

CENTER for
JUDICIAL
ACCOUNTABILITY



Box 69, Gedney Station • White Plains, New York 10605-0069
TEL: 914/997-8105 • FAX: 914/684-6554

Priority
By Express Mail

September 22, 1994

Mr. Warren St. John
98 Hicks Street
Brooklyn, New York 11201

RE: The Attorney General's indefensible
defense of respondents in the Article 78
proceeding, Sassower v. Hon. Guy
Mangano, et al.

Dear Mr. St. John:

Enclosed are the materials we discussed by phone today. First and foremost, The New York Times' editorial "After the Primaries, New York's Mystery General", which opens with the question:

"What, exactly, does the New York State Attorney General do?"

and concludes by stating:

"the voters need to know how the candidates intend to handle the job's meat-and-potatoes work of defending the state against legal actions..."

We agree--and offer you a unique opportunity to describe a real-life "legal action" in the office of the Attorney General--one, which is decidedly not boring, but, rather, involves scandal issues, beloved by press and public alike--in this case, judicial corruption, whistleblowing, and retaliation.

As you know, when my mother brought the Article 78 proceeding, Sassower v. Mangano, et al., charging the Appellate Division, Second Department with using its judicial offices to retaliate against her for whistleblowing on judicial corruption, the Appellate Division was provided free legal defense by the Attorney General.

How did the Attorney General defend the justices, who my mother was accusing of heinous criminal acts? By allowing them to decide their own case. Without legal authority, Attorney General Robert Abrams--and Attorney General Oliver Koppell after him--

argued that the Appellate Division was not disqualified from deciding my mother's Article 78 proceeding against it. And, likewise, without legal authority, Attorney General Koppell has gone on to argue to the Court of Appeals that there should be no appellate review of the Appellate Division's self-interested decision in its own favor, dismissing the Article 78 proceeding against itself.

Such indefensible positions taken by our State's highest legal officer--affecting the integrity of the judicial process and destroying the sanctity of Article 78 proceedings, designed to provide independent review of governmental abuses--needs to be exposed and unequivocally disavowed by the candidates for Attorney General, vying for election in November.

Since Judiciary Law §14 and §100.3(c) of the Rules Governing Judicial Conduct each explicitly require that a judge disqualify himself from a case wherein he is a party or has an "interest that could be substantially affected by the outcome of the proceeding", the public must know--in advance of the election--whether the Attorney General it will elect in November--will obey such clear-cut law and ethical rules. Indeed, come January, Sassower v. Mangano, et al. will be on the desk of the next Attorney General--whoever he or she may be.

If the Court of Appeals does not review Sassower v. Mangano, et al., we will prepare a petition for a writ of certiorari to the U.S. Supreme Court. What will be the position of Attorney General Burstein or Attorney General Vacco to such petition? Will they also argue--without citation to legal authority (because there is none) that permitting accused judges to decide an Article 78 proceeding against themselves is okay? And what position will they take as to the constitutionality of the Article 78 statute and Judiciary Law §90--discussed in detail at pp. 4-10, 16-23 of my mother's enclosed reargument/renewal motion--but ignored entirely by Attorney General Koppell. (See, my mother's Reply Affidavit, ¶¶10-13, as to the affirmative duty of the Attorney General to address the constitutionality of statutes--which Mr. Koppell wholly failed to do.)

The public also must know how Ms. Burstein and Mr. Vacco, as Attorney General, propose to handle complaints of judicial corruption--such as here presented. The extensive correspondence with Attorney General Koppell, annexed to our Court of Appeals submissions¹, shows the complete failure of his office to respond

¹ See the correspondence annexed to Mr. Schwartz' 3/14/94 letter to the Court of Appeals as Exhibits "2", "4", "5", "6", "7", "8", "9", and to my mother's 7/19/94 reargument motion as Exhibits "M", "N", "O", "P", "R".

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to the documentary evidence provided. Since our new Attorney General will have on his or her desk our fully-documented allegations of criminal conduct by sitting judges--that question is actual, not speculative or abstract. In its September 12, 1994 issue, The New York Times describes Ms. Burstein's view of the Attorney General's role regarding governmental corruption as:

"favors an expansion of duties for attorney general but is uncertain of exact role."

Now that she is the Democratic candidate, it is time for Ms. Burstein to become more certain as to how the Attorney General will handle governmental corruption issues--particularly since she is already familiar with the the "real life" situation of Sassower v. Mangano, et al, in which Mr. Koppell used the Attorney General's office to prevent independent review of the corruption alleged.

As you can see from the enclosed hand-written note of Ms. Burstein, addressed to my mother, she claims she "will look into this matter when [she is] attorney general".

However, you should know that before she sent note, when Ms. Burstein, who let us know that she would not use Sassower v. Mangano, et al, in her hotly contested primary race with Mr. Koppell, refused to even state her view as to the propriety of judges deciding their own case and made various other comments not reflecting well upon her competence and/or integrity.

I look forward to describing to you our extraordinary communications with Ms. Burstein, which give me no reason to be confident as to her competence or integrity--as well as my contacts which are just beginning with Mr. Vacco's office.

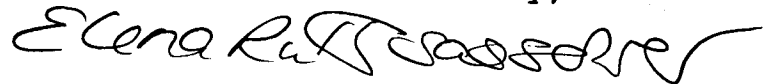
This is a dynamite story--and particularly in the election season. Indeed, as reflected by my mother's October 24, 1991 letter to Governor Cuomo², enclosed in my initial April 5, 1994 transmittal to you, the context for the judicial retaliation to which she has been subjected, is the voting rights case of Castracan v. Colavita, in which she, as pro bono counsel, challenged the trading of judgeships by a cross-endorsements deal, implemented at judicial nominating conventions which violated the Election Law.

² My mother's October 24, 1991 letter to Governor Cuomo, calling for the appointment of a special prosecutor, is annexed to her July 19, 1994 reargument/reconsideration motion as Exhibit "K".

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Please call me on Monday or Tuesday so that we can make the appropriate arrangements for an interview on Wednesday. We would be particularly pleased if you would come to White Plains for that purpose since it would be rather difficult for us to transport all the evidentiary documentation that we have readily available to us in our files.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability

- Enclosures:
- (a) New York Times editorial, 9/17/94
 - (b) New York Times, 8/12/94 grid: "Democrats Running for Attorney General"
 - (c) 8/4/94 ltr to Karen Burstein
 - (d) Karen Burstein's hand-written response
 - (e) Judiciary Law §14
 - (f) §100.3(c) of Rules Governing Judicial Conduct
 - (g) 7/19/94 Reargument/Renewal Motion
 - (h) 8/4/94 "Memorandum of Law" of Attorney General
 - (i) 8/8/94 DLS Reply Affidavit

* Also enclosed is my mother's just filed complaint to the Commission on Judicial Conduct against the Appellate Division, Second Department. Is it your bet that the Commission will or will not take action?

I hope you'll agree that such extraordinary complaint--and what the Commission does or does not do with it--is yet another great story.