CENTER FOR INDIVIDUAL FREEDOM

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April 12, 2004

VIA FEDERAL EXPRESS:
Departmental Disciplinary Committee
for the First Department
61 Broadway, 2nd Floor
New York, NY 10006

re: Complaint against Olatunde C.A. Johnson, Esq.

Dear Departmental Disciplinary Committee:

We hereby formally submit this complaint against Olatunde C.A. Johnson, Esq., a lawyer licensed in the State of New York under Registration Number 2865319, who currently practices at the National Headquarters of the American Civil Liberties Union, located at 125 Broad Street, 18th Floor, New York, New York 10004.

Specifically, Ms. Johnson violated both the spirit and the letter of the ethical rules and obligations she was bound to uphold when she intentionally acted to manipulate and influence an impartial tribunal that was then in the deliberative process of considering and deciding a high-profile constitutional case in which she had represented one of the parties as co-counsel.

As outlined below, through her conduct, Ms. Johnson violated the Disciplinary Rules of the Code of Professional Responsibility adopted by the State of New York, the Model Rules of Professional Conduct adopted by the U.S. Court of Appeals for the 6th Circuit, and the ethical obligations shared by all attorneys to safeguard the integrity, independence, and impartiality of the judicial process as "officers of the court." For the reasons discussed herein, we request that the Departmental Disciplinary Committee fully investigate and take appropriate action against Ms. Johnson for her unethical conduct.

On April 17, 2002, Ms. Johnson was Judiciary Counsel to U.S. Senator Edward Kennedy, a member of the U.S. Senate Judiciary Committee. In that capacity, Ms. Johnson received a telephone call from Elaine R. Jones, Esq., President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc., in which Ms. Jones asked Senator Kennedy, through Ms. Johnson, to delay Senate Judiciary Committee proceedings on any judicial nominees to the

U.S. Court of Appeals for the 6th Circuit until after a pending legal challenge to the University of Michigan's affirmative action admissions policies was decided by that court — a case in which Ms. Jones represented the Defendant-Intervenors as counsel.

Ms. Johnson memorialized Ms. Jones' call and request in a Memorandum dated April 17, 2002, and, in that same Memorandum, recommended how Senator Kennedy should proceed. (The Memorandum is attached as Exhibit A, along with an article published by *The Washington Times* on April 8, 2004, which confirms Ms. Johnson as the author of the Memorandum and prints an unredacted version of the Memorandum.[1])

According to the Memorandum written by Ms. Johnson, Ms. Jones wanted the "[Senate Judiciary] Committee to hold off on any 6th Circuit nominees until the University of Michigan case regarding the constitutionality of affirmative action in higher education is decided by the *en banc* 6th Circuit." In addition, Ms. Jones asked specifically that "the Judiciary Committee consider scheduling Julia [Smith] Gibbons, the uncontroversial nominee to the 6th Circuit[,] at a later date," as stated in Ms. Johnson's Memorandum.

Ms. Jones sought to delay the confirmations of any new judges to the U.S. Court of Appeals for the 6th Circuit because, according to Ms. Johnson's Memorandum, "[t]he thinking is that the current 6th Circuit will sustain the affirmative action program, but if a new judge with conservative views is confirmed before the case is decided, that new judge will be able, under 6th Circuit rules, to review the case and vote on it." Such a delay was all the more important because "[r]umors have been circulating that the case will be decided in the next few weeks," Ms. Johnson wrote in her Memorandum. In other words, Ms. Jones believed she could win her pending case before the *en banc* 6th Circuit as it was composed on April 17, 2002, and, therefore, wanted to make sure that no new judges would be confirmed in order to protect an anticipated favorable outcome for her clients.

