in April 1999? The record shows that the case was steered to a Court of Claims judge disqualified for bias and interest in that he was a former law partner of Governor Pataki, was immediately dependent on the Governor for reappointment – his term having already expired – and had been the subject of *facially-meritorious* judicial misconduct complaints, dismissed by the Commission *without* investigation. Yet, the judge did not disqualify himself, nor make disclosure, as I had sought. Instead, he "threw" the case by a fraudulent judicial decision, which rested dismissal of the lawsuit exclusively on two prior decisions in two other Article 78 proceedings against the Commission, notwithstanding I had shown, by written analyses, that each of those decisions were judicial frauds: being factually and legally false and fabricated – a showing I had substantiated by a copy of the record of each proceeding, which I had made physically part of the record of my proceeding.

On January 10, 2000, just weeks before my Article 78 proceeding was "thrown", Chief Judge Kaye gave her annual "State of the Judiciary" address.[4] Responding to the media-publicized

[4] This "State of the Judiciary" address is Exhibit A to my March 3, 2000 letter to Chief Judge Kaye. That letter – and my other correspondence with Chief Judge Kaye, herein summarized – are posted on CJA's

scandal involving fiduciary appointments, Chief Judge Kaye announced that she was appointing a Special Inspector General for Fiduciary Appointments, which she stated would "work closely" with the Commission, as likewise with "the attorney disciplinary committees of the Appellate Divisions and other appropriate authorities". Twice she repeated: "the best way to begin the new millennium is by being honest with the public and with ourselves about our shortcomings", the second time reinforcing the need for action:

> "Unquestionably, we have to do everything in our power to earn the trust and confidence of the public in the integrity, reliability and efficacy of our courts. And there is only one place to begin improving public perceptions about our courts: by improving the realities."

Consequently, on March 3, 2000, I gave Chief Judge Kaye an opportunity to be "honest with the public" and to use her "power" to improve "the realities". I hand-delivered to her New York City office a full copy of the record of my Article 78 proceeding against the Commission – with its physically-incorporated records of the two other Article 78 proceedings: *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission*.

My accompanying hand-delivered March 3, 2000 coverletter[5] called upon her to appoint a Special Inspector General to investigate the Commission's corruption – comparable to the newly-appointed Special Inspector General for Fiduciary Appointments. I noted that it was "precisely because the Commission is corrupt that patronage in judicial appointments – long the subject of *facially-meritorious* judicial misconduct complaints, dismissed by the Commission *without investigation* – has flourished to the point where the media call it an 'open secret'" (at p. 2).

As to the three-in-one casefile record I was delivering for investigation, I stated:

> "The most salient and frightening fact about the Commission's corruption...is that in three specific Article 78 proceedings over the past five years, the Commission – whose duty it is to uphold judicial standards – has been the beneficiary of

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website, accessible *via* the sidebar panel "Seaching for Champions (Correspondence)-NYS", which brings up a webpage containing a link to Chief Judge Judith Kaye.

[5] This letter and my subsequent ones to Chief Judge Kaye should be viewed in the context of what she publicly stated on June 19, 1997 at the annual meeting of Citizens Union. After calling upon me, by name, from the audience, she responded to my request that she read a June 2, 1997 letter I had written to Governor Pataki pertaining to the judicial appointments process to the lower state courts with the memorable words: "I read all your letters, Ms. Sassower". Such is recited by my January 7, 1998 letter to Chief Judge Kaye, entitled "Safeguarding the Public's Rights and Interest in the State Judicial Appointments Process" (at pp. 1-2). It is part of the record of my Commission case and, additionally, posted on CJA's webpage of correspondence with her.

fraudulent judicial decisions of Supreme Court/New York County, without which it could not have survived the challenges brought by complainants whose *facially-meritorious* judicial misconduct complaints the Commission had dismissed *without investigation.* Indeed, the Commission had NO legitimate defense in *any* of these three proceedings, relying on litigation fraud by 'the People's Lawyer', the State Attorney General, who represented the Commission in flagrant violation of Executive Law §63.1[fn3]." (at p. 2, italics and capitalization in the original).

