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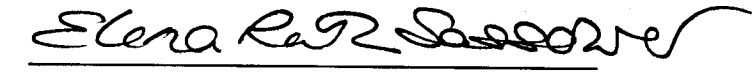
REPORT OF THE CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA)

TO: **NEW YORK STATE BAR ASSOCIATION**
ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK
NEW YORK STATE TRIAL LAWYERS ASSOCIATION

RE: **EVALUATION OF THE NEW YORK STATE COMMISSION ON JUDICIAL NOMINATION'S OCTOBER 4, 2000 REPORT OF RECOMMENDEES FOR THE NEW YORK COURT OF APPEALS**

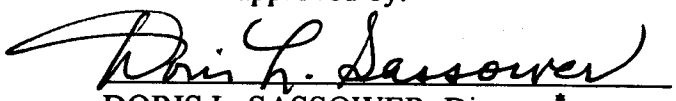
DATE: **OCTOBER 16, 2000**

Submitted by:



ELENA RUTH SASSOWER, Coordinator

Read and approved by:



DORIS L. SASSOWER, Director*

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* First woman practitioner nominated for the New York Court of Appeals at statewide Judicial Nominating Convention (1972); First woman appointed to the Judicial Selection Committee of the New York State Bar Association (1972-1980); Authored first published article on the newly-introduced use of judicial selection panels in New York, "*Judicial Selection Panels: An Exercise in Futility?*", New York Law Journal (10/22/71, p. 1).

INTRODUCTION

This report is submitted in the public interest to aid the organized bar in its evaluation of the seven candidates that the New York State Commission on Judicial Nomination has recommended to Governor Pataki as "well qualified" for appointment to the New York Court of Appeals. Rigorous evaluation is essential as the Commission has wholly abandoned guiding "merit selection" principles. For this reason, the organized bar must not only disapprove Supreme Court Justice Stephen G. Crane and Court of Claims Judge Juanita Bing Newton -- the recommendees this report specifically opposes -- but must reject all seven recommendees who, pursuant to Judiciary Law §63.3, are *not* even properly before the Governor for appointment to our State's highest court.

Indeed, only decisive action by the organized bar will vindicate the transcending public interest in the integrity of the "merit selection" process and the fitness of its recommendees. These were each discarded by the Governor and State Senate in filling the previous Court of Appeals vacancy in 1998. At that time, Appellate Division, Second Department Justice Albert Rosenblatt was elevated to our State's highest court in face of documentary proof that the Commission on Judicial Nomination had jettisoned "merit selection" standards to recommend him. What occurred at the Senate's so-called confirmation "hearing" – the ONLY public opportunity for citizens to hear and be heard as to a recommendee's fitness and the process that has produced him -- is summarized in CJA's published Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" (New York Post, 12/28/98) (Exhibit "A-1"). It reinforces the importance of your present undertaking.

The most comprehensive recitation of what the Governor and Senate collusively did to cover up the Commission's subversion of "merit selection" is set forth in CJA's March 26, 1999 verified ethics complaint against the Governor, as well as the Commission, annexed hereto (Exhibit "A-2")[1]. This ethics complaint, filed with the New York State Ethics Commission, has also been filed with the New York State Attorney General, the Manhattan District Attorney, and the U.S. Attorneys for the Eastern and Southern Districts of New York to support CJA's formal requests for criminal prosecution. Because these public agencies and officers each refuse to respect the most *fundamental* conflict of interest rules[2], there has been no investigation of the systemic political manipulation and corruption therein detailed. This has been – and continues to be – the subject of massive correspondence by CJA with those public agencies and officers, all available

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[1] CJA's verified March 26, 1999 ethics complaint consists of a series of separate, yet integrally interrelated, ethics complaints against state officers and agencies – for which a Table of Contents appears at p. 3 thereof. The annexed copy of the ethics complaint does not contain the five appended exhibits, all but the first pertaining to CJA's complaint against New York State Attorney General Eliot Spitzer. It does, however, append CJA's seven-page inventory of the voluminous substantiating documentation, transmitted to the Ethics Commission with the March 26, 1999 complaint.

[2] The Ethics Commission's conflict of interest – and the proposed solution thereto -- are particularized at pages 4-7 of the March 26, 1999 ethics complaint. This conflict of interest has since been manifested by the Ethics Commission's refusal to even respond to the complaint. Such wilful nonfeasance is reflected by CJA's September 15, 1999 supplement to the complaint (Exhibit "B", pp. 1, 6-7).

upon request.

For the convenience of all concerned, including the Governor, Legislators, and Chief Judge, who will be receiving copies, a Table of Contents follows:

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I THE COMMISSION ON JUDICIAL NOMINATION'S OCTOBER 4, 2000 REPORT OF RECOMMENDEES IS *NON-CONFORMING* WITH JUDICIARY LAW §63.3

All of the Commission's activities take place "behind closed doors", except the end-product of its secret process: its report of recommendees, pursuant to Judiciary Law §63.3. This report is required to be released to the public simultaneous to its transmittal to the Governor. Being the *only* visible manifestation of the Commission's supposed adherence to "merit-selection" principles, it is thus more than some procedural nicety. It is the necessary starting point for evaluation of the Commission's work.

On its face, the Commission's October 4, 2000 report (Exhibit "C-2") is NON-CONFORMING with the requirements of Judiciary Law §63.3, the statute under which it purports to be rendered.

Judiciary Law §63.3 *expressly* states that the report:

> "*shall* include the commission's *findings* relating to the character, temperament, professional aptitude, experience, qualifications and fitness for office of *each candidate* who is recommended to the governor" (emphases added).

This statutory requirement is reinforced by the Commission's own rule, 22 NYCRR §7100.8, "Report to the Governor", that the "report shall be in conformance with section 63(3) of the Judiciary Law". Nevertheless, the October 4, 2000 report (Exhibit "C-2") contains NO "*findings*" as to "*each candidate*". Instead, there are only bald conclusory statements that "in the collective judgment of the Commission" all seven candidates are "well qualified by their character, temperament, professional aptitude, experience, qualifications and fitness for office" and that they "are considered the best qualified of those who filed applications for consideration". NO specificity is provided, such as citation of cases exemplifying their intellect, perspicacity, and courage, or any track record of affirmances and reversals, or reference to an unblemished record, free of professional or judicial misconduct complaints.

Although the report states that "the Commission caused an investigation to be conducted of the large number of applicants it determined to interview", NO information is provided as to either the total number of applicants, or the number interviewed. Nor is there ANY information as to the manner in which the Commission conducted its "investigations"[3] to establish the qualifications of

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[3] To ensure the thoroughness and reliability of the Commission's evaluations, the Judiciary Law confers upon the Commission the power to: (1) "...administer oaths or affirmations, subpoena witnesses and compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents or other evidence that it may deem relevant or material to its evaluation of candidates", Judiciary Law §64.2; (2) "require from any court, department, division, or board, bureau, commission, or other agency of the state or political subdivision thereof or any public authority such assistance, information, and data, as will enable it

the applicants, let alone the specifics of its investigations of the seven "best qualified" recommendees. As to these critically important facts, the organized bar, along with the public, is left wholly in the dark.

The only "particulars" provided by this boiler-plate, completely uninformative report is by an attached "*summary of the careers of the recommended candidates*" – a distillation of resume-type biographic information, with NO qualitative assessment.

