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FROM: Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)

RE: Bar Evaluations of the Qualifications of New York Court of Appeals Judge Richard C. Wesley, Nominated to the Second Circuit Court of Appeals, and of P. Kevin Castel, Nominated to the District Court of the Southern District of New York

DATE: March 26, 2003

This statement follows prior notification by the Center for Judicial Accountability, Inc. (CJA) of documentary evidence establishing the unfitness of New York Court of Appeals Judge Richard C. Wesley, nominated to the Second Circuit Court of Appeals, and of P. Kevin Castel, Esq., nominated to the District Court of the Southern District of New York. Already transmitted to you is a portion of that evidence: the final two motions in the Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York*,[1] and the two decisions thereon by the New York Court of Appeals.

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[1] On March 6th, the day following announcement of these nominations, I provided a copy of these motions to City Bar Counsel Alan Rothstein, *in hand*, who thereafter transmitted them to the City Bar's Judiciary Committee. On March 18th, I sent a copy, priority mail, to George Frazza, Esq., the Second Circuit representative on the ABA's Standing Committee on Federal

As reflected by the American Bar Association's "Evaluation Criteria", the first of the recognized criteria for assessing a candidate's fitness is "integrity" (Exhibit "A-1"). Likewise, the Association of the Bar of the City of New York's "Guidelines for Evaluating Candidates for Judicial Office" places "integrity" and "impartiality" as the first area of assessment – examining "whether the candidate is free of any bias or outside influence which would interfere with the candidate's ability to render justice impartially." (Exhibit "A-2"). This statement is addressed to evidence establishing not only lack of integrity and impartiality by Judge Wesley and Mr. Castel, when their integrity and impartiality were put to the test, but their failure and refusal to do their duty to ensure the integrity and impartiality of judges and lawyers, including those documentarily shown to have corrupted the judicial process.

Impartiality is the *sine qua non* for any judge – described by the New York Court of Appeals as "the first idea in the administration of justice", *Oakley v. Aspinwall*, 3 N.Y. 547 (1850). The statutory and rule provisions for ensuring the impartiality of New York state judges are Judiciary Law §14 and the Chief Administrator's Rules Governing Judicial Conduct, specifically, §100.3E, entitled "Disqualification", and §100.3F, entitled "Remittal of disqualification", which pertains to disclosure. As to lawyers, New York's Disciplinary Rules of the Code of Professional Responsibility, codified as Part 1200 of Title 22 of New York Codes, Rules and Regulations, proscribe conflicts of interest.

§100.3D of the Chief Administrator's Governing Judicial Conduct, entitled "Disciplinary responsibilities", requires a judge to "take appropriate action" when he "receives information indicating a substantial likelihood" that "another judge has committed a substantial violation" of the Chief Administrator's Rules Governing Judicial Conduct. Similarly, he must "take appropriate action" when he "receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility".

A similar reporting provision pertains to lawyers, DR 1-103(A) of New York's Disciplinary Rules of the Code of Professional Responsibility, codified as 22 NYCRR§1200.4(a) and entitled "Disclosure of Information to Authorities". Its importance was reinforced by the New York Court of Appeals' decision in

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Judiciary, to whom I had spoken by phone that day. It was received by his office on March 20th.

Weider v. Skala, 80 N.Y.2d 628, 636 (1992), wherein -- and recognizing its applicability to judges as well -- the Court stated:

> "...one commentator has noted that, '[t]he reporting requirement is nothing less than essential to the survival of the profession' (Gentile, *Professional Responsibility – Reporting Misconduct By Other Lawyers*, NYLJ, Oct. 23, 1984, at 1, col 1; at 2, col 2; *see also*, Olsson, *Reporting Peer Misconduct: Lip Service to Ethical Standards is Not Enough*, 31 Ariz L Rev 657, 658-659.)"[2].

Judge Richard C. Wesley

The two transmitted motions: (1) my October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief; and (2) my October 24, 2002 motion for leave to appeal -- as likewise the Court's two December 17, 2002 decisions denying them, *without reasons*, are self-explanatory. They provide a "real life" view of how Judge Wesley, sitting on our state's highest court, with a duty to uphold and clarify the law and to provide a role model example for lower state judges and the legal profession[3], obliterated mandatory legal and ethical standards pertaining to judicial disqualification and disclosure, embodied in Judiciary Law §14 and §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct, AND mandatory ethical rules for reporting misconduct by lawyers and judges, embodied in §100.3D of the Chief Administrator's Rules Governing Judicial Conduct and DR 1-103(A) of New York's Disciplinary Rules of the Code of Professional Responsibility – replicating the very conduct which was the substantive content of the appeal, *to wit*, the obliteration of these same mandatory provisions in the courts below. This, not only to "protect" lower state court judges, but his own Court of Appeals brethren, shown to be disqualified for interest by my fact-specific, meticulously documented May 1, 2002 motion for their disqualification.

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[2] Quoted at ¶47 of my May 1, 2002 motion for the Court's disqualification and for disclosure.

[3] The critical importance that judges, particularly appellate judges, sensitize the profession to ethics issues is the subject of "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*", John M. Levy, 22 Santa Clara Law Review, pp. 95-116 (1982) -- repeatedly brought to the Court's attention (*see* fn. 7 of my reargument motion).

Specifically, Judge Wesley joined with five of his judicial brethren, excepting Judge Rosenblatt, in a September 12, 2002 decision[4] dismissing my disqualification motion on the false pretense that it was made on "nonstatutory grounds" – and that "the Court ha[d] no authority to entertain" it. To this, I responded on reargument as follows:

> "Apart from the conspicuous absence of *any* legal citation for the proposition that 'the Court has no authority to entertain' a nonstatutory grounded motion [fn.10]– 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." (my reargument motion, ¶18, emphases in the original).

It is telling that Judge Wesley puts *Matter of New York State Association of Criminal Defense Lawyers v. Kaye, et al.*, 96 N.Y.2d 512 (2001), as his first listing in response to question #21 of the public portion of the Senate Judiciary Committee questionnaire as to whether he had been a "party in any civil or administrative proceeding" (Exhibit "B"), without deeming it appropriate to identify that such decision was preceded by an earlier one involving a motion for the Court's disqualification. Such significant decision, 95 N.Y.2d 556 (2000), was extensively discussed in my reargument motion (¶¶22-26, 38-42, 46, 56) to establish the disparate manner in which the Court disposed of my disqualification motion. I stated:

> "22. ...The Court there adjudicated, by a fact-specific, reasoned decision, the statutorily-based motion that New York State Association of Criminal Defense Lawyers made for its disqualification. This was 'safe' for it to do, as that motion could readily be denied. Indeed, the Court's decision itself pointed out,

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[4] Annexed as Exhibit "B-1" to my reargument motion.

