CENTER for JUDICIAL ACCOUNTABILITY

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FAX COVER SHEET

10/3/94 — DATE

1:30 p.m. — TIME

TO: THE NEW YORK TIMES
ATT: Joseph P. Fried

FAX NUMBER: 718-858-2497 (tele: 718-625-5733)

This fax consists of a total of 16 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.

FROM: Elena Ruth Sassower, Coordinator

Dear Mr. Fried:

Thanks for your review. This is a dynamite story about the most fundamental of conflict of interest--judges deciding their <u>own</u> cause--and doing so in the context of an Article 78 proceeding, which is designed to provide <u>independent</u> review of government misconduct.

By Order dated September 29, 1994, the Court of Appeals has refused review--whether as of right or as of leave--of the Appellate Division, Second Department's self-interested decision in its <u>own</u> favor. It thus makes plain that, notwithstanding its promulgation of the Rules Governing Judicial Conduct, it will not undertake enforcement thereof--at least against high-ranking judges of the Appellate Division, Second Department.

By that standard, what can we expect of the Commission on Judicial Conduct--which is known for its failure to take action against the most heinous and documented complaints of judicial misconduct.

Also enclosed is the <u>Times</u>' September 17, 1994 editorial "New York's Mystery General" and my September 25th letter in response, as yet unpublished.

Ex "N"

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(58)

By Fax: 212-949-8864
and Priority Mail: Certified, RRR 358-786-513

September 19, 1994

Commission on Judicial Conduct
801 Second Avenue
New York, New York 10017

RE: Complaint against the Justices of the Appellate Division, Second Department, and, in particular, Justices William C. Thompson, Lawrence J. Bracken, Thomas R. Sullivan, Vincent R. Balletta, and Albert M. Rosenblatt

Dear Commission Members:

This letter constitutes a formal complaint against justices of the Appellate Division, Second Department, who have knowingly and deliberately violated fundamental judicial disqualification rules as to conflict of interest. Those rules explicitly proscribe a judge's participation in any case to which he is a party or in which he has an "interest that could be substantially affected by the outcome of the proceeding".

Such judicial disqualification rules, going back to the common law, are embodied in Canon 3(C) of the Code of Judicial Conduct, as well as the Chief Administrator's Rules Governing Judicial Conduct, which Article VI, §20 of the New York State Constitution gives the force of constitutional mandate.

Judiciary Law §14 codifies these rudimentary disqualification rules by language which is "positive and explicit" (People v. Thayer, 61 Misc. 573, 115 N.Y.S. 855, aff'd 132 A.D. 593, 116 N.Y.S. 821 (1908). Decisional law further requires "a Judge to studiously avoid all taint of impropriety", Harris v. State Commission on Judicial Conduct, 56 N.Y.2d 365, 452 N.Y.S.2d 368 (1982).

Nonetheless, when I brought an Article 78 proceeding against the Appellate Division, Second Department, suing its Presiding Justice, Hon. Guy Mangano, in his representative capacity as the first-named respondent therein, and charging the Appellate Division, Second Department with criminal conduct in underlying

proceedings under A.D. #90-00315, the Appellate Division, Second Department failed and refused to follow controlling law and rules relating to mandatory disqualification. Indeed, the Appellate Division, Second Department's refusal to recuse itself from adjudicating Sassower v. Hon. Guy Mangano, et al. (A.D. #93-02925) occurred notwithstanding a formal application by me for recusal and transfer, where my specific factual allegations of criminal conduct by the Appellate Division, Second Department in the underlying proceedings, and evidentiary showing in support thereof, were uncontroverted.

All of the papers in the Article 78 proceeding that were before the Appellate Division, Second Department when it decided the Article 78 proceeding against itself are transmitted herewith in substantiation of this complaint. I specifically draw the Commission's attention to ¶22 of my July 2, 1993 Affidavit in support of my Order to Show Cause for disqualification, wherein I stated:

> "22. The decisions and orders relating to...[the underlying proceedings under] A.D. #90-00315 show the involvement of a majority of the judges of the Appellate Division, Second Department. Those decisions and orders, when compared with the record in the proceedings, evidence a pattern of disregard for black-letter law and standards of adjudication--particularly as to threshold jurisdictional issues." (emphasis added)

I also refer the Commission to Point II (pp. 4-6) of my July 19, 1993 Memorandum of Law on the disqualification issue, which highlighted (at p. 5) that ¶22 quoted hereinabove, as well as five other critical paragraphs of my aforesaid July 2, 1993 Affidavit, were entirely undisputed by the Appellate Division, Second Department's attorney, the Attorney General. Such paragraphs dealt with the lawlessness of the Appellate Division, Second Department, as reflected by the files in the underlying proceeding under A.D. #90-00315.