This is not the first time the Commission has failed to conform with the "*findings*" requirement for "*each candidate*", specified by Judiciary Law §63.3. As pointed out to the Commission by CJA's October 11, 2000 letter to it (Exhibit "D-1"), the Commission's previous November 12, 1998 report (Exhibit "E-1") was *identically* non-conforming with Judiciary Law §63.3. Nor was the Commission unaware of the non-conformity of its November 12, 1998 report when it rendered its October 4, 2000 report. CJA had sent it a March 12, 1999 letter (Exhibit "E-2") concerning the non-conformity of the November 12, 1998 report. As pointed out in CJA's October 11, 2000 letter (Exhibit "D-1"), the Commission never responded to CJA's March 12, 1999 letter[4] or its subsequent communications[5]. These include CJA's March 26, 1999 ethics complaint against the Commission based on its demonstrated "corruption of its own evaluation procedures to advance the corrupt and politically-favored Albert Rosenblatt" (Exhibit "A-2", pp. 1, 2, 22-24)[6], and CJA's September 15, 1999 supplement thereto (Exhibit "B", pp. 1, 4)[7]. Both the ethics complaint and supplement additionally specified that the Commission, in violation of Judiciary Law §63.3 and the Freedom of Information Law, had ignored requests that it disgorge copies of its prior reports of recommendees over its twenty-year history -- reports which would establish whether the November 12, 1998 report was also non-conforming with them.

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properly to evaluate the qualifications of candidates...", and, specifically, the Commission on Judicial Conduct, Judiciary Law §64.3; and (3) "...interview any person concerning the qualifications of any candidate", Judiciary Law §64.4. This is reiterated by the Commission's Rule, 22 NYCRR §7100.6, "Investigation of Candidates".

[4] The faxed receipt for CJA's March 12, 1999 letter is annexed thereto. As the "hard copy" was, thereafter sent to the Commission in the same envelope as enclosed for it a copy of CJA's March 26, 1999 ethics complaint, the certified mail/return receipt, Z-509-073-630, is annexed to the complaint (Exhibit "A-2").

[5] CJA's February 5, 1999 letter (Exhibit "F") was the last communication to which Mr. Summit had responded. That response was his 3-sentence February 24, 1999 letter transmitting a copy of the Commission's November 12, 1998 report (Exhibit "E-1").

[6] The certified mail/return receipt, Z-509-073-630, reflecting delivery to the Commission, is appended to the March 26, 1999 ethics complaint (Exhibit "A-2").

[7] The certified mail/return receipt, Z-509-073-645, reflecting delivery to the Commission, is appended to the September 15, 1999 supplemental ethics complaint (Exhibit "B").

As noted by CJA's October 11, 2000 letter (Exhibit "D-1"), *IF* the November 12, 1998 report is non-conforming to these prior reports, so, likewise, is the identically-modeled October 4, 2000 report.

The Commission, by its counsel, Stuart Summit, has now responded to CJA's faxed October 11, 2000 letter. That October 12, 2000 response (Exhibit "D-3"), also responding to CJA's second, *subsequently* faxed, October 11, 2000 letter (Exhibit "D-2) which it wrongly claims to be CJA's first letter of that date, does not deny or dispute CJA's recitation of the non-conformity of the Commission's October 4, 2000 and November 12, 1998 reports with Judiciary Law §63.3 – which it wholly ignores. As to the requested prior reports, Mr. Summit now states the Commission will provide them. Astonishingly, however, he asserts that he is "reasonably certain that [the Commission has] provided many of them to [us] in the past". He provides no detail as to when "in the past" he believes these reports were provided, such as whether it was before or after CJA's March 26, 1999 ethics complaint and September 15, 1999 supplement, each identifying the Commission's failure to produce the requested reports. Conspicuously, too, he also makes no reference to the further inquiry in CJA's first October 11, 2000 letter as to whether the Commission has promulgated rules and regulations for public records access, as required under the Freedom of Information Law, which applies to it, including the required "subject matter list" of records in its possession[8].

Based on the undisputed recitation in CJA's October 11, 2000 letter as to the Commission's knowledge of the non-conformity of its prior November 12, 1998 report with Judiciary Law §63.3, there can be no doubt that the Commission's violation of Judiciary Law §63.3 in connection with its October 4, 2000 report is, in every sense, knowing and deliberate. Indeed, the only discernible change resulting from CJA's March 12, 1999 letter to the Commission (Exhibit "E-2") is that the October 4, 2000 report is not prefaced with the warning "CONFIDENTIAL". This warning had appeared on the November 12, 1998 report and was an additional respect in which CJA's March 12, 1999 letter had pointed out that the November 12, 1998 report was non-conforming with Judiciary Law §63.3. Whether such statutorily-unauthorized "CONFIDENTIAL" warning prefaced prior Commission reports of recommendees remains to be seen, when and if, such reports are finally furnished to CJA.

[8] For purposes of completeness, the referred-to April 26, 1999 letter of Robert Freeman, Executive Director of the New York State Committee on Open Government, is annexed (Exhibit "G-1"), as is CJA's follow-up May 3, 1999 letter to the Commission on Judicial Nomination (Exhibit "G-2").

II THE COMMISSION ON JUDICIAL NOMINATION HAS FAILED TO ADHERE TO "MERIT SELECTION" PRINCIPLES BY ITS WILFUL FAILURE TO REACH OUT TO CREDIBLE SOURCES WITH POTENTIALLY ADVERSE INFORMATION AS TO THE FITNESS OF THE CANDIDATES UNDER CONSIDERATION

The Commission's violation of Judiciary Law §63.3 by its wilful failure to make ***"findings"*** as to "*each candidate*" in its October 4, 2000 report – the only *public* aspect of its work – reflects its abandonment of "merit selection" principles in its "behind closed doors" operations. The *sine qua non* of "merit selection" is thorough investigation of candidates' qualifications and fitness. This cannot take place if the Commission does not avail itself of information about the candidates it purports to be investigating from credible sources likely to have negative information. That the Commission has wilfully failed to avail itself of such information sources may be seen from the fact that it never contacted CJA – a non-partisan, non-profit citizens' organization *expressly* identifying itself as "documenting how judges break the law and get away with it"[9].

That CJA is not just a credible source, but one the Commission knew was capable of making a powerful contribution of negative information, is evident from CJA's October 5, 1998 letter to the Commission (Exhibit "H") in the context of its 1998 "merit selection" of candidates. Such letter, providing the Commission with a fact-specific, document-supported presentation as to the unfitness of three separate candidates the Commission was reported to have interviewed, closed with this penultimate paragraph:

> "As reflected by the foregoing presentation, CJA has a great deal to offer in providing the Commission with readily-verifiable information pertinent to candidate qualifications. We, therefore, request that much as the Commission, in the normal course of its investigations, purports to contact references and individuals having knowledge of the candidates, so it include CJA among its knowledgeable sources before finalizing its deliberations." (at p. 8)

This very paragraph was quoted, *verbatim*, in CJA's November 18, 1998 letter to the Executive Committee of the Association of the Bar of the City of New York (Exhibit "I", p. 3) in connection with the organized bar's evaluation of the Commission's recommendees – and, specifically, Appellate Division, Second Department Justice Albert Rosenblatt, then a candidate under consideration. A copy was sent to the Commission, as well.

Individually and collectively, CJA's extensive correspondence with the Commission (Exhibits "A-2", "B", "E-2", "F", "G-2", "H", "I") demonstrated CJA's dedicated and consistent commitment to fact-specific, documented presentations, such as could only benefit a Commission respecting "merit selection" principles. Nonetheless, the Commission took NO

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[9] *See* CJA's enclosed informational brochure.

steps to utilize CJA as an information source in the evaluations culminating in its October 4, 2000 report.