I further stated – and showed – that appointment of a Special Inspector General to investigate the corruption of the judicial process, protecting a corrupt Commission, was essential because "public agencies and officers having criminal and disciplinary jurisdiction over the Commission are compromised by disabling conflicts of interest" (at p. 2).

I noted that Chief Judge Kaye would herself have to put aside her "substantial conflicts of interest" born of her "personal and professional relationships with innumerable person implicated in the corruption of the Commission, or the beneficiaries of it" (at p. 7). Among the three examples I provided: Judge Rosenblatt, her newest colleague on the Court of Appeals, and Judge Carmen Ciparick, another Court of Appeals colleague, whose 1993 confirmation CJA had opposed based, *inter alia*, on her membership on the Commission on Judicial Conduct, participating in its corrupt dismissals of *facially-meritorious*, documented complaints we had filed. I suggested that these conflicts might account for why, throughout the many years that CJA's vigorous advocacy had alerted Chief Judge Kaye to the Commission's corruption, she had taken no investigative steps. Rather, she had continued to refer aggrieved members of the public to the Commission when they turned to her for help against biased and abusive judges (p. 7)[6]. I

"fn3 Executive Law §63.1 requires the Attorney General's involvement in litigation to be predicated on 'the interests of the state'. No 'state interest' is being served by an Attorney General who corrupts the judicial process with defense fraud and misconduct in order to defeat a meritorious claim."

[6] Two such referrals from Chief Judge Kaye's office, dated May 24, 1999 and February 9, 2000, to Kamou Bey, a Vietnam veteran and former New York City corrections officer, were annexed to my March 3, 2000 letter to Chief Judge Kaye (Exhibits B-2 and B-4). Mr. Bey's initial May 19, 1999 letter to Chief Judge Kaye was also annexed (Exhibit B-1), as likewise his subsequent January 18, 2000 letter to Chief Judge Kaye (Exhibit B-3), which read, in pertinent part:

> "...How can you as a so-called administrative judge ignore corruption and complaints about certain judges who blatantly violate citizens' rights and more importantly, their constitutional rights?.....
>
> Until my last dying breath I will seek justice. You are just as corrupt. My trial was a complete joke!
>
> ...I am living proof, and one of the many thousands who was cheated out of fair and equitable treatment that is set forth in the United States Constitution. Due process of law – and that all judges shall uphold their oath of office in good behavior, and not abrogate or detract from being fair.

also suggested that her silence and inaction might be attributable to the fact that she herself was subject to the Commission's disciplinary jurisdiction. Indeed, I observed that a *facially-meritorious* complaint could properly be filed against her should she fail and refuse to discharge her mandatory administrative and disciplinary responsibilities under §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct, which require judges receiving information of judicial misconduct to "take appropriate action" (at p. 8).

My letter closed by stating that without forceful action by her the public will have "ample reason to distrust" her "fitness for the pre-eminent judicial position of Chief Judge of New York State" (at p. 9).

Chief Judge Kaye did not answer the letter. Instead, it was answered by the Unified Court System's counsel, Michael Colodner, who – by obliterating any mention of the corruption issues and otherwise misrepresenting its content – purported that the Chief Judge had "no jurisdiction" and no "power in her administrative capacity" and that "Should [I] object to the handling of [my] case in the Supreme Court, [my] proper avenue of redress is by appeal of that decision to an appellate court."

I immediately telephoned Chief Judge Kaye's New York City office. I spoke with her directly and requested that she "*personally* review" Mr. Colodner's deceitful response. I thereafter reiterated this in a hand-delivered April 18, 2000 letter to her, which was a formal complaint against Mr. Colodner, who – as I pointed out – had worked directly with Judge Rosenblatt when he was Chief Administrative Judge of the Unified Court System (at p. 2). The letter detailed that the same constitutional and statutory authority as gave Chief Judge Kaye "jurisdiction" and "power" to set up the Inspector General for Fiduciary Appointments gave her authority to investigate evidence of the Commission's corruption. Indeed, my letter pointed out that compared to the legislative and executive branches, the judicial branch had the greatest interest in ensuring the integrity of the judiciary and as much jurisdiction, if not more, to do so. Further, any supposed lack of "jurisdiction" would not relieve her of the obligation to ensure that an investigation was initiated by the jurisdictionally-proper body (at pp. 7-11).