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

> 'The respondent Judges have no pecuniary or personal interest in this matter and petitioners allege none. Nor do petitioners allege personal bias or prejudice.' (at 561).

> 23. By sharp contrast, my disqualification motion *both alleged and documented* the 'personal and pecuniary' interests of the six judges I contended were statutorily disqualified: Judge Rosenblatt, Chief Judge Kaye, and Judges Smith, Graffeo, Ciparick, and Levine. Such was expressly highlighted by my ¶11 (Exhibit [])." (my reargument motion, ¶¶22-23, emphasis in the original).

My reargument motion also showed that this was not the first time that the Court – with Judge Wesley participating -- had falsified the record so as to purport that a proper disqualification motion could not be "entertain[ed]" because it was "made on nonstatutory grounds". It had done the same thing in *Robert L. Schulz, et al. v. New York State Legislature, et al.*, 92 N.Y.2d 917 (1998) – a case cited in fn. 2 of the disqualification decision in *Criminal Defense Lawyers v. Kaye*, 95 N.Y.2d, 556, 558). As to such case, which, like my own, involved far-reaching issues of government integrity, I stated:

> "25. *Schulz* is also a case where it was 'not safe' for the Court to acknowledge the true nature of the disqualification motion at issue. That Mr. Schulz made his motion on the statutory ground of interest – albeit not citing Judiciary Law §14 -- is evident from his motion (Exhibit [])[fn]. Indeed, like my own disqualification motion, Mr. Schulz' motion *both alleged and documented* the disqualifying interests of the four judges against whom it was specifically directed, *to wit*, Chief Judge Kaye and Judges Bellacosa, Levine, and Ciparick [fn].

> 26. The Court's pretense that my motion was not made on a statutory ground, like its pretense that Mr. Schulz' motion was not made on a statutory ground -- when each clearly was -- is inexplicable except as a reflection of its knowledge that it would

> otherwise have had to 'entertain' those motions by fact-specific, reasoned decisions, as it did in *Criminal Defense Lawyers v. Kaye* (Exhibit []) – and that doing so would require it to concede its statutory disqualification." (my reargument motion, ¶¶25-26, emphasis in the original).

My reargument motion further showed (¶¶31-33) that the Court had also lied in dismissing as "academic" my disqualification motion against Judge Rosenblatt, presumably because he "took no part" in the September 12, 2002 decision. I stated that there was nothing "academic" about my entitlement to an adjudication of the serious and substantial nature of Judge Rosenblatt's disqualifying interest since, as my disqualification motion had expressly identified, such interest raised:

> "reasonable question as to whether ANY of Judge Rosenblatt's six Court of Appeals colleagues could impartially evaluate, or be perceived as able to impartially evaluate, the instant appeal, knowing as they must, the severe disciplinary and criminal consequences that would ensue to their brother, Judge Rosenblatt..." (my disqualification/disclosure motion, ¶26, emphasis in the original).

The September 12, 2002 decision disposed of that "reasonable question" – as likewise the myriad of other "reasonable questions" raised by my 68-page affidavit in support of my disqualification motion -- by referring what it purported to be my "application seeking recusal" to "the Judges for individual consideration and determination by each Judge." The six individual judges, Judge Wesley among them, then "each respectively" denied recusal, *without* reasons and *without* identifying ANY of the facts I had presented. This, in face of the explicit adjudicative standard which my disqualification motion had proposed -- without contest from the Commission, the state agency charged with prosecuting violations of disqualification/disclosure:

> "Adjudication of a recusal application should be guided by the same legal and evidentiary standards as govern adjudication of other motions. If the application sets forth specific supporting facts, the judge, as any adversary, must respond to those specific facts. To leave unanswered the 'reasonable questions' raised by

such application would undermine its very purpose of ensuring the appearance, as well as the actuality, of the judge's impartiality." (my disqualification/disclosure motion, ¶8; my reargument motion, ¶13).

Consequently, this September 12, 2002 decision has a DOUBLE significance: it not only reflects adversely on Judge Wesley's participation in collective decision-making in the vital area of judicial integrity and impartiality, but, more importantly, on his own individual decision-making in this area. As stated by my reargument motion,

"43. That none of the six judges who each respectively denied my [May 1, 2002] motion – Chief Judge Kaye, Judges Smith, Levine, Ciparick, Wesley, and Graffeo – substantiate their denials [of recusal] with any reasons reflects their knowledge that they cannot remotely justify them. Indeed, the most cursory examination of the motion shows these denials to be wholly indefensible. This is also why none of these six judges disclose any of the facts bearing upon the appearance that they cannot be fair and impartial, such as expressly identified by my motion under the title heading, 'The Duty of this Court's Judges to Make Disclosure of Pertinent Facts Bearing upon their Interest and Bias' (at ¶¶116-121, 98).

44. ...the fact that each of the six judges individually 'consider[ed] my 'referred motion for recusal' underscores their knowing participation in fraud. Such 'consideration' as each judge gave to the motion before denying recusal would have made obvious to each that the motion was statutorily-based and sought disqualification for interest under Judiciary Law §14. That not a single judge saw fit to dissent from the Court's fraudulent pretext that the motion was made 'on nonstatutory grounds' further reinforces the conspiratorial and collusive nature of their deceit. Indeed, any one judge 'with a proper sense of duty', could have disqualified himself and, by requisite disclosure, exposed the fraudulent acts of his colleagues." (my reargument motion, ¶¶43-44).

Although my disqualification motion asserted (¶9) that "all seven of th[e] Court's judges must recuse themselves so as to avoid the appearance of their bias", Judge Wesley – alone among the seven – was not specifically alleged to be disqualified for interest. This was not because he was not disqualified for interest – and my notice of motion did not exclude him as being so disqualified. Rather, it was because I had no information on which to found allegations. Thus, I did not know whether Judge Wesley had knowledge of judicial misconduct complaints against him, filed with the Commission. According to Judge Wesley's response to question #7 of the public portion of the Senate Judiciary Committee's questionnaire, he was a Supreme Court justice from January 1987 to April 1994, an Appellate Division justice from April 1994 to December 1996, and a Court of Appeals judge since January 1997. Over this 16-year judicial tenure, it is certainly not unlikely that a judicial misconduct complaint would have been lodged against him – especially if his flagrant judicial misconduct in *Schulz v. New York State Legislature* and in my lawsuit against the Commission are characteristic of the lack of integrity and impartiality he brought to his other adjudications.

I also did not know that Judge Wesley was not intending to serve out the remaining eight years of his 14-year term on the New York Court of Appeals – and that he was then pursuing an appointment to the federal bench. Such federal judicial appointment would require the backing of powerful political patrons, such as Governor Pataki, who the record of my lawsuit showed to be implicated in the Commission's corruption, as well as to be manipulating and corrupting the processes of judicial appointment in the state courts, including "merit selection" to the New York Court of Appeals[5].