It must be further noted that over and beyond this impressive correspondence with the Commission, Commission member Michael Finnegan has his own direct, first-hand knowledge of CJA's powerful and meticulously-documented presentations from the 2-1/2 year period in which he served as Governor Pataki's counsel. In that capacity, he received substantial correspondence from CJA relating to the Governor's so-called temporary judicial screening committee, inaccessible to the public except through his office. This was highlighted in CJA's published Letter to the Editor, "*In Choosing Judges, Pataki Creates Problems*" (New York Times, 11/16/96: Exhibit "J-1"). Based on that correspondence, CJA ultimately concluded the committee was a "front" behind which Mr. Finnegan "rigged" ratings. The case example of a specific rating that Mr. Finnegan had "rigged" was the "highly qualified" rating of Court of Claims Judge Juanita Bing Newton. This rating followed CJA's transmittal to Mr. Finnegan of its document-supported opposition to Judge Newton, for presentment to the temporary judicial screening committee, showing that she was directly and complicitously involved in the corruption of the New York State Commission on Judicial Conduct, of which she was a member. CJA's March 26, 1999 ethics complaint reflects this, identifying both Mr. Finnegan and Judge Newton by name (Exhibit "A-2", p. 16). The referred-to correspondence that Mr. Finnegan received from CJA pertaining to Judge Newton: CJA's June 12, 1996 letter to him and CJA's June 11, 1996 letter to the State Senate[10] are annexed as Exhibits "J-2" and "J-3", respectively.

III THE *READILY-VERIFIABLE* CORRUPTION OF THE NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, EXPOSED BY THE CENTER FOR JUDICIAL ACCOUNTABILITY, INC (CJA), MADE CJA AN INDISPENSABLE INFORMATION SOURCE

Because the accuracy of the Commission on Judicial Nomination's evaluations largely depends on its ability to obtain reliable information about its *mostly judicial* candidates from the New York State Commission on Judicial Conduct, CJA had to have been viewed as an indispensable information source. This, because CJA's presentations to the Commission on Judicial Nomination particularized the *readily-verifiable* corruption of the Commission on Judicial Conduct, as to which CJA furnished evidentiary proof.

This proof consisted of three *facially-meritorious* judicial misconduct complaints against Justice Rosenblatt, dated September 19, 1994, October 26, 1994, and December 5, 1994, dismissed by the Commission on Judicial Conduct, *without* investigation and *without* reasons, in violation of

[10] Copies of two additional letters are annexed to CJA's June 11, 1996 letter – which had each been sent to Mr. Finnegan, certified mail/return receipt: P-801-449-994 and P-608-518-937. They are: CJA's April 18, 1996 letter to David Gruenberg, Counsel to the Senate Judiciary Committee and CJA's April 29, 1996 letter to Mr. Finnegan.

Judiciary Law §44.1. Indeed, these complaints were not only *facially-meritorious*, but had been accompanied by documentation establishing judicial misconduct rising to a level of criminality: Justice Rosenblatt's disregard of conflict of interest rules to pervert his judicial office to advance ulterior political and retaliatory goals. To these three 1994 judicial misconduct complaints was added a fourth *facially-meritorious* judicial misconduct – one based, *inter alia*, on Justice Rosenblatt's believed perjury by his *publicly-inaccessible* responses to Questions #30 and #32(d) of the Commission on Judicial Nomination's questionnaire. This fourth judicial misconduct complaint, dated October 6, 1998 – still pending when Justice Rosenblatt was recommended by the Commission on Judicial Nomination as "well qualified", when he was appointed by the Governor, and when he was confirmed by the Senate – was subsequently dismissed by the Commission on Judicial Conduct, *without* investigation and *without* reasons, in violation of Judiciary Law §44.1. This is recited in CJA's March 26, 1999 ethics complaint (Exhibit "D", pp. 25-27).

CJA's fact-specific presentations additionally recited how the Commission on Judicial Conduct, by its attorney, the State Attorney General, had engaged in defense fraud, to defeat two separate Article 78 proceedings challenging its unlawful dismissals of these judicial misconduct complaints: *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141), challenging the dismissals of the 1994 complaints, and *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), challenging the dismissal of the 1998 complaint.

The evidentiary proof, in the Commission on Judicial Nomination's possession, that the Commission on Judicial Conduct was dismissing *facially-meritorious* complaints *without* investigation and *without* reasons established the worthlessness of the 1983 amendment to Judiciary Law §64.3. This amendment restricts the information the Commission on Judicial Nomination can obtain from the Commission on Judicial Conduct to:

> "the record of any proceeding pursuant to a formal written complaint against an applicant for judicial appointment to the court of appeals, in which the applicant's misconduct was established, any pending complaint against an applicant, and the record to date of any pending proceeding pursuant to a formal written complaint against such applicant for appointment to the court of appeals."

In other words, under the amendment, the Commission on Judicial Nomination has NO access to dismissed judicial misconduct complaints. This, because in a March 4, 1983 written statement, the Commission on Judicial Conduct was able to mislead the Governor and Legislature into believing that dismissed complaints had no value because they either did not allege facts constituting judicial misconduct, and, therefore, had been dismissed *without* investigation[11], or

[11] As to such complaints, the Commission on Judicial Conduct's March 4, 1983 statement to the Governor

because, upon investigation, their allegations of judicial misconduct were not substantiated. The Commission on Judicial Conduct argued that disclosing these valueless dismissed complaints to the Commission on Judicial Nomination would needlessly smear the applicant against whom the complaint had been filed.

The Commission on Judicial Conduct's successful *ipse dixit* advocacy was in response to an original proposed amendment to Judiciary Law §64.3 that would have enabled the Commission on Judicial Nomination to obtain "*all information* in its possession concerning the applicant" from the Commission on Judicial Conduct (Exhibit "K", emphasis added)[12]. This original amendment was endorsed by the Commission on Judicial Nomination in a March 4, 1983 letter to the Governor in which it stated that it "support[ed] and appreciat[ed]" this amendment to Judiciary Law §64.3, with its comparable amendment to the Commission on Judicial Conduct's confidentiality provision, Judiciary Law §45, to provide "*any information* requested by the commission on judicial nomination concerning an applicant for the court of appeals" (emphasis added).

Faced with CJA's evidentiary presentation that the Commission on Judicial Conduct was dismissing *facially-meritorious* complaints, *without* investigation – and, indeed, *without* reasons -- the Commission on Judicial Nomination had to realize that "merit selection" was severely jeopardized and that it risked approving as "well qualified" judicial candidates against whom legitimate judicial misconduct complaints had been filed with the Commission on Judicial Conduct -- and *unlawfully* dismissed. Under such circumstances, the Commission on Judicial Nomination had to reach out to alternative sources having information about dismissed judicial misconduct complaints – such as CJA. This, as an interim step until it had secured an official investigation into

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and Legislature asserted: "When the basis for a decision not to investigate is explained to a complainant, *as it is in every case*, the complainant is usually satisfied that the complaint was considered, if not pursued" (at p. 5, emphasis added). As herein detailed AND DOCUMENTED, the Commission is NOT "*in every case*" providing complainants with explanations for dismissing their *uninvestigated* complaints.

12 After the amendment was revised to its present form, the Commission on Judicial Conduct presented a March 25, 1983 statement opposing disclosure of "any pending complaint against an applicant". Among the stated reasons for this opposition:

> "The Nomination Commission is required by statute to make a public report of its findings as to all candidates it recommends for the court of Appeals (Jud.L 63, subd. 3). *Presumably, such public 'findings' would have to include any pending complaints, even those which are de minimis or may soon be dismissed as unsubstantiated.*" (3/25/83 statement, at p. 5, emphasis added).

As hereinabove particularized, the Commission on Judicial Nomination's October 4, 2000 report (Exhibit "C-2"), like its November 12, 1998 report (Exhibit "E-1"), have altogether dispensed with "findings".

the evidence presented and detailed by CJA's October 5, 1998 letter (Exhibit "H") and by its subsequent March 26, 1999 ethics complaint (Exhibit "A-2") and September 15, 1999 supplement (Exhibit "B") as to the Commission on Judicial Conduct's corruption – including its subversion of the judicial process to defeat Article 78 challenges to its unlawful dismissals.

