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BY PRIORITY MAIL

September 13, 1994

Laura Murray, Legislative Director
New York Civil Liberties Union
132 West 43rd Street
New York, New York 10036-6599

RE: NYCLU support of a lawyer wrongfully
suspended for more than three years

Dear Ms. Murray:

Congratulations again on The New York Times publication of the fine letter you co-authored with Mr. Siegel, "Suspension for a Remark is Excessive". As mentioned when we spoke last Friday, the case we wish to present to the New York Civil Liberties Union involves a more egregious suspension and violation of First Amendment rights--the retaliatory suspension of an attorney's license to practice law for speaking out against judicial corruption in our state courts.

Such retaliatory suspension, by an Order of the Appellate Division, Second Department dated June 14, 1991¹, which stated no reasons and made no evidentiary findings, was not based on a plenary proceeding or even notice of written charges--all contrary to the explicit requirements of the Appellate Division's own Rules Governing the Conduct of Attorneys (§691.4). Said suspension Order was illegal at the time it was issued (Matter of Nuey, 61 N.Y.2d 513, 474 N.Y.S.2d 714 (1984) and has been maliciously perpetuated for more than three years, notwithstanding the Court of Appeals' supervening decision more than two years ago in Matter of Russakoff, 72 N.Y.2d 520, 583 N.Y.S.2d 949 (1992), reiterating that interim suspension orders without findings must be vacated as a matter of law². No hearing preceded the Appellate Division's June 14, 1991 interim suspension Order--and none has been afforded in the three years since--the Appellate Division, Second Department denying, without reasons, all requests for a hearing.

¹ Exhibit "D-6" to the enclosed Jurisdictional Statement.

² See Exhibits "G" and "H" to the Jurisdictional Statement.

The attorney so deprived of due process is my mother, Doris L. Sassower. At the time of her suspension, my mother was acting as pro bono counsel to petitioners in a politically-sensitive Election Law case, which challenged a written judge-trading cross-endorsements deal, implemented at judicial nominating conventions that violated the Election Law³. For your information, I enclose my mother's Martindale-Hubbell listing, which always gave her its highest "AV" rating throughout the years it rated her, as well as a copy of a letter from the Fellows of the American Bar Foundation, confirming her election to membership in that distinguished body.

At your suggestion, late on Friday afternoon my mother telephoned your "intake intern". After discussing the matter with her, the intern requested that my mother send copies of her Article 78 proceeding Sassower v. Mangano, et al. That proceeding--now before the New York Court of Appeals--alleges and documents the Appellate Division's manipulation of the disciplinary mechanism--which it controls--for ulterior, retaliatory purposes⁴.

In view of the statement in your published letter that:

"As Attorney General, Mr. Koppell has the highest obligation to uphold the letter and spirit of the Constitution and the laws of the State of New York",

we trust you will be absolutely appalled by the unconstitutional and illegal manner in which the Attorney General of our State defended the judicial respondents in Sassower v. Mangano, et al. What he did was to permit the very judges accused of criminal conduct to decide their own case⁵--in violation of Judiciary Law §14 and the Rules Governing Judicial Conduct--so as to grant the legally insufficient and demonstrably perjurious dismissal motion of their attorney, the Attorney General⁶.

³ For a more detailed description of that case--as well as a copy of the written cross-endorsement deal trading judgeships--see my mother's letter to Governor Cuomo calling for the appointment of a special prosecutor, annexed as Exhibit "K" to the enclosed July 19, 1994 reargument/reconsideration motion.

⁴ See, particularly, 5-8 of Mr. Schwartz' 3/14/94 letter to the Court of Appeals and pp. 14-17 of the 7/19/94 reargument/renewal motion.

⁵ See ¶6 of the Jurisdictional Statement.

⁶ See ¶¶12, 13, 22, 24 of the Jurisdictional Statement, pp. 12-17 of Mr. Schwartz' 3/14/94 letter to the Court of Appeals.

As the submissions before the Court of Appeals establish, Mr. Koppell, as Attorney General, has argued, contrary to law and without the slightest legal authority, that the Appellate Division, Second Department was free to decide the Article 78 proceeding against itself. He has further argued, without legal authority, that there should be no appellate review of the resulting self-interested decision in its favor.

As shown by the reargument/reconsideration motion, now sub judice before the Court of Appeals, Mr. Koppell has not only failed to defend the constitutionality of Judiciary Law §90--found unconstitutional twenty years ago by Judge Jack Weinstein in his extraordinary dissenting opinion in Mildner v. Gulotta, 405 F. Supp. 182 (1975)⁷--but has failed even to defend the constitutionality of the Article 78 statute, interpreted by Mr. Koppell as permitting judges sued thereunder to decide their own case⁸ (see 8/8/94 reply affidavit, ¶¶10-13).