The ethical ramifications of Ms. Jones' request and conduct were not lost on Ms. Johnson. After all, Ms. Jones was intentionally attempting to influence the outcome of a pending case in which she was counsel by covertly seeking to manipulate the composition of a federal appellate court. Ms. Johnson explicitly

[1] Ms. Johnson used the shortened familiar form of her name, "Olati," in addressing the Memorandum.

noted these ethical concerns in her Memorandum to Senator Kennedy, and was even joined by the Senator's Chief Counsel, Melody Barnes, Esq., herself a lawyer licensed in the State of New York, in questioning the propriety of delaying hearings to affect the outcome of a particular pending case. Ms. Johnson wrote in her Memorandum to Senator Kennedy that "Melody and I are a little concerned about the propriety of scheduling hearings based on the resolution of a particular case." Nevertheless, Ms. Johnson, along with Ms. Barnes, disregarded these ethical concerns, and "recommend[ed] that [Judge Julia Smith] Gibbons be scheduled for a later hearing [because] the Michigan case is important."

On their face, these facts alone raise disturbing ethical and legal concerns about Ms. Johnson and her conduct as a lawyer, especially as a lawyer advising an elected official charged with upholding the public trust.[2]

However, further facts only elevate the seriousness of the ethical and legal questions raised by Ms. Johnson's actions.

Prior to joining Senator Kennedy's staff as Judiciary Counsel in September 2001, Ms. Johnson was a staff attorney for the NAACP Legal Defense and Educational Fund, Inc., where her superior was Ms. Jones. In that capacity, Ms. Johnson represented the organization and individuals in a variety of civil rights cases before courts across the country. Most notably, among the cases in which Ms. Johnson served as co-counsel was *Gratz v. Bollinger*, Nos. 01-1416, 01-1418, 01-1433 &01-1438 (6th Cir.), the constitutional and statutory challenge to the University of Michigan's affirmative action admissions policy — and the very same case that motivated Ms. Jones to call her former colleague in Senator Kennedy's office on April 17, 2002, and request that the Senator delay the confirmations of any new judges to the U.S. Court of Appeals for the 6th Circuit. The briefs filed by the NAACP Legal Defense and Educational Fund list both "Olatunde C.A. Johnson" and "Elaine R. Jones" as "Attorneys for Defendant-

[2] In fact, the Memorandum to Senator Kennedy written by Ms. Johnson, taken by itself, wholly encapsulates Ms. Johnson's clear ethical violations. That Memorandum demonstrates that Ms. Johnson sought to manipulate and influence the composition of the *en banc* U.S. Court of Appeals for the 6th Circuit for the sole purpose of ensuring a favorable outcome for herself and her clients in a pending case. What's more, the Memorandum exposes Ms. Johnson's consciousness of guilt, detailing the fact that she knowingly ignored her ethical obligations through the rationalization that even unethical means were appropriate to reach the end of winning the University of Michigan affirmative action case in which she was counsel.

Intervenors" in the *Gratz* case and were filed with the 6th Circuit on July 31, 2001, less than two months before Ms. Johnson joined Senator Kennedy's staff.[3] (The briefs are attached as Exhibit B.[4])

The revelation that Ms. Johnson was herself a lawyer who participated in the University of Michigan affirmative action case, representing the Defendant-Intervenors on behalf of the NAACP Legal Defense and Educational Fund, raises grave ethical concerns about Ms. Johnson and her conduct. After all, in recommending that Senator Kennedy delay confirmation hearings for a specific judicial nominee to the 6th Circuit in order to manipulate the composition of that court and influence the outcome of the *Gratz* case, Ms. Johnson clearly violated multiple ethical rules while willfully disregarding her ethical obligations as a member of the legal profession and an "officer of the court."

In fact, even without reference to specific ethical rules and obligations for lawyers, Ms. Johnson's transgressions are obvious. She intentionally acted to manipulate the make-up of a court then in the process of considering and deciding a pending case, with the specific purpose of influencing the outcome of that case. She did so at the request of a former superior and colleague, whom Ms. Johnson knew was representing a party in the pending case. She did so despite the fact that she represented the same party in the pending case. She did so even though she recognized and expressed the impropriety of engaging in such conduct. She did so in spite of the fact that another colleague also recognized and expressed ethical concerns about engaging in such conduct. And she did so in secret and *ex parte*, without informing the other parties and counsel in the pending case of her actions

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[3] The briefs are "Dated: July 30, 2001," but the docket sheets from the U.S. Court of Appeals for the 6th Circuit record them as being filed on July 31, 2001.