IV THE COMMISSION ON JUDICIAL NOMINATION'S RECOMMENDATION OF SUPREME COURT JUSTICE STEPHEN G. CRANE ILLUSTRATES ITS INCLUSION OF RECOMMENDEES AGAINST WHOM *UNINVESTIGATED* FACIALLY-MERITORIOUS JUDICIAL MISCONDUCT COMPLAINTS HAVE BEEN FILED AND WHO MAY HAVE PERJURED THEMSELVES AS TO THEIR LACK OF KNOWLEDGE OF THESE COMPLAINTS

As demonstrated in 1998 and again now, the Commission on Judicial Nomination's supposedly "well qualified" recommendees are the subject of *facially-meritorious* judicial misconduct complaints, *unlawfully* dismissed *without* investigation and *without* reasons by the Commission on Judicial Conduct – whose serious, substantial nature warrant their removal from office and, indeed, criminal prosecution. These recommendees may have perjured themselves about these and other complaints in response to Question #30(a) and (b) on its questionnaire[13]:

> "(a) To your knowledge, has any complaint or charge ever been made against you in connection with your service in a judicial office? Include in your response 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 2].
>
> > [fn 2: Judiciary Law, Article 3-S §64(3) provides that this Commission may require from any court or other agency of the State any information or data as will enable it properly to evaluate qualifications of candidates,

[13] The comparable question on the Uniform Judicial Questionnaire – which the bar associations may be using to conduct their evaluations – is Question #22:

> "Are you now, or have you ever been, the subject of any formal complaint, charge or claim of malpractice arising out of your official or professional responsibilities during the course of your: ...(b) public or judicial service? ___ Yes ___ No.
>
> If so, please describe each complaint, charge or claim and its outcome, including whether the governmental agency or other entity to which such complaint, charge or claim was made censured you, issued a caution, imposed a sanction or took any other action whatsoever criticizing your conduct, even if the complaint, charge, or claim was dismissed."

subject to an absolute judicial or executive privilege where one exists.]"

Thus, as particularized by CJA's November 18, 1998 letter (Exhibit "I") and March 26, 1999 ethics complaint (Exhibit "A-2", pp. 22-24), the Commission on Judicial Nomination recommended Justice Rosenblatt as "well qualified" – in the face of three *facially-meritorious* – and *uninvestigated* -- judicial misconduct complaints against him – complaints so serious as to warrant his removal and criminal prosecution, where additionally, evidence suggests that he had perjured himself in his *publicly-inaccessible* responses to Questions #30 and #32(d) of its questionnaire. And this year, the Commission has recommended at least one "well qualified" candidate, Supreme Court Justice Stephen G. Crane, as to whom, unless he, too, perjured himself in responding to Question #30, it knows a series of *facially-meritorious* judicial misconduct complaint have been filed, likewise serious enough to warrant his removal and criminal prosecution. These complaints have been filed not just with the Commission on Judicial Conduct, but with other public officers and agencies.

That Justice Crane perjured himself *IF* he did not answer "Yes" to subpart (a) of Question #30 may be seen from the receipt stamps for four complaints against him that were either hand-delivered for him to the 6th floor of Supreme Court/New York County where he has his chambers – or sent to him certified mail/return receipt. These complaints, each designating him as an indicated recipient, are:

(1) CJA's February 23, 2000 letter to Governor George Pataki – a copy of which was hand-delivered for Justice Crane. This letter, submitted to the Governor to "strenuously oppose[]" his consideration of Justice Crane for designation to the Appellate Division, First Department, simultaneously requested that he take steps to remove Justice Crane from the bench and to secure his criminal prosecution, including by appointing a special prosecutor or investigative commission (at pp. 1-2, 32-34);

(2) CJA's February 25, 2000 memorandum to the State Attorney General, the Manhattan District Attorney, the U.S. Attorney for the Southern District of New York, and the State Ethics Commission – a copy of which was hand-delivered for Justice Crane. This memorandum requested that these public agencies and officers take steps to initiate disciplinary and criminal prosecutions based on the recitation in CJA's February 23, 2000 letter to the Governor;

(3) CJA's March 3, 2000 letter to Chief Judge Judith Kaye -- a copy of which was sent to Justice Crane by certified mail/return receipt: Z-509-073-750. This letter requested that the Chief Judge take steps to ensure Justice Crane was demoted from his position as Administrative Judge, as well as removed from the bench and criminally prosecuted based on the recitation in CJA's February 23, 2000 letter to the Governor;

(4) CJA's March 3, 2000 letter to the Commission on Judicial Conduct – a copy of which was sent to Justice Crane by certified mail/return receipt: Z-509-073-750. This letter, enclosing a copy of CJA's February 23, 2000 letter to the Governor, constituted a formal judicial misconduct complaint against Administrative Judge Crane, pursuant to Article 6, §22(a) of the New York State Constitution and Judiciary Law §44.1.

For ease of reference, full copies of each of these documents are transmitted herewith in File Folder A.

IF Justice Crane did not perjure himself in response to Question #30(a) and answered "Yes", he would have had to "furnish full details" to the Commission on Judicial Nomination, as required by Question #30(b). These would necessarily have included a summary of the complaints' allegations and the identity of the complainant. Assuming he furnished these, the Commission's failure to contact CJA must be seen as even more wilful. This, because CJA is the complainant and the allegations concern Justice Crane's misuse of his power as Administrative Judge, for self-interested and biased reasons, by wilfully violating "random selection" rules. The transparent purpose was to "steer" the Article 78 proceeding *Elena Ruth Sassower v. Commission* to a self-interested and biased judge ready and willing to "throw" it by a fraudulent judicial decision.

IF Justice Crane furnished the "full details" required by Question #30(b), the Commission on Judicial Nomination would have recognized that it was a beneficiary of his complained-of misconduct as the gravamen of the Article 78 proceeding was the Commission on Judicial Conduct's unlawful dismissal of the *facially-meritorious* October 6, 1998 judicial misconduct complaint against Justice Rosenblatt. As such, a judicial determination requiring the Commission on Judicial Conduct to investigate that complaint into Justice Rosenblatt's believed perjury by his *publicly-inaccessible* responses jeopardized the Commission on Judicial Nomination. Such investigation would establish whether, in fact, Justice Rosenblatt perjured himself – and, if he did, expose that the Commission on Judicial Nomination had recommended him as "well qualified" notwithstanding.

CJA's four aforesaid letters of complaint about Justice Crane's misconduct as Administrative Judge in the Article 78 proceeding – as well as CJA's massive subsequent correspondence, to which Justice Crane was not a recipient -- rest on the fact-specific recitation at pages 6-14 of CJA's February 23, 2000 letter to the Governor. The two footnotes on page 6 establish the most pertinent facts: the first, fn. 8, identifies the "random selection" rule violated by Administrative Judge Crane: Part 202.3(b) of the Uniform Civil Rules for the Supreme Court and the County Court. The second footnote, fn. 9, identifies the two exhibits annexed to the letter that documentarily establish Administrative Judge Crane's interference with "random selection": These two exhibits are: (1) the computerized court record (Exhibit "C-1" to the letter); and (2) the November 9, 1999 order of Acting Supreme Court Kapnick (Exhibit "C-6" to the letter).

As particularized by pages 6-14 of CJA's February 23, 2000 letter to Governor Pataki – and summarized at page 5 of CJA's March 3, 2000 letter to Chief Judge Kaye – after Administrative Judge Crane interfered with "random selection" in the Article 78 proceeding and "steered" it to Acting Supreme Court Justice William Wetzel, he WILFULLY REFUSED to respond to legitimate inquiries by the Article 78 petitioner, set forth in a December 2, 1999 letter to him, as to:

(1) the legal authority for his interference with "random selection" rules;

(2) the basis for having "steered" the case to Justice Wetzel and prior thereto to Acting Supreme Court Justice Ronald Zweibel;

(3) his awareness of specific facts pertaining to Justice Wetzel's disqualification for self-interest and bias, particularized in the Article 78 petitioner's accompanying December 2, 1999 letter application for Justice Wetzel's recusal.