Under such circumstances, the Appellate Division, Second Department was duty-bound to recuse itself and transfer the case out of the Department. That obligation was even more compelled in the context of an Article 78 proceeding--whose historic purpose is to provide review by an independent tribunal of complaints concerning misconduct by judges and other public officers and bodies.

The extent to which the Appellate Division, Second Department deliberately flouted its mandatory obligation to recuse itself and perverted the Article 78 remedy may be seen from the

September 20, 1993 Decision, Order & Judgment (Exhibit "A") it rendered, denying, without reasons or citation to any legal authority, my motion for its recusal. Indeed, four members of the five-judge panel rendering the Judgment were absolutely disqualified from deciding the proceeding.

As set forth to the Court of Appeals at ¶6 of my January 24, 1994 Jurisdictional Statement to support review as of right by that tribunal:

> "6. ...Respondent Second Department rendered the [September 20, 1993] Judgment by a five-judge panel, three of whose members--Justices Thompson, Sullivan, and Bracken--had themselves participated in every Order [under A.D. #90-00315] which the Article 78 proceeding sought to have reviewed--and a fourth member, Justice Balletta, who has participated in more than half of said Orders." (emphasis in the original)

This factual allegation--dispositive of the mandatory duty of Justices Thompson, Sullivan, Bracken, and Balletta to have disqualified themselves from adjudicating the Article 78 proceeding wherein their conduct was directly in issue--is uncontroverted and incontrovertible. Indeed, the Commission can readily verify for itself the on-going involvement of Justices Thompson, Sullivan, Bracken, and Balletta in the underlying proceedings under A.D. #90-00315 by examining the Orders under that docket number, annexed as exhibits to my Article 78 submissions[1]. For the convenience of the Commission, their names, appearing on each of the Orders, have been highlighted by yellow marker.

Based on the foregoing unrebutted and irrebuttable documentary evidence, the Commission on Judicial Conduct, has ample probable cause to commence an investigation. That investigation will show that the Justices' knowing and wilful failure and refusal to recuse themselves from adjudication of my Article 78 proceeding constituted the crime of Official Misconduct under Penal Law §195.00, as to both subdivisions 1 and 2 thereof.

Investigation will further establish that when Justices Thompson, Sullivan, Bracken, Balletta, and Rosenblatt granted

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[1] See, Article 78 Petition: Exhibits "B" and "C" thereto; my July 2, 1993 Affidavit in support of Order to Show Cause, Exhibits "A-1", "A-2", "A-3", "A-4", "A-5", "G", "H", "I", "K-1", "K-2", "M-1", "M-2" thereto; my July 19, 1993 Affidavit, Exhibit "B-1" thereto.

the dismissal motion of their own attorney, the Attorney General, furnished at state expense to defend them, they did so with full knowledge that their attorney's said dismissal motion was not only legally insufficient, but also factually false and perjurious. In support thereof, I refer the Commission to the following portions of my submissions to the Appellate Division, Second Department when it, nonetheless, granted its attorney's dismissal motion: my July 2, 1993 Affidavit in support of my Order to Show Cause, at ¶¶17-61; my July 19, 1993 Affidavit, at ¶¶2-4; 12-19; 22-26; 29-30; my July 19, 1993 Memorandum of Law, Points II, III, IX.

Indeed, notwithstanding that the above-cited submissions exposed the perjurious and sanctionable nature of the Attorney General's dismissal motion, the Appellate Division, Second Department permitted the Attorney General to repeat such objected-to misconduct in its defense before the Court of Appeals[2]. Such represents its complicity in the crimes committed by its attorney by his knowing and wilfully filing, on its behalf, of sworn false statements, Penal Law, §210.05, §210.10, §210.35, §210.40. Revealingly, both before the Appellate Division, Second Department and the Court of Appeals, the Attorney General was unable to provide any legal authority for allowing his judicial clients to decide an Article 78 proceeding challenging the legality of their own conduct.