Neither Chief Judge Kaye nor anyone on her behalf denied or disputed this. Instead, my April 18, 2000 letter was simply ignored. Five weeks later, on May 23, 2000, I ran into Chief Judge Kaye and directly asked when her response would be forthcoming. She breezily told me – in the

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> I do not believe in you Judge Kaye. You are a mockery to the so-called judiciary...The people of this State of New York are being cheated out of justice..."

This January 18, 2000 letter to Chief Judge Kaye was written by Mr. Bey after he had already filed a series of *facially-meritorious* judicial misconduct complaints, dated May 27, 1999, June 25, 1999, and July 23, 1999, which the Commission had dismissed, without investigation. Copies of these complaints and the Commission's dismissals were provided to Chief Judge Kaye with my March 3, 2000 letter to Chief Judge Kaye (see fn. 10).

presence of Chief Administrative Judge Jonathan Lippman – that she didn't know when. I set this forth in my hand-delivered June 30, 2000 letter to her, further objecting that her office was continuing to direct members of the public who were turning to her for help against biased judges to the Commission, with knowledge that it was dumping judicial misconduct complaints (at pp. 6, 8-9)[7]. Still, neither Chief Judge Kaye nor anyone on her behalf responded.

Consequently, on August 3, 2000, I filed a *facially-meritorious* judicial misconduct complaint against Chief Judge Kaye with the Commission – a copy of which I sent to her, certified mail/return receipt. The complaint was based on Chief Judge Kaye's "wilful refusal to discharge the official duties imposed upon even the lowliest judge under §100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct pertaining to administrative and disciplinary responsibilities, as well as her wilful refusal to discharge her supervisory duties as 'chief judicial officer' of the Unified Court System (NYS Constitution, Article VI, 28(a); Judiciary Law §210.1" (at p. 2). This, in addition to her violation of §100.2 of the Chief Administrator's Rules requiring a judge to "act in all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and prohibiting a judge from being influenced by "social, political, or other relationships" (at pp. 6-7). I noted that Chief Judge Kaye had "obvious personal and professional relationships" with Mr. Colodner and with those interested in maintaining the Commission as a corrupt façade – as, for instance, her Court of Appeals colleagues Judges Rosenblatt and Ciparick. I further noted that Chief Judge Kaye had her own self-interest in keeping the Commission a corrupt façade since she herself was subject to the Commission's disciplinary jurisdiction (at p. 7).

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[7] Annexed to my June 30, 2000 letter was an example of such continuing referral from Chief Judge Kaye's office, dated May 5, 2000 (Exhibit F-2), responding to a February 11, 2000 letter from Thomas Thornton, John Heard (the actor), and Ross Giunta (Exhibit F-1). Mr. Thornton's June 6, 2000 reply as president of the Children's Rights Council, was also annexed (Exhibit F-3). In pertinent part, he stated:

> "I have first-hand experience of the CJC [Commission on Judicial Conduct] summarily dismissing facially meritorious complaints, without any investigation. Furthermore, I am well aware of the Center for Judicial Accountability's legal actions against the CJC over the past several years. Specifically, I have copies of the CJA's letters to you dated March 3 and April 18, 2000, in which you were provided with such overwhelming evidence of the CJC's corruption that no one taking proper judicial conduct seriously can ignore the fact that New York State's public is effectively denied the possibility of defending itself against judicial arbitrariness.
>
> I vigorously protest your abdicating your responsibility of overseeing New York's courts and of protecting the public from judicial totalitarianism."

