CHRONOLOGY

Annotated with cross-references to the disciplinary files under A.D. #90-00315, organized according to the Inventory that is annexed to Supplemental Exhibit "7" to the March 14, 1994 letter of Evan Schwartz, Esq.

1. In May 1989, Samuel G. Fredman, a former Chairman of the Westchester County Democratic Committee, with no prior judicial experience, took office as a Supreme Court justice of the Ninth Judicial District, by interim appointment of Governor Mario Cuomo.

2. The position filled by Mr. Fredman was an interim vacancy created by the early resignation of Supreme Court Justice Lucille Buell, a Westchester County Republican, whose term was to have expired on December 31, 1989. Upon information and belief, Justice Buell's early resignation was part of a larger judge-trading deal between the Westchester Republican and Democratic party leadership, consummated in 1989.

3. Upon information and belief, in or about May 1989, Harvey Landau, Esq. was Chairman of the Scardale Democratic Club, actively promoting the nomination of Samuel G. Fredman for a 14-year term in the November 1989 general election (Folder "D-7", Doc. 1, Exh. "C" to DLS Aff., ¶¶18-23).

4. On or about June 22, 1989, Mr. Landau, as successor counsel to Doris Sassower's law firm in a divorce action entitled Breslaw v. Breslaw, (Westchester Co. #86-22587), presented to Justice Fredman a false, fraudulent, and facially

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Ex "J" Ex "B"

deficient Order to Show Cause, seeking to hold Doris Sassower [hereinafter "DLS"] and her law firm in contempt and for sanctions against them based upon their alleged refusal to turn over to him their legal files relating to Mrs. Breslaw's divorce action[1].

5. At the time the aforesaid contempt motion was signed by Justice Fredman, he had no prior involvement in the Breslaw matter, but had considerable prior professional involvement with DLS, who had been his adversary and professional competitor for many year, during which he had evidenced hostility and vicious feelings toward her and the public and professional positions she had espoused.

6. Mr. Landau's Order to Show Cause was factually, legally, and jurisdictionally baseless as a matter of law (Folder "D-7", Doc. 1, Exh. "C" to DLS Aff., See Memo of Law annexed thereto) (also, Br., Pt. II, pp. 30-40)[2]--as would have been obvious to any unbiased and competent judge.

7. On June 30, 1989, DLS appeared in Justice Fredman's part for the return date of her own pending Order to Show Cause for reargument of the order which was the subject of

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[1] The papers in the contempt proceeding in Breslaw v. Breslaw are contained in the an Appendix, accompanying DLS' Appellant's Brief, filed in the Appellate Division, Second Department under docket number, A.D. #92-0062/4. Notwithstanding said appeal was filed on August 11, 1992--and the Second Department is now calendaring 1993 appeals--the Appellate Division has skipped over the Breslaw appeal.

[2] Citations herein to "Br." or "A-", refer to documents contained in DLS' Appellant's Brief and Appendix in Breslaw v. Breslaw, A.D. #92-00562/4.

Mr. Landau's Order to Show Cause. Mr. Landau failed to appear on such return date (Folder "D-4/5/6", Doc. 6, Exh. "D", p. 11-12; File "D-7", Doc. 1, Exh. "C" to DLS Aff: 7/5/89 ltr annexed thereto).

8. Over DLS' objection, Justice Fredman then engaged in an ex parte communication with Mr. Landau, following which Mr. Landau's untimely opposing paper were received by the Court. Justice Fredman thereupon denied DLS an adjournment to reply thereto and denied her an adjournment of Mr. Landau's contempt Order to Show Cause, whose July 10, 1989 return date DLS informed Justice Fredman was for a date she was scheduled to be out of the country (Folder "D-4/5/6", Doc. 6, Exh. "D", p. 11-12).

9. By letter dated July 5, 1989 (Folder "D-7", Doc. 1, annexed to Exh. "C" to DLS Aff.), hand-delivered to Justice Fredman's Chamber, DLS stated that as a result of the Court's denial of her requested adjournment of the first-time on pending motion and it ex parte conversation with Mr. Landau, she would be retaining counsel in the contempt proceeding. She requested thirty days for such purpose.

10. Although Judiciary Law §756 mandates the right to counsel in contempt proceedings, Justice Fredman denied DLS any adjournment in a letter (A-119) that was mailed in an envelope bearing a postmark of "PM" "7 Jul. 1989" (A-125).

11. Said letter did not arrive at DLS' law firm until late in the morning on Monday, July 10, 1989 (A-124).

12. Upon receipt of Justice Fredman' aforesaid letter,

DLS' secretary immediately telephoned Justice Fredman's Chambers and advised that DLS had left the country prior to the letter's delivery and was unaware of its contents (A-124). DLS' secretary offered to send an attorney to court, but was told by Justice Fredman's law secretary that that was unnecessary (Folder "D-4/5/6", Doc. 6, Exh. "D", pp. 13-4).

13. The court records and an affidavit by the court reporter assigned to Justice Fredman establish that the Breslaw matter was not on the court's calendar on July 10, 1989, that there were no appearances noted, and that no default was taken against DLS or her law firm.

14. Nonetheless, three day later, on July 13, 1989, Justice Fredman issued a defamatory decision (Folder "D-4/5/6", Doc. 6, Exh. "D"), prejudging DLS guilty of the underlying contempt charged by Mr. Landau and excoriating her for what he termed her "capricious disappearance" on July 10, 1989, which he characterized as a "gross insult visited" upon him personally, constituting a further contempt. Justice Fredman released his decision to the New York Law Journal (A-281) and local press (A-342).

15. Within a week of publication by The New York Law Journal on July 24, 1989 (Folder "D-4/5/6", Doc. 6, Exh. "D") and articles on the contempt proceeding by the local Gannett newspaper (A-342-3), the Grievance Committee for the Ninth Judicial District [hereinafter "Grievance Committee"], on information and belief, rendered an ex parte report concerning

DLS, which it thereafter filed with the Appellate Division, Second Department [hereinafter "Second Department"].

16. DLS has never seen such ex parte July 31, 1989 report, discovery of which has been consistently denied her by Mr. Casella, Chief Counsel for the Grievance Committee, and by the Second Department (Article 78: DLS' 7/2/93 Cross-Motion, ¶36; 11/19/93 Dism/S.Judg Motion, ¶23).

17. Upon information and belief, the ex parte July 31, 1989 report related to complaints by two former clients, arising out of fee disputes with DLS' law firm.

18. Said complaints, pending before the Grievance Committee since 1987 and 1988, had been controverted by DLS in all material respects (11/19/93 Dism/S.Judg Motion, Exh. "E" and "F"; Article 78: DLS' 7/2/93 Cross-Motion, ¶46)

19. The Grievance Committee never notified DLS of any intent to take disciplinary steps with respect to the aforesaid two complaints and never served her with pre-petition written charges or afforded her a pre-petition hearing, as 22 N.Y.C.R.R. §691.4(e)(4) and (f) require.

20. The nature of the complaints, as well as the chronology of their handling by the Grievance Committee and the Second Department, show no basis upon which the Grievance Committee could discard the pre-petition requirements under the exigency exception of §691.4(e)(5) (Article 78: DLS' 7/2/93 Cross-Motion, ¶¶ 38-45).

21. Notwithstanding that under 22 N.Y.C.R.R. §691.4(k)

disciplinary proceedings are to be given a preference by the court, it was not until more than four months later, on December 14, 1989 (Folder "D-1"), that the Second Department rendered an Order on the ex parte July 31, 1989 report.

22. Meanwhile, in the Breslaw contempt proceeding, Justice Fredman denied DLS' recusal motion based on his personal bias and pre-exiting hostility toward her (A-131-153; 38-49), and the Second Department denied DLS' application for leave to appeal Justice Fredman's Order denying recusal (A-190-201; 211-214; 215).

23. Neither Justice Fredman nor Mr. Landau disclosed their on-going political relationship--which was then unknown to DLS (Doc "D-7", Doc 1, Exh. "C", pp. 8-10) (A-318-323; 326).

24. At the next appearance before Justice Fredman, on August 30, 1989, Justice Fredman, in the presence of the press, held DLS in summary contempt. DLS thereupon brought an Article 78 proceeding against Justice Fredman (A-216-234), who later withdrew the summary contempt after being informed by the Attorney General that he could not defend same (A-235-7)[3].

25. Upon information and belief, on or before August 30, 1989, the political leadership of the Democratic and Republican Parties of the Ninth Judicial District formalized, by a written document, the negotiations that had been taking place

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[3] The Second Department's November 14, 1989 Decision & Order, dismissing said Article 78 proceeding against Justice Fredman as moot in light of such vacatur, was reprinted by The New York Law Journal on November 22, 1989.

over the preceding year to trade judgeships in the Ninth Judicial District. The document set forth a three-year deal [hereinafter "the Deal"] by which, through cross-endorsement, the Democratic and Republican parties exchanged Supreme and County judgeships, including the Surrogate judgeship of Westchester County, upon agreed terms and conditions, including a contracted-for resignation of a Supreme Court judge and a split of judicial patronage along party lines.

26. Upon information and belief, the principal architect and beneficiary of the Deal was Samuel Fredman.

27. Upon information and belief, the Deal was ratified by the Executive Committee of the Democratic and Republican parties of the counties comprising the Ninth Judicial District--Westchester, Putnam, Dutchess, Orange, and Rockland. It was then implemented at the Judicial Nominating Conventions conducted in September 1989 which, pursuant to the Deal, nominated Justice Fredman, then 64 year of age to a 14-year term on the Supreme Court.

28. The Democratic Judicial Nominating Convention was held on September 19, 1989 and personally witnessed by DLS, as a member of the Ninth Judicial Committee, a citizen' group organized by Eli Vigliano, Esq., who was also present at the Convention and witnessed same.

