

# Some Light Sparring for 4 Attorney General Candidates

## Debate Brings Out Differences on Crime

By IAN FISHER

With the primary election only four days away, the four Democratic candidates for New York State attorney general lightly jabbed at each other yesterday in a debate that underscored their basic agreement on the issues, but exposed their differing visions of the office's role in fighting crime.

Polls show the race too close to call, but the debate was largely civilized even as the candidates scrapped for any chance to distinguish themselves from the others. All four candidates bowed in one way or another to public concerns about the issues of crime and violence, even as two candidates criticized the others for portraying the attorney general as a crime fighter — a role that has traditionally been ceded to the police and district attorneys.

"I don't think — and I think it is very important to stress this — to say that you are against violence means that you are going to be a super-prosecutor," said Karen S. Burstein, a former state senator and Family Court judge in Brooklyn, who like the incumbent, G. Oliver Koppell, contends that the office has little to do with street crime. "What it means is that you are going to seize the opportunity to speak against violence in the home, in the schools, against guns, in the consumer arena and environmental affairs."

### Not Far Enough?

But Charles J. Hynes, the Brooklyn District Attorney, and Elliot L. Spitzer, a former Manhattan prosecutor, suggested she did not go far enough.

"The issue for Democratic voters in this state for Tuesday's primary is who among us has the vision and experience to make public safety a top priority for the attorney general," Mr. Hynes said in the hourlong debate at Fordham University's Lincoln Center campus in Manhattan. The debate, sponsored by the New York Press Club, was televised on New York 1.

Despite the tough talk, none of the our proposed a fundamental or statutory change in the office's duties, which traditionally include defending state agencies and bringing mostly civil action in the areas of civil rights, consumer affairs, antitrust cases and environmental issues. Mr. Hynes said he would be the "chief lobbyist" for law-enforcement officials to the



The four Democrats running in the tight primary race for New York State Attorney General exchanged greetings before they began their debate yesterday at Fordham University. From the left were Charles J. Hynes, Karen S. Burstein, Elliot L. Spitzer and G. Oliver Koppell.

William E. Sauro/The New York Times

Legislature, and Mr. Spitzer envisioned a similar role that would not include prosecuting street crime.

In all, the debate centered largely on these issues, which have little to do with the attorney general's office:

¶Should people vote for Ms. Burstein simply because she is a woman, and no woman has been elected to a statewide office in 20 years? (No, all four agreed, but Ms. Burstein suggested, not so subtly, that it would, indeed, be nice to end that drought.)

¶Does Mr. Spitzer, who has spent at least \$2.4 million of his own money, have an unfair advantage? (Three said yes. Mr. Spitzer said: "You can't buy votes in New York State. The public is too smart. The public looks for substance.")

¶Has Mr. Koppell, a former Bronx Assemblyman who was appointed to the office in December by his colleagues in the Legislature, called too many news conferences to trumpet

the achievements of his brief incumbency? (Mr. Hynes said Mr. Koppell's media events included "announcing the sunrise." Mr. Koppell said: "One of the ways I have run the attorney general's office is to do everything in public so the public knows what is going on.")

The candidates barely spoke about the biggest issue that divides the four. Mr. Spitzer is the only one of the candidates to support the death penalty, a fact he has begun to advertise more heavily in his television commercials. In the only mention of the issue, Mr. Koppell accused Mr. Spitzer of omitting any reference to the death penalty in his campaign literature to some voters, and later accused him of pandering.

"The fact of the matter is that Mr. Spitzer has said anything that he thinks can get him votes," Mr. Koppell said. "First, he talked only about

criminal justice issues. Then he realized he was losing the ball game, so all of a sudden he talked about the environment."

Mr. Koppell himself came under a brief attack from Mr. Hynes, who accused him of playing politics at the Democratic Convention in June in an effort to keep the others off the primary ballot. Mr. Koppell became the party's sole designee, and the other candidates were forced to collect petitions around the state to win spots on the ballot.