Mr. Thornton's first-hand experience with the Commission, as reflected by two *facially-meritorious* complaints he had filed with it, dated January 18, 1998 and July 25, 1998, each dismissed without investigation, was documented by his exchange of correspondence with the Commission, spanning from January 18, 1998 to November 18, 1998, annexed to my June 30, 2000 letter to Chief Judge Kaye as Exhibits H-1 to H-13.

Clearly, the Commission, too, had "its own self-interest in this *facially-meritorious* complaint against Chief Judge Kaye – not the least reason because it would find itself the subject of a corruption investigation were the Chief Judge to be faithful to the administrative, disciplinary, and supervisory responsibilities with which [my April 18, 2000] letter confronted her". I, therefore, requested that the Commission advise what steps it would take to ensure that the complaint was impartially determined (at pp. 7-8).

By a three-sentence letter dated September 19, 2000, the Commission simply ignored its disqualifying self-interest and dismissed my *facially-meritorious*, documented complaint. This, on the pretense that there was "no indication of judicial misconduct to justify discipline" – when, as my eight-page complaint detailed, the complaint was sufficient to warrant Chief Judge Kaye's removal from office.

The consequence of Chief Judge Kaye's symbiotic "protectionism" of a corrupted Commission and the Commission's "protectionism" of her was the corrupting of the "merit selection" process to the Court of Appeals in connection with the vacancy that would subsequently be filled by Appellate Division, Third Department Justice Victoria Graffeo. CJA demonstrated this by a comprehensive October 16, 2000 report, which showed how the corruption of the Commission necessarily corrupts "merit selection". This, because the Commission on Judicial Nomination relies on the Commission on Judicial Conduct for information about its mostly-judicial applicants for the Court of Appeals[8] and the Commission on Judicial Conduct does not disclose

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[8] Like all applicants to the Commission on Judicial Nomination, the questionnaire that Chief Judge Kaye was required to complete contains the following inquiry:

> "30. (a) To your knowledge, has any complaint or charge ever been made against you in connection with your service in a judicial office? Your response should include any question raised or inquiry conducted of any kind by any agency or official of the judicial system.
>
> (b) If the answer to subpart (a) is 'Yes', furnish full details, including the agency or officer making or conducting the inquiry, the nature of the question or inquiry, the outcome and relevant dates [fn]."

She was also required to sign an "Information and Privacy Waiver", which includes the following:

> "I specifically consent to the release of any such information in the possession of the New York State Commission on Judicial Conduct and request that same be delivered to a representative of the New York State Commission on Judicial Nomination."

Chief Judge Kaye's response to question #30 is publicly inaccessible. However, had she answered honestly and not perjured herself – something the public does not know – she would have had to answer "Yes" to question #30(a) and to have identified my August 3, 2000 judicial misconduct complaint against her. Her direct personal knowledge of that complaint derived from multiple sources in addition to my original mailing of a copy of the complaint to her, certified mail/return receipt. These include the following contacts hereinafter recited: CJA's October 16, 2000 report on the corruption of the Commission on Judicial Nomination (at pp. 14-15); my May 1, 2002 motion to disqualify Chief Judge Kaye (at ¶¶84-87), my October 15, 2002

dismissed complaints, which moreover, it unlawfully destroys.

The October 16, 2000 report detailed multiple respects in which the Commission on Judicial Nomination was violating "merit selection" principles – and I hand-delivered a copy to Chief Judge Kaye's New York City office so that she could take "appropriate action". Indeed, my hand-delivered October 24, 2000 letter to her urged that she "finally discharge her mandatory duty to the People of this State to protect them from the systemic governmental corruption...involving the Commission on Judicial Conduct and Commission on Judicial Nomination – state agencies responsible for safeguarding judicial integrity, to which [she] appoint[s] members."

