DORIS L. SASSOWER

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BY FAX: 212-820-8986
AND BY HAND

September 28, 1994

John Borek, Esq.
Fried, Frank, Harris, Shriver & Jacobson
One New York Plaza
New York, New York 10004

Dear Mr. Borek:

Per our telephone conversation this morning, I enclose pertinent materials regarding my prior communications with Gregory Joseph, Esq., who you indicated was involved in the firm's decision to decline representation of me in defense of a professional liability case--even with my insurer, AIG, paying your firm's $300-$400 hourly rates.

These materials reflect adversely upon Mr. Joseph's professional responsibility--notwithstanding his title as Chairman of the Committee on Professional Responsibility of the Association of the Bar of the City of New York. They also suggest that Mr. Joseph is insensitive to his position as partner in a firm that should be in the forefront of protecting "the rule of law" in this country from erosion.

Indeed, the reason I was prompted to call the firm yesterday for its legal services in my defense was because I read the poignant front-page story in The New York Law Journal about Jewish lawyers whose careers were destroyed by Nazi persecutors. The story made reference to your partner, Hans Frank, and I was struck by its modern-day parallel in my own life.

Perhaps you saw the film, "Judgment at Nuremburg", which portrayed the fact that the Nazis were able to accomplish such destruction precisely because judges and lawyers--who are charged with upholding the law--did not take any steps to prevent it from being subverted.

As we discussed by telephone, earlier this year I had communicated with Mr. Joseph in his capacity as Chairman of the City Bar's Committee on Professional Responsibility about a frightening situation. As may be seen from my enclosed February 20, 1994 letter to him, I sought the amicus support of the City Bar for review by the New York State Court of Appeals for a most extraordinary Article 78 proceeding, Sassower v. Hon. Guy Mangano, et al.. In that proceeding, the Appellate Division,

Second Department, in violation of fundamental judicial disqualification rules and the historic purpose of the Article 78 remedy, permitted the very judges whose unlawful conduct was the subject of my Article 78 challenge to decide their own case.

Being challenged by Sassower v. Hon. Guy Mangano, et al. was the Appellate Division, Second Department's misuse of its disciplinary power to issue a continuum of jurisdictionless and factually unfounded orders against me. These groundless orders were transparent retaliation against me for my activities as a judicial "whistle-blower"--including an "interim" Order of suspension dated June 14, 1991, suspending me from the practice of law immediately, indefinitely, and unconditionally.

Such suspension Order was a result of my legal challenge, as pro bono counsel for a citizens' group, of a corrupt political deal involving the cross-endorsement of seven judgeships in the Ninth Judicial District, including the Westchester County Surrogate judgeship. This unlawful judge-trading deal was implemented at illegally run-judicial nominating conventions, conducted without a quorum, without a roll-call, and with other egregious violations of the Election Law, as to all of which I had eye-witness and other uncontroverted documentary proof.

I particularly draw your attention to the description of my suspension Order in my February 20, 1994 letter to Mr. Joseph:

> "Such Order was accomplished without a plenary proceeding, with no notice of written charges, no hearing, no evidentiary findings, and without even a statement of reasons in the suspension Order itself--all contrary to the explicit requirements of the Appellate Division's own Rules Governing the Conduct of Attorneys. The Appellate Division entered its interim Order of suspension on June 14, 1991, in the face of the Court of Appeals' decisions in Matter of Nuey, 61 N.Y.2d 513, 474 N.Y.S.2d 714 (1984) and has since perpetuated it, notwithstanding the Court of Appeals' supervening decision in Matter of Russakoff, 72 N.Y.2d 520, 583 N.Y.S.2d 949 (1992). As the record shows, the Appellate Division has denied my motions to vacate such 'interim' suspension Order, as those cases required (although my case is a fortiori in all respects) and, by its Decision/Order dated January 28, 1994, has threatened me with criminal contempt, should I make any further motions in the 'underlying disciplinary proceeding' without prior

> judicial consent (a practice itself condemned in decisions in other Judicial Departments)."