Nor did Administrative Judge Crane respond to the Article 78 petitioner's indicated desire for a conference so that arrangements could be made to ensure that the Article 78 proceeding was "assigned to a fair and impartial tribunal", where the record before him not only established that two other Article 78 proceedings against the Commission on Judicial Conduct, *Doris L. Sassower v. Commission* (NY Co. #95-109141) and *Michael Mantell v. Commission* (NY Co. #99-108655) had each been "thrown" by fraudulent judicial decisions, but that the only way the Commission on Judicial Conduct was going to "survive" *Elena Ruth Sassower v. Commission* was if that proceeding, too, was "thrown" by a fraudulent judicial decision.

The Association of the Bar has a copy of the file in *Elena Ruth Sassower v. Commission* – which physically incorporates the files of those two other Article 78 proceedings. CJA hereby requests that this comprehensive file be made available to the New York State Bar Association, the Women's Bar Association of the State of New York, and the New York State Trial Lawyers Association so that they, in addition to the City Bar, may verify the accuracy of CJA's fact-specific February 23, 2000 letter to the Governor. Meanwhile, to afford them a "taste" of the file, copies of the Article 78 petitioner's December 2, 1999 letter to Administrative Judge Crane and December 2, 1999 letter to Justice Wetzel, on which it relied, are enclosed in File Folder A.

It is telling that notwithstanding the fact-specific and fully-documented nature of CJA's February 23, 2000 letter, warranting, *by any objective standard*, Justice Crane's demotion as Administrative Judge, removal from the bench, and criminal prosecution, he nonetheless felt confident to seek promotion to our State's highest court. Perhaps he viewed such ultimate promotion as his just reward for having so brazenly subverted "random selection" to protect the public officers and agencies implicated in criminal conduct by *Elena Ruth Sassower v. Commission* -- all integral players in the Court of Appeals "merit selection" process: the Commission on Judicial Nomination, the Commission on Judicial Conduct, the Governor, the State Senate, not to mention a completely

submissive and complicitous organized bar.

In light of that portion of Question #30(a) inquiring whether there had been "any question raised or inquiry conducted of any kind by any agency or official of the judicial system" and Question #30(b) as to "the nature of the question or inquiry, the outcome and relevant dates"[14], it is critical to know what Justice Crane responded – *assuming*, of course, he did not perjure himself by answering "No" to Question #30(a). CJA did not inform Justice Crane of any response it had received to these complaints. Nor did CJA provide him copies of any of the subsequent voluminous correspondence based thereon. Consequently, if Justice Crane was able to furnish the Commission on Judicial Nomination with information as to the Commission on Judicial Conduct's dismissal of CJA's March 3, 2000 judicial misconduct, that information did not come from CJA. Since the Commission on Judicial Conduct purports not to notify judges when it dismisses complaints against them, *without* investigation, that information would likely have come from some other source. The most likely of these sources would have been Chief Judge Kaye or those in the upper echelons of the Office of Court Administration, such as Chief Administrative Judge Jonathan Lippman – in other words, the most prestigious of references which Justice Crane could reasonably have been expected to give the Commission on Judicial Nomination in response to its Question #34[15] – and which the Commission on Judicial Nomination might reasonably have been expected to contact, in any event inasmuch as he is Administrative Judge of the Civil Branch of the Supreme Court, First Judicial District.

Chief Judge Kaye received a mountain of correspondence from CJA, as a follow up to its March 3, 2000 letter. As with the March 3rd letter, this correspondence sought Justice Crane's demotion as Administrative Judge and action by her to secure an official investigation of the Commission on Judicial Conduct – whose then most recent outrage was its April 6, 2000 dismissal, *without* investigation and *without* reasons of the *facially-meritorious* and fully-documented March 3rd judicial misconduct complaint[16]. To appreciate how absolutely extraordinary it would be had she and Chief Administrative Judge Lippman, who also received this correspondence, each failed to raise any "question" or "inquiry" with Administrative Judge Crane, copies of CJA's letters to Chief Judge Kaye, dated April 18, 2000[17] and June 30, 2000, are enclosed in File Folder A, along with the culmination of that correspondence, a copy of CJA's August 3, 2000 *facially-meritorious*

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[14] *Cf.* Question #22 on the Uniform Judicial Questionnaire.

[15] The comparable question on the Uniform Judicial Questionnaire is Question #46.

[16] The Commission on Judicial Conduct's April 6, 2000 dismissal letter is Exhibit "C-3" to CJA's April 18, 2000 letter to Chief Judge Kaye.

[17] *See*, in particular, pp. 4-7 as to the Chief Judge's undisputed and indisputable duty under §100.3(C) and (D) of the Chief Administrator's Rules Governing Judicial Conduct to take steps to demote Administrative Judge Crane and to secure his removal from the bench and criminal prosecution.

judicial misconduct complaint against Chief Judge Kaye, filed with the Commission on Judicial Conduct[18]. Such correspondence also demonstrates how equally extraordinary it would be if neither Chief Judge Kaye nor Chief Administrative Judge Lippman had *independently* alerted the Commission on Judicial Nomination to the irrefutable and unrefuted evidence before them of Administrative Judge Crane's misconduct – *assuming*, of course, that the Commission on Judicial Nomination contacted them either as persons raising some "question or inquiry", pursuant to Question #30, or as indicated references, pursuant to Question #34.

As it is fairly obvious that pursuant to Judiciary Law §64.3, the Commission on Judicial Nomination would have been in contact with the Commission on Judicial Conduct as part of its required "merit selection" evaluation of applicants, it must be pointed out that the Commission on Judicial Conduct received copies of ALL of CJA's above correspondence with Chief Judge Kaye pertaining to Justice Crane's indisputable and undisputed administrative misconduct. It also received copies of other correspondence with public officers and agencies. All of this is in addition to a May 17, 2000 letter, particularizing (at pp. 6-7) the unlawfulness of the dismissal, *without* investigation and *without* reasons, of CJA's March 3, 2000 complaint against Administrative Judge Crane. This May 17, 2000 letter, followed by CJA's June 28, 2000 letter, are also included in File Folder A, along with the shameful July 19, 2000 letter of Commission on Judicial Conduct Chairman Eugene W. Salisbury, failing and refusing to respond. Consequently, if, because of the limitation on disclosure imposed by the 1983 amendment to Judiciary Law §§45 and 64.3, the Commission on Judicial Conduct gave NO intimation to the Commission on Judicial Nomination of the existence of CJA's March 3, 2000 *facially-meritorious*, fully documented judicial misconduct complaint – and the other complaints against Administrative Judge Crane, filed with public officers and agencies, copies of which were in its possession -- this is yet a further demonstration of how such amendment undermines the very slightest possibility of true and legitimate "merit selection".

Finally, because of the confidentiality imposed by Judiciary Law §45, the Commission on Judicial Conduct presumably never informed the Commission on Judicial Nomination as to whether there had been any other judicial misconduct complaints filed against Justice Crane. However, as CJA's February 23, 2000 letter points out (at pp. 7-8), his flagrant administrative misconduct in *Elena Ruth Sassower v. Commission* -- and his no less brazen judicial misconduct in the case of *Doris L. Sassower v. Kelly, Rode & Kelly, et al.* (NY. Co. #93-120917) -- leads to the reasonable assumption that other judicial misconduct complaints would have been filed against him.

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[18] CJA's August 3, 2000 judicial misconduct complaint against Chief Judge Kaye was dismissed by the Commission on Judicial Conduct in a September 19, 2000 letter which purported that "the Commission concluded that there was no indication of judicial misconduct to justify judicial discipline". The pretense that the complaint presents "no indication of judicial misconduct to justify judicial discipline", *when it is fully documented as to its allegations of misconduct so serious as to entitle the People of this State to Chief Judge Kaye's removal from office*, is further evidence of the Commission's on-going, unabated corruption.