Investigation will readily disclose the improper motive behind the Appellate Division, Second Department's actions: its actual knowledge of the substantive merit of the Article 78 proceeding, which, if reviewed by an independent tribunal, would ultimately result in criminal prosecution and liability of the Appellate Division, Second Department justices involved in the underlying proceedings under A.D. #90-00315. Certainly, Justices Thompson, Sullivan, Bracken, and Balletta knew--of their own personal knowledge--that the files under A.D. #90-00315 document an on-going pattern of heinous judicial misconduct and criminal acts, mandating their removal from office (see p. 6 of my July 19, 1993 Memorandum of Law).

Such criminal conduct has included, inter alia, the Appellate Division, Second Department's issuance and perpetuation of an

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[2] Although events subsequent to the September 20, 1993 Judgment (Exhibit "A") showed, unequivocally, that the basis upon which the Appellate Division, Second Department dismissed the Article 78 proceeding--to wit, the supposed existence of a remedy in the underlying proceeding--"was and is an outright lie", the Attorney General continued to ignore all evidentiary proof on the subject and persisted in making false and completely unsubstantiated claims to the contrary.

interim Order[3] of suspension of my professional license--which, at the time it was issued on June 14, 1991, that Court knew to be fraudulent and jurisdictionally void--a fact highlighted by its failure to state any reasons for the interim suspension in its Order, in violation of the Appellate Division, Second Department's own rules (22 N.Y.C.R.R §691.4(l)(2)) and the complete absence of any evidentiary findings, in violation of controlling decisional law of this State's highest Court, Matter of Nuey, 61 N.Y.2d 513, 474 N.Y.S.2d 714 (1984).

Notwithstanding the Court of Appeals' supervening decision in Matter of Russakoff, 72 N.Y.2d 520, 583 N.Y.S.2d 949 (1992), which reiterated that interim suspension orders without findings had to be vacated as a matter of law, and that there must be a prompt post-suspension hearing, where no hearing has been held prior thereto, the files under A.D. #90-00315 show that the Appellate Division, Second Department, without reasons, persists in refusing to vacate the June 14, 1991 interim suspension Order--although the record demonstrates that my right to vacatur of my interim suspension is in all respects a fortiori to that of attorney Russakoff. The Appellate Division, Second Department further refuses to direct a post-suspension hearing, although no hearing was ever afforded me prior to my suspension. Contrary to my rights under the CPLR, it has also threatened me with criminal contempt if I make any further motion without prior judicial approval.

The files under A.D. #90-00315 leave no doubt but that the justices of the Appellate Division, Second Department have employed their judicial offices to advance ulterior retaliatory goals, there being not the slightest factual or legal basis for any of the Orders issued thereunder.

Thus, the refusal of the justices of the Appellate Division, Second Department to disqualify themselves from adjudicating an Article 78 proceeding challenging their own Orders under A.D. #90-00315 represents more than an abstract ethical violation of the rule proscribing "the appearance of impropriety". It is a deliberate obstruction of justice and "cover-up" to prevent exposure of criminal activity by the Appellate Division, Second Department under A.D. #90-00315, itself constituting yet another crime (Obstructing Governmental Administration, Penal Law §195.05).

The fact that Justice Thompson is a long-standing member of the Commission on Judicial Conduct obviously requires his

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[3] The June 14, 1991 interim suspension Order is annexed as Exhibit "A-1" to my Affidavit in support of my July 2, 1993 Order to Show Cause.

disqualification from any consideration of this complaint inasmuch as Justice Thompson was not only the Presiding Judge of the Appellate Division, Second Department panel which refused to recuse itself from adjudicating Sassower v. Mangano, et al., but, as hereinabove cited, had himself participated in every Order under A.D. #90-00315 challenged therein.

The Commission's Annual Report appends a copy of the Chief Administrator's Rules Governing Judicial Conduct. Thus, the public has a right to expect the Commission to enforce Rules 100.2 and 100.3 therein governing "impropriety" and "disqualification" by taking disciplinary steps against violators of Rule 100.2 and 100.3--most especially against Justice Thompson.