What Chief Judge Kaye did, instead, was to stamp her imprimatur on what the Commission on Judicial Nomination was doing by publicly endorsing Governor Pataki's selection of Justice Graffeo and his prior two nominees. Nor did she take "appropriate action" thereafter in the wake of the further corruption of the "merit selection" process of which I gave her notice by a December 9, 2000 letter. That letter, which I delivered to her, in-hand, together with such substantiating documents as CJA's comprehensive November 13, 2000 report on the complicitous role of the bar associations, requested that she present the report to her Committee to Promote Public Trust and Confidence in the Legal System so that it could take appropriate steps, specifically including:

> "call[ing] on the Chief Judge, the Legislature, and the Governor – 'the appointing authorities who designate the members of both the Commission on Judicial Nomination and the Commission on Judicial Conduct – to launch an official investigation of these two state agencies on which so much of the judicial process and 'Rule of Law' in New York rest.'" (at p. 2).

Yet, three months later, when I telephoned that Committee, its counsel stated she knew nothing about CJA's report. Chief Judge Kaye then ignored my hand-delivered March 1, 2001 letter to her, inquiring as to the report's whereabouts.

Due to time limitations, I will pass over my further direct, face-to-face interactions with Chief Judge Kaye: on September 27, 2000, when I gave her, in-hand, a letter of that date to Attorney General Spitzer, to which she was an indicated recipient, detailing his fraudulent defense tactics before the Appellate Division, First Department to defeat Mr. Mantell's appeal of his Article 78 proceeding against the Commission; and on April 18, 2001, at the annual Fair Trial-Free Press

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reargument/vacatur for fraud motion (at p. 5), and my October 24, 2002 motion for leave to appeal (at p. 13).

Yet, my August 3, 2000 judicial misconduct complaint is NOT the only complaint against Chief Judge Kaye of which she had knowledge and which she should have included in her response to question #30(a). As reflected by ¶¶40-41 of my May 1, 2002 disqualification/disclosure motion, my father, George Sassower, also filed judicial misconduct complaints against Chief Judge Kaye, copies of which he had sent her. Two of these, dated March 29, 1994 and October 20, 1993, were annexed as Exhibits D-2 and D-3 to the bound compendium of exhibits accompanying the disqualification/disclosure motion.

conference, at which she presided, flanked by Judge Rosenblatt and Attorney General Spitzer – wherein I made public comment about the Commission's readily-verifiable corruption being protected by a corrupted judicial process. These are recited in my 68-page affidavit supporting my May 1, 2002 motion to disqualify Judge Kaye and her Court of Appeals brethren. Over 40 pages of that motion (pp. 16-56) meticulously detailed Judge Kaye's disqualification for interest under Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and her flagrant violations and corruption of both her judicial and administrative functions, exposed by my Article 78 proceeding[9]. The balance of my affidavit pertained to the disqualifying interests of her fellow Court of Appeals judges, the appearance of their bias based thereon, and my request for disclosure by the judges. This included their knowledge of judicial misconduct complaints against them, filed with the Commission, and their "dependencies on, and personal, professional, and political relationships with, those implicated in the Commission's corruption or in the systemic judicial and governmental corruption exposed by this lawsuit." (pp. 63-66).

How did Chief Judge Kaye address this fact-specific, law-supported disqualification/disclosure motion? – whose recitation included (¶¶68-86) her administrative misconduct that had resulted in my *facially-meritorious*, fully-documented August 3, 2000 judicial misconduct complaint against her, dismissed by the Commission, without investigation. BY BRAZENLY LYING. In a five-sentence September 12, 2002 decision, she and her fellow judges, except for Judge Rosenblatt who "took no part", collectively dismissed the motion's requested disqualification relief "upon the ground that the Court has no authority to entertain the motion made on nonstatutory grounds". The decision then purported that a so-called "application seeking recusal" had been "referred to the Judges for individual consideration and determination by each Judge" and that each had denied it. Chief Judge Kaye was the first among the six named judges, whose denials were each *without* reasons and *without* identifying *any* of the facts or law presented by my motion. Nor did any of them make disclosure – or even identify that disclosure had been sought.

The outright fraud perpetrated by Chief Judge Kaye and her judicial brethren by this September 12, 2002 decision and by their accompanying decision, which, on the Court's own motion, dismissed my appeal of right on the ground that "no substantial question is directly involved" and additionally denied, *without* reasons, my motion against Attorney General Spitzer, was particularized by my October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure, and other relief, which presented a 35-page affidavit on the subject.