29. In an October 1, 1989 article published in the Westchester edition of The New York Times, DLS as well as Mr. Vigliano were quoted as "attempting to mount a legal challenge".

30. Within the next ten day, DLS gave information to the Judiciary Committee of the Westchester Bar Association and Women's Bar Association concerning Justice Fredman's unfitness for the judicial office to which he had been nominated by both major parties. By letter dated October 5, 1989, DLS sent a copy of her written submission concerning Justice Fredman to the New York State Commission on Judicial Conduct, which dismissed her complaint, without investigation, by letter dated November 28, 1989.

31. On November 1, 1989, Mr. Vigliano, on behalf of the Ninth Judicial Committee, hand-delivered a written complaint to Governor Cuomo's Manhattan office, copies of which he filed with the New York State Board of Elections and the New York State Commission on Judicial Conduct, entitled "Election Fraud in the Ninth Judicial District". Mr. Vigliano contended that the three-year Deal was illegal and a fraud upon the voters, as were the Judicial Nominating Conventions, which he detailed as violative of the Election Law. Mr. Vigliano further noted the perjurious nature of the Certificates of Nomination, signed by the permanent chairman and secretary of each party, all lawyers.

32. The Governor's Office referred Mr. Vigliano's complaint to the New York State Board of Election which, on May 25, 1990 dismissed it, without investigation and without notice to Mr. Vigliano. By that time, the New York State Commission on Judicial Conduct had already dismissed, without investigation, Mr. Vigliano's November 3, 1989 complaint to it.

33. On November 15, 1989 (A-349), the local Gannett newspaper reported that DLS had been recently released from a psychiatric hospital, which she had voluntarily entered following her collapse resulting from Justice Fredman's abusive treatment and public humiliation of her in the Breslaw case.

34. The following month, by Order dated December 14, 1989 (Folder "D-1"), the Second Department issued an Order authorizing a disciplinary proceeding against DLS based on alleged "acts of professional misconduct set forth in the committee's report, dated July 31, 1989" and naming Gary Casella, Chief Counsel for the Grievance Committee, as prosecutor of the proceeding.

35. Said Order (Folder "D-1") did not allege that the ex parte July 31, 1989 committee report had recommended prosecution of DLS or that it had made any finding that DLS was guilty of alleged misconduct.

36. The December 14, 1989 Order (Folder "D-1") made no reference to 22 N.Y.C.R.R. §691.4 and made no findings that the Grievance Committee had complied with the provisions therein.

37. No copy of the December 14, 1989 Order, or of the papers on which it was based, was ever served upon DLS (11/19/93 Dism/S.Judg Motion, ¶85).

38. On February 8, 1990, DLS was personally served with a Notice of Petition and Petition dated February 6, 1990 (Exh. "C" to 11/19/93 Dism/S.Judg Motion). Said Petition was made entirely "upon information and belief"--including the

allegation as to compliance with "Section 90 of the Judiciary Law and pursuant to Section 691.4 of the Rules Governing the Conduct of Attorneys".

39. No copy of the Second Department's December 14, 1989 Order or the July 31, 1989 committee report was attached to the February 6, 1990 Petition, which recited those document in its jurisdictional allegations (11/19/93 Dism/S.Judg Motion, ¶¶22, 85).

40. On March 8, 1990, DLS, by her attorney, Eli Vigliano, Esq., served her Verified Answer, dated March 7, 1990 (Exh. "U" to 11/19/93 Dism/S.Judg Motion), which denied knowledge or information sufficient to form a belief as to the December 14, 1989 Order (Folder "D-1") and the ex parte July 31, 1989 committee report, as well as to the Grievance Committee's compliance with Judiciary Law §90 and §691.4, alleged as jurisdictional allegations in the February 6, 1990 Petition.

41. DLS' Verified Answer further pleaded two complete affirmative defenses, including that DLS was "being made the subject of invidious, discriminatory, retaliatory, selective disciplinary action denying her, inter alia, the equal protection of the laws".

42. No allegation in the Grievance Committee's February 6, 1990 Petition or DLS' March 7, 1990 Verified Answer placed her medical condition in issue.

43. In April 1990, Justice Fredman, in the still unresolved Breslaw contempt proceeding, telephoned DLS'

psychiatrist, without her knowledge or consent, and directed him to appear in court--under threat that he would otherwise be brought to court by a Sheriff--to respond to Justice Fredman's own inquiries as to DLS' medical condition (Folder "D-7", Doc. 1, DLS Aff., ¶5).

44. On April 13, 1990, over the objection of counsel appearing on DLS' behalf and in her absence, Justice Fredman violated the physician-patient privilege under CPLR §4504, directing DLS' psychiatrist to testify as to her medical condition and denying a motion that such testimony be taken in camera (Folder "D-7", Doc. 1, DLS Aff, ¶3).

45. Thereafter, Justice Fredman ordered the court reporter to transcribe the April 13, 1990 court proceeding on an expedited basis, at taxpayers' expense. On April 20, 1990, he issued a decision finding DLS to be mentally capacitated (Folder "D-2", Doc. 1, Exh. "C").

46. Less than three weeks later, and without any inquiry of DLS prior thereto as to either her medical condition or whether she was then representing clients, Mr. Casella procured an ex parte Order to Show Cause (Folder "D-2", Doc. 1), to which he annexed the April 13, 1990 court transcript and Justice Fredman's April 20, 1990 decision. Said Order to Show Cause, signed May 8, 1990, sought a court-ordered medical examination of DLS pursuant to §22 N.Y.C.R.R. §691.13(b)(1) to determine whether she was mentally incapacitated and to suspend her upon such determination.

47. Mr. Casella's Order to Show Cause (Folder "D-2", Doc. 1) was unsupported by the petition of the Grievance Committee called for in 22 N.Y.C.R.R. §691.13(b)(1), the rule provision upon which Mr. Casella relied, and failed to allege any authorization by the Grievance Committee for such application (Folder "D-4/5/6", Doc. 5).

48. Mr. Casella's Order to Show Cause (Folder "D-2", Doc. 1) did not seek relief under 22 N.Y.C.R.R. §691.13(c). It did not allege that DLS had placed her medical condition in issue in the disciplinary proceeding authorized by the February 6, 1990 Petition or that such February 6, 1990 Petition was an "underlying" proceeding. Nor did the Order to Show Cause direct service thereof on DLS' attorney of record for the February 6, 1990 Petition, Mr. Vigliano.

49. Although Mr. Casella's May 8, 1990 Order to Show Cause required personal service thereof upon DLS, it was not personally served upon her.

50. DLS opposed Mr. Casella's May 8, 1990 Order to Show Cause with a Cross-Motion (Folder "D-2", Doc. 2) to dismiss same for lack of personal and subject matter jurisdiction, stating that there was no showing by Mr. Casella that the Grievance Committee had authorized him to bring such application and that requisite pre-petition procedures had been followed (at p. 4).

51. DLS further sought dismissal based on "unconstitutional invidious selectivity", specifically requesting

"a pre-disciplinary hearing" to establish the Grievance Committee's "continuous unending pattern of invidious selectivity" going back to its first disciplinary proceedings ever brought against her more than ten year earlier (Folder "D-2", Doc. 2, pp. 2, 6-9).

52. In support thereof, DLS pointed out that when those earlier proceedings had been transferred to the Appellate Division, First Department, it threw out, on summary judgment, seventeen of the twenty charges made therein against her, thereafter dismissing the remaining three charges in a November 18, 1981 Order, which gave DLS leave to seek sanctions against her prosecutors in the Second Department for their frivolous conduct (Folder "D-2", Doc. 2, p. 6).

53. DLS' complaint as to the constitutionally impermissible manner in which the Grievance Committee had prosecuted those earlier proceedings and the unethical conduct of it Chief Counsel, Assistant Counsel, and it Chairman was reflected by the November 18, 1981 Order, annexed to her papers in support of her Cross-Motion (File Folder "D-2", Doc. 4, Exh. "B").

54. Mr. Casella failed to present any proof that the Grievance Committee had authorized him to make the May 8, 1990 Order to Show Cause for DLS' suspension pursuant to 22 N.Y.C.R.R. §691.13(b)(1).

55. Although 22 N.Y.C.R.R. §691.4(k) requires disciplinary proceedings to be given a preference by the court,

the Second Department did not adjudicate Mr. Casella's May 8, 1990 Order to Show Cause and DLS' Cross-Motion for four months, i.e., until October 18, 1990--the day before DLS was scheduled to argue the appeal in Castracan v. Colavita before the Appellate Division, Third Department.

56. In late September 1990, DLS, acting a pro bono counsel, filed an Election Law case in the Third Department, entitled Castracan v. Colavita, et al. Said proceeding challenged as illegal, unethical, and an unconstitutional disenfranchisement of the voters the three-year judge-trading Deal--the 1990 phase of which was then being implemented. Also challenged was the conduct of the 1990 Democratic and Republican Judicial Nominating Convention, which the Petition alleged had violated the Election Law.

57. By decision/order dated October 17, 1990, the Supreme Court, Albany County dismissed Castracan v. Colavita for failure to state a cause of action, on the ground that it could not address the legality of the three-year Deal, absent proof that the judicial nominating conventions implementing it had been illegally conducted.

58. The aforesaid decision disregarded the legal standard for a motion to dismiss for failure to state a cause of action and falsified the record, which contained proof as to the Election Law violations at the Judicial Nominating Conventions in the form of affidavits of three eye-witnesses to the conventions. No hearing had been afforded the Castracan Petitioner to present

further proof.