"He did a great job in Buffalo," Mr. Hynes said, referring to the convention site. "A great reformer in the Bronx. He locked us all out there." Mr. Koppell said he only urged delegates to votes for him, not against the others.

The four will debate again on Sunday, in a live presentation of "News Forum" on Channel 4 at 11:30 A.M.

EX "M-1"

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

BY HAND

September 10, 1994

Mr. Ian Fisher  
The New York Times  
Metro Desk, 3rd Floor  
229 West 43rd Street  
New York, New York 10036

Dear Mr. Fisher:

Since our telephone conversation on Thursday morning, I became aware of the debate between the candidates for Attorney General to be televised on Gabe Pressman's News Forum this Sunday on NBC.

I believe you should see the letter that I have already sent to Mr. Pressman not only because it summarizes the issues about which we spoke on the telephone, but because I expect you will be viewing the debate and doubtless reporting on it for Monday's New York Times.

You should be aware that, in addition to sending the enclosed letter to Mr. Pressman, I have also furnished copies to Mr. Spitzer and Mr. Hynes, Ms. Burstein having already flatly rejected the request that she raise the issues discussed therein in the campaign.

In the event that Mr. Pressman does not pose the question presented in my letter to the candidates and Mr. Spitzer and Mr. Hynes do not bring up the subject themselves, it would be highly appropriate--not to mention devastating--for you to interview the candidates about the legality of judges accused of criminal conduct in Article 78 proceedings deciding their own case and the propriety of Attorney General Koppell arguing against any appellate review of the resulting decision in their own favor.

Should you wish to see our submissions now before the Court of Appeals in Sassower v. Mangano, et al., we will readily furnish same to you. Those submissions document the fact that Attorney General Koppell is in complicity with the criminal misconduct of his judicial clients and has totally abandoned his duty under the law of addressing the constitutionality of statutes brought before the Court for review.

EX "M-2"

Mr. Fisher

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September 10, 1994

As illustrative I am enclosing our most recent submission to the Court of Appeals, dated August 8, 1994. I am furnishing you with all enclosures to my letter to Mr. Pressman, as well as the fax coversheets showing transmittal of that letter to Mr. Spitzer and Mr. Hynes.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability

Enclosures

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Box 69, Gedney Station • White Plains, New York 10605-0069  
TEL: 914/997-8105 • FAX: 914/684-6534

By Fax: 212-664-6385

September 9, 1994

Mr. Gabe Pressman  
News Forum: NBC  
30 Rockefeller Center  
New York, New York 10112

Dear Mr. Pressman:

Following up my telephone conversation with your assistant, Stacey, I am providing you with a succinct summary, as well as a specific question to pose to the candidates for Attorney General in your scheduled interview with them this Sunday.

As virtually every reporter who has written about this race has observed--unfortunately only in passing--the Attorney General has no power in the criminal arena, which is under the jurisdiction of the district attorneys in each county. It is for that reason that when Mr. Koppell became involved in the upstate gang rape case, which Mr. Koppell has since used for a T.V. commercial to promote his campaign, he had to first be appointed by Governor Cuomo as a special prosecutor to do that job. In other words, independent of that appointment, the Attorney General had no power even to investigate, let alone prosecute such case. Thus, the discussion of crime as the "number one issue" has to be understood as a "smokescreen" to obscure the Attorney General's real duties.

Reporters have pointed out that the Attorney General's duties primarily consist of defending the state and its various governmental bodies and officers in civil litigation. Yet, there has been no examination by the press of Mr. Koppell's on-the-job performance during his eight-month tenure as Attorney General by appointment of the Governor.

Under the law of our State, those aggrieved by governmental action and inaction have the right to have their complaints reviewed by legal procedure called an "Article 78 proceeding". In such Article 78 proceedings, the governmental bodies and officers sued are given free legal defense by the Attorney General.