In pertinent part, I stated:

> "Apart from the conspicuous absence of any legal citation for the proposition that

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[9] This includes her complicity in Governor Pataki's corruption of the judicial appointments process to the lower state courts – a process in which she participated through her appointments to his judicial "screening" committees. [see fn. 25 of my May 1, 2002 disqualification/disclosure motion].

> 'the Court has no authority to entertain' a nonstatutory grounded motion[fn10] – a proposition the Court also does not discuss – the clear implication is that my disqualification motion was 'made on nonstatutory grounds'. This is a flagrant lie. My motion was *expressly* made on the statutory ground of interest, proscribed by Judiciary Law §14." (at ¶18, italics in original, underlining added).

My affidavit further stated (at ¶24): "This is not the first time that the Court has falsified the record so as to purport that a proper disqualification motion could not be 'entertain[ed]' because it was 'made on nonstatutory grounds'". The Court had done the same thing four years earlier in the case of *Robert L. Schulz, et al. v. New York State Legislature, et al.*[10], 92 N.Y.2d 917 (1998). In that case, challenging the constitutionality of billions of dollars of New York State bonds, Mr. Schulz had made a motion to disqualify four of the Court's judges, Chief Judge Kaye among them, based on their investments and other financial interests in the bonds.

There, too, the so-question of "recusal" had been referred to the individual judges for individual determination and, there, too, denied, without reasons, by each of the individual judges, Chief Judge Kaye among them. As in my case, such denial was without identifying *any* of the facts Mr. Schulz' motion had presented, reflective of the judges' knowledge that these were decisive of both the judges' statutory disqualification for interest and their nonstatutory disqualification, that is, recusal, for bias (at ¶¶26, 41-47).

As to the Court's *sua sponte* dismissal of my appeal of right based on its boilerplate that "no substantial constitutional issue is directly involved", my affidavit showed (at ¶¶48-55) that this further fraud by the Court was also evident from its failure to identify *any* of the facts and law I had set forth in support of my appeal of right. Most importantly:

> (a) that my appeal of right had been predicated on the Court's decision in *Valz v. Sheepshead Bay*, 249 N.Y. 122, 131-2 (1928), holding that appeal of right lies "Where the question of whether a judgment is the result of due process is the decisive question";
>
> (b) that I had demonstrated that due process was the "decisive question" in that the appealed-from Appellate Division, First Department decision was "so totally devoid of evidentiary support as to render it unconstitutional under the Due Process Clause' of the United States Constitution" – beginning with the Appellate

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"fn[10] '[u]nder our State constitutional system, the Court of Appeals decides the scope of its own power and authority', New *York Association of Criminal Defense Lawyer[s] v. Kaye*, 95 N.Y.2d 556, 560 (2000) []."

[10] The other defendants-respondents in the case were: "*Sheldon Silver, Speaker of the Assembly, and Joseph Bruno, Senate Majority Leader; and The New York State Executive, George Pataki, Governor, H. Carl McCall, Comptroller*", with "*The City of New York; and The New York City Transitional Finance Authority*" intervenor-defendants-respondents.

Division's concealment that I had made a motion to disqualify its judges for interest and bias, and for disclosure, which it denied *without* reasons and *without* identifying *any* of the facts and law my motion had presented; and

(c) that I had demonstrated that my entitlement to an appeal of right was *a fortiori* to that recognized by the Court in *General Motors v. Rosa*, 82 N.Y.2d 183 (1993), in which Chief Judge Kaye had written the decision that "an independent, unbiased adjudicator...is an essential element of due process of law, guaranteed by the Federal and State Constitutions".