In support thereof--and at the request of Mr. Joseph's assistant--Erica Raved, Esq.--I supplied voluminous documentation, establishing the seriousness of a situation I identified to Mr. Joseph as presenting:

> "a dangerous threat to every member of the profession, particularly to those who, like myself, have had the courage to speak out in order to provide leadership on politically sensitive or controversial issues, especially those challenging vested interests within the judiciary."

The documentary transmittal, hand-delivered to your offices on February 23, 1994, is reflected by the inventory accompanying my letter of that date to Ms. Raved. I estimate that the legal submissions comprising the transmittal constituted well over 1,000 pages.

However, by a perfunctory three-sentence letter dated the following day, Ms. Raved purported to "have completed a review of the files" and, without amplification, stated:

> "It does not appear that the Professional Responsibility Committee has a professional responsibility at this time."

Upon receipt of Ms. Raved's incomprehensible February 24th letter, which returned the files, I telephoned Ms. Raved. She refused to explain to me why the extraordinary constitutional and due process issues established by the files were not a "professional responsibility" of the Committee on Professional Responsibility and would not discuss any aspect of her alleged review.

I, thereafter, telephoned Mr. Joseph, who likewise refused to discuss the issues presented by the Article 78 proceeding and refused to present my amicus request to the City Bar's Committee on Professional Responsibility for its determination. Nor would Mr. Joseph permit me to make a personal presentation to the Committee.

I would add that a year prior to my calling Mr. Joseph for amicus support in my Article 78 proceeding before the Court of Appeals, my daughter had called him for amicus support for a certiorari petition to the U.S. Supreme Court in the case of Sassower v. Field. I enclose copies of my daughter's initial letter to Mr. Joseph, which transmitted the relevant

documentation concerning the "run-amok" behavior of the Second Circuit in sustaining a palpably erroneous sanctions award of the District Court under its so-called "inherent power". On its face, the Second Circuit's decision was one that should have been repugnant to any attorney. But to a lawyer such as Mr. Joseph, a pre-eminent expert in the field, there was--and is--no excuse for his disinterest and indifference to the palpable perversion of fundamental rules regarding sanctions that such decision reflects[1].

Since Mr. Joseph never returned our papers in Sassower v. Field to us, perhaps he will let you look at them so that you can judge for yourself--in this other instance--how professionally irresponsible Mr. Joseph behaved, despite his title as Chairman of the Committee on Professional Responsibility.

Based upon Mr. Joseph's response to our requests for amicus help in Sassower v. Mangano and Sassower v. Field, it is reasonable to conclude that Mr. Joseph is not sensitive to the public interest or his ethical responsibilities--where to do so would require him to speak out against the grotesque judicial abuse at the heart of those cases, where judges wholly disregard our rule of law.

This morning I called Mr. Joseph directly to speak to him about my "uncomfortable feeling" that he was "black-balling" me at the firm--and that, at his behest, the firm had declined to undertake my AIG-paid retention. Mr. Joseph did not deny such allegation. He simply refused to discuss the matter with me, saying that the firm had "many clients"--it being understood by that remark that it did not need my business. He then hung up on me.

Hans Frank was good enough to return the call I placed to him this morning after Mr. Joseph so abruptly dismissed me. I mentioned that I was just finalizing a letter to you and would send him a copy.

I also stated that I would send him a copy of the papers relative to my unlawful "interim" suspension and the aforementioned Article 78 proceeding--which, as hereinabove stated, Mr. Joseph would not even present to his Committee.

By such papers, Mr. Frank will be able to verify that the nightmare he experienced more than fifty years ago in Germany not only "can happen here", it has happened here--to a prominent

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[1] The pertinent facial abnormalities of the Second Circuit's decision were enumerated at pp. 4-6 of our Supplemental Petition for Rehearing to the U.S. Supreme Court, which are enclosed for your information.

leader of the bar--and respected organizations of the bar have done absolutely nothing about it.