Plainly, if the personal friendships that have developed between Justice Thompson and other Commission members during his tenure, would interfere with the Commission's performing its statutory duty to investigate and punish him and his co-conspiring justices of the Appellate Division, Second Department, the Commission must disqualify itself and request the Governor to appoint a Special Prosecutor.

For your information, I annex as Exhibit "B-1" a copy of my credentials as they appeared in the 1989 edition of the Martindale-Hubbell's Law Directory. That publication gave me its highest rating of "AV" for both integrity and competence in all the many years in which I maintained my own private practice until my 1991 interim suspension. Additionally, I annex as Exhibit "B-2" a copy of a letter from the Fellow of the American Bar Association, announcing my election to that distinguished body in 1989. As indicated by that letter, such election is an honor reserved for "less than one-third of one per cent of the practicing bar in each state".

As reflected by my Martindale-Hubbell's listing, I have considerable expertise on the subject of judicial standards. In 1972, I became the first woman to be appointed as a member of the New York State Bar Association's Committee on Judicial Selection, a position in which I served for eight years, interviewing and evaluating the qualifications of every candidate for our Court of Appeals, the four Appellate Divisions and the Court of Claims.

I believe the within transmittal should more than suffice to establish the absolute disqualification of the Appellate Division, Second Department from adjudicating my Article 78 proceeding against itself and its tolerance of a legally insufficient dismissal motion of its attorney, the Attorney General. However, for verification of that branch of this complaint that charges the Appellate Division, Second Department with complicity in the Attorney General's perjurious dismissal

motion and with misuse of its judicial office for ulterior retaliatory ends, your investigation will require, inter alia, the files under A.D. #90-00315. I await your request for such files, which, in the meantime, will be readied for transmittal.

I would note that when the Appellate Division, Second Department issued its June 14, 1991 suspension Order, I immediately moved to vacate it, arguing, inter alia, that such suspension was "swift retribution" for my judicial "whistle-blowing" as pro bono counsel in the case of Castracan v. Colavita. That case, brought in 1990 on behalf of the public interest, challenged the disenfranchisement of voters in the Ninth Judicial District, resulting from a corrupt political deal made in 1989 between the leaders of the two major parties in the Ninth Judicial District. By said deal, which was put in writing, party leaders cross-endorsed seven judgeships over a three-year period, including the Westchester Surrogate judgeship, contracted-for judicial resignations, and agreed to a split of judicial patronage. Castracan v. Colavita also challenged the illegally conducted judicial nominating conventions, at which the deal was implemented, and the perjurious certificates of nomination, falsely attesting to compliance with Election Law requirements.

This Commission dismissed, without investigation, my documented complaints as to the judicial "cover-up" that took place in Castracan v. Colavita and in the companion case of Sady v. Murphy to protect the judges, would-be judges, and political leaders involved. The Commission, likewise, dismissed, without investigation, my documented complaints against Supreme Court Justice Samuel G. Fredman, credited as "the chief architect" of the deal, who was also its principal beneficiary.

Such dismissals of my aforementioned prior complaints--without investigation--notwithstanding documentary evidence showed prima facie judicial misconduct--has plainly emboldened the Appellate Division, Second Department, led by a judicial member of this Commission, to act as if it were above the law and rules of ethics.

The Commission's handling of this profoundly serious and far-reaching complaint will test whether one of its own judicial members will be held accountable for failing to adhere to the fundamental ethical and legal standards that this Commission was constitutionally created to enforce.

Very truly yours,

DORIS L. SASSOWER, Director
Center for Judicial Accountability

DLS/er
Enclosures:
(1) Article 78 Petition, dated 4/28/93
(2) Attorney General's Motion to Dismiss, dated 5/12/93
(3) Attorney General's Memorandum of Law, dated 5/13/93
(4) DLS' Order to Show Cause, dated 7/2/93
(5) Attorney General's Memorandum of Law in Opposition, dated 7/12/93
(6) DLS' Affidavit, dated 7/19/93
(7) DLS' Memorandum of Law, dated 7/19/93
(8) Appellate Division, Second Department's Decision, Order & Judgment, dated 9/20/93
(9) DLS' 1989 Martindale-Hubbell listing and letter confirming election to the Fellows of the American Bar Foundation