We urgently need your organizational support before the Court of Appeals and immediate assistance in preparing a petition for a writ of certiorari to the U.S. Supreme Court, which we anticipate will be inevitable.

In addition, we require organizational and legal backing for a federal action under 42 U.S.C. §1983 based upon the deliberate deprivation of my mother's First Amendment, due process, and equal protection rights. We believe such federal action should also seek a declaration that Judiciary Law §90 and the Appellate Division, Second Department's rules are unconstitutional. For detailed discussion on that subject, I specifically refer you to pp. 16-23 of the July 19, 1994 reargument/reconsideration motion and enclose a copy of the Mildner v. Gulotta case.

Please let us hear from you soon.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability

⁷ See pp. 16-23 of the 7/19/94 motion for reargument/reconsideration.

⁸ See pp. 3-6 of the 7/19/94 reargument/reconsideration motion.

Enclosures:

- (a) 9/2/94 NYT Letter to the Editor:
"Suspension for a Remark is Excessive"
- (b) Martindale-Hubbell listing
- (c) ltr of American Bar Foundation
- (d) 1/24/94 Jurisdictional Statement
- (e) Attorney General's 2/11/94 ltr
- (f) 3/14/94 ltr of Evan Schwartz, Esq.
- (g) 7/19/94 reargument, reconsideration motion
- (h) Attorney General's 8/4/94 Memorandum
- (i) 8/8/94 Reply Affidavit
- (j) Mildner v. Gulotta, 405 F. Supp. 182 (1975)

cc: Norman Siegel, Executive Director, NYCLU (w/o enclosures)
Ira Glasser, Executive Director, ACLU (w/o enclosures)

9/2/94 NYJ

Suspension for a Remark Is Excessive

To the Editor:

The suspension by New York State's Attorney General, G. Oliver Koppell, of Thomas Neidl, chief of his office's criminal prosecutions bureau, for having made disparaging remarks about homosexuals and lesbians (news article, Aug. 26) inappropriately infringes upon Mr. Neidl's First Amendment rights.

A woman said, you report, that her answering machine had taped Mr. Neidl saying that homosexuals "shouldn't have kids."

While it was perfectly appropriate — and given the offensive nature of Mr. Neidl's remarks, accurate — for the Attorney General to condemn the remarks as "personally repugnant," suspension of Mr. Neidl from his supervisory position on the basis only of his statements offends basic values respecting free expression.

The critical question here must turn on job performance. Principles of free speech counsel against suspension or dismissal on the basis of expression in the absence of evidence that such expression has seriously impaired Mr. Neidl's ability to perform the tasks assigned to him as deputy chief.

As Attorney General, Mr. Koppell

has the highest obligation to uphold the letter and spirit of the Constitution and the laws of the State of New York. We urge Mr. Koppell, even as he rightfully continues to deplore the bigotry reflected in Mr. Neidl's unfortunate remarks, to reverse his decision to suspend Mr. Neidl.

NORMAN SIEGEL, LAURA MURRAY
New York, Aug. 29, 1994

The writers are, respectively, executive director and legislative director, New York Civil Liberties Union.