It is my fervent hope and expectation that Mr. Frank will not "stand idly by" while our courts burn the Constitution and that he will let Mr. Joseph know that this is a matter which must be presented to the City Bar's Committee on Professional Responsibility for their immediate attention and action.

To paraphrase the immortal Justice Oliver Wendell Holmes, three years of being suspended--without a hearing--are enough!

Very truly yours,

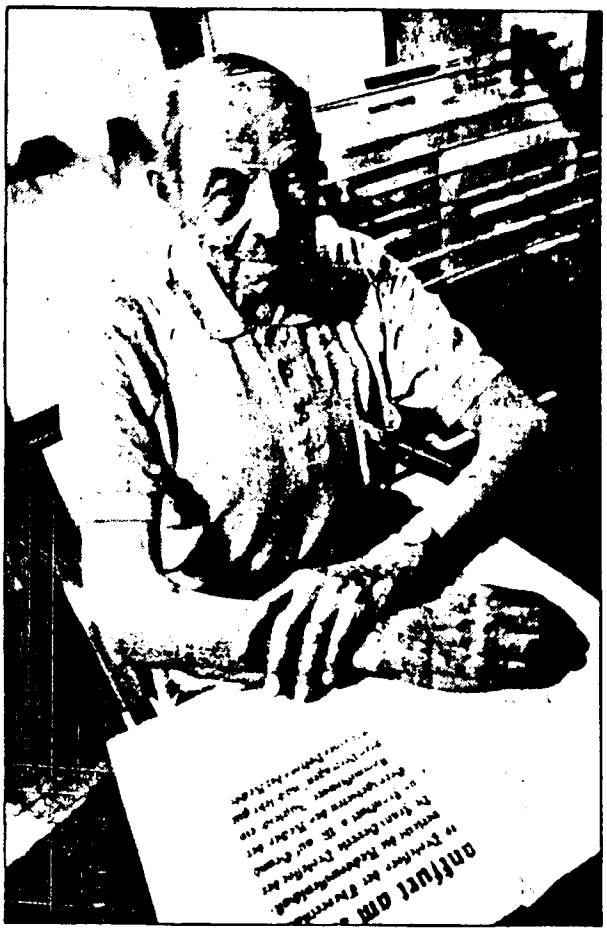
DORIS L. SASSOWER

DLS/er
Enclosures:
(a) "A Variety of Fates for German Lawyers Barred From Practice, NYLJ, 9/27/94
(b) 1989 Martindale-Hubbell listing
(c) letter from the Fellows of the American Bar Foundation
(d) my 2/20/94 letter to Mr. Joseph
(e) my 2/23/94 letter to Ms. Ravid
(f) Ms. Ravid's 2/24/94 letter to me
(g) my daughter's 3/2/93 letter to Mr. Joseph
(h) pp. 4-6 of our Supplemental Petition for Rehearing to the U.S. Supreme Court

cc: Hans Frank, Esq. (encl.: Article 78 submissions now before the New York State Court of Appeals)
Gregory Joseph, Esq.,
Chairman, Committee on Professional Responsibility
Association of the Bar of the City of New York
Barbara Robinson, President,
Association of the Bar of the City of New York

NYLJ 9/27/94 front page

■ HIGHLIGHT ■



PHOTOGRAPH BY ANITA BARTSCH

**Erich Speier, 88, is shown with some of the legal credentials that allowed him – for a mere few weeks in 1933 – to practice law in Frankfurt.**

# *A Variety of Fates For German Lawyers Barred from Practice*

**BY MARTIN FOX**

ERICH SPEIER'S career as a lawyer ended almost as soon as it began. Within weeks of his admission to the German bar in his native Frankfurt in March 1933, he was prohibited from practicing through an edict directed at many of that country's Jewish lawyers and judges.

Ernst C. Stiefel encountered a similar fate as a young lawyer at the hands of the Nazi regime, sending him on an exile that took him to France, England and the U.S. and eventual prominence at Coudert Brothers.

