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**PREPARED PRELIMINARY STATEMENT IN CONNECTION WITH  
THE TESTIMONY OF EVAN DAVIS AND DAN KARSON  
ON BEHALF OF  
THE NEW YORK CITY BAR ASSOCIATION**

**NEW YORK ETHICS REVIEW COMMISSION HEARING  
OCTOBER 14, 2015  
NEW YORK LAW SCHOOL  
185 WEST BROADWAY, NEW YORK, NY 10013**

On March 14, 2014 the New York City Bar Association in partnership with Common Cause New York issued a Report entitled *Hope for JCOPE*.<sup>1</sup> Immediately following the appointment of this Review Commission we sent each member of the Commission a copy of our report together with a request for public hearings. We are very pleased and grateful that the Commission has decided to hold public hearings and has included our participation. We are also eager to answer any questions about our report and its recommendations.

Since 2010, 13 state senators and Assembly members have been convicted of crimes of corruption or dishonesty.<sup>2</sup> In other cases where criminal charges were not brought but where misconduct occurred, one Assembly member was spared prosecution in exchange for testimony; one resigned his seat, one was stripped of his party leadership position; and one resigned before charges were brought. On top of these cases, the former Assembly Speaker and the former Senate majority leader have been indicted and are awaiting trial. And there have been published media reports that additional legislative members are under investigation.

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<sup>1</sup> "Hope for JCOPE" Report of the New York City Bar Association and Common Cause/New York, March 14, 2014, available at <http://www2.nycbar.org/pdf/report/uploads/Hope-for-JCOPE-Report.pdf> (a copy is attached as Exhibit 1).

<sup>2</sup> See Exhibit 2.

Clearly, neither JCOPE nor its predecessor commission has had the deterrent or preventative effect that the public should expect from a body charged with an anti-corruption mission.

We believe that JCOPE's composition - the way its members are chosen by law, the way its staff has been chosen, and the rules under which it operates by law - fails to instill in officeholders, much less the public, any serious confidence or concern that JCOPE can or will deter, uncover or punish unethical or criminal conduct.

We cannot of course speculate as to what thought any of the convicted legislators gave to JCOPE, or for that matter, any law enforcement agency. However, given the number of legislators investigated, charged and/or convicted just during JCOPE's short existence, we think it a fair inference that JCOPE either was of little concern, or was all but invisible to them.

To be effective, an anti-corruption and ethics chartered body must have the following constituents:

- It must be independent and apolitical, and while its members and staff may be appointed by elected officials, those officials must appoint and empower the body with a clear mandate to be independent and apolitical
- It must be empowered to function without the veto or legal restraint of a minority

We have encountered those who sincerely believe that the best way to encourage public confidence in government is to play down vigorously seeking out and calling public attention to unethical behavior. They see vigorous ethics enforcement as a counter-productive idea that will only encourage public cynicism. According to this view, most public officers are ethical and to highlight the bad apples will unfairly tarnish the reputation of the ethical public servants and discourage good people from entering public service.

We believe that vigorous ethics enforcement is in both the public interest and the interest of the many, many public servants who obey the law. This result is particularly clear when far too often it is elected officials who are breaching the public trust and bringing government as a whole into disrepute. Misconduct by an elected official is, and in a democracy should be, a matter of political and electoral consequence. Therefore we need ethics machinery that will proceed independently, vigorously and fairly with complete indifference to those political and electoral consequences.

Thus two major concerns underlie our Report. The first is concern over JCOPE's lack of both actual and perceived independence. JCOPE must be structured with safeguards that will give the public confidence that JCOPE will interpret and enforce ethics and lobbying rules without regard to political consequences. Those safeguards can be provided by Commission procedures that insulate commission members from political influences, and by transparency that both enables public scrutiny of JCOPE's decision making process and provides fairness because the Commission is indifferent to irrelevant political consequences. Our Report concludes that these safeguards are wanting in the case of JCOPE.

The second major concern of our Report is JCOPE's lack of vigor in the face of an urgent need to strengthen Albany's commitment to high ethical standards. Ethics is the first line of defense against public corruption, and to be effective JCOPE must demonstrate initiative. Our Report concludes that JCOPE has failed to take a large number of needed remedial actions that it is empowered to take under current law. While we are aware that JCOPE has taken some steps to improve its operations and extend its reach, we believe far more must be done. We have identified the steps we believe JCOPE can take right now, without legislative action, as well as necessary legislative amendments, in a chart attached to our testimony.<sup>3</sup> This chart shows a comparison between JCOPE's proposals for reform made in its mandated report to the Legislature and the proposals in our Report, which are for the most part actions we believe JCOPE can take on its own initiative and without the need for new legislation. It is unfortunate in our view that JCOPE has largely chosen to seek unnecessary new authority rather than to use its existing authority under the State Code of Ethics in a robust and purposive manner.

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<sup>3</sup> See Exhibit 3. See also excerpted list of recommendations from "Hope for JCOPE" report attached as Exhibit 4.

We do not plan to review all of our recommendations here but are ready to answer questions as to any of them. Rather Mr. Davis will highlight two – our recommendation that the Commission construe the phrase “breach of public trust” in the State Ethics Law to include a failure to report misconduct and our recommendation that the Commission issue guidance on how to manage the conflict of interest that arises when officials make decisions that directly affect large campaign contributors. Mr. Karson will highlight two others – our proposal for legislative change to make the Commission more independent and our proposal to bar an affiliation that carries any influence over employment, grant making or other financial decisions between elected officials and their staff and families and non-profit entities receiving state funding.

Finally, some of our proposals will require additional funding. For example an improved website where who is lobbying whom about what, together with the campaign contributions that accompany that lobbying, can be discovered with the push of a button, and an ethics awareness campaign to get the message across clearly to state offices with calls to ethical behavior. The New York City Bar Association would actively support such additional funding.