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DORIS L. SASSOWER, born New York, N.Y., September 25, 1932; admitted to bar, 1955, New York; 1961, U.S. Supreme Court, U.S. Claims Court, U.S. Court of Military Appeals and U.S. Court of International Trade. Education: Brooklyn College (B.A., summa cum laude, 1954); New York University (J.D., cum laude, 1955). Phi Beta Kappa. Florence Allen Scholar. Law Assistant: U.S. Attorney's Office, Southern District of New York, 1954-1955; Chief Justice Arthur T. Vanderbilt, Supreme Court of New Jersey, 1956-1957. President, Phi Beta Kappa Alumnae in New York, 1970-71. President, New York Women's Bar Association, 1968-69. President, Lawyers' Group of Brooklyn College Alumni Association, 1963-65. Recipient: Distinguished Woman Award, Northwood Institute, Midland, Michigan, 1976. Special Award "for outstanding achievements on behalf of women and children," National Organization for Women—NYS, 1981; New York Women's Sports Association Award "as champion of equal rights," 1981. Distinguished Alumna Award, Brooklyn College, 1973. Named Outstanding Young Woman of America, State of New York, 1969. Nominated as candidate for New York Court of Appeals, 1972. Columnist: ("Feminism and the Law") and Member, Editorial Board, *Woman's Life Magazine*, 1981. Author: Book Review, *Separation Agreements and Marital Contracts*, *Trial Magazine*, October, 1987; *Support Handbook*, *ABA Journal*, October, 1986; Anatomy of a Settlement Agreement Divorce Law Education Institute 1982 "Climax of a Custody Case," *Litigation*, Summer, 1982; "Finding a Divorce Lawyer you can Trust," *Scarsdale Inquirer*, May 20, 1982. "Is This Any Way To Run An Election?" *American Bar Association Journal*, August, 1980; "The Disposable Parent: The Case for Joint Custody," *Trial Magazine*, April, 1980. "Marriages in Turmoil: The Lawyer as Doctor," *Journal of Psychiatry and Law*, Fall, 1979. "Custody's Last Stand," *Trial Magazine*, September, 1979; "Sex Discrimination—How to Know It When You See It," *American Bar Association Section of Individual Rights and Responsibilities Newsletter*, Summer, 1976; "Sex Discrimination and The Law," *NY Women's Week*, November 8, 1976; "Women, Power and the Law," *American Bar Association Journal*, May, 1976; "The Chief Justice Wore a Red Dress," *Woman In the Year 2000*, Arbor House, 1974; "Women and the Judiciary: Undoing the Law of the Creator," *Judicature*, February, 1974; "Prostitution Review," *Juris Doctor*, February, 1974; "'No-Fault' Divorce and Women's Property Rights," *New York State Bar Journal*, November, 1973; "Marital Bliss: Till Divorce Do Us Part," *Juris Doctor*, April, 1973; "Women's Rights in Higher Education," *Current*, November, 1972; "Women and the Law: The Unfinished Revolution," *Human Rights*, Fall, 1972; "Matrimonial Law Reform: Equal Property Rights for Women," *New York State Bar Journal*, October, 1972; "Judicial Selection Panels: An Exercise in Futility?," *New York Law Journal*, October 22, 1971; "Women in the Law: The Second Hundred Years," *American Bar Association Journal*, April, 1971; "The Role of Lawyers in Women's Liberation," *New York Law Journal*, December 30, 1970; "The Legal Rights of Professional Women," *Contemporary Education*, February, 1972; "Women and the Legal Profession," *Student Lawyer Journal*, November, 1970; "Women in the Professions," *Women's Role in Contemporary Society*, 1972; "The Legal Profession and Women's Rights," *Rutgers Law Review*, Fall, 1970; "What's Wrong With Women Lawyers?," *Trial Magazine*, October-November, 1968. Address to: The National Conference of Bar Presidents, Congressional Record, Vol. 115, No. 24 E 815-6, February 5, 1969; The New York Womens Bar Association, Congressional Record, Vol. 114, No. E5267-8, June 11, 1968. Director: New York University Law Alumni Association, 1974; International Institute of Women Studies, 1971; Institute on Women's Wrongs, 1973; Executive Woman, 1973. Co-organizer, National Conference of Professional and Academic Women, 1970. Founder and Special Consultant, Professional Women's Caucus, 1970. Trustee, Supreme Court Library, White Plains, New York, by appointment of Governor Carey, 1977-1986 (Chair, 1982-1986). Elected Delegate, White House Conference on Small Business, 1986. Member, Panel of Arbitrators, American Arbitration Association. Member: The Association of Trial Lawyers of America; The Association of the Bar of the City of New York; Westchester County, New York State (Member: Judicial Selection Committee; Legislative Committee, Family Law Section), Federal and American (ABA Chair, National Conference of Lawyers and Social Workers, 1973-1974; Member, Sections on: Family Law; Individual Rights and Responsibilities Committee on Rights of Women; 1982; Litigation) Bar Associations; New York State Trial Lawyers Association; American Judicature Society; National Association of Women Lawyers (Official Observer to the U.N., 1969-1970); Consular Law Society; Roscoe Pound-American Trial Lawyers' Foundation; American Association for the International Commission of Jurists; Association of Feminist Consultants; Westchester Association of Women Business Owners; American Womens' Economic Development Corp.; Womens' Forum. Fellow: American Academy of Matrimonial Lawyers; New York Bar Foundation.

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November 13, 1992

TO WHOM IT MAY CONCERN:

This is to certify that Doris L. Sassower of White Plains, New York, was elected a Fellow of the American Bar Foundation in 1989 and is in good standing. This honor is limited to one-third of one percent of lawyers licensed to practice in each jurisdiction.

The Fellows is an honorary organization of practicing attorneys, judges and law teachers whose professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. Established in 1955, The Fellows encourage and support the research program of the American Bar Foundation.

The objective of the Foundation is the improvement of the legal system through research concerning the law, the administration of justice and the legal profession.



Carol Murphy
Staff Director of The Fellows