Thus, under the heading, "The Duty of this Court's Judges to Make Disclosure of Pertinent Facts Bearing Upon their Interest and Bias" (p. 63), my disqualification/disclosure motion requested that all seven judges disclose their

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[5] The criminal implications of this lawsuit on Governor Pataki, identified from the outset of the litigation and established by innumerable substantiating documents in the record, including criminal and ethics complaints against him, is best summarized, with exhaustive record references, at ¶¶15-31 of my August 17, 2001 motion in the Appellate Division, First Department for its disqualification and for disclosure, under the title heading, "This Court's Justices Have a Self-Interest in the Appeal to the Extent they are Dependent on Governor Pataki for Reappointment to this Court and for Elevation to the New York Court of Appeals". For your convenience, a copy is annexed (Exhibit "C").

knowledge of judicial misconduct complaints filed against them with the Commission, noting that "all except Chief Judge Kaye, who had no prior judicial experience, served on lower state courts" (¶118). I also stated:

> "it may be assumed that Associate Judge Richard Wesley, who was Governor Pataki's first appointee to this Court, has had close personal, professional, and political relationships with him going back to the years in which they were together in the State Legislature." (my disqualification/disclosure motion, ¶120).[6]

Had Judge Wesley disclosed his knowledge of judicial misconduct complaints filed against him with the Commission – which was his mandatory obligation to do -- this would have been relevant to his response to the confidential portion of the Senate Judiciary Committee's questionnaire, whose question #3(b) asks:

> "Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for a breach of ethics, unprofessional conduct or violation of any rule of practice? If so, please provide full details." (Exhibit "B").

Had he disclosed his relationships with Governor Pataki – also his mandatory obligation to do on my disqualification/disclosure motion – this would have been relevant to his response to question #26 of the public portion of the Senate Judiciary Committee's questionnaire (Exhibit "B"). In that response, Judge Wesley identifies that the Governor's federal judicial screening committee "reviews candidates for the District Court" and, therefore, did not recommend his nomination[7]. His response to the related inquiry, "describe your experience

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[6] Judge Wesley's response to question #7 of the Senate Judiciary Committee questionnaire identifies his tenure in the New York State Assembly: from January 1979 to June 1982, he was Assistant Counsel to the Minority Leader and from January 1983 to January 1987, he was an Assemblyman. It has been reported in the press that "[w]hile in the Assembly he became close to Governor Pataki, then himself a young assemblyman.", "*Wesley Said to Be Choice for 2nd Circuit*", New York Law Journal, Daniel Wise, 1/12/03.

[7] The Governor's March 16, 2001 press release announcing the creation of his "Federal Appointments Screening Committee" to "screen and review candidates for nomination by President George W. Bush to serve as U.S. Attorney and for federal judgeships" did NOT specify any exclusion of candidates for the Second Circuit Court of Appeals.

The record of my lawsuit contains CJA's March 30, 2001 letter to the Executive Director

in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated", then begins: "I was called to the White House on September 18, 2002 with regard to a vacancy at the Second Circuit."

There is clearly something missing here. Judge Wesley has no national reputation such that, unsolicited, the White House would be calling him "out of the blue". Someone in a "high place" presumably urged his nomination on the White House – a someone likely to have been Governor Pataki.

Notably, September 18, 2002, the date Judge Wesley identifies as having been "called to the White House", was six days after the Court's September 12, 2002 decision, dismissing, with *no law* and *factual lies* my May 1, 2002 disqualification motion, denying, *without reasons*, my so-called "application for recusal", and ignoring, *without mention*, my request for disclosure, as likewise, *without mention*, my request for:

> "disciplinary and criminal referrals, pursuant to §§100.3D(1) & (2) of the Chief Administrator's Rules Governing Judicial

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of the Governor's State Judicial Screening Committees, whose RE clause highlighted its request for "information as to the newly-created 'Federal Appointments Screening Committee', including its membership, rules and procedures, questionnaire forms, and telephone number". The closing paragraph of the letter discussed this request as follows:

> "Finally, *a propos* of the Governor's March 16, 2001 press release announcing the formation of a 'Federal Appointments Screening Committee' to 'screen and review candidates for nomination by President George W. Bush to serve as U.S. Attorney and for federal judgeships', CJA requests information as to who, in addition to the Governor's appointed chairman, Court of Claims Judge John O'Mara, will be serving on the Committee. Please also provide information as to the new Committee's screening and review procedures, including a blank questionnaire, *if any*, that applicants will be required to complete, as well as a telephone number for the Committee so that we may communicate with it directly." (at p. 5, emphasis in the original).

As with virtually all of CJA's many, many written requests for information and documents pertaining to the Governor's state judicial screening process – a significant portion of which are part of the record – CJA received no response whatever. [*See* Exhibit "I" to my August 17, 2001 disqualification/disclosure motion in the Appellate Division, First Department, which is CJA's above-quoted March 30, 2001 letter, unresponded to by the Governor's office.]

> Conduct and DR 1-103(A) 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." (my disqualification/disclosure notice of motion).

On that same September 12, 2002 date, but by separate decision[8], the Court dismissed, "on the Court's own motion", my May 1, 2002 appeal of right, *without* responding to the due process ground articulated by its own decision in *Valz v. Sheepshead Bay*, 249 N.Y. 122, 131-2 (1928), upon which my appeal was *expressly* predicated, and, likewise, *without* responding to my showing that my due process constitutional right of appeal was "analogous...if not *a fortiori*" to that recognized by the Court in *General Motors v. Rosa*, 81 N.Y.2d 1004 (1993), 82 N.Y.2d 183, 188 (1993). This September 12, 2002 decision also denied, *without reasons*, my June 17, 2002 motion to strike the Attorney General's memorandum of law in opposition to my disqualification motion and his letter opposing my appeal of right – *without identifying the basis* upon which the motion was made, *to wit*, because "each such document is a 'fraud on the court'", further entitling me, *inter alia*, to referral of the Attorney General and Commission:

> "for disciplinary and criminal investigation and prosecution...consistent with this Court's mandatory 'Disciplinary Responsibilities' under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, for *inter alia*, filing of false instruments, obstruction of the administration of justice, and official misconduct" (my notice of motion to strike, etc.),

as well as to "referral of the record herein to the New York State Institute on Professionalism in the Law for study and recommendations for reform."

All these dispositions by the Court's September 12, 2002 decisions are extensively discussed by my October 15, 2002 reargument motion as not only "judicial frauds", being legally unfounded, factually insupportable, and knowingly false, but as "the manifestation of the Court's disqualifying interest and actual bias" (¶7), with

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[8] The Court's second September 12, 2002 decision is "C-1" to my reargument motion.

> "a common criminal purpose: to cover up the systemic judicial corruption evidentiarily established by the record herein, as to which my disqualification/disclosure motion demonstrated that six of the Court's judges are involved or implicated..." (¶8).