However, the Attorney General is bound by the same standards of ethical responsibilities as govern lawyers in the private sector. Just as a private lawyer may not exceed the bounds of law and ethics in defending his client, the Attorney General, likewise, may not do so. Indeed, since the Attorney General is the highest law officer of the State, he and his office must be the exemplars of integrity.

As shown by irrefutable documentary evidence, Attorney General Koppell, in his defense of judges sued in the Article 78 proceeding entitled Sassower v. Mangano, et al., has not only demonstrated his complete lack of integrity, but his knowing subversion of the Article 78 remedy and his true role as Attorney General.

Briefly stated, in the aforesaid case, Attorney General Koppell permitted judges, who were respondents and the subject of the Article 78 proceeding, to decide their own case and argued to the New York State Court of Appeals, without the slightest citation of legal authority, that there should be no appellate review of such brazen violation of fundamental law and conflict of interest rules applicable to judges.

Your viewing audience can be presumed smart enough to know that "no man can be judge of his own cause". It would be an insult to your audience to think otherwise. Indeed, such maxim--which goes back to ancient time--is embodied in our statute books (Judiciary Law §14), as well as in the Rules Governing Judicial Conduct, promulgated by the Chief Administrator of our courts, and incorporated in our State Constitution (Article VI, §20(b)(4)).

Attorney General Koppell has actual, personal knowledge of the Article 78 proceeding Sassower v. Mangano, et al., which was personally discussed with him on six separate occasions and the subject of intensive, on-going correspondence with him from January through June of this year.

Mr. Koppell has never been able to provide any legal authority for allowing judges accused of the crime of official misconduct to decide their own case--because there is none. That he nonetheless has allowed judges accused of criminal conduct in an Article 78 proceeding to decide their own case--in the face of his knowledge that our law expressly proscribes same--makes him a "law breaker" and unfit for election as our State's highest legal officer.

The point is that Mr. Koppell's duties in defending judges in Article 78 proceedings do not permit him to break the law--as he has knowingly and deliberately done to cover-up what he knows to be a "judicial Watergate".

It must be emphasized that the reason Mr. Koppell has allowed accused judges to decide their own case--where the law unequivocally prohibits it--is precisely because of his actual knowledge that review by an independent tribunal would result in his clients being found guilty of conduct requiring their removal from office and criminal prosecution.

Indeed, Mr. Koppell was provided by us with full documentary evidence, substantiating the truth behind the allegations of the Article 78 proceeding relating to the criminal and tortious conduct of his clients. Yet, the correspondence resoundingly demonstrates Mr. Koppell's complete failure and refusal to conduct any investigation of his clients, or even of the misconduct of lawyers on his staff.

In that connection and with the benefit of our correspondence with Mr. Koppell, the press can see for itself that his recent swift and decisive action against an Assistant Attorney General on his staff for a biased comment is a public relations ploy--and not demonstrative of the manner in which he ordinarily runs his office. As shown by that correspondence, the grossly derelict and dishonest manner in which Mr. Koppell has run the Attorney General's office requires that the voters run him out of that office.

Finally, you should be aware that Sassower v. Mangano, et al. is presently pending before the New York State Court of Appeals and that the papers before that Court document the appalling degree to which Mr. Koppell has abandoned his responsibilities under law. These include his duty to address the constitutional issues raised before that Court relative to the statutory provisions involved in that case. This encompasses those relating to Article 78 proceedings, since any interpretation which would permit accused judges to decide the legality of their own conduct in an Article 78 proceeding would be unconstitutional.

Thus, what Mr. Koppell has done is not only contrary to law and ethical rules, but also unconstitutional.

This is an extraordinary important issue which the public has a right to know since the historic Article 78 remedy belongs to the People as their protection from abuse of governmental power by public officials, who betray their oaths of office and the People's trust.

Mr. Koppell's opponents who aspire to replace him as Attorney General should be asked their view of Mr. Koppell's permitting judges accused of misconduct in Article 78 proceedings to decide their own case and arguing against any appellate review of their self-interested decision.