CJA's February 23, 2000 letter does not detail Justice Crane's misconduct in *Kelly, Rode & Kelly*, except to say that he "wholly subverted the judicial process by rendering and adhering to fraudulent judicial decisions" – possibly for ulterior political and retaliatory reasons. As reflected therein, the *Kelly, Rode & Kelly* case was the basis of CJA's opposition to Justice Crane's 1997 candidacy for the Appellate Division, First Department, communicated to the First Department Judicial Screening Committee at that time.

Administrative Judge Crane's wilful and deliberate abuse of his judicial office in *Elena Ruth Sassower v. Commission*, as particularized at pages 6-14 of CJA's February 23, 2000 letter, suffice to demonstrate his corruption. Should there be any need for a similarly particularized recitation of his misconduct as a Supreme Court justice in *Kelly, Rode & Kelly*, CJA should be immediately contacted for the appalling details.

V THE COMMISSION ON JUDICIAL NOMINATION'S RECOMMENDATION OF COURT OF CLAIMS JUDGE JUANITA BING NEWTON DISREGARDS HER ACTIVE AND COMPLICITOUS PARTICIPATION IN THE CORRUPTION OF THE COMMISSION ON JUDICIAL CONDUCT, OF WHICH SHE IS A FORMER MEMBER

The "summary of the careers" portion of the Commission on Judicial Nomination's October 4, 2000 report (Exhibit "C-2") *incorrectly* describes Court of Claims Judge Juanita Bing Newton as "Member, New York State Commission on Judicial Conduct". No dates for this membership are included and, in fact, she is no longer a member. Her four-year term on the Commission on Judicial Conduct, to which she was appointed by Chief Judge Kaye, spanned from January 19, 1994 to October 18, 1999.

In view of CJA's fact-specific, evidence-supported advocacy as to the corruption of the Commission on Judicial Conduct, in the Commission on Judicial Nomination's possession, Judge Newton's former membership should have set off "alarm bells". It certainly provided the Commission on Judicial Nomination with yet further reason for contacting CJA.

From the dates of Judge Newton's membership – which she presumably provided the Commission on Judicial Nomination in response to its Question #20, specifically requesting "dates" -- the Commission on Judicial Nomination could readily discern that her membership spanned the period of events most relevant to the two Article 78 proceedings against the Commission on Judicial Conduct, *Doris L. Sassower v. Commission* and *Elena Ruth Sassower v. Commission*[19]. Indeed, the Commission on Judicial Conduct's December 13, 1994 and January 24, 1995 letters dismissing, *without* investigation and *without* reasons, the three *facially-meritorious* 1994 complaints against Justice Rosenblatt are printed on stationary bearing her name. Likewise, its

[19] Her tenure also spanned the period of events most relevant to the *Mantell v. Commission* Article 78 proceeding.

December 23, 1998 letter dismissing, *without* investigation and *without* reasons, the *facially-meritorious* October 6, 1998 judicial misconduct complaint against Justice Rosenblatt is printed on stationary bearing Judge Newton's name[20].

In 1996, when Judge Newton was seeking reappointment to the Court of Claims, CJA vigorously opposed her reappointment because of her active and complicitous participation in the Commission's corruption. This opposition was initially set forth in CJA's April 18, 1996 letter to counsel to the Senate Judiciary Committee, David Gruenberg[21] – with a copy sent to Judge Newton. As stated therein:

> "In her capacity as a judicial member of the New York State Commission on Judicial Conduct, Judge Newton has not protected the public from unfit judges – as has been her duty to do. Rather, she has used her position as Commissioner to protect high-ranking, politically-connected judges from the consequences of their official misconduct. She has done this by permitting fully documented complaints against them – including complaints of heinous criminal acts – to be summarily dismissed. Such summary dismissals, without any determination by the Commission that the complaints facially lack merit (because indeed they do not), violate the Commission's explicit statutory investigative duty under Judiciary Law §44.1." (at p. 2, emphases in the original)

The letter then described that the Article 78 proceeding *Doris L. Sassower v. Commission* was:

> "so devastating that the only way the Commission on Judicial Conduct could survive it was by engaging in litigation misconduct before a Supreme Court justice who, by a fraudulent decision of dismissal, would dump the case. This is proven by the litigation file..." (at p. 3)

The letter asserted that Judge Newton, as a Commission member, had been "on notice of the Commission's litigation misconduct in the Article 78 proceeding and of the fraudulent dismissal – of which it is the beneficiary". Yet, like the rest of the Commissioners, she had "refused to meet her ethical and professional duty to take corrective steps. Such an individual is unworthy of any judicial office" (at p. 2).

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[20] Judge Newton's name is also imprinted on the Commission's January 4, 1999 letter dismissing Mr. Mantell's *facially-meritorious* September 28, 1998 judicial misconduct complaint on the false pretense that it presented "no indication of judicial misconduct upon which to base an investigation." Such dismissal, *without* investigation, resulted in Mr. Mantell's Article 78 proceeding.

[21] Because Mr. Finnegan was sent a copy of this letter (certified mail/rrr P-801-449-994), with a copy thereafter hand-delivered for him as part of CJA's June 11, 1996 letter to the Senators, it is annexed hereto. It is part of Exhibit "J-3".

The letter then concluded with a challenge:

> "... by copy of this letter directly to Judge Newton, we call upon her to demonstrate that the dismissal of our Article 78 proceeding against the Commission on Judicial Conduct is not a fraud—and to justify the constitutionality of the Commission's rule, 22 NYCRR §7000.3, as written and as applied—challenged in that proceeding.
>
> To assist Judge Newton in meeting the specific legal and factual issues involved, we enclose the first three pages of our December 15, 1995 letter to the Assembly Judiciary Committee (Exhibit "F")[22] – a copy of which was sent to the Administrator of the Commission on Judicial Conduct, with a request that it be distributed to the Commissioners." (at pp. 3-4, emphases in the original).

Judge Newton did not respond to this April 18, 1996 letter, sent to her certified mail/return receipt (P-801-449-996)[23]. This was not because the letter did not warrant response – it plainly did. Rather, it was because she knew that she could not respond without conceding the Commission on Judicial Conduct's corruption, to which she was a culpable party.

As demonstrated by the further sequence of CJA's correspondence: its April 29, 1996 letter to Mr. Finnegan, its June 11, 1996 letter to the State Senate, and its June 12, 1996 letter to Mr. Finnegan (Exhibits "J-3" and "J-2"), this State's sham and politicized judicial appointment and confirmation process to the lower state courts covered up Judge Newton's demonstrated lack of integrity by rewarding, rather than penalizing her.

The organized bar's instant evaluation of Judge Newton as "well qualified" should not, likewise, cover up Judge Newton's lack of integrity. Rather, as part thereof, the organized bar must call her to account and require that she finally respond to the legitimate questions posed to her back in 1996 – and, then, again, in 1997 when she testified before the City Bar's *ad hoc* Committee on Judicial Conduct, which was holding a May 14, 1997 public hearing on the Commission on Judicial Conduct.

In advance of that hearing, CJA faxed the Commission on Judicial Conduct a May 6, 1997 coversheet, enclosing a May 5, 1997 memorandum, challenging it to justify its self-promulgated rule 22 NYCRR §7000.3 in relation to Judiciary Law §44.1 and to address the analysis of the fraudulent judicial decision dismissing *Doris L. Sassower v. Commission*, embodied in the first three pages of CJA's December 15, 1995 letter to the Assembly Judiciary Committee – a copy of

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[22] This exhibit is appended to the copy of the April 18, 1996 letter that was attached to CJA's June 11, 1996 letter to the Senators [*see* p. 2 (fn. 1) of the June 11, 1996 letter] (Exhibit "J-3" hereto).