Significantly, Judge Wesley identifies only one other time frame in response to question #26 (Exhibit "B") -- and that is "late December" when he was "contacted by the White House and told they would like [him] to complete some paperwork for a background check." That would be no more than two weeks after the Court's December 17, 2002 decision denying my reargument motion, *without reasons* and, additionally, *without* identifying my request for disclosure IF THE MOTION WERE DENIED:

> "as to whether, to their knowledge, they are now, or previously have been, the subject of judicial misconduct complaints filed with the Commission, and other material facts bearing upon their personal, professional, and political relationships with, and dependencies on, the persons and entities whose misconduct is the subject of this appeal or exposed thereby" (my reargument notice of motion),

and without making *any* of this requested disclosure.

Such flagrant judicial misconduct was compounded by the Court's second December 17, 2002 decision denying my motion for leave to appeal, including – *but without identifying* – the requested "other & further relief" mandated by the record, *to wit*

> "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 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 recommendations for reform." (my leave to appeal notice of motion).

In view of the criminal repercussions of the case on Governor Pataki (Exhibit "C"), the September and December dates that Judge Wesley identifies reasonably suggest that he was promptly rewarded for his corrupt September 12, 2002 and December 17, 2002 decisions, "protecting" the Governor and others, including his Court of Appeals' brethren implicated in the systemic governmental and judicial corruption established by the record – as to which he had a mandatory duty under cited ethical rules to "take appropriate action". Certainly, after having been "called to the White House" in September for possible appointment to a Second Circuit judgeship, it is inconceivable that a judge who did not view his nomination as a "pay-back" reward for his "protectionism" would fail to scrupulously confront the Court's serious judicial misconduct detailed by my reargument motion – and reinforced by the "Question Presented for Review" by my motion for leave to appeal:

> "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*:
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> > "...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd. 1)..." (emphasis added)".

Indeed, as my reargument motion itself pointed out:

> "Faced with an uncontroverted and incontrovertible record establishing, *inter alia*, that the Commission 'has been the beneficiary of FIVE fraudulent judicial decisions without which it would NOT have survived', the Court's failure to *sua sponte* grant leave to appeal, where it *sua sponte* dismissed the notice of appeal on a boilerplate, further manifests its disqualifying interest and actual bias. No other conclusion can be drawn about the Court that is vested with 'primary responsibility for the

> administration of the judicial branch of government'[fn18]." (my reargument motion, ¶56, emphasis in the original).

Judge Wesley's misconduct in connection with my disqualification/disclosure motion – all the more impeachable because he adhered to it on reargument[9] -- exposes the inadequacy and deceit of his response to question #22 of the public portion of the Senate Judiciary Committee's questionnaire (Exhibit "B"):

> "Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and

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[fn18] *New York Association of Criminal Defense Lawyers v. Kaye*, 95 N.Y.2d 556, 560 (Exhibit []).

[9] The standard for removal, in the record before Judge Wesley and his fellow Court of Appeals judges, is:

> "*A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...*", italics added by the Appellate Division, First Department in *Matter of Capshaw*, 258 A.D. 470, 485 (1st Dept 1940), quoting from *Matter of Droege*, 129 A.D. 866 (1st Dept. 1909)."

> "A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another..." (at 568, emphasis in original). "Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe." (at 574). *Matter of Bolte*, 97 A.D. 551 (1st Dept. 1904) (my motion for leave to appeal, Exhibit "L", p. 2; my December 22, 2000 Appellant's Brief in the Appellate Division, First Department, p. 4).

CJA's position, also reflected by the record – and pertinent to evaluation herein of Judge Wesley's fitness for an even more powerful judgeship -- is that "there is NO reason why there should be a different standard in confirming judges than in disciplining them." [*See* Exhibit "J-2" (p. 3) to my August 17, 2001 disqualification/disclosure motion in the Appellate Division, First Department].

> financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated." (emphases added).

Judge Wesley's response – made anywhere from between two weeks to three months after his participation in the December 17, 2002 denial of my reargument motion[10] – does not address the range of "potential conflict[s] of interest" embraced by the question nor specifically provide "categories of litigation". This should have been independently obvious to him – and certainly obvious from my disqualification/disclosure motion underlying the reargument motion he had so recently denied.

Judge Wesley's five-sentence response to #22 is limited to extrajudicial "familiarity" and "relationships" with "the parties". As to these limited conflicts, he asserts his past and future diligence, as a judicial officer:

> "that neither a potential conflict of interest exists nor the appearance of such. I have always adhered to the New York Code of Judicial Conduct in that regard (see, Canon 3[C]) and will adhere to the requirements of the Code of Judicial Conduct (28 USC §455)."

It is odd that Judge Wesley, a New York Court of Appeals judge, should reference the New York Code of Judicial Conduct -- a bar association product – rather than the Chief Administrator's Rules Governing Judicial Conduct, which, pursuant to Article VI, §§20 and 28(c) of the New York State Constitution, the Court of Appeals approves. In any event, Judge Wesley's citation to Canon 3C is out of date. Canon 3 was reorganized and revised many years ago. Canon 3C, formerly entitled "Disqualification", is now Canon 3E. Its equivalent is §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, also entitled "Disqualification".

Both §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Canon 3E – as likewise 28 U.S.C. §455 – specify that a judge must disqualify himself where he has an "interest that could be substantially affected

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[10] Although the public portion of Judge Wesley's completed Senate Judiciary Committee questionnaire is not dated, his response to #26 is that he completed it after being contacted by the White House "[i]n late December" (Exhibit "B").

by the proceeding". This type of conflict of interest is not expressly identified by Judge Wesley's question #22 response. As my lawsuit proves, Judge Wesley is both unwilling to make mandatorily-required disclosure that would make such interest obvious – even where expressly requested -- or to disqualify himself by reason of that undisclosed interest. This, over and beyond his brazen dishonesty by concealing, rather than confronting, the interests of his fellow judges, even when particularized, with substantiating documents in a formal motion before him – and in ignoring the appearance, not to mention the actuality, of bias resulting therefrom.