[4] The briefs were filed on behalf of the Defendant-Intervenors/Appellants (No. 01-1438) and Defendant-Intervenors/Appellees (Nos. 01-1416, 01-1418, 01-1433), and were downloaded and printed from the website of the NAACP Legal Defense and Education Fund, Inc., via the following Internet addresses (URLs): (1) the Final Brief for Defendant-Intervenors'/Appellants (No. 01-1438), (visited Apr. 8, 2004) <http://www.naacpldf.org/pdfdocs/gratz_breif001.pdf>; (2) the Final Reply Brief for Defendant-Intervenors'/Appellants (No. 01-1438), (visited Apr. 8, 2004) <http://www.naacpldf.org/pdfdocs/gratz_breif002.pdf>; and (3) the Final Brief for Defendant-Intervenors'/Appellees (Nos. 01-1416, 01-1418, 01-1433), (visited Apr. 8, 2004) <http://www.naacpldf.org/pdfdocs/gratz_breif003.pdf>. (Please note that the misspelling of "brief" — using the "e" before the "i" — in these Internet addresses (URLs) is intentional and necessary to access the documents.)

to affect the composition of the very court that would sit in judgment of their cause.

It is hard to imagine a clearer case of professional misconduct, especially since Ms. Johnson, herself, memorialized her ethical misgivings in a Memorandum before ignoring those concerns based on the rationalization that outcome of "the Michigan case" — she had worked on — "is important."

Turning to the specific ethical rules and obligations violated by Ms. Johnson, it is clear that she violated multiple rules adopted by the State of New York and the U.S. Court of Appeals for the 6th Circuit, as well as the fundamental ethical obligations that apply to all members of the legal profession.

As to rules applicable to lawyers licensed in New York, there can be little doubt that Ms. Johnson violated multiple provisions of DR 9-101 in the Code of Professional Responsibility concerning "[a]voiding even the appearance of impropriety." DR 9-101(b)(3)(i) states that "[a] lawyer serving as a public officer or employee *shall not* … [p]articipate in a matter in which the lawyer participated personally and substantially while in private practice or non-governmental employment." N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.45(b)(3)(i) (emphasis added). As a result, DR 9-101(b)(3)(i) is precisely on point with regard to Ms. Johnson's unethical conduct. While a staff attorney with the NAACP Legal Defense and Educational Fund, Ms. Johnson was a lawyer participating in the *Gratz* case, representing the Defendant-Intervenors, seeking to uphold the University of Michigan's affirmative action admissions policies. Thus, when she later joined Senator Kennedy's staff, as a federal government employee, Ms. Johnson should have avoided any involvement in or contact with the *Gratz* case. But despite this clear ethical boundary, Ms. Johnson, nevertheless, used her government position to continue to participate in and influence the outcome of the *Gratz* case by recommending that Senator Kennedy delay the confirmation of a specific judicial nominee to the 6th Circuit in an effort to manipulate the composition of that court. Ms. Johnson's Memorandum memorializes that she did so both at the request of her former superior and co-counsel in the *Gratz* case and with the specific purpose of ensuring a favorable outcome for the NAACP Legal Defense and Educational Fund's clients. In doing so, Ms. Johnson violated DR 9-101(b)(3)(i).

Ms. Johnson, likewise, violated DR 9-101(c), which states: "A lawyer *shall not* state or imply that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official." N.Y. COMP. CODES R.

& REGS. tit. 22, § 1200.45(c) (emphasis added). As recorded in the Memorandum she wrote, Ms. Johnson stated or, at the very least, implied an ability to influence improperly the *en banc* 6th Circuit then hearing and deciding a pending case, the University of Michigan affirmative action case, in which she was counsel, not to mention her recommendation to and influence over a sitting U.S. Senator then considering judicial confirmations to that court. Moreover, due to the lack of any meaningful investigation into Ms. Johnson's conduct, it is still unclear to what other persons Ms. Johnson stated and/or implied her ability to improperly influence and to manipulate the judicial consideration and resolution of the *Gratz* case. For these reasons, Ms. Johnson violated DR 9-101(c).