[23] A copy of the certified mail receipt was included in the copy of CJA's April 18, 1996 letter annexed to its June 11, 1996 letter to the State Senate. See Exhibit "J-3" herein.

which pages the memorandum annexed. CJA then reinforced this by a faxed May 13, 1997 letter to the Commission's then Chairman, Henry Berger, *expressly* requesting that Judge Newton, who was to testify with him and with the Commission's Administrator, Gerald Stern, be apprised of CJA's May 5, 1997 memorandum challenge – and that she give it "her personal response". Nevertheless, Judge Newton ignored this challenge when she testified at the hearing and allowed Chairman Berger and Administrator Stern to ignore it, as well. Copies of this correspondence are enclosed in File Folder B.

Whereas the travesty of what took place in 1996 at the Senate Judiciary Committee's purported confirmation "hearing" for Judge Newton is recounted in CJA's June 11, 1996 and June 12, 1996 letters (Exhibits "J-3" and "J-2") -- copies of which were contemporaneously provided to Judge Newton[24] -- the travesty of what took place at the City Bar's May 14, 1997 hearing is far more public, having been featured in CJA's prominently-placed $3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (New York Law Journal, 8/27/97, pp. 3-4). Such ad, additionally, provides a fact-specific recitation of the Attorney General's litigation fraud in defense of the Commission in *Doris L. Sassower v. Commission*, as well as a concise summary of the fraudulent judicial decision in that Article 78 proceeding of which the Commission is the beneficiary. A copy of "*Restraining 'Liars'*" is included in File Folder B.

Judge Newton may be presumed to be familiar with the "'*Restraining Liars*'" ad, as it has been repeatedly referred-to or annexed by CJA's voluminous correspondence with the Commission on Judicial Conduct during the period of Judge Newton's tenure. This includes CJA's *facially-meritorious* October 6, 1998 judicial misconduct complaint – and the verified Article 78 petition in *Elena Ruth Sassower v. Commission* that the Commission, with Judge Newton as a member, engendered by its unlawful dismissal of that complaint, *without* investigation and *without* reasons.

It deserves emphasis that Judge Newton was a Commission member not only when *Elena Ruth Sassower v. Commission* was commenced on April 22, 1999 by service of the verified Article 78 petition upon the Commission on Judicial Conduct, but in the ensuing half year when the Attorney General, on the Commission's behalf, engaged in a replay of the same *modus operandi* of fraudulent defense tactics as is particularized in "'*Restraining Liars*'". Such defense fraud was known to the Commission on Judicial Conduct. It was the subject of urgent notice to it, beginning with a hand-written and hand-delivered May 17, 1999 memorandum, thereafter typed, faxed, and embodied in subsequent correspondence. It was also fully particularized and documented in a voluminous July 28, 1999 omnibus motion, seeking imposition of sanctions and costs on Commission members and culpable staff, as well as disciplinary and criminal referral of them for "litigation misconduct, including fraud and deceit upon the Court and [the Article 78] Petitioner, as well as the crimes of, *inter alia*, filing of false instruments, conspiracy, obstruction of the administration of justice, and official misconduct." (July 28, 1999 Notice of Motion, p. 2). Copies of the May 17, 1999 memorandum and July 28, 1999 Notice of Motion are included in File Folder B.

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[24] Judge Newton is an indicated recipient of the June 12, 1996 letter (Exhibit "J-3", p. 3).

In addition to CJA's request that the City Bar share its copy of the file in *Elena Ruth Sassower v. Commission* with the New York State Bar Association, the Women's Bar Association of the State of New York, and the New York State Trial Lawyers Association, CJA requests that the file be shared for purposes of evaluating Judge Newton. Indeed, the file – physically incorporating the file in *Doris L. Sassower v. Commission* -- should be ON THE TABLE when Judge Newton is interviewed so that she can account for the *readily-verifiable* obliteration of the "Rule of Law" in those two Article 78 proceedings and explain her complicitous inaction, in face of repeated and on-going notice of her duty – and that of the Commission -- to take corrective steps.

Of course, the files are NOT needed for Judge Newton to confront the *facial* unconstitutionality of the Commission's self-promulgated rule 22 NYCRR §7000.3 and Judiciary Law §44.1 -- which, if she is unable to discern, would be evidence of incompetence. Nor does she need the files to confront that portion of CJA's three-page analysis of the decision in *Doris L. Sassower v. Commission* showing its pretense that 22 NYCRR §7000.3 and Judiciary Law §44.1 are compatible to be an insupportable fraud. Again, if she is unable to discern this – and discern it readily – she is incompetent.

The files are also not necessary for Judge Newton to explain the LEGAL basis for the Commission on Judicial Conduct's dismissals, *without* investigation and *without* reasons, of the *facially-meritorious* 1994 and 1998 judicial misconduct complaints against Appellate Division, Second Department Justice Rosenblatt – which generated both *Doris L. Sassower v. Commission* and *Elena Ruth Sassower v. Commission*. All that is needed are copies of those complaints, which are enclosed in File Folder B, along with the dismissal letters bearing her name on the letterhead. As part thereof, Judge Newton should be specifically called upon to reconcile the dismissals of the 1994 complaints with the relevant disciplinary principles set forth in Mr. Stern's law review article, "*Is Judicial Discipline in New York State a Threat to Judicial Independence?*" (Pace Law Review, Vol 7, No. 2, winter 1987, pp. 291-344), particularly those under the subheading "*Determining Generally When 'Error' is Misconduct*" (pp. 303-305). The relevant text under this subheading is quoted at pages 4-5 of CJA's May 17, 2000 letter to the Commission in support of its entitlement to investigation of the March 3, 2000 judicial misconduct complaint against Administrative Judge Crane. At the same time, Judge Newton should explain why – since 1995 when CJA first began citing the disciplinary principles appearing in Mr. Stern's own law review article -- the Commission has steadfastly *refused* to address them.

Finally, enclosed are copies of CJA's April 17, 1996 letter to Mr. Stern and Mr. Stern's April 18, 1996 letter response, from which can be seen that Judge Newton had a perfect attendance record at Commission meetings in the first two years of her Commission membership. This would include meetings at which CJA's 1994 *facially-meritorious* – and documented – judicial misconduct complaints against Justice Rosenblatt were dismissed. As to these, she thus cannot rely on any claimed lack of actual knowledge.

It is not known whether Judge Newton, whose tenure as a Commission member began on January 19, 1994, participated in the Commission's decision to seek authorization from the State Archives

and Records to destroy – after only a five-year retention -- the official records of judicial misconduct complaints, dismissed *without* investigation. A date of January 25, 1994 appears for the Commission's request on the authorization form – which is Exhibit "F" to CJA's May 17, 2000 letter to the Commission. Based on the final question in the penultimate paragraph of that letter (at p. 11) – to which there has been *no* response from the Commission -- it would appear the Commission did NOT notify the Legislature (or the public) of its intention to seek such improper authorization. In any event, Judge Newton, as a Commissioner, would likely have been apprised when, on March 30, 1994, the State Archives and Records Administration mistakenly gave its approval, as the Commission was thereby permitted to immediately destroy all the thousands of *uninvestigated* dismissed judicial misconduct complaints from its first 19 years and, on an on-going basis, to destroy *uninvestigated* dismissed complaints, after a five-year retention. As Judge Newton may have eventually realized, the Commission could, thereby, obliterate the *prima facie* proof of its unlawful dismissals of complaints whose review would be pertinent to questions of judicial fitness for retention and promotion on the bench.