That Judge Wesley has already employed his judicial office to "protect" state officials -- including Governor Pataki, on whom his federal judicial nomination has depended – as well as his judicial brethren, not only on the New York Court of Appeals, but on the Supreme Court and Appellate Division – shows that he is unfit for judicial office -- period. Clearly, however, he is unfit for the substantial category of litigation brought in federal court against New York state officials, state judges among them, for civil rights violations, such as under 42 U.S.C. §1983[11] -- firstly, because he will not make requisite disclosure of his

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[11] Such federal lawsuits include those against the New York Court of Appeals and its judges. Examples are the four federal lawsuits Judge Wesley lists after *New York State Association of Criminal Defense Lawyers v. Kaye, et al.* in response to question #21 of the public portion of the Senate Judiciary Committee's questionnaire (Exhibit "B"). The necessity that the records of these four lawsuits be examined – as likewise the records of any lawsuits brought against the Court of Appeals and its judges during the period of Judge Wesley's tenure – is reinforced by the record of my lawsuit. Indeed, that Judge Wesley identifies that the Court of Appeals either denied leave to appeal or dismissed appeals in three of these four lawsuits (and in perhaps all four) is all the more significant in light of my May 1, 2002 disqualification/disclosure motion. As therein asserted (*inter alia*, ¶¶42-58) with substantiating documentation, the Court has a

> "pattern and practice of protectionism, *to wit*, of accepting for review those appeals where egregious constitutional violations can be brushed aside as if judicial 'error' – ...but of denying review where the constitutional violations are...of such nature, magnitude, and durations that they cannot be disguised as anything but corrupt and retaliatory conduct by lower court judges." (disqualification/disclosure motion, ¶56).

According to Judge Wesley's descriptions, two of these four federal lawsuits remain pending and two were dismissed. Obviously, as to *Sinacore v. New York Court of Appeals*, (8:02-CV-0761-T-27MSS), dismissal based on the judicial defendants' "absolute immunity" has NO bearing on the substantive merit of the plaintiff's claim. As to *Multani v. U.S. DOJ, et al.*, (97-CV-628),

personal, professional, and political relationships that would motivate him to insulate such state officials from suit and, secondly, because where those relationships entail dependencies and other aspects of interest, he will also not make disclosure and disqualify himself. Nor will he "take appropriate action" when his federal judicial brethren similarly disregard their disclosure and disqualification obligations and "throw" meritorious lawsuits by fraudulent decisions. Indeed, based on what he did in my lawsuit, there can be no question but that he will join with his Second Circuit Court of Appeals colleagues in falsifying, distorting, and suppressing material facts and in disregarding black-letter law to deprive citizens of a federal forum for redressing the heinous constitutional violations committed and countenanced by corrupt and politicized New York state courts.

To eliminate ANY doubt that such scenario is not theoretical – and that Second Circuit judges, with undisclosed relationships to New York state judges and to other state officials, render fraudulent decisions to shield these state actors, sued in §1983 civil rights actions – as to which disqualification/disclosure motions under 28 U.S.C. §455 are just as worthless as motions in New York state courts under Judiciary Law §14 and §§100.3E & F of the Chief Administrator's Rules Governing Judicial Conduct – and as to which the federal judicial complaint mechanism under 28 U.S.C. §372(c) is as corrupted as the New York State Commission on Judicial Conduct -- you need only examine the unopposed submissions filed in the United States Supreme Court in the §1983 federal action, *Doris L. Sassower v. Hon. Guy Mangano, et al.*, #98-106[12]. The record

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identified by Judge Wesley as based on alleged "violation of Multani's right to due process as a result of 'judicial malpractice'", he does not cite any of the grounds upon which that case was dismissed. In any event, *Multani* is especially significant because Judge Wesley's participation in the underlying state action where the "judicial malpractice" occurred was NOT at the Court of Appeals level, but as a member of the Appellate Division, Fourth Department panel. Such participation is presumably the reason why Judge Wesley took "no part" when the appellate decision was sought to be appealed to the Court of Appeals (Mo. No. 1716, SSD 117). This should be verified with Judge Wesley – as, likewise, the reason why Judge Titone also took "no part".

[12] The record of that lawsuit establishes, *on the federal level*, what the record of my lawsuit against the Commission establishes *on the state level*: the corruption of ALL avenues of redress for judicial misconduct. Indeed, these are companion cases: my lawsuit being the state counterpart to that lawsuit.

before Judge Wesley contained a copy of Doris Sassower's cert petition and supplemental brief[13]. Indeed, I had transmitted a copy of these documents to the Commission in substantiation of the very *facially-meritorious* judicial misconduct complaint, whose dismissal by the Commission, *without* investigation, in violation of Judiciary Law §44.1, generated my lawsuit against it (Exhibit "D").

As reflected by footnote 1 of my motion for leave to appeal, annotating my "Question Presented for Review", a copy of the lower court record, *in full*, was provided to the Court on May 1, 2002, "Law Day", in conjunction with my appeal of right and disqualification/disclosure motion. Since the Court has now returned this copy to me in the same patriotic, draped in the American flag and ribbon-bedecked boxes in which I had personally delivered them, and likewise returned the copy of the simultaneously-delivered further documents substantiating my disqualification/disclosure motion – all in seemingly "untouched by human hands" condition[14] -- you can review the very copies that

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[13] These became part of the record on my July 28, 1999 omnibus motion in Supreme Court, whose first branch was to disqualify the Attorney General from representing the Commission "for non-compliance with Executive Law §63.1 and for multiple conflicts of interest". These multiple conflicts included those arising from *Sassower v. Mangano*, as to which I filed a copy of the cert petition and supplement brief in substantiation. [A duplicate of the cert petition and supplemental brief are in "File Folder II: 1/27/99 ltr to Spitzer" pertaining to that July 28, 1999 omnibus motion.]

[14] With the exception of the two pages of my April 22, 1999 Notice of Right to Seek Intervention, attached to my Notice of Petition and Verified Petition, there are NO creases in the documents that would reflect examination. This includes the briefs that were before the Appellate Division, First Department. It also includes my January 17, 2002 reargument motion and February 20, 2002 motion for leave to appeal, made to the Appellate Division, First Department – whose importance was highlighted by my subsequent Court of Appeals submissions (my May 1, 2002 disqualification/disclosure motion: ¶3; my May 1, 2002 jurisdictional statement in support of my appeal of right, pp. 8-10). Indeed, my October 24, 2002 motion for leave to appeal, concluded as follows (pp. 21-22):

> "Finally, as to the related transcending issues encompassed by this appeal – all of which can only enhance public trust and confidence in the judiciary and in the judicial process—Petitioner-Appellant refers the Court to her February 20, 2002 affidavit in support of her motion in the Appellate Division for leave to appeal. Suffice to repeat this Court's words quoted therein, first from *Nicholson* (at 607):

were before Judge Wesley[15]. I am, therefore, depositing them with Carolyn O'Hara, Administrative Assistant to the City Bar's Committee on the Judiciary. Additionally, I am depositing with her a copy of the submissions that were before Judge Wesley on: (1) my May 1, 2002 motion to disqualify the Court's judges and for disclosure, etc.; (2) my May 1, 2002 jurisdictional statement in support of my appeal of right; and (3) my June 17, 2002 motion to strike, for costs, sanctions, disciplinary & criminal referrals, disqualification of the Attorney General, etc. These were disposed of by the Court's two September 12, 2002 decisions -- the subject of my October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief. A copy of the submissions on that reargument motion is also being deposited with Ms. O'Hara, as well as of the submissions on my October 24, 2002 motion for leave to appeal.