59. On appeal, the Appellate Division, Third Department, whose rule entitle Election Law proceeding to an automatic preference, cancelled, without reasons[4], the oral argument in Castracan v. Colavita, scheduled for October 19, 1990, and put the case over until after Election Day. Such cancellation by the Appellate Division, Third Department was on October 18, 1990--the same day the Second Department, after a four-month delay, issued its Order granting Mr. Casella's May 8, 1990 Order to Show Cause to have DLS medically examined.

60. The Second Department's brief October 18, 1990 Order (Folder "D-2") contained seven material errors:

(a) It mischaracterized DLS' Cross-Motion (Folder "D-2", Doc 2), which sought dismissal of Mr. Casella's May 8, 1990 Order to Show Cause, as seeking dismissal of a disciplinary proceeding authorized against her by a December 6, 1989 Order;

(b) There was no December 6, 1989 Order against DLS, but only a December 14, 1989 Order (Folder "D-1"), authorizing prosecution of the February 6, 1990 Petition (Exh. "U" to 11/19/93 Dim/.Judg Motion);

(c) DLS' Cross-Motion did not challenge personal jurisdiction in "the underlying disciplinary proceeding", but rather contested service of the May 8, 1990 Order to Show Cause

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[4] Undisclosed by the Appellate Division, Third Department was the fact that a plurality--if not majority--of the justices of that court were themselves the products of judicial cross-endorsements. The constitutionality of such practice was directly at issue in the Castracan v. Colavita case.

(Folder "D-2", Doc. 2, pp. 2-3; Doc. 4, pp. 1-4).

(d) There was no "underlying disciplinary proceeding" to Mr. Casella's May 8, 1990 Order to Show Cause, the February 6, 1990 Petition being completely separate and unrelated;

(e) The Second Department's use of the same docket number, A.D. 90-00315, for its October 18, 1990 Order as had been assigned to the February 6, 1990 Petition made it appear that they were related. They were not;

(f) The Second Department's delegation to Mr. Casella, as DLS' prosecutor, of the court's authority to designate "qualified medical experts" was unauthorized by 22 N.Y.C.R.R. §691.13(b)(1);

(g) The Second Department's authorization to Mr. Casella to appoint a medical "expert" did not conform with 22 N.Y.C.R.R. §691.13(b)(1), which call for designation of "medical experts".

61. By Order dated November 1, 1990 (Folder "D-3")--eight months after issue had been joined on the February 6, 1990 Petition (Exh. "C" to 11/19/93 Dism/S.Judg Motion) by DLS' March 7, 1990 Verified Answer (Exh. "U" to 11/19/93 Dism/S.Judg Motion)--the Second Department appointed Max Galfunt as special referee for the February 6, 1990 Petition.

62. Thereafter, Mr. Casella and Referee Galfunt took no steps to proceed with the February 6, 1990 Petition.

63. As to the October 18, 1990 Order (Folder "D-2"), Mr. Casella failed to notify Mr. Vigliano of the name of the

medical expert he had designated to examine DLS until December 17, 1990 (Folder "D-4/5/6", Doc. 6, ¶16). He and the doctor designated by him then refused to agree to any safeguards relative to such examination (Folder "D-4/5/6", Doc. 6, ¶18; Doc. 2, ¶14).

64. By letter dated January 10, 1991 (Folder "D-4/5/6", Doc. 2, Exh. "B"), Mr. Vigliano delineated several respects in which the October 18, 1990 Order was not authorized by 22 N.Y.C.R.R. §691.13(b)(1), the section invoked by Mr. Casella, and requested that the Grievance Committee stipulate to vacatur of the October 18, 1990 Order, absent which he stated he would make an application to the court.

65. Without addressing any of Mr. Vigliano's specific jurisdictional and legal objections, Mr. Casella responded, by letter dated January 15, 1991 (Folder "D-4/5/6", Doc. 2, Exh. "C"), that the Grievance Committee "does not and will not agree to voluntary vacatur".

66. Thereafter, both Mr. Casella and DLS obtained Orders to Show Cause. Mr. Casella's Order to Show Cause, signed January 25, 1991, (Folder "D-4/5/6", Doc. 1) was made pursuant to 22 N.Y.C.R.R. §691.4(l)(1)(i) to immediately suspend DLS for alleged "failure to comply" with the October 18, 1990 Order. DLS' Order to how Cause, signed January 28, 1991, (Folder "D-4/5/6", Doc. 2) was for vacatur of the October 18, 1990 Order as jurisdictionally void, as well as in opposition to Mr. Casella's Order to Show Cause.

67. Mr. Casella's January 25, 1991 Order to Show Cause for suspension was unsupported by any petition by the Grievance Committee setting forth any charge, based on a finding, that DLS was guilty of "failing to comply". It was supported only by Mr. Casella's attorney's affirmation, which further failed to allege that the Grievance Committee had authorized his application (11/19/93 Dism/S.Judg Motion, ¶32).

68. Without addressing the jurisdictional issue, Mr. Casella's supporting affirmation now affirmatively represented (at ¶14), for the first time (cf. File "D-2", Doc. 1, Casella Aff. at ¶3), that the unrelated February 6, 1990 Petition was "an underlying disciplinary proceeding"--which statement Mr. Casella knew to be false--and additionally represented that prosecution of the February 6, 1990 Petition had been delayed as a result of DLS' alleged failure to comply--which he also knew to be false. Mr. Casella represented that this was an "equally as important reason" for DLS' immediate suspension.

69. Mr. Casella also used for his Order to Show Cause the same A.D. #90-00315 docket number as had been assigned to the February 6, 1990 Petition (File "D-4/5/6", Doc. 9, fn. 1; File "D-12/13", Doc. 1, DLS Aff, p.1). This was intended to further the deceit that his motion for DLS' suspension and the February 6, 1990 proceeding against her were related--which he knew was not the case.

70. DLS' January 28, 1991 Order to Show Cause and supporting papers (Folder "D-4/5/6", Doc. 2, 5, 6, 8, 9)

vigorously denied and controverted Mr. Casella's conclusory and unsupported claim of DLS' "failure to comply" and showed that the Second Department's October 18, 1980 Order was not a "lawful demand", as 22 N.Y.C.R.R. §691.4(l)(1)(i) specifically requires. Additionally DLS sought sanctions against Mr. Casella and an investigation of his unethical conduct.

71. Although under 22 N.Y.C.R.R. §691.4(k), disciplinary proceedings are to be given a preference by the court, more than four months elapsed before the Second Department decided the aforesaid two motions and Mr. Casella's subsequent motion for sanctions against Mr. Vigliano.

72. By two Order dated June 12, 1991 ("D-4", "D-5"), the Second Department denied, without reasons, Mr. Vigliano's Order to Show Cause to vacate the October 18, 1990 Order and to discipline Mr. Casella ("D-4") and denied Mr. Casella's motion for sanctions against Mr. Vigliano, "with leave to renew upon a showing of continued frivolous conduct" ("D-5"). The Second Department did not identify what conduct by Mr. Vigliano it considered "frivolous"--and the record shows no such conduct.

73. Two days later, on June 14, 1991, with no stay for review by the Court of Appeal nor time allowed for compliance with the challenged October 18, 1990 Order, the Second Department issued it "interim" suspension Order granting Mr. Casella's Order to Show Cause, without any findings or statement of reasons therefor. Said Order ("D-6"), of which DLS was unaware until it was served upon her five day later, on June 19, 1991--the day

before the last day to file an appeal to the Court of Appeal in Castracan v. Colavita. By that time, it had already been released to the press by the Second Department.

74. The aforesaid three Orders ("D-4", "D-5", "D-6") were rendered within days of The New York Times' June 9, 1991 publication of DLS' Letter to the Editor (Folder "D-7", Doc. 1, Exh. "B" to DLS Aff.) describing the Castracan v. Colavita case, her intention to take it to the Court of Appeals, and the misconduct on the bench of Justice Fredman. Likewise it was within days of her transmittal to Governor Cuomo of an affirmation about the Breslaw case and the unethical conduct of Mr. Landau, who at that time was reported as a prospective nominee of the Governor for an interim appointment on the Supreme Court in Westchester County. A copy of DLS affirmation concerning Mr. Landau was hand-delivered on June 11, 1991 to the Grievance Committee as a formal complaint against him (Folder "D-7", Doc. 1, Exh. "C" to DLS Aff.; see also DLS Aff. at ¶¶12-14).

75. At the time the Second Department issued its findingless June 14, 1991 Order ("D-6"), "interim" suspension orders, without findings or stated reasons, were contrary to the court's own rules, as set forth in 22 N.Y.C.R.R. §691.4(l)(2), as well as controlling Court of Appeal' case law, as articulated in Matter of Nuey, 61 N.Y.2d 513, 474 N.Y.S.2d 714 (1984).

76. Immediately upon being served, DLS made arrangements to be examined by the physician designated by Mr. Casella (Folder "D-7", Doc. 1: at ¶11 of Vigliano Aff; at ¶2 of

DLS Aff).

77. Said physician, who informed her that he was employed by the Grievance Committee, would not provide a copy of his credentials to her without first checking with Mr. Casella. Thereafter, he refused to supply DLS with his credentials (Ct of Appeal: 8/22/91 DLS Aff., ¶8)

78. On June 20, 1991, simultaneous with her arrangements to be medically examined, DLS moved by Order to Show Cause to vacate and/or modify the June 14, 1991 "interim" suspension Order, with a TRO stay provision pending the determination of the motion (Folder "D-7", Doc. 1). The Second Department struck out the stay provision--notwithstanding her supporting affidavit (at ¶2) stated her readiness to submit to a medical examination and that arrangements were in progress for same.