Ms. Johnson's conduct is also troubling in light of DR 8-101, which governs a lawyer's "[a]ction as a public official." DR 8-101(a)(1) commands that "[a] lawyer who holds public office *shall not* … use the public position to obtain, or attempt to obtain, a special advantage in legislative matters for the lawyer or for a client under circumstances where the lawyer knows or it is obvious that such action is not in the public interest." N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.42(a)(1) (emphasis added). DR 8-101(a)(2) instructs that "[a] lawyer who holds public office *shall not* … use the public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client." N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.42(a)(2) (emphasis added). Thus, whether Ms. Johnson's conduct is considered to constitute improper influence over the judicial confirmation process or improper influence over the composition of the *en banc* 6th Circuit, itself, both with the purpose of ensuring a favorable outcome for her clients in the *Gratz* case, it is clear either conduct was proscribed in DR 8-101(a). In other words, Ms. Johnson necessarily was using her public position as Judiciary Counsel to Senator Kennedy either to gain "special advantage in legislative matters … not in the public interest" or "to influence, or attempt to influence, a tribunal," both in favor of her clients in the *Gratz* case. As such, she violated DR 8-101(a).

Multiple requirements of DR 1-102 are problematic when it comes to the conduct of Ms. Johnson. For instance, DR 1-102(a)(5) states that "[a] lawyer … *shall not* … [e]ngage in conduct that is prejudicial to the administration of justice." N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.3(a)(5) (emphasis added). Surely, Ms. Johnson's intentional actions — taken to manipulate the composition of a federal appellate court then in the process of hearing and deciding a pending case in which she was counsel — constitute "conduct that is prejudicial to the administration of justice." Such a conclusion is only bolstered by the fact that Ms.

Johnson's obvious and acknowledged purpose was to influence the outcome of the case in her clients' favor through her conduct.

Ms. Johnson's conduct also raises concerns under DR 1-102(a)(4), which prohibits "conduct involving dishonesty, fraud, deceit, or misrepresentation"; DR 1-102(a)(3), which prohibits "illegal conduct that adversely reflects on a lawyer's honesty, trustworthiness or fitness as a lawyer"; DR 1-102(a)(7), which prohibits "any other conduct that adversely reflects on the lawyer's fitness as a lawyer"; and DR 1-102(a)(2), which prohibits a lawyer from "[c]ircumvent[ing] a Disciplinary Rule through actions of another"; not to mention DR 1-102(a)(1), which prohibits a lawyer from "[v]iolating [any] Disciplinary Rule." N.Y. COMP. CODES R. & REGS. tit. 22, §§ 1200.3(a)(1), (2), (3), (4) & (7).

Ms. Johnson violated the ethical rules and obligation imposed upon her by the U.S. Court of Appeals for the 6th Circuit, as well. Because her conduct was connected with and related to a case pending before the U.S. Court of Appeals for the 6th Circuit, in which she was a lawyer, Ms. Johnson was subject to the ethical rules and obligations imposed by that court, too. Specifically, the 6th Circuit, itself, has adopted Rules and Internal Operating Procedures designed to safeguard the integrity, independence, and impartiality of its judicial proceedings and decisions. Ms. Johnson undermined that integrity even though she used an unusual, perhaps unique, method of circumventing the 6th Circuit rules. The fact that she violated the rules of a court in another state does not allow her to escape New York's jurisdiction over her unethical conduct because DR 1-105(b)(1) of the Code of Professional Responsibility adopted by the State of New York, dealing with choice of law, provides that, "for conduct in connection with a proceeding in a court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise."

Let us turn to the rules of the jurisdiction in which the 6th Circuit sits.

Sixth Circuit Rule 46(b)(2), entitled "Conduct Subject to Discipline," instructs that discipline may be imposed on any lawyer "who engages in conduct violating the Canons of Ethics or the Model Rules of Professional Conduct, whichever applies, or who fails to comply with the rules or orders of this Court." In other words, Ms. Johnson is subject to discipline for any violation of the entirety of the Canons of Ethics, the Model Rules of Professional Conduct, or the

rules and operating procedures of the 6th Circuit. She violated both the letter and the spirit of multiple provisions amongst these ethical rules and obligations.