Additionally, my affidavit showed (at ¶¶57-65) the Court's further fraud by its without reasons denial of my motion against Attorney General Spitzer for an order striking his submissions as a "fraud on the court", referring him to disciplinary and criminal authorities, and disqualifying him from representing the Commission for his violation of Executive Law §63.1 and multiple conflicts of interest. This, because the record established my entitlement, *as a matter of law*. I stated:

"...no reasons can justify the Court's wilful violation of its mandatory disciplinary responsibilities under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct and related obligations under DR 1-103(A) of New York's Code of Professional Responsibility to take appropriate action in the face of the evidentiarily-established litigation fraud by New York's highest legal officer – Attorney General Spitzer personally – on behalf of the state agency charged with enforcing judicial standards, where as the Court knows, the consequences are so profoundly damaging to the People of this State." (at ¶64, reargument/vacatur for fraud motion).

On October 24, 2002 – in conjunction with my October 15, 2002 reargument/vacatur for fraud motion – I made a further and final motion to the Court of Appeals. It was for leave to appeal and posed a single question for review:

"Whether this Court recognizes a supervisory responsibility to accept judicial review of an appeal against the New York State Commission on Judicial Conduct, sued for corruption, where the record before it [fn] establishes, *prima facie*, that the Commission has been the beneficiary of five fraudulent judicial decisions[fn] without which it would not have survived three separate legal challenges – with four of these decisions, two of them appellate, contravening this Court's own decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980), *to wit:*

'...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd. 1)... '" (p. 3, leave to appeal motion, italics and capitalization in the original).

These five fraudulent judicial decisions – which my May 1, 2002 appeal of right had also focally presented – were the three decisions of Supreme Court/New York County, of which I had given Chief Judge Kaye notice and proof when I turned to her, in her administrative capacity, on March 3, 2000 – plus the two appellate decisions that the Appellate Division, First Department had subsequently rendered in Mr. Mantell's Article 78 proceeding and my own[11]. Annexed to my October 24, 2002 leave to appeal motion were my written analyses of each of these five decisions – whose accuracy had NEVER been denied or disputed by the Commission or its attorney, Attorney General Spitzer, whose litigation papers had conspicuously avoided even mentioning these analyses. The highlights of these five analyses were summarized in the body of my 22-page motion – culminating in my assertion that "the same two analyses as [I] provided to Chief Judge Kaye in March 2000...suffice to expose the fraud of all five decisions, *readily*."[12]. Expressly left out of this count of five decisions were the two Court of Appeals' September 12, 2002 decisions – the subject of my pending reargument/vacatur for fraud motion.

How did Chief Judge Kaye, as head of a court that has "primary responsibility for the administration of the judicial branch of government"[13], respond? She joined with her judicial brethren, excepting Judge Rosenblatt who "took no part", in perpetuating the wholesale corruption and fraud which my motions had resoundingly exposed. This, by two December 17, 2002 decisions, each two sentences, one denying my reargument/vacatur for fraud motion and the other denying my motion for leave to appeal – each denial, *without* reasons. Such again flagrantly violated her judicial and administrative duties. Indeed, Chief Judge Kaye neither identified, discussed, nor granted the further relief which my motion for leave to appeal expressly sought and which the record before her mandated, *to wit*,

> "disciplinary and criminal referrals, pursuant to §§100.3D(1) and (2) of the Chief Administrator's Rule Governing Judicial Conduct and DR 1-103A of New York's Disciplinary Rules of the Code of Professional Responsibility, of the documentary proof herein presented of longstanding and ongoing systemic corruption by judges and lawyers on the public payroll, as well as referral of the record herein to the New York State Institute on Professionalism in the Law for study and

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[11] These two appellate decisions were additionally pernicious because they insulated the Commission from future legal challenge by purporting that a person whose judicial misconduct complaint had been dismissed by the Commission lacked standing to sue. The Appellate Division, First Department achieved this in *Mantell* by a single sentence which was unsupported by any law and factually false. The Appellate Division, First Department's subsequent appellate decision in my case then used the *Mantell* appellate decision as legal authority on the issue of standing – notwithstanding I had demonstrated the fraudulence of that decision by a written analysis. [see my October 24, 2002 motion for leave to appeal, pp. 14-15].

[12] Quoted from p. 21 of my October 24, 2002 motion for leave to appeal, underlining and italics in the original.