79. DLS' aforesaid Order to Show Cause, which the Second Department denied, without reasons, on July 15, 1991 ("D-7"), argued that suspension of her licence was unauthorized and excessive punishment for her attorney's legitimate legal challenge to its October 18, 1990 Order ("D-2") and that recusal of the Second Department was warranted by the appearance that its June 14, 1991 Order was "swift retribution for the opinion expressed" by her in her aforesaid New York Time letter to the Editor and her filed complaint against Mr. Landau for his misconduct with Justice Fredman (Folder "D-7", Doc. 1, ¶¶12-14 of DLS Aff; Exh. "B" and "C" thereto).

80. By letter dated June 21, 1991, Mr. Casella forwarded to Referee Galfunt, the referee designated to hear the February 6, 1990 Petition, a copy of the June 14, 1991 "interim" suspension Order. In said letter, Mr. Casella represented the February 6, 1990 Petition as an "underlying proceeding", which would "of course" "be held in abeyance". Said representation was false and known to be false by Mr. Casella--the February 6, 1990 Petition being a completely separate and unrelated proceeding.

81. Within three weeks of service of the June 14, 1991 "interim" suspension Order, Mr. Casella notified DLS that the Grievance Committee had authorized two sua sponte complaints against her (11/19/93 Dism/S.Judg Motion, Exh. "H" and "I").

82. By letter dated June 28, 1991 (11/19/93 Dism/S.Judg Motion, Exh. "H-1"), Mr. Casella notified DLS of a sua sponte complaint against her based on a decision, issued four day earlier by Justice Fredman in the Breslaw contempt proceeding. Said decision was rendered by Justice Fredman more than a year after the conclusion of the Breslaw contempt proceeding.

83. On it face, Justice Fredman's June 24, 1991 decision, which Mr. Casella enclosed with the June 28, 1991 sua sponte complaint, departed from accepted legal and judicial standard to an extent reflecting pathology (11/19/93 Dism/S.Judg Motion, ¶83, Exh. "H").

84. By letter dated July 6, 1991 (11/19/93 Dism/S.Judg Motion, Exh. "I"), Mr. Casella notified DLS of a sua sponte

complaint based on the filing in Castracan v. Colavita of a Notice of Appeal to the Court of Appeals, bearing the name of DLS' law firm, Doris L. Sassower, P.C., on June 20, 1991--the day following service of the June 14, 1991 "interim" suspension Order.

85. DLS responded to each of the aforesaid sua sponte complaints and requested proof that they had been authorized by the Grievance Committee. She also sought various other information as to Grievance Committee procedures (11/19/93 Dism/S.Judg Motion, Exh. "H-3", "H-5", "H-8"; "I-4", "I-6"). Mr. Casella refused to provide such proof and would not supply DLS with a copy of any rules applicable to the Grievance Committee's operation.

86. Mr. Casella denied DLS' further request that it transfer complaints involving her to another judicial department, based on her long-standing complaint of retaliatory and invidious prosecution and misconduct, refusing to provide proof that such request had been presented for the Grievance Committee's consideration.

87. Mr. Casella also refused DLS' request that her June 11, 1991 filed complaint against Mr. Landau be sent out of the Second Judicial Department (11/19/93 Dism/S.Judg Motion, Exh. "G-2"). Instead, he sent it to the Grievance Committee for the Tenth Judicial District, which is under the authority of the Second Department. In July 1991, its Chief Counsel dismissed DLS' complaint, without presentment to that Committee and without

requiring any repone from Mr. Landau (11/19/93 Dism/S.Judg Motion, Exh. "G-3", "G-4").

88. The aforesaid disposition contradicts express procedure, outlined in a pamphlet distributed by the Grievance Committee for the Tenth Judicial District as "Advice to Complainant", that attorneys made the subject of "a proper complaint" will be required to respond thereto (11/19/93 Dism/S.Judg Motion, Exh. "G-15"). DLS' complaint was in all respects "a proper complaint" (11/19/93 Dism/S.Judg Motion, "G-1").

89. By motion dated July 19, 1991, DLS moved for leave to appeal to the Court of Appeals based, inter alia, on the Second Department's failure to comply with the requirements of 22 N.Y.C.R.R. §691.4, decisional law, and due process, as well as the unlawfulness of its October 18, 1990 ("D-2"), procured by Mr. Casella without a petition, in violation of 22 N.Y.C.R.R. §691.13(b).

90. In opposition, Mr. Casella, without any evidentiary support except the palpably erroneous October 18, 1990 Order, repeated (at p. 2) that the February 6, 1990 Petition was an "underlying" disciplinary proceeding--which statement he knew to be false.

91. Such misrepresentation to the Court of Appeal not only permitted Mr. Casella to argue (at ¶9) that the June 14, 1991 "interim" suspension Order constituted "a non-final, interlocutory order, but enabled him to claim (at ¶¶10-11) that

the February 6, 1990 Petition constituted authorization for his otherwise petition-less May 8, 1990 Order to Show Cause (Folder "D-2", Doc. 1) and January 25, 1991 Order to Show Cause (Folder "D-4/5/6", Doc. 1).

92. Mr. Casella also annexed to his opposing submission to the Court of Appeal the June 24, 1992 decision of Justice Fredman, notwithstanding such decision was dehors the record, on it face pathological, and his actual knowledge that it did not accord with standards of due process (Folder "D-4/5/6", Doc. 6, Exh. "D") and was the product of bias (Folder "D-7", Doc. 1, DLS' Aff., Exh. "C").

93. Mr. Casella took the position that even were DLS to submit to an examination, and even were there no finding of incapacity, he would, nonetheless, recommend that she remain suspended because of her alleged noncompliance with the October 18, 1990 Order and alleged noncooperation with the Committee (Ct of Appeal: Affm in Support of Motion, Exh. "5"; Affm in Further Support, at p. 4).

94. In August 1991, DLS appeared before the Second Department, together with Mr. Vigliano, who was arguing the appeal of Sady v. Murphy, (A.D. #91-07706) which challenged the third phase of the 1989 three-year Deal, then being implemented. During oral argument, Justice Mangano, as well as Justice Thompson, a member of the New York State Commission of Judicial Conduct, expressed views as to the corrupt and unethical nature the Deal and the petitioner' entitlement to a hearing, of which

they had been deprived by the lower court.

95. Justice Thompson, speaking of the contracted-for resignation of a Supreme Court justice required by the Deal, stated that such violated "ethical rules and would not be approved by the Commission on Judicial Conduct" and, further, that "a judge can be censured for that".

96. Justice Mangano recognized the contractual nature of the Deal and the criminal ramifications thereof stating that those involved would "have a lot more to worry about than this lawsuit when this case is over".

97. Nonetheless, on August 21, 1991, the Second Department dismissed Sady v. Murphy in a one-line decision that "petitioner failed to adduce evidence sufficient" to invalidate the challenged nomination--when it knew, as reflected from its comment from the bench, that the written Deal was illegal, as a matter of law and, further that the petitioners in Sady had been denied their right to a hearing to present proof, if such were deemed necessary.

98. On August 28, 1991, DLS appeared with Mr. Vigliano before the Court of Appeals, in connection with Mr. Vigliano's appeal from the Second Department's dismissal of Sady v. Murphy. Judge Richard Simons, who heard the leave application, called the 1989 three-year Deal, "a disgusting deal" and made a statement that trading judgeship represented an exchange of valuable consideration under the Election Law.

99. Nonetheless, on that same day, August 28, 1991,

the Court of Appeal dismissed the appeal of right in Sady v. Murphy on the ground that "no substantial constitutional question is directly involved" and denied the motion for leave to appeal (Mo. No. 1020).

100. On September 10, 1991, the Court of Appeals denied DLS' motion for leave to appeal from the June 14, 1991 "interim" suspension Order (Mo. No. 890). The following month, on October 15, 1991, it dismissed the appeal as of right filed by Mr. Vigliano on behalf of the petitioner in Castracan v. Colavita, on the ground that "no substantial constitutional question is directly involved" (Mo. No. 1061).

101. On October 24, 1991, DLS wrote a letter to Governor Cuomo, requesting appointment of a special prosecutor to investigate the politicization of the bench and corruption of the judicial process, documented by the files in Castracan v. Colavita, it companion case, Sady v. Murphy, the Breslaw contempt proceeding before Justice Fredman, and the Second Department's suspension of her license, which DLS' letter asserted to be without legal and factual basis and retaliatory.

102. DLS sent copies of said letter, directly critical of the Second Department and the Court of Appeals to those courts, as well as to the Administrative Judge of the Ninth Judicial District, in addition to agencies of government, such as the New York State Commission on Judicial Conduct, and government leader, such as G. Oliver Koppell, then Chairman of the Assembly Judiciary Committee. Thereafter, DLS filed complaints with the

New York State Commission on Judicial Conduct, copies of which Mr. Koppell also received.

103. The New York State Commission on Judicial Conduct dismissed all said complaints, without investigation.

104. In or about October 1991, DLS moved to transfer a case in which she was personally involved as a defendant from the Ninth Judicial District, based, inter alia, on her activities as pro bono counsel to the petitioner in Castracan v. Colavita. Said motion was denied by the Administrative Judge for the Ninth Judicial District, who then personally assigned the case to Supreme Court Justice Nicholas Colabella (A-1408-10)[5].

105. Undisclosed to DLS was that Justice Colabella had been a childhood friend and former law partner of Anthony Colavita, the first named respondent in Castracan v. Colavita, and had himself been offered the Westchester Surrogate judgeship under the three-year Deal challenged by that case (A-179-82).

106. As the judge assigned to the case of Wolstencroft v. Sassower, Justice Colabella knowingly and deliberately rendered a succession of legally improper and severely prejudicial ruling. He refused to recuse himself when application was made therefor by DLS, during which he admitted his relationship with Mr. Colavita to be on-going (A-1405-6).