Certainly if, after reviewing the particulars of Judge Wesley's impeachable judicial misconduct chronicled by my reargument motion and reinforced by my motion for leave to appeal, there is any charitable doubt as to his unfitness for ANY judicial office or, indeed, for ANY office of public trust, your obligation is to examine the underlying substantiating record.

It must be noted, however, that even without the underlying record, my reargument motion and motion for leave to appeal permit verification of their salient aspects by virtue of their annexed exhibits and lengthy record excerpts. As illustrative, the Court's utterly indefensible LIE that my disqualification motion was made on "nonstatutory grounds" is verifiable from Exhibit "B-2"

> 'There can be no doubt that the State has an overriding interest in the integrity and impartiality of the judiciary. There is 'hardly *** a higher governmental interest than a State's interest in the quality of its judiciary' (*Landmark Communications v. Virginia*, 425 US 829, 848 [Stewart, J., concurring]',
>
> and then from *Commission v. Doe* (at 61), where the Court recognized the Commission as 'the instrument through which the State seeks to insure the integrity of its judiciary'."

[15] Judge Wesley also had the benefit of an inventory of these documents, which is annexed to Exhibit "F" to my June 7, 2002 reply affidavit on my disqualification/disclosure motion.

to my reargument motion, annexing a copy of my May 1, 2002 notice of motion and the first eight pages of my moving affidavit, including its table of contents. Likewise, the Court's similarly indefensible LIE in *Schulz v. New York State Legislature*, 92 N.Y.2d 917 (1998), is verifiable from Exhibit "G" to my reargument motion, annexing a copy of Mr. Schulz' August 17, 1998 notice of motion and moving affidavit. That my appeal of right was expressly predicated on the Court's own decision in *Valz v. Sheepshead Bay*, 249 N.Y. 122, 131-2 (1928), is verifiable from the copy of my May 1, 2002 notice of appeal, annexed as Exhibit "C-2". Also, as to my motion to strike, a copy of my June 17, 2002 notice of motion is annexed as Exhibit "C-3", from which you can verify the all-important basis of the relief sought – and its requested disciplinary and criminals referrals pursuant to expressly invoked mandatory rules.

As for my motion for leave to appeal, you do not even need the analyses of the five fraudulent lower court decisions, annexed thereto as Exhibits "H", "I", "K", "L", to verify that these decisions are legally insupportable and that, as stated in my "Question Presented for Review", four of them, two appellate, contravene the Court's own decision in *Matter of Nicholson* as to the mandatory nature of Judiciary Law §44.1. The quoted excerpts from those analyses in the text of the motion suffice. Indeed, pages 8-12 of my motion, spotlighting the hoaxes perpetrated by Supreme Court Justice Herman Cahn in *Doris L. Sassower v. Commission* (NY Co. #109141/95) and by Supreme Court Justice Edward Lehner in *Michael Mantell v. Commission* (NY Co. #108655/99) pertaining to Judiciary Law §44.1 and 22 NYCRR §7000.3, expose ALL five decisions as judicial deceits, "protecting" and perpetuating a corrupted Commission.

P. Kevin Castel, Esq.

My October 24, 2002 motion for leave to appeal also reflects adversely upon the fitness of P. Kevin Castel, Esq. Most pertinent are pages 7-14 relating to Justice Cahn's fraudulent decision in *Doris L. Sassower v. Commission* and Justice Lehner's fraudulent decision in *Michael Mantell v. Commission* -- exposed as such by my two analyses that were before Acting Supreme Court Justice William Wetzel when he based his dismissal of my lawsuit on those two decisions *exclusively*. Also pertinent are the same pages relating to my February 23, 2000 letter to Governor Pataki[16] and my March 3, 2000 and April 18, 2000

[16] My February 23, 2000 letter to Governor Pataki, with exhibits, is contained in File Folder "A" to CJA's October 16, 2000 report to the bar associations on "merit selection" – transmitted

letters to Chief Judge Kaye[17]. These will permit you to begin to assess the gravity of Mr. Castel's disregard of his mandatory duties under DR 1-103(A) of New York's Disciplinary Rules of the Code of Professional Responsibility, not only as an individual, private lawyer, but as one occupying significant positions of public trust and bar leadership. Indeed, had Mr. Castel discharged his ethical duties in such positions, upon my long-ago notice to him of what was taking place, my lawsuit might never have reached Judge Wesley. Timely and appropriate action by Mr. Castel would have curtailed, if not halted, the judicial and governmental corruption which thereafter ensued – including corruption involving Chief Judge Kaye and Governor Pataki *directly*, as the record that came before Judge Wesley documentarily established.

On September 12, 2000 – exactly two years before the Court's two self-interested September 12, 2002 decisions that became the subject of my October 15, 2002 reargument motion – I had a conversation with Mr. Castel at the conclusion of a meeting of the "Committee on Judicial Conduct", held at the City Bar. This is reflected by my September 18, 2000 letter to him and to Guy Miller Struve, Esq., who was also part of that conversation. Unbeknownst to me, but reflected by #17 and #10 of the public portion of Mr. Castel's completed Senate Judiciary Committee questionnaire (Exhibit "E"), he was then not only a member of the Departmental Disciplinary Committee of the First Judicial Department and a member of its Policy Committee, but President-Elect of the Federal Bar Council. Previously, he had been a member of the City Bar's Committee on Professional and Judicial Ethics, as well as a member of the City Bar's Council on Judicial Administration.

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to the Court in substantiation of my May 1, 2002 disqualification/disclosure motion (¶95). As reflected by my October 24, 2002 motion for leave to appeal (p. 8, fn. 5), such letter, presenting a 14-page analysis of Justice Wetzel's decision, was the precursor of the presentation in my December 22, 2000 appellant's brief. A copy of the letter, without exhibits, is also annexed as Exhibit "F" to my August 17, 2001 disqualification/disclosure motion in the Appellate Division, First Department.

[17] My March 3, 2000 letter to Chief Judge Kaye is annexed as Exhibit "G" to my October 24, 2002 motion for leave to appeal, albeit without exhibits. With exhibits, that letter, as likewise my April 18, 2000 letter to Chief Judge Kaye, are contained in File Folder "A" to CJA's October 16, 2000 report to the bar associations on "merit selection" – transmitted to the Court in substantiation of my May 1, 2002 disqualification/disclosure motion. [*see also* Exhibits "L-2" and "N" to my August 17, 2001 disqualification/disclosure motion in the Appellate Division, First Department].