[13] *New York Association of Criminal Defense Lawyers v. Kaye*, 95 N.Y.2d 556, 560 (2000), quoted and cited at ¶56 of my October 15, 2002 reargument/vacatur for fraud motion.

recommendations for reform." (p. 2, notice of motion, leave to appeal)

Chief Judge Kaye's tenure on the bench is marked by a pattern of cover-up of judicial corruption, violating her mandatory administrative and judicial responsibilities. The 40 pages of my May 1, 2002 disqualification motion pertaining to Chief Judge Kaye (pp. 16-56) chronicle a succession of these violations, with her subsequent conduct, as demonstrated by my October 15, 2002 reargument/vacatur for fraud motion and my October 24, 2002 motion for leave to appeal, reinforcing this pattern dramatically. Indeed, what is demonstrated over and beyond her approval to, and participation in, a corrupted judicial process protecting a corrupted Commission – leaving litigants with nowhere to turn with their legitimate judicial misconduct complaints – is her evisceration of a panoply of safeguards for ensuring the integrity of the judicial process. This, while, over and again, she lies to the public by her repeated rhetoric that "The court system has zero tolerance for jurists who act unethically or unlawfully" (Gannett, March 22, 1996)[14], "the judiciary is fully accountable to the public"(Hofstra Law Review, Spring 1997, reprinting her speech at a Hofstra Law School symposium)[15] and that "as a public institution, the courts must recognize their accountability to the public – and we do" (Daily News, January 17, 2002)[16].

Although I am offering this Committee – and the press – the same record of the Commission case that was before Chief Judge Kaye at the Court of Appeals, it is not needed to verify the essential facts of her corruption in office, which can be speedily accomplished. All that is necessary are my reargument/vacatur for fraud motion and my motion for leave to appeal. Indeed, from the exhibits annexed to the reargument/vacatur motion, it takes less than ONE MINUTE to verify that Chief Judge Kaye LIED in purporting that my disqualification motion was made on "nonstatutory grounds" – with an additional MINUTE to verify that she LIED in likewise purporting with respect to Mr. Schulz' disqualification motion four years earlier. As to Chief Judge Kaye's knowledge that – as to *matters of law* – the three, and then five, judicial decisions of which the Commission was beneficiary were frauds – this can be verified from my motion for leave to appeal within AN HOUR.

In other words – and but for the Senate Judiciary Committee's own involvement in the systemic corruption which the Commission case exposes – it is a straight-forward, simple matter for the Committee to vindicate the public's trampled rights by rejecting Chief Judge Kaye's reappointment and referring her to disciplinary and criminal authorities for investigation and prosecution, as is its duty to do.

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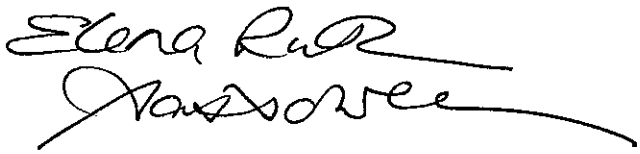
[14] Quote from Chief Judge Kaye, recited at ¶50 of my May 1, 2002 disqualification/disclosure motion.

[15] Quote from Chief Judge Kaye, recited at ¶66 of my May 1, 200 disqualification/disclosure motion.

[16] Quote from Chief Judge Kaye, recited at page 21 of my October 24, 2002 motion for leave to appeal, with her column annexed as Exhibit M-1 thereto.

Finally, should this Committee not do its duty and instead railroad this nomination to Senate confirmation without factual findings based on the testimony here received, CJA offers this testimony – and the substantiating record of the Commission case – in support of Chief Judge Kaye's removal by concurrent legislative resolution and/or impeachment,[17] pursuant to §§23 and 24 of the New York State Constitution.



[17] CJA's January 22, 2003 written testimony in opposition to Court of Claims Judge Susan Read's confirmation to the New York Court of Appeals identified that "the brazen official misconduct" of the sitting Court of Appeals judges in the Commission case would be "the subject of a formal impeachment complaint, which CJA will be presenting to the Committee." (at fn. 4).