107. Thereafter, as a result of Justice Colabella's

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[5] References herein are to the Brief (Br.) and Appendix (A-), filed in the Appellate Division, Second Department by DLS in May 1993 in Wolstencroft v. Sassower, under A.D. #92-00459. Said appeal is still pending before the Second Department.

wilful disregard of black-letter law ad to jurisdiction and due process, DLS brought two CPLR Article 78 proceeding against him before the Second Department. DLS' first Article 78 proceeding against Justice Colabella wad brought on February 13, 1992, following issuance by him of a February 10, 1992 decision and accompanying order & warrant of commitment. By the papers in such proceeding (A.D. #92-01093), the Second Department became aware of the extreme physical and mental harassment to which DLS was being mercilessly subjected by Justice Colabella.

108. By letter dated March 6, 1992 (11/19/93 Dism/S.Judg Motion, Exh. "J"), Mr. Casella notified DLS that the Grievance Committee had "authorized" a sua sponte complaint based on Justice Colabella's aforesaid February 10, 1992 decision.

109. By ex parte letter dated March 6, 1992 (11/19/93 Dism/S.Judg Motion, Exh. "W-3"), Mr. Casella advised the Presiding Justice of the Second Department that the Grievance Committee had "unanimously voted" to hold prosecution of the February 6, 1990 Petition in abeyance during the period of DLS' suspension. He further noted that he intended to take no action upon the two sua sponte Breslaw and Castracan complaints, which he identified as then "pending" before the Grievance Committee.

110. Following Mr. Casella's aforesaid March 6, 1992 ex parte letter--as to which DLS had no knowledge--the Second Department issued two Orders dated April 1, 1992. By the first ("D-9"), the Second Department denied what it called the Grievance Committee' ex parte "application" to hold prosecution

of the February 6, 1990 Petition in abeyance and directed the Grievance Committee to proceed to prosecute same. By the second, ("D-9") the Second Department authorized a supplemental petition, claiming that the Grievance Committee was seeking to supplement the February 6, 1990 Petition and "to prosecute additional allegation based upon act of professional misconduct which form the basis of sua sponte complaints pending" before it.

111. The second April 1, 1992 Order ("D-9") was an outright falsification of the facts since, as reflected by Mr. Casella's March 6, 1992 letter (11/19/93 Dism/S.Judg Motion, Exh. "W-3"), the Grievance Committee had not requested leave to prosecute a supplemental petition.

112. As revealed by Mr. Casella's March 6, 1992 letter (11/19/93 Dism/S.Judg Motion, Exh. "W-3"), the Second Department's Order to the Grievance Committee that it prosecute a supplemental petition was issued notwithstanding the Grievance Committee had not voted to recommend prosecution, nor provided the Second Department with any report setting forth evidentiary finding as to the two sua sponte complaint against her.

113. Independent of the March 6, 1992 letter (11/19/93 Dism/S.Judg Motion, Exh. "W-3"), the Second Department had actual knowledge that the two sua sponte complaint against DLS, pending before the Grievance Committee, were factually and legally baseless--having directly received from her written communication on the subject of those complaints (11/19/93 Dism/S.Judg Motion, ¶¶37-40).

114. Thereafter, Mr. Casella served DLS with a Supplemental Petition, dated April 9, 1992 (11/19/93 Dism/S.Judg Motion, Exh. "P-1"), with the same docket number as the separate and unrelated February 6, 1990 Petition, A.D. #90-00315.

115. The April 9, 1992 Supplemental Petition, which lacked a Verification, was--like the February 6, 1990 Petition (11/19/93 Dism/S.Judg Motion, Exh. "C")--pleaded entirely "on information and belief" It embodied the Grievance Committee's two sua sponte complaints in Castracan and Breslaw (11/19/93 Dism/S.Judg Motion, Exh. "H", "I"), as to which the Grievance Committee had never notified DLS of any intent to take disciplinary steps and never served her with pre-petition written charges or afforded her a pre-petition hearing, as 22 N.Y.C.R.R. §691.4(e)(4) and (f) require.

116. DLS' "interim" suspension--then extent for nearly a year--made the exigency exception under §691.4(e)(5) inapplicable.

117. Additionally, the April 9, 1992 Supplemental Petition (11/19/93 Dism/S.Judg Motion, Exh. "P-1") added a charge that had never before been presented to DLS by the Grievance Committee for response and which was not authorized by the Second Department's Second April 1, 1992 Order ("D-9"), which referred only to the "sua sponte complaint pending with the petitioner". Said unauthorized charge rested on DLS' alleged post-suspension "non-compliance" with the October 18, 1990 Order directing her medical examination by a "medical expert" designated by Mr.

Casella.

118. Thereafter, by letter dated May 5, 1992 (11/19/93 Dism/S.Judg Motion, Exh. "J-5"), Mr. Casella notified DLS that, as part of the sua sponte complaint on Wolstencroft, he was requiring her response to a decision of Justice Colabella rendered the previous day, May 4, 1992.

119. By letter, dated May 29, 1992 (11/19/92 Dism/S.Judg Motion, Exh. "K"), Mr. Casella notified DLS that the Grievance Committee had "authorized" a further sua sponte complaint based on another matter before Justice Colabella, F. Gordon Realty v. Donald J. Fass.

120. By letter dated June 11, 1992 (11/19/93 Dism/S.Judg Motion, Exh. "N-1"), DLS sought disclosure of exculpatory and other material in the possession of the Grievance Committee, inquiring whether such material, as well as her written responses to the disciplinary complaint against her, had been presented and reviewed by the Grievance Committee, the date, and what action had been taken with respect thereto.

121. By letter of the same date (11/19/93 Dism/S.Judg Motion, Exh. "N-2"), Mr. Casella admitted that the Grievance Committee's prosecution of the disciplinary proceeding against DLS rested entirely on unsworn statements. Additionally, he stated that DLS was "not entitled to information concerning the internal working of the Committee in these matters".

122. By motion dated June 16, 1992 (Folder "D-12", Doc. 1), DLS moved to vacate the June 14, 1991 "interim"

suspension Order based on the Court of Appeals' supervening May 1992 decision in Matter of Russakoff, 72 N.Y.2d 520 (Exhibit "G-2"), because of the Second Department' failure to make finding therein and afford her a post-suspension hearing. DLS also sought vacatur based upon lack of jurisdiction and the documentary evidence of deliberate fraud, misrepresentation, and unethical practices by Mr. Casella, as to which she requested an immediate disciplinary investigation.

123. Mr. Casella opposed DLS' June 16, 1992 motion to vacate her "interim" suspension based on Russakoff by, inter alia, claiming, falsely (Folder "D-12", Doc. 2, ¶3), that (a) the proceeding authorized by the December 14, 1989 Order was an "underlying disciplinary proceeding" to the October 18, 1990 Order; and (b) the June 14, 1991 "interim" suspension Order was "based on a finding" that DLS had "failed to comply" with the October 18, 1990 Order.

124. Two day later, by motion dated June 18, 1992 (Folder "D-14", Doc. 1: Dismissal), DLS moved to dismiss the April 9, 1992 Supplemental Petition, as well as the February 6, 1990 Petition which it incorporated, based on non-compliance with jurisdictional provision of Judiciary Law §90 and 22 N.Y.C.R.R. §691.4(e)(4), §691.4(f), and (h) by the Grievance Committee.

125. In conjunction therewith, DLS sought disclosure pursuant to CPLR §408 so as to determine whether the Grievance Committee was complying with rules regarding committee action and authorization "or whether, as is believed, the Committee function

more as a 'rubber stamp' for Mr. Casella." (Folder "D-14", Doc. 1: Dismissal, ¶¶39-40)

126. DLS further sought transfer to another Judicial Department based on the Second Department's pattern of decision/orders, which he alleged to be "in disregard for fact and law", "politically-motivated retaliation" and "invidious, selective, and discriminatory prosecution" (Folder "D-14", Doc. 1: Dismissal, ¶¶41-44).

127. While DLS' June 18, 1992 motion to dismiss the April 9, 1992 Supplemental Petition was sub judice (Folder "D-14), Mr. Casella, without leave of Court, served a new Notice of Supplemental Petition and Supplemental Petition, dated June 26, 1992 (11/19/93 Dism/S.Judg Motion, Exh. "P-2). Said new Supplemental Petition was virtually identical to the previous one, except that it annexed a Verification thereafter made. Mr. Casella refused to withdraw his earlier Supplemental Petition (Folder "D-14", Doc. 1: Strike, ¶¶2,6,7).

128. On July 3, 1992, DLS moved to strike the June 26, 1992 Supplemental Petition, for discovery, and for an "immediate disciplinary investigation of Petitioner's Chief Counsel for his persistent unethical and abusive practices" (Folder "D-14", Doc. 1: Strike).

129. Thereafter, the Grievance Committee transmitted an ex parte report dated July 8, 1992 to the Second Department (Folder "D-15"). Upon information and belief, said ex parte report related to the Grievance Committee's two sua sponte

complaints on Wolstencroft and Fass. Prior thereto, the Grievance Committee had never notified DLS of any intent to take disciplinary steps and had never served her with pre-petition written charges or afforded her a pre-petition hearing, as 22 N.Y.C.R.R. §691.4(e)(4) and (f) require.

130. DLS' "interim" suspension--then extent for over a year--made the exigency exception under §691.4(e)(5) inapplicable.

131. Prior to the filing of said ex parte July 8, 1992 report, DLS had supplied Mr. Casella with written responses (11/19/93 Dism/S.Judg Motion, Exh. "J", "K") denying any wrong-doing by her and directing his attention to her two Article 78 proceeding against Justice Colabella (A.D. #01093, A.D. #92-03248), wherein he documented the unlawful nature of Justice Colabella's conduct and that his decisions knowingly falsified the fact concerning her.