My September 18, 2000 letter apprised Messrs. Castel and Struve that any legitimate bar committee on judicial conduct would have to address evidentiary proof "that the New York State Commission on Judicial Conduct and 28 USC §372(c) are utterly worthless in protecting lawyers, litigants, and the general public from even the most unabashed judicial misconduct" – which the City Bar had wilfully failed and refused to do over the many, many years in which CJA had provided and proffered it with such evidentiary proof. In substantiation, and so that Messrs. Castel and Struve might have a more informed perspective on the "Committee on Judicial Conduct" then being established, I provided each of them with a copy of my 25-page June 20, 2000 letter to City Bar President Evan Davis, chronicling a decade of CJA's interaction with the City Bar – as to which President Davis had refused to meet with me and refused to otherwise respond. The RE: clause of that letter had requested that the City Bar establish "a Standing Committee on Judicial Conduct" and also requested "*amicus* support and legal assistance" in my lawsuit against the Commission, whose appeal from Justice Wetzel's decision had yet to be perfected.

My June 20, 2000 letter identified (pp. 5-8) that the City Bar had long had a copy of the record of my lawsuit, including a copy of the records of *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission*, which my lawsuit physically incorporated, and that such established:

> "*prima facie*, that in all three cases, the Commission had NO legitimate defense to the proof of its corruption and that it survived only because New York's highest legal officer, the State Attorney General, resorted to fraudulent litigation tactics on its behalf, which state judges then covered up by fraudulent judicial decisions."

I then stated:

> "Under 22 NYCRR §1200.4, codifying DR-1-103(A), 'Disclosure of Information to Authorities', of New York's Disciplinary Rules of the Code of Professional Responsibility [fn], reflected, as well in Rule 8.3 of the ABA Model Code of Professional Conduct [fn], an individual attorney has a duty to report fraudulent conduct by another attorney, to 'a tribunal or

> other authority empowered to act'. This duty applies with even greater force to the City Bar, which has successfully advocated extending an individual lawyer's responsibilities under ethical rules to law firms [fn] and which can hardly have any credibility in espousing ethical rules for the legal community when it exempts itself from any corresponding ethical obligations.
>
> The City Bar's duty to report to appropriate authorities the evidence of high-level corruption presented by the file of *Elena Ruth Sassower v. Commission* is essential, as CJA has been wholly unable to obtain criminal and disciplinary investigation from the governmental agencies and public officers to which it has turned. Among these are the Manhattan District Attorney, the U.S. Attorney for the Southern District of New York, the U.S. Attorney for the Eastern District of New York, the New York State Ethics Commission – in addition to the State Attorney General and the Commission on Judicial Conduct, the two key participants in that corruption. Indeed, the file of *Elena Ruth Sassower v. Commission* itself chronicles CJA's exhaustive efforts to obtain official investigation and prosecution while that litigation was progressing in Supreme Court/New York County. These efforts have continued since Acting Supreme Court Justice Wetzel 'threw' the case by a fraudulent January 31, 2000 judicial decision – as evident from the mountain of CJA's subsequent correspondence to those same governmental agencies and public officers. As resoundingly demonstrated therein, these governmental oversight agencies and public officers are disabled by disqualifying conflicts of interest -- which they refuse to address, let alone disclose, in violation of law and ethical rules of professional responsibility. The result has been a complete inability to bring the corruption established by the file of *Elena Ruth Sassower v. Commission* 'under law enforcement'."

My letter further identified (pp. 7-8) that the City Bar had been provided with copies of this mountain of correspondence and annexed an inventory. As to these, I stated:

> "Of particular importance are CJA's February 23, 2000 letter to Governor Pataki, containing (at pp. 15-29) an analysis of Justice

> Wetzel's fraudulent January 31, 2000 decision and requesting (at pp. 33-34) that he appoint a special prosecutor or investigative commission, and CJA's March 3, 2000 to Chief Judge Kaye, requesting that she appoint a special inspector general to investigate the Commission's corruption.
>
> Based upon the fact-specific, document-supported presentations in those letters – and in CJA's subsequent April 18, 2000 letter to Chief Judge Kaye – CJA requests that the City Bar also call upon the Governor and the Chief Judge to appoint an independent investigative and prosecutorial body, using ALL its public relations and press connections for that purpose, and, additionally, that it pursue other steps to secure an official investigation and criminal prosecution of the corruption established by the file of *Elena Ruth Sassower v. Commission*, including filing a complaint with the Public Integrity Section of the U.S. Justice Department's Criminal Division.
>
> To the extent that the City Bar believes that the appellate process can be counted on to furnish a 'remedy' for the annihilation of the rule of law that has occurred in *Elena Ruth Sassower v. Commission*, depriving the People of this State of redress against a demonstrably corrupted Commission, CJA further requests the City Bar's *amicus* support and legal assistance in the appeal, which must be perfected by the end of the year.... A copy of the March 23, 2000 Notice of Appeal and Pre-Argument Statement is annexed..." (emphasis in the original).

In his positions of public trust and bar leadership, current, former, and impending, Mr. Castel was not free to ignore the fact-specific, documented presentation I provided him with in September 2000, without committing serious professional misconduct. Indeed, his duty was all the greater since, as my 25-page June 20, 2000 letter particularized, a virtual "who's who" of those in positions of public trust and leadership had abandoned their obligations under professional and ethical codes of conduct.

That Mr. Castel, then a member of the First Department Disciplinary Committee, on its Policy Committee, and incoming President of the Federal Bar

Council, was content to take NO investigative or corrective action in response to the horrifying state of affairs chronicled by my June 20, 2000 letter and highlighted by CJA's $3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4)[18], and by my article, "*Without Merit: The Empty Promise of Judicial Discipline*" (The Long Term View (Massachusetts School of Law), Vol. 4, No. 1, summer 1997) – copies of which were not only directly annexed thereto[19], but which I had given him, *in hand*, on September 12, 2000 -- establishes that he lacks the integrity and fidelity to the rule of law and public welfare essential to being a judge.

Obvious from his present nomination for a federal court judgeship is that Mr. Castel then harbored judicial ambitions[20] – the realization of which he knew would be forfeited by adherence to professional and ethical codes, not the least reason being their ramifications on the Governor, whose patronage he required to obtain a judgeship[21]. He, therefore, was perfectly willing to accept the

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[18] As identified by my June 20, 2000 letter (pp. 10-11), my lawsuit against the Commission represents "the confluence of the three litigations which '*Restraining Liars*' describes'". This was also identified by my May 1, 2002 disqualification/disclosure motion (¶33) which, quoting from the lower court record, further elaborated that it "necessarily exposes the official misconduct of [the] Attorney General ...in those litigations and subsequent thereto in wilfully failing and refusing to take corrective steps upon notice...of his mandatory ethical and professional duty to do so."

[19] These are Exhibits "A-3" and "A-10", respectively, to my June 20, 2000 letter. Because of their importance, they are also annexed hereto as Exhibits "F-1" and "F-2".