CONCLUSION

The public is entitled to expect that the organized bar will vigorously uphold its right to true and meaningful "merit selection" of judges to the New York Court of Appeals by gubernatorial appointment – a right for which, nearly a quarter century ago, it relinquished its constitutional right to *elect* judges to the State's highest court. The Commission on Judicial Nomination has palpably violated the essential procedural requirement of Judiciary Law §63.3 that its report of recommendees contain "*findings* relating to the character, temperament, professional aptitude, experience, qualifications and fitness for office of *each candidate* who is recommended to the governor". This violation, hereinabove shown to be knowing and deliberate, conceals – yet at the same time reflects – the Commission's wilful violation of its obligation to properly investigate candidate qualifications. The result, herein demonstrated, is that two of the seven recommendees it purports to be "well qualified" are in fact, unfit. These two recommendees, Supreme Court Justice Stephen Crane and Court of Claims Judge Juanita Bing Newton, have each engaged in serious official misconduct – for which there is indisputable and undisputed documentary proof that each has refused to address. The consequence of this official misconduct has been – and is known to them to be -- the evisceration of yet another right of the public: its right under Article VI, §22 of the New York State Constitution to the critical safeguard afforded by the New York State Commission on Judicial Conduct as an agency empowered to investigate complaints of judicial misconduct so that unfit judges do not remain, and advance, on the bench.

The *readily-verifiable* corruption of the Commission on Judicial Conduct, to which Justice Stephen Crane, as Administrative Judge of the Civil Branch of the First Judicial Department, and Judge Newton, as a former member of the Commission on Judicial Conduct, have played important, even decisive roles, undermines the very possibility of "merit selection". This, because the Commission on Judicial Nomination relies on the Commission on Judicial Conduct as a key source for information on the fitness of its mostly judicial candidates.

In light of the facts herein presented, the responsibility of the organized bar – both to the rank and file of the profession it purports to serve and to the general public to whom it has a transcending duty of service – is to publicly reject the violative October 4, 2000 report and to call upon the Governor, the Legislature, and Chief Judge – 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 integrity of the judicial process and "Rule of Law" in New York rest. Indeed, it would be an appropriate test of the "character", "professional aptitude", "qualifications" and "fitness" of all seven recommendees for bar evaluators to inquire of their views as to whether the October 4, 2000 report conforms with Judiciary Law §63.3 and whether, over public objection *as set forth herein*, the Governor may lawfully proceed with appointment and the Senate with confirmation of any one of them to the Court of Appeals.

TABLE OF EXHIBITS

Exhibit "G-1":	April 26, 1999 letter of Robert J. Freeman, Executive Director, New York State Committee on Open Government
"G-2":	CJA's May 3, 1999 letter to the Commission on Judicial Nomination
Exhibit "H":	CJA's October 5, 1998 letter to the Commission on Judicial Nomination
Exhibit "I":	CJA's November 18, 1998 letter to the Executive Committee of the Association of the Bar of the City of New York
Exhibit "J-1":	CJA's Letter to the Editor, "*On Choosing Judges, Pataki Creates Problems*", New York Times, November 16, 1996
"J-2":	CJA's June 12, 1996 letter to Michael Finnegan, Counsel to Governor Pataki
"J-3":	CJA's June 11, 1996 letter to the New York State Senate, annexing as exhibits: (A) CJA's April 18, 1996 letter to David Gruenberg, Counsel, Senate Judiciary Committee; and (B) CJA's April 29, 1996 letter to Mr. Finnegan
Exhibit "K":	New York State Assembly Bill 3996: February 23, 1983

INVENTORY OF FILE FOLDER "A"
IN OPPOSITION TO THE COMMISSION ON JUDICIAL NOMINATION'S RECOMMENDATION OF ADMINISTRATIVE JUDGE STEPHEN G. CRANE AS "WELL QUALIFIED" FOR APPOINTMENT TO THE NEW YORK COURT OF APPEALS

CJA's COMPLAINTS AGAINST ADMINISTRATIVE JUDGE CRANE:

1. CJA's February 23, 2000 letter to Governor Pataki

2. CJA's February 25, 2000 memorandum to NYS Attorney General, Manhattan District Attorney, U.S Attorney for the Southern District of New York, and NYS Ethics Commission

3. CJA's March 3, 2000 letter to Chief Judge Judith Kaye

4. CJA's March 3, 2000 judicial misconduct complaint against Administrative Judge Crane, filed with NYS Commission on Judicial Conduct

ARTICLE 78 FILE:

Elena Sassower's December 2, 1999 letter to Administrative Judge Crane, accompanied by a copy of her December 2, 1999 letter to Acting Supreme Court Justice Wetzel

CJA's ADDITIONAL CORRESPONDENCE WITH CHIEF JUDGE KAYE:

1. CJA's April 18, 2000 letter to Chief Judge Kaye

2. CJA's June 30, 2000 letter to Chief Judge Kaye

3. CJA's August 3, 2000 judicial misconduct complaint against Chief Judge Kaye, filed with NYS Commission on Judicial Conduct

CJA's ADDITIONAL CORRESPONDENCE WITH COMMISSION ON JUDICIAL CONDUCT:

1. CJA's May 17, 2000 letter to the Commission on Judicial Conduct

2. CJA's June 26, 2000 letter to Eugene Salisbury, Chairman, Commission on Judicial Conduct

3. Chairman Salisbury's July 19, 2000 letter to CJA

INVENTORY OF FILE FOLDER "B"

IN OPPOSITION TO THE COMMISSION ON JUDICIAL NOMINATION'S RECOMMENDATION OF COURT OF CLAIMS JUDGE JUANITA BING NEWTON AS "WELL QUALIFIED" FOR APPOINTMENT TO THE NEW YORK COURT OF APPEALS

CJA's 1994 *FACIALLY-MERITORIOUS* JUDICIAL MISCONDUCT COMPLAINTS AGAINST APPELLATE DIVISION, SECOND DEPARTMENT JUSTICE ALBERT ROSENBLATT, DISMISSED BY THE NYS COMMISSION ON JUDICIAL CONDUCT, *WITHOUT* INVESTIGATION AND *WITHOUT* REASONS

1. CJA's September 19, 1994 judicial misconduct complaint
2. CJA's October 26, 1994 judicial misconduct complaint
3. CJA's December 5, 1994 judicial misconduct complaint

Commission on Judicial Conduct's acknowledgment letters, dated September 28, 1994, November 4, 1994, and December 14, 1994 & dismissal letters, dated December 13, 1994 and January 24, 1995

CJA's 1998 *FACIALLY-MERITORIOUS* JUDICIAL MISCONDUCT COMPLAINTS AGAINST APPELLATE DIVISION, SECOND DEPARTMENT JUSTICE ALBERT ROSENBLATT, DISMISSED BY THE NYS COMMISSION ON JUDICIAL CONDUCT, *WITHOUT* INVESTIGATION AND *WITHOUT* REASONS

CJA's October 6, 1998 judicial misconduct complaint

Commission on Judicial Conduct's acknowledgment letter, dated November 3, 1998, and dismissal letter, dated December 23, 1998

EXCHANGE OF CORRESPONDENCE, ETC.:

1. CJA's May 6, 1997 fax coversheet to Commission on Judicial Conduct
2. CJA's May 5, 1997 memorandum to, *inter alia*, Commission on Judicial Conduct, annexing 3-page analysis
3. CJA's May 13, 1997 faxed letter to Henry Berger, Chairman, Commission on Judicial Conduct
4. CJA's $3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", New York Law Journal, 8/27/97, pp. 3-4
5. CJA's April 17, 1996 letter to Gerald Stern, Administrator, Commission on Judicial Conduct
6. Mr. Stern's April 18, 1996 letter to CJA
7. CJA's May 17, 1999 memorandum to the Commission on Judicial Conduct
8. Petitioner's July 28, 1999 Notice of Motion in *Elena Ruth Sassower v. Commission*