First, numerous provisions of the Model Rules of Professional Conduct mirror the standards and obligations imposed by the Disciplinary Rules of the Code of Professional Responsibility adopted by the State of New York. For instance, just like DR 9-101(b)(3)(i) in New York, Model Rule of Professional Conduct 1.11(d)(2)(i) states that "a lawyer currently serving as a public officer or employee ... *shall not* … participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment." (emphasis added.) Others include Model Rule of Professional Conduct 8.4(e), which, similar to DR 9-101(c) in New York, states "[i]t is professional misconduct for a lawyer to … state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law"; Model Rule of Professional Conduct 8.4(d), which, similar to DR 1-102(a)(5) in New York, states "[i]t is professional misconduct for a lawyer to … engage in conduct that is prejudicial to the administration of justice"; Model Rule of Professional Conduct 8.4(c), which, similar to DR 1-102(a)(4) in New York, states "[i]t is professional misconduct for a lawyer to … engage in conduct involving dishonesty, fraud, deceit or misrepresentation"; Model Rule of Professional Conduct 8.4(b), which, similar to DR 1-102(a)(3), states "[i]t is professional misconduct for a lawyer to … commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects"; and Model Rule 8.4(a), which similar to DR 1-102(a)(1) & (2) in New York, states "[i]t is professional misconduct for a lawyer to … violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another." Since Ms. Johnson's improper and unethical conduct constituted violations of these provisions under the Disciplinary Rules of the Code of Professional Responsibility adopted in New York, she violated these same rules as adopted by the U.S. Court of Appeals for the 6th Circuit.

Moreover, Ms. Johnson violated rules and obligations imposed by the 6th Circuit that are specifically designed to ensure the integrity, independence, and impartiality of that court. For instance, Sixth Circuit Internal Operating Procedure 34(b)(1) states: "[t]he circuit executive, at the direction of the Chief Judge, makes up the schedule of panels," and the panels are to be "scrambled and structured so that every judge sits with each of the judge's colleagues in that division at least once each session." The purpose of this rule is to randomize the selection of judges so that an attorney representing a party in a pending case cannot attempt to

bring his or her client's cause before a preferred judge or panel of judges. Ms. Johnson undermined that rule in a case in which she was counsel.

Other 6th Circuit rules are, likewise, designed to ensure that attorneys cannot improperly influence or manipulate the judges or panels hearing the attorneys' pending cases. For instance, 6th Circuit Internal Operating Procedure 34(b)(2) states that, "[w]here it becomes necessary to bring in a new third judge to complete a panel, the clerk will draw a name [at random] from among the active judges not already on the panel," and 6th Circuit Internal Operating Procedure 34(c)(2) instructs that attorneys participating in pending cases may not learn the identity of the judges who will hear and decide their cases until "[t]wo weeks before the date of oral argument."

Most recently, the 6th Circuit made it clear that its Rules and Internal Operating Procedures also seek to protect the integrity, independence, and impartiality of judicial proceedings and decisions rendered by the court *en banc*. In addressing a complaint alleging that Chief Judge Boyce Martin improperly withheld a petition for hearing *en banc* from the rest of the court for a period of months, the court, through Acting Chief Judge Alice Batchelder, commented that such allegations "'raise an inference that misconduct has occurred'" and noted that "the members of this court performed and continue to perform a comprehensive review of the court's internal procedures, and how those procedures are implemented … [so as to] greatly reduce[ ] the potential for future incidents." *In re Complaint of Judicial Misconduct No. 03-6-372-07*, Memorandum of Batchelder, Acting C.J., at 4 (6th Cir. May 28, 2003) (The decision is attached as Exhibit C.).[5]

The actions Ms. Johnson took to manipulate and control the make-up of the *en banc* 6th Circuit then considering her clients' pending case were quite similar to the allegations against Chief Judge Martin. Chief Judge Martin allegedly attempted to delay proceedings in order to wait for certain judges to become ineligible for the *en banc* panel, and Ms. Johnson actively attempted to keep new judges from becoming eligible to hear her clients' pending case as members of the

[5] The complaint claimed that Chief Judge Martin withheld an *en banc* petition for several months in order to manipulate the make-up of an *en banc* panel that would later hear and decide the constitutional challenge to the affirmative action admissions policy used by the University of Michigan's law school. In the months during which the *en banc* petition was allegedly withheld, two 6th Circuit judges took "senior" status, making them ineligible to hear and decide the case as a part of the *en banc* panel.

en banc 6th Circuit. The intended effect of both actions was one and the same: influencing and manipulating the make-up of the tribunal that would hear and decide a pending case in order to ensure a favored outcome. The alleged conduct of Chief Judge Martin is not at issue here. The point is not whether that allegation was true; the point is that the 6th Circuit has already made it quite clear that an attempt to manipulate which judges will sit on a case — even an unusual attempt like the secret actions of Ms. Johnson — is a violation of the 6th Circuit rules. Ms. Johnson violated the 6th Circuit's rules.