[20] Mr. Struve was then already pursuing his own judicial ambitions. In 1997 and 1998, he had been approved by the Commission on Judicial Nomination for appointment to the New York Court of Appeals, but was passed over by Governor Pataki in favor of then Appellate Division, Fourth Department Justice Wesley and thereafter in favor of Appellate Division, Second Department Justice Rosenblatt. In 2002, the Commission on Judicial Nomination again approved Mr. Struve, but, again, he was passed over by Governor Pataki – this time in favor of the Governor's former deputy counsel who he had previously made a Court of Claims judge, Susan Read.

[21] Mr. Castel provides precious little information in response to question #26(b) of the public portion of the Senate Judiciary Committee's questionnaire: "Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated". Indeed, his response is confined to "interviews", as to which he begins by stating, "I was interviewed by a federal judicial screening committee appointed by Governor George Pataki of New York." (Exhibit "E"). The bar associations must require a more appropriate "descri[ption]" of Mr. Castel's "experience" – including when he was

perversions particularized by my June 20, 2000 letter – and to "stand idly by" while the public was left defenseless against the most brazen judicial misconduct, state and federal, while an unconstitutional attorney disciplinary law, controlled by the courts, was used to retaliate against a judicial whistle-blowing attorney who had adhered to such professional and ethical codes; while New York's highest law enforcement office, the State Attorney General, thwarted legitimate legal challenges to corrupt judges and the Commission by engaging in a level of litigation misconduct which would be grounds for disbarment if committed by a private attorney, and while judicial selection processes, state and federal, were politicized and corrupted, including by rigged bar association ratings of judicial nominees.

Mr. Castel's simplistic assertion, in response to question #22 of the public portion of the Senate Judiciary Committee questionnaire, that he "will comply with all existing codes governing judicial conduct" (Exhibit "E"), is rebutted by his disregard of existing codes of attorney conduct, when his fidelity to those codes was most needed. Put to the test, Mr. Castel failed abysmally to rise above his self-interest and the personal, professional, and political ties compromising his impartiality.

CONCLUSION

Unless bar-promulgated and endorsed ethical rules of professional responsibility are to be totally stripped of meaning, and likewise the law embodying them, Judge Wesley and Mr. Castel must be found unfit for the federal judgeships to which they have been nominated. Their disregard of fundamental principles of impartiality, as well as of their obligation to report misconduct by attorneys and judges, was not as individual, private lawyers, but as lawyers holding positions of great public trust and leadership. The result has been a continuation of the very judicial and governmental corruption presented to them for redress.

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interviewed and the relevant background facts. Among these, whether and when he filed an application with the Governor's office and completed a questionnaire. Copies, in blank, of any such application and questionnaire must be obtained – as likewise of the rules and procedures of the Governor's federal judicial screening committee – especially, as CJA has been unable to obtain same.

As set forth in fn. 7 *supra*, the Governor's office is not responsive to CJA's requests for information and documents concerning the Governor's judicial screening committees – including as to his federal judicial screening committee.

The thousands, if not millions, of people who have been, and will be, directly and irreparably harmed by this corruption – and the public at large -- have a right to expect that you will call upon Judge Wesley and Mr. Castel to account for their betrayal of mandatory ethical rules of professional responsibility, which required them to uphold the rule of law on which the public interest rests.

As Judge Wesley did not see fit to respond to my 36-page October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief, except to deny it *without* reasons and *without* disclosure, he must do so now, addressing, if not each and every paragraph, than the facts and law presented by each and every section and subsection of the motion, for which a table of contents appears at pages 5-6. Likewise, since his response to the "Question Presented for Review" in my 22-page October 24, 2002 motion for leave to appeal, was to deny it, *without* reasons, and *without* making the requested disciplinary and criminal referrals, pursuant to the cited ethical rules, he should be expected to demonstrate that the five lower court decisions of which the Commission is the beneficiary are NOT frauds. Let him begin by just trying to explain how the mandatory statutory language of Judiciary Law §44.1 regarding investigation of judicial misconduct complaints not determined by the Commission to be facially lacking in merit, so recognized by the Court in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980), can be reconciled with the four decisions – two appellate -- which purport that the Commission has NO such mandatory duty. Certainly, Judge Wesley should be expected to confront my analyses of the decisions, annexed as Exhibits "H", "I", "K", and "L" -- or, at least, their salient aspects, incorporated into the text of my motion. This would include pages 8-12, as to the hoaxes perpetrated by Justice Cahn and Justice Lehner.

Needless to say, Mr. Castel, who did not see fit to respond to my September 18, 2000 letter, should be asked to identify what steps he took, consistent with his professional and ethical responsibilities, to verify the truth of its assertions – whose particulars were provided by my transmitted June 20, 2000 letter. This would include whether, in addition to reading the letter and examining its annexed exhibits[22], he reviewed the two free-standing compendia of exhibits I

[22] Among these exhibits: my 3-page analysis of Justice Cahn's decision in *Doris L. Sassower v. Commission* – the same analysis as is Exhibit "H" to my motion for leave to appeal -- and my Pre-Argument Statement in my lawsuit against the Commission, summarizing the six claims for relief presented by my Verified Petition and the course of the proceeding prior to, and before, Justice Wetzel. These are, respectively, attached to Exhibits "B" and "E" to my June 20,

hand-delivered to Mr. Struve's office – and, if so, which exhibits. As Mr. Castel assumed his two-year presidency of the Federal Bar Council in November 2000, maintaining, with the City Bar, a "Joint Committee on Judicial Conduct", he should be specifically asked to address my discussion of the federal judicial disqualification statutes and the federal judicial disciplinary mechanism under 28 U.S.C. §372(c) summarized in my article, "*Without Merit: The Empty Promise of Judicial Discipline*" (Exhibit "F-2"). To further ensure that his responses are based on empirical evidence, NOT the self-serving claims of the judicial and legal establishment that he presumably fostered as President of the Federal Bar Council, he should be expected to confront the particulars presented, with substantiating documentation, in the uncontested cert petition and supplemental brief in *Doris L. Sassower v. Hon. Guy Mangano, et al.* -- which was his duty to do 2-1/2 years ago, and which he could easily have done as such documents were in the possession of the City Bar[23].

I am ready, willing, and able, to be interviewed, as is CJA's Director, Doris L. Sassower, regarding any and all of the foregoing and to answer your questions, including under oath.

Elena Ruth Sassower

cc: Judge Richard C. Wesley
P. Kevin Castel, Esq.
President George W. Bush
Senator Orrin G. Hatch, Chairman, U.S. Senate Judiciary Committee
Senator Patrick Leahy, Ranking Member,
U.S. Senate Judiciary Committee
Senator Charles E. Schumer
Senator Hillary Rodham Clinton
New York State Commission on Judicial Conduct

2000 letter.

[23] As reflected by page 18 of my June 20, 2000 letter, the City Bar had been provided with TWO copies of the cert petition and supplemental brief in *Doris L. Sassower v. Hon. Guy Mangano, et al.*