132. By Order dated July 31, 1992 ("D-12"), the Second Department, denied, without reasons and with imposition of "costs", DLS' June 16, 1992 motion to vacate the June 14, 1991 suspension Order based on Russakoff. It also denied all other relief, including DLS' request for leave to appeal to the Court of Appeals.

133. By Notice of Appeal dated September 3, 1992, DLS sought to appeal as of right to the Court of Appeals. Such appeal was based upon the Second Department's denial of her constitutional right to equal protection to that afforded to Mr.

Russakoff and the unconstitutionality of interim suspension orders without hearings.

134. Although DLS demonstrated that her "interim" suspension was in all respect a fortiori to that in Russakoff, the Court of Appeal, by Order dated November 18, 1991 (Mo. No. 1208 D 99), dismissed, for lack of finality, her appeal as of right.

135. By three separate Orders dated November 12, 1992, the Second Department: (a) ("D-13") sua sponte, amended it July 31, 1992 Order denying vacatur of the June 14, 1991 "interim" suspension Order to impose maximum statutory costs against DLS for having made said motion; (b) ("D-15") authorized disciplinary proceeding based on the Grievance Committee's ex parte July 8, 1992 report--as to which DLS only then became aware; and (c) ("D-14") by "Decision and Order on Application", denied DLS' motion for discovery and for investigation of Mr. Casella's unethical conduct and granted the Grievance Committee leave "to resubmit the charges" of the June 26, 1992 Supplemental Petition, after granting DLS' July 3, 1992 motion to strike same and to vacate the April 1, 1992 Order which had authorized it.

136. The Second Department's November 12, 1992 Order authorizing a petition based on the ex parte July 8, 1992 report ("D-15") failed to allege that the Grievance Committee had complied with pre-petition jurisdictional prerequisites, set forth in 22 N.Y.C.R.R. §691.4(e)(4), (f), and (h) of notice, written charges, a hearing, and finding based on evidentiary

proof or that it was proceeding under the exigency provision of §691.4(e)(5).

137. Thereafter, by letter dated December 4, 1992 (Folder "D-17", Doc. 3, Exh. "A"), DLS communicated directly with the Chairman of the Grievance Committee, protesting the Grievance Committee's violation of her due process rights by failing to comply with the pre-petition requirements of 22 N.Y.C.R.R. §691.4 and stated that, by virtue of her "interim" suspension, there could be no claim of exigency and threat to the public interest under 22 N.Y.C.R.R. §691.4(f). DLS further reiterated that she had never had any hearing as to her alleged "failure to comply", for which she was purportedly suspended nearly a year and a half earlier. Said letter to the Chairman of the Grievance Committee was followed by several more on the subject requesting an immediate hearing on her "interim" suspension (Folder "D-17", Doc. 3, Exh. "B", "D", "F").

138. On December 14, 1992, DLS moved to reargue and renew the Second Department' November 12, 1992 sua sponte Order ("D-15"), detailing that her right to vacatur of her "interim" suspension Order was in all respect a fortiori to that of Mr. Russakoff (Folder "D-17", Doc. 1).

139. By ex parte report dated December 17, 1992, Mr. Casella communicated with the Second Department. Upon information and belief, said communication purported to be the resubmission of the three charge of the June 26, 1992 Supplemental Petition and the April 9, 1992 Supplemental Petition

before it, authorized by the Second Department's November 12, 1992 "Decision and Order on Application" ("D-14"). Prior thereto, the Grievance Committee had never served DLS with pre-petition written charges or afforded her a pre-petition hearing, as 22 N.Y.C.R.R. §691.4(e)(4) and (f) require.

140. DLS' "interim" suspension--then extent for over a year and a half--made the exigency exception under 22 N.Y.C.R.R. §691.4(e)(5) inapplicable.

141. On January 28, 1993, a Petition against DLS was signed by the Chairman of the Grievance Committee (11/19/93 Dism/S.Judg Motion, Exh. "D"). Said Petition, made entirely "upon information and belief", did not allege that it was based on a Grievance Committee's recommendation for prosecution, but, rather, on the Second Department's November 12, 1992 Order ("D-14") authorizing the Grievance Committee to commence a proceeding against DLS based on act allegedly set forth in the Grievance Committee's ex parte July 8, 1992 report (11/19/93 Dism/S.Judg Motion, ¶¶17, 19, 21-2).

142. The five charge comprising the January 28, 1993 Petition against DLS (11/19/93 Dism/S.Judg Motion, Exh. "D") were based entirely on the Grievance Committee's own sua sponte complaints relating to the Wolstencroft and Fass matters before Justice Colabella (11/19/93 Dism/S.Judg Motion, Exh. "J", "K").

143. Said January 28, 1993 Petition used the same docket number, A.D. #90-00315, as had been assigned to the completely separate and unrelated February 6, 1990 Petition

(11/19/93 Dism/S.Judg Motion, Exh. "C").

144. The Grievance Committee failed to personally deliver the January 28, 1993 Petition in accordance with Judiciary Law §90(6). Instead, it sent a process server disguised as a "pizza deliveryman", who, when informed that no pizza had been ordered by DLS, returned the following day--a Saturday--and left the January 28, 1993 Petition stuck in the handle of the front door of her home (Folder "D-18", Doc. 1, DLS Aff. ¶¶4-5).

145. On February 22, 1993, DLS moved to vacate the January 28, 1993 Petition based on lack of personal jurisdiction (Folder "D-18", Doc. 1).

146. Upon information and belief, in late February 1993, the Second Department communicated ex parte with Referee Galfunt, directing him to proceed with the February 6, 1990 Petition (Article 78: 7/2/93 Cross-Motion, Exh. "C", p. 4, ln. 20).

147. Immediately thereafter, DLS sought to disqualify Mr. Casella from prosecution of the February 6, 1990 Petition based on her on-going complaints of prosecutorial misconduct by him and the fact that he would be an essential witness to her affirmative defenses. By letter dated March 15, 1993 (Article 78: 7/2/93 Cross-Motion, Exh. "E-1", "E-3"), DLS put Mr. Casella on notice that he would be called upon to testify on the subject of the false claim in his January 25, 1991 Order to Show Cause for her suspension (at ¶14), to wit, that the February 6, 1990

Petition was "an underlying disciplinary proceeding" to his suspension application.

148. By Supplemental Affidavit, dated March 8, 1993, in further support of her December 14, 1993 motion to reargue and renew the Second Department's November 12, 1993 sua sponte Order imposing maximum cost upon her for moving for vacatur based on Russakoff ("D-13"), DLS documentarily showed, by comparison of her "interim" suspension Order with those of 20 other attorney interimly upended by the Second Department, that he had been treated in a disparate and discriminatory manner in that her suspension was unprecedented and that each of said attorneys had received a hearing, unless waived, and a final order for appellate review (Folder "D-17", Doc. 4, pp. 1-4).

149. By "Decision & Order on Application" dated March 17, 1993 (Folder "D-16"), the Second Department purported to acted upon the Grievance Committee's ex parte December 17, 1992 report--as to which DLS had no knowledge prior thereto--and authorized the Grievance Committee to bring a proceeding based on "three additional allegation of professional misconduct set forth in the supplemental petition dated June 26, 1992".

150. The Second Department's March 17, 1993 Order ("D-16") did not allege compliance by the Grievance Committee with pre-petition requirements, set forth in 22 N.Y.C.R.R. §691.4(e)(4), (f), and (h) of notice, written charges, a hearing, and findings based on evidentiary proof or that it was proceeding under the exigency provision of §691.4(e)(5).

151. On March 30, 1993, the Grievance Committee served the Supplemental Petition dated March 25, 1993 (11/19/93 Dism/S.Judg Motion, Exh. "B"), without complying with the personal delivery requirement of Judiciary Law, §90(6). Instead, the Supplemental Petition was left in the mailbox at DLS' home.

152. The March 25, 1993 Supplemental Petition, signed by the Grievance Committee's Chairman (11/19/93 Dism/S.Judg Motion, Exh. "B") did not allege that it was based upon a committee report authorizing the charges set forth therein.

153. On April 8, 1993, in a telephone conference with Referee Galfunt and Mr. Casella, who were then proceeding on the February 6, 1990 Petition, as directed by the Second Department, Referee Galfunt told DLS that he would not rule on her jurisdictional objections to the February 6, 1990 Petition (Article 78 Petition, ¶ ELEVENTH: 7/2/93 Cross-Motion, pp. 26-7).

154. By motion dated April 14, 1993, DLS moved for vacatur of the March 25, 1993 Supplemental Petition for lack of jurisdiction (Folder "D-18", Doc. 1 (3/25/93 Supp. Petition)).

155. By Order dated April 22, 1993 (Folder "D-18"), the Second Department denied, with maximum costs against her, DLS' reargument/renewal motion of its November 12, 1992 sua sponte Order which imposed maximum cot upon her for moving for vacatur of her "interim" suspension under Russakoff ("D-13"). The Second Department described her motion a "duplicative and frivolous"--notwithstanding the record showed her suspension to be in all respect a fortiori to Russakoff's, vacated by the Court

of Appeals almost a year earlier, and the facts set forth in DLS' March 8 1993 Supplemental Affidavit (Folder "D-17", Doc. 1, pp. 1-4), comparing her suspension with that of 20 other lawyer interimly-upended by the Second Department, had never been previously presented.