Beyond the ethical rules and obligations imposed upon Ms. Johnson by the State of New York and the U.S. Court of Appeals for the 6th Circuit, it is also clear that Ms. Johnson's conduct violated the fundamental foundation upon which the ethical obligations of all attorneys rest — namely, that a lawyer is an "officer of the court" charged with upholding the integrity, independence, and impartiality of the judicial process. It is a simple but steadfast principle that attorneys cannot seek to influence or manipulate the court responsible for resolving their pending or impending litigation. As stated in a comment to the section concerning "Improperly Influencing a Judicial Officer" of the RESTATEMENT THIRD, THE LAW GOVERNING LAWYERS: "The proper exercise of judicial authority and public confidence in judicial rulings require both the reality and the perception of impartiality on the part of [the] judicia[ry]." The comment goes on to explain that any "attempt by a lawyer to obtain special treatment from [the] judicia[ry] compromises that interest" and violates an attorney's "obligation not to seek to influence [the] judicia[ry] improperly." This is the fundamental legal and ethical principle violated by Ms. Johnson through her conduct. It is a principle that surely underlies both the Disciplinary Rules of the Code of Professional Responsibility adopted by the State of New York and the Model Rules of Professional Conduct and Local Rules adopted by the U.S. Court of Appeals for the 6th Circuit, not to mention the spirit of the legal profession as a whole.

We are far from alone in the belief that Ms. Johnson violated her ethical obligations through her conduct. Enclosed with this letter is an article published on Page A03 of *The Washington Times* on March 19, 2004. (The article is attached as Exhibit D.) In the article, three prominent law professors and nationally recognized experts on legal ethics seriously question the propriety of the actions described in Ms. Johnson's Memorandum to Senator Kennedy. Most telling, George Washington University Law Professor Jonathan Turley states that the conduct memorialized in Memorandum written by Ms. Johnson "raises very serious questions about propriety. On its face, there is an element of complicity and dishonesty." Professor Turley goes on to explain, "This is certainly not what

the Framers intended when they gave the Senate the powers of confirmation. The fact that this type of discussion occurred at all is outrageous." George Mason University Law Professor Ronald Rotunda and Pepperdine University Law Professor Douglas Kmiec agreed and made similar statements.

Those expressions, limited by the question put to them and the nature of a brief newspaper article, are indicative of those of numerous legal scholars and ethicists. The article, itself, suggests such unanimity of opinion exists. The article notes that "[t]he only legal scholars contacted by *The Washington Times* who did not condemn the Kennedy [M]emo were … two law professors who are widely credited with developing the current Democratic strategies to block Republican [judicial] nominees." Given unanimity of opinion as to the ethical concerns raised by Ms. Johnson's conduct memorialized in her own Memorandum to Senator Kennedy, it is imperative that the Departmental Disciplinary Committee initiate a full investigation into Ms. Johnson's obvious violations.

Quite simply, Ms. Johnson's conduct cannot be condoned by the State of New York, where she is licensed to practice law and subject to your oversight. Thus, for the foregoing reasons, we respectfully request that the Departmental Disciplinary Committee fully investigate and take appropriate disciplinary action against Ms. Johnson. She can be reached by mail at the National Headquarters of the American Civil Liberties Union, located at 125 Broad Street, 18th Floor, New York, New York 10004, where she currently practices, and by telephone at (212) 549-2500. Of course, we would be willing to offer any assistance that we can with regard to this matter and kindly request that you keep us apprised of all non-confidential proceedings and actions taken in your consideration of this matter.

Sincerely,

/s/

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Enclosures