September 9, 1994

For them to answer this straight-forward question does not require any factual information beyond what is contained in the foregoing paragraph. However, as reflected by the enclosed letters to Karen Burstein and Eliot Spitzer, they each received a full set of papers for their personal review, with a request that they show leadership in raising public consciousness of this vital issue as part of their campaign. Ms. Burstein, who resigned from the bench to run for election to Attorney General, declined to do so. Mr. Spitzer, who called us this afternoon and expressed interest, stated he would be reviewing the material before your program.

As for Mr. Hynes, the Brooklyn District Attorney, his office has been furnished not only with the submissions to the Court of Appeals, but with all the evidentiary materials we had previously provided to Attorney General Koppell (our March 8, 1994 letter)--and which he returned to us, apparently unread (our June 17, 1994 ltr). We are presently awaiting the results of the investigation being undertaken by Mr. Hynes' designated "Corruption Investigation Division", pursuant to our letter complaint, filed on April 27, 1994.

Needless to say, should you desire to review any materials beyond those indicated hereinbelow, which will be hand-delivered to your office tomorrow morning, we will readily provide same to you.

Thus, the question to be put to Mr. Koppell by you is as follows:

"One of your duties as Attorney General is to defend judges sued in Article 78 proceedings for official misconduct. Is it your belief that such judges are free to decide their own case and that there should be no right to appellate review of a decision in their favor?"

Were Mr. Koppell to answer honestly with the only legally proper answer, you can then confront him with the case of Sassower v. Mangano, et al., exposing his hypocrisy for what it is.

As aforesaid, the question for the other candidates is:

"What is your view of an Attorney General who permits judges accused of misconduct in Article 78 proceedings to decide their own case and argues against any appellate review of a decision in their favor?"

Mr. Pressman

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We will be watching your show with great interest. It would be refreshing to see the four candidates focus on a real issue, relevant to the office of Attorney General.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability

- Enclosures:
- (1) correspondence with Attorney General Koppell
  - (2) Judiciary Law §14
  - (3) Chief Administrator's Rules Governing Judicial Conduct
  - (4) 8/4/94 letter to Karen Burstein
  - (5) 8/8/94 letter to Eliot Spitzer
  - (6) 4/27/94 complaint to Brooklyn District Attorney Corruption Investigation Division



The extraordinary exhibits to this letter to Mr. Pressman--consisting, inter alia, of a continuum of correspondence with the Attorney General's office--were supplied to Mr. Fisher. Due to their volume, they are not reproduced herein.

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6  
10/8/94

FAX COVER SHEET

3:50 p.m.

DATE

TIME

THE NEW YORK TIMES  
IAN FISHER

TO:

518-436-7109 (tele: 518-436-0757)

FAX NUMBER:

This fax consists of a total of 18 19 pages, including this cover-sheet. If you do not receive the indicated number of pages, or if there is a question as to the transmittal, please call (914) 997-8105.

Elena Ruth Sassower, Coordinator

FROM:

Dear Mr. Fisher:

For reasons you have not been good enough to share with me, for almost a month, you have failed and refused to return any of the numerous telephone messages I have left for you at your New York and Albany offices.

This is notwithstanding your request in our one and only telephone conversation on September 8th that I send you some of our materials bearing on the race for New York State Attorney General--which you are covering. On September 10th, I hand-delivered those materials to you--under a coverletter, which enclosed a copy of my letter to Gabe Pressman. You will recall that Mr. Pressman was to hold a "debate" between the candidates on WNBC-TV the following day.

According to the A.P. item that appeared in today's New York Times, beneath your lengthy "bio" sketch of Dennis Vacco, a debate by WABC-TV will be taped tomorrow. I am in the process of contacting that station so as to provide it with my September 29th letter to Mr. Vacco, which enclosed our correspondence with Ms. Burstein.

I believe you should, likewise, have a copy. FYI, I also enclose a copy of my September 25th "Letter to the Editor", as yet unpublished by the Times.

Elena Ruth  
Sassower

Ex "M-3"