156. On April 28, 1993, following Referee Galfunt's continued refusal to rule on DLS' jurisdictional objections to the February 6, 1990 Petition at the preliminary conference thereon (Article 78: 7/2/93 Cross-Motion, pp. 27-30), DLS served an Article 78 proceeding addressed to that Petition, entitled DORIS L. SASSOWER v. HON. GUY MANGANO, a Presiding Justice of the Appellate Division, Second Dept., HON. MAX GALFUNT, a Special Referee, and EDWARD SUMBER and GARY CASELLA, a Chairman and Chief Counsel respectively of the Grievance Committee for the Ninth Judicial District. Said proceeding was based upon the lack of compliance with requisite jurisdictional pre-petition procedures under 22 N.Y.C.R.R. §691.4(e)(4) and (f) as to pre-petition written charges and a hearing.

157. DLS' Article 78 Petition included, a part of its requested relief, transfer to another judicial department.

158. Thereafter, the Attorney General, on behalf of the above-named respondent moved for dismissal. In such dismissal motion, the Attorney General conceded that the pre-petition requirement of 22 N.Y.C.R.R. §691.4 had not been complied with, but falsely argued that compliance was not required because the ex parte July 31, 1989 report, underlying

the December 14, 1989 Order directing prosecution, "implicitly" relied upon the exigency exception under §691.4(e)(5) (Article 78: 5/13/93 Aff. of Assistant Attorney General Sullivan, ¶12).

159. The Assistant Attorney-General who made such dismissal motion did not purport that he had personal knowledge of the Grievance Committee's ex parte July 31, 1989 report about which he was making his aforesaid factual statement and did not support his affirmation with any affidavit from his clients, who did have such personal knowledge. Nor did he claim to be familiar with the two complaint encompassed by the February 6, 1990 Petition (Article 78: 7/2/93 Cross-Motion, at ¶29; 7/19/93 DLS Aff in Further Support, ¶22, 7/19/93 Memo of Law, Pt III).

160. The Assistant Attorney-General further opposed transfer (at ¶15) and falsely asserted, without evidentiary support or affidavit by a party with personal knowledge, that DLS' jurisdictional objection could be adequately addressed in the underlying proceeding (at ¶11).

161. On May 24, 1993, while DLS' Article 78 proceeding against the Second Department was pending against it, the Second Department denied, in one Order and without reasons ("D-18"), DLS' two separate motions to vacate the January 28, 1993 Petition and March 25, 1993 Petition for lack of personal jurisdiction (Folder "D-18", Doc. 1 (1/28/93); Doc 1 (3/25/93)).

162. By motion dated June 14, 1993 (Folder "D-19", Doc. 1), DLS moved to reargue and renew said May 24, 1993 Order based, inter alia, upon the Second Department's disregard for

black-letter law of Judiciary Law §90(6) regarding personal service and upon "the appearance of impropriety" of its adjudicating DLS' motion while it was being sued by her in Sassower v. Mangano, et al..

163. By Order to Show Cause, dated July 2, 1993, DLS cross-moved in her Article 78 proceeding for leave to amend or supplement her 78 Petition:

> "so as to plead a pattern and course of harassing and abusive conduct by Respondents, acting without or in excess of jurisdiction, as reflected by the March 25, 1993 Supplemental Petition and the January 28, 1993 Petition and all acts in prosecution thereof, as well as the May 8, 1990 and January 25, 1991 motion made by Respondent Casella resulting in the interim Order of suspension dated June 14, 1991." (78 Proceeding: ¶5 of 7/2/93 Notice of Cross-Motion)

164. As part of that Cross-Motion, DLS refuted and documented as false Assistant Attorney General Sullivan's claim that the ex parte July 31, 1989 report "implicitly relied" upon the exigency exception (78 Proceeding: 7/2/93 Cross-Motion, ¶¶33-47) and sought discovery thereof, as well as of the ex parte July 8, 1992 report underlying the January 28, 1993 Petition and the ex parte December 17, 1992 report underlying the March 17, 1993 Supplemental Petition--both of which were rendered after DLS was already suspended, thereby making unavailable any claim of "exigency" as to the latter two petitions (78 Proceeding: 7/2/93 Cross-Motion, ¶¶49-52).

165. DLS further showed that there was no remedy in the underlying disciplinary proceedings and that the Second

Department and Referee Galfunt were refusing to address her jurisdictional challenge to the February 6, 1990 Petition (78 Proceeding: 7/2/93 Cross-Motion, ¶¶22, 53-61). In support thereof, she annexed the full transcript of the April 1993 conferences before Referee Galfunt (as Exhibit "C" and "D") and, specifically, cited the Second Department's prior denial, without reasons ("D-14"), of her jurisdictional challenge to the February 6, 1990 Petition, encompassed in her June 18, 1992 motion to dismiss (Folder "D-14", Doc. 1).

166. DLS' Cross-Motion detailed that all of the Second Department's Orders under A.D. #90-00315, when compared to the record, "evidence a pattern of disregard for black-letter law and standards of adjudication--particularly as to threshold jurisdictional issues" (at ¶22). Among the Second Departments' Orders highlighted in that respect was the June 14, 1991 "interim" suspension Order, the Orders thereafter denying vacatur (at ¶14-5, 23) and the demonstrably false April 1, 1992 Orders (at ¶19). The Attorney General did not deny same.

167. DLS' Cross-Motion, which also sought summary judgment, was unchallenged by the Attorney General (7/12/93 Memo in Opposition of Assistant Attorney General Carolyn Olson), who did not deny DLS' sworn statements as to the facts underlying the Grievance Committee's ex parte July 31, 1989 report (7/2/93 Cross-Motion, ¶¶33-52).

168. The Attorney General, citing Judiciary Law §90(10), opposed any disclosure of the ex parte reports on which

the February 6, 1990 Petition and other disciplinary petitions purported to rest (7/12/93 Memo, at pp. 5-6). Without any legal authority, the Attorney General argued in opposition to transfer and contended that Presiding Justice Mangano was himself not disqualified from adjudicating the Article 78 proceeding which named him as the first respondent (7/12/93 Memo, at p. 4).

169. On September 7, 1993, while Sassower v. Mangano, et al. was pending before the Second Department, DLS appeared at public hearing before the New York State Senate Judiciary Committee in Albany and gave testimony as Director of the Ninth Judicial Committee, in opposition to Governor Cuomo's nomination to the Court of Appeal of Justice Howard Levine. Such opposition rested on Justice Levine's participation on the panel of the Appellate Division, Third Department, whose affirmance of dismissal in Castracan v. Colavita, contravened controlling law, the transcending public interest, and disregarded the factual record. In support thereof, DLS provided the Senate Judiciary Committee with the full record in Castracan v. Colavita.

170. DLS further testified that in a case such as Castracan, where the legality and constitutionality of judicial cross-endorsement was the central issue, the Appellate Division, Third Department panel was obliged to disclose--but had not--that three of it five members had themselves been cross-endorsed when they ran for their judicial offices.

171. DLS further argued that the Governor's nomination of Justice Levine to the Court of Appeal could properly be viewed

by the public as a political "pay back" by Governor Cuomo for his having protected the party leaders and their corrupt judge-trading Deal which Castracan v. Colavita challenged.

172. Two weeks later, the Second Department, by Decision, Order & Judgment dated September 20, 1993 (Exhibit "A" to 1/24/94 Jur. Stmt), granted the dismissal motion of it own attorney, the Attorney General, and dismissed Sassower v. Mangano, et al. "on the merits", stating that "petitioner' jurisdictional challenge can be addressed in the underlying disciplinary proceeding". The Second Department knew, based on the record before it and its own personal knowledge, that such statement was false.

173. The Second Department denied DLS' request for recusal and transfer, without any findings on that issue, and further denied all relief requested by her Cross-Motion.

174. The Second Department's dismissal of Sassower v. Mangano, et al. was by a five-judge panel, three of whom had participated in every Order under A.D. #90-00315, which her Article 78 proceeding had ought to have reviewed and an additional judge who had participated in more than half of the challenged Orders. Justice Mangano did not participate on the panel (Jur. Stmt, ¶6).

175. On the same day as it dismissed Sassower v. Mangano, et al., the Second Department--this time with Justice Mangano presiding--denied, without reasons (Folder "D-19"), DLS' June 14, 1993 motion for reargument/renewal of its May 24, 1993

Order ("D-18") for vacatur of the January 28, 1993 Petition and March 25, 1993 Supplemental Petition for lack of personal jurisdiction.

176. The following week, on September 27, 1990, DLS was directed to proceed with three days of hearings on the February 6, 1990 Petition, in the absence of her attorney of record thereon, Eli Vigliano, Esq.

177. Notwithstanding the Second Department's September 20, 1993 Judgment in Sassower v. Mangano, et al. stated that DLS could raise her jurisdictional objections in "the underlying disciplinary proceeding", Referee Galfunt refused to permit her to prove there was no jurisdiction at the hearings held on the February 6, 1990 Petition and allowed Mr. Casella to proceed without proving the jurisdictional allegations of the February 6, 199 Petition--which DLS' March 8, 1990 Verified Answer had placed in issue (11/19/93 Dism/S.Judg Motion, Exh. "U").

178. At the aforesaid hearings on the February 6, 1990 Petition, Referee Galfunt and Mr. Casella refused to permit any proof by DLS on the subject of her June 14, 1991 "interim" suspension. Referee Galfunt refused to require Mr. Casella to substantiate his prior representations to him, the Second Department, and the Court of Appeals that the February 6, 1990 Petition was "underlying" his application for her suspension.

179. On November 19, 1993, pursuant to the Second Department's stated basis for dismissing Sassower v. Mangano, et al., DLS moved "in the underlying disciplinary proceeding" for

dismissal/summary judgment of the three disciplinary petitions against her, dated February 6, 1990, January 28, 1993, and March 25, 1993; for discovery of the Grievance Committee's ex parte reports, dated July 31, 1989, July 8, 1992, and December 17, 1992; and for appointment of a special referee to investigate and report as to DLS' complaint of prosecutorial and judicial misconduct in connection with all of the disciplinary proceedings against her.

180. DLS' November 19, 1993 dismissal/summary judgment motion also sought transfer to another judicial department, establishing, by a meticulous evidentiary presentation, the Second Department's knowledge that the disciplinary proceedings it was authorizing against DLS were jurisdictionally void, factually baseless, and rested on false and perjurious representations of Mr. Casella.

181. Mr. Casella failed to oppose DLS' November 19, 1993 motion with any probative evidence and failed to provide any legal authority to sustain the jurisdictionally-void disciplinary proceedings he had commenced against DLS without compliance with pre-petition requirements of 22 N.Y.C.R.R. §691.4(e), (f), and (h) of notice, written charges, a hearing, and findings based on evidentiary proof.

182. On December 15, 1994, DLS appeared in Albany at public hearing of the New York State Senate Judiciary Committee, and, as Director of the Center for Judicial Accountability, testified in opposition to Governor Cuomo's nomination of Justice

Carmen Ciparick to the Court of Appeals.

183. DLS' aforesaid opposition was based, inter alia, on Justice Ciparick's inaction as a member of the New York State Commission on Judicial Conduct in the face of documented complaints about the three-year Deal, the violation of the Election Law at the Judicial Nominating Conventions of the Ninth Judicial District, the legally-aberrant decision of the Third Department in Castracan v. Colavita and of the Second Department in Sady v. Murphy, the fraudulent, pathological, and criminal conduct of Justice Fredman in the Breslaw case and the Second Department's legally insupportable and retaliatory June 14, 1991 "interim" suspension Order ("D-6").

184. As part of her opposition, DLS challenged as unconstitutional the completely secret process by which nominations to the Court of Appeals are made by the Governor, as well as the Senate Judiciary Committee's failure to discharge its "advise and consent" function in anything more than a "rubber-stamp" manner, based on deals made in advance by the Senate leadership with the Governor.

185. On January 3, 1994, DLS filed a Notice of Appeal to the Court of Appeals from the Second Department's Order and Judgment, dated September 20, 1993, dismissing Sassower v. Mangano, et al.

186. On January 9, 1994, Attorney General Koppell was made personally aware of the dishonest and fraudulent manner in which the Attorney General's office had defended its clients in

Sassower v. Mangano, et al., most particularly, its permitting its judicial clients to adjudicate the legality of their own conduct in the Article proceeding.

187. On January 10, 1994, the Second Department refused to grant a stay of further hearings on disciplinary proceedings on the February 6, 1990 Petition pending the outcome of the Article 78 appeal and disposition of DLS' November 19, 1993 dismissal/summary judgment motion, sub judice before it. A further hearing then took place on the February 6, 1990 Petition before Referee Galfunt on January 11, 1994, at which time the Referee and Mr. Casella again blocked presentment of the jurisdictional issues and disregarded DLS' fundamental due process rights.

188. On January 24, 1994, DLS filed her Jurisdictional Statement to the Court of Appeals in Sassower v. Mangano, et al.. Said Jurisdictional Statement detailed the Second Department's fraudulent and criminal conduct, the substantial constitutional issues created by the Second Department's failure to recuse itself, and the unconstitutionality of open-ended interim suspension orders and of the disciplinary mechanism.

189. By letter dated February 3, 1994 (Supp. Exh."2" to 3/14/94 Schwartz ltr), DLS filed a formal complaint with Attorney General Koppell regarding the fraudulent representation his office had to provided to the respondents in Sassower v. Mangano, et al., which resulted in the September 20, 1993 Judgment of Dismissal (Exhibit "A" to 1/24/94 Jur. Stmt). In

support thereof and her allegations that the Attorney General's judicial clients were using their offices "for ulterior and retaliatory purposes", DLS requested "an independent examination of the file under A.D. #90-00315", waiving all confidentiality for said purpose.

190. The following day, DLS received a copy of the Second Department' Order dated January 28, 1994 (Supp. Exh. "3" to 3/14/94 Schwartz ltr), denying, without reasons, her November 19, 1993 dismissal/summary judgment motion in the "underlying disciplinary proceeding" and threatening her with criminal contempt should she make further motions without prior judicial approval.

191. By letter dated and hand-delivered on February 6, 1994 (Supp. Exh. "4" to 3/14/94 Schwartz ltr), DLS notified Attorney General Koppell that his judicial clients' January 28, 1994 Order was further proof that there was no remedy in the "underlying disciplinary proceeding" and that the September 20, 1993 dismissal of Sassower v. Mangano, et al. based thereon "was and is an outright lie". In support thereof, DLS supplied Attorney General Koppell with a full set of papers in the November 19, 1993 dismissal/summary judgment motion.

192. Nonetheless, by letter to the Court of Appeals dated February 11, 1994, Attorney General Koppell permitted Assistant Attorney General John Sullivan to file in the Court of Appeals opposition to DLS' Jurisdictional Statement, repeating the misrepresentations he had made to the Second Department--

already documented by DLS to be false and legally insupportable.

193. Thereafter, by letter dated February 22, 1994 (Supp. Exh. "5" to 3/14/94 Schwartz ltr), DLS apprised Attorney General Koppell that Assistant Attorney General Sullivan had admitted to her that he had never read the files under A.D. #90-00315.

194. On March 8, 1994 (Supp. Exh. "7" to 3/14/94 Jur. Stmnt), following Attorney General Koppell's failure to requisition the disciplinary files under A.D. #90-000315 from his clients, DLS hand-delivered a duplicate set of the files under A.D. #90-00315, organized and indexed so as to permit him to readily substantiate ¶7 of DLS' Jurisdictional Statement, to wit, that all of the Second Department's Order under A.D. #90-00315 "in addition to being jurisdictionally void, are otherwise factually baseless, as the record under A.D. #90-00315 unequivocally shows".

195. On March 14, 1994, DLS' counsel, Evan Schwartz, Esq., filed a letter with the Court of Appeals in further support of its jurisdiction over Sassower v. Mangano, et al.. Said letter described the Second Department as using its disciplinary power to retaliate against a judicial whistle-blower and stated that the confidentiality of Judiciary Law §90(10) was being misused by it and the Grievance Committee to disguise the lack of jurisdiction and "probable cause" for disciplinary proceedings they had continued to generate against her--even after her

suspension.

196. Mr. Schwartz' March 14, 1994 letter also apprised the Court of Appeals of the complicity of the Attorney General with the criminal conduct of his clients. In support thereof, Mr. Schwartz cited (at p.13) specific record references, establishing the fraudulent nature of the Attorney General's submission to the Second Department, which it had resubmitted to the Court of Appeals. Additionally, Mr. Schwartz annexed seven letters of DLS' correspondence with the Attorney General, reminding him of his duty to correct the record before the Court of Appeals.

197. Thereafter, despite written communications to Attorney General Koppell inquiring as to the status of his review of the files under A.D. #90-00315 (Exhibits "M"-"O" to 7/17/94 reargument), the Attorney General failed to review the files and allowed his office's criminally false and fraudulent submission to the Court of Appeals to stand.

198. By Order dated May 12, 1994 (Exhibit "I" to 7/19/94 reargument), the Court of Appeal dismissed DLS' appeal taken from the Second Department's dismissal of the Article 78 proceeding upon the ground that no substantial constitutional question is directly involved." It made no comment as to any of the fraudulent conduct she had documented, either as it related to the Attorney General or the Second Department's adjudication of the Article 78 proceeding against itself.

199. By letter to Attorney General Koppell, dated June 9, 1994 (Exhibit "P" to 7/19/94 reargument), DLS requested that

the Attorney General move for reargument of the Court of Appeal's May 12, 1994 Order--lest it become a "dangerous precedent":

> "...that judges, accused of fraudulent and criminal conduct in Article 78 proceedings, are free to decide their <u>own</u> cases and to grant a dismissal motion of their <u>own</u> attorney, the Attorney General, who is free to fashion his motion on perjury and deceit. [and] further...that there shall be no right to appellate review of such perversion."

DLS requested the return of the files in the event the Attorney General did not intend to seek reargument.

200. By letter dated June 10, 1994 (Exhibit "Q" to 7/19/94 reargument), counsel to the Attorney General returned the files, stating, without elaboration, that the files had been reviewed, that their position "is the correct one", and that "the decision of the Court of Appeals indicates that our argument prevailed there".

201. Examination of the files returned by the Attorney General's office showed that the returned files were in pristine condition--completely uncreased--and seemingly "untouched by human hands".

202. In a telephone call thereafter made to counsel for the Attorney General, at which such fact was discussed, counsel for the Attorney General admitted that neither he nor Attorney General Koppell had reviewed the files.

203. A June 17, 1994 letter to counsel for the Attorney General (Exhibit "R" to 7/19/94 reargument) memorialized that telephone conversation and the fact that the two documents

missing from the returned file: Mr. Casella's 5/8/90 Order to Show Cause for DLS' suspension and DLS' Cross-Motion thereto--were themselves sufficient for the Attorney General to confirm that, as fully detailed in DLS' November 19, 1993 dismissal/summary judgment motion (at ¶30)--also still in the Attorney General's possession, the October 18, 1990 Order ("D-2") directing DLS medical examination was "facially erroneous in at least seven material respects".

204. Counsel to the Attorney General did not controvert the aforesaid June 17, 1994 letter or otherwise respond to it, except by returning--in similarly pristine, "untouched by human hand" condition Mr. Casella's Order to Show Cause, DLS' Cross-Motion, and the November 19, 1994 Dismissal/Summary Judgment motion, with an unsigned "stickem" note reading "per your request".