The crackdown on Jewish lawyers prevented Hans J. Frank from continuing his career in Germany after receiving a law degree in 1933. After arriving in the U.S., he pursued his legal education at New York University School of Law and joined what is now Fried, Frank, Harris, Shriver & Jacobson, where he has remained for more than a half-century.

They were among the several thousand lawyers from Germany who emigrated here after the first "April Laws" were issued against Jewish professionals, among the first steps in the systemic anti-Semitic onslaught of religious, economic and professional persecution that eventually culminated in the Holocaust.

Next month, a commemorative program will take place at the New York County Courthouse at Foley Square marking a 1938 decree that sealed the fate for the few Jewish lawyers who until then had managed to

**Continued on page 4, column 4**

# Nazi Ban on Jewish Lawyers Is Remembered

Continued from page 1, column 5

escape disbarment. (See related story, this page.)

Mr. Speier is scheduled to be on hand for the commemoration, sponsored by the Jewish Lawyers Guild, on Oct. 12 at 12:30 p.m. in the courthouse's rotunda.

At age 88, he can recall vividly the personal and professional devestation inflicted upon him 61 years ago shortly after completing a six-year court internship and two-tier grueling examination process that qualified him for appointment as a judge, a civil service position. However, an "Aryan Clause" in the law expelled all Jews from civil service, except those who had served in World War I, and also prevented their admission into the legal profession.

## 'Excited Mood'

Among his memorabilia is a form-letter of disbarment — identical to those sent to many other Jewish lawyers and judges in the civil service — notifying them that the "excited mood of the people" dictated they no longer could practice law or appear in the courts in any capacity. "Jewish lawyers could not live in Germany," he said.

After brief sojourns to Italy and France, Mr. Speier said in a recent interview, he returned to Germany, worked as a machinist and patiently waited four years to receive a visa enabling him and his wife to emigrate to this country through the sponsorship of a relative.

Arriving in the middle of the Depression with few assets, a pressing need to support his family and an inhospitable legal environment — the profession "didn't want anything to do with us," he said — he eventually abandoned the law for a successful career as an engineer for a major electronics company.

But unlike others who were uprooted by the Nazis, Mr. Speier has continued his ties to Germany, and he and his wife visit there periodically.

Mr. Stiefel, now of counsel to Coudert Brothers, has maintained a strong connection to his native country: he is a member of the German bar and spends time in that country associated with a major Dusseldorf law firm advising European and American companies on trade, investment and economic matters. He also is proud that he may be the only American lawyer also admitted to the German, French and English bars.

## Passed N.Y. Bar

Mr. Stiefel, an octogenarian, joined the New York bar in 1944 after passing the bar examination without attending an American law school. He served in the U.S. Army during World War II.

Mr. Frank, 83, could not be reached to comment on his experiences in Germany, although biographical information suggests he left shortly after receiving a law degree from the University of Heidelberg in 1933, the same university from which Mr. Stiefel graduated four years earlier. Fried Frank, where he is now of counsel, ended up as the professional home for a number of German Jewish exiles.

A firm spokeswoman said Mr. Frank recently has been active in the securing of reparations from Germany as the result of its absorption of the former East Germany.

Fritz Weinschenk, 72, never was able to pursue his goal of studying law in Germany. As a teenager, he and his family left for the U.S. in 1935. However, he became what he called a "gofer" for an organization formed by about 200 lawyers — 90 percent of them German Jewish refugees — the American Federation of European Jurists. It took Mr. Weinschenk, of Hamburger, Weinschenk, Molnar & Busch, nearly 20 years to be admitted to the New York bar.

His practice of representing refugees in obtaining reparations from Germany "rekindled my interest in German law," he said, and in 1988 he received a doctorate of laws from the University of Mainz, the school he had planned to attend 40 years earlier.

Mr. Weinschenk said one his partners here was the late Adolph Hamburger, a special target of the Nazis because of his political views and associations. Mr. Hamburger first escaped to Czechoslovakia, Mr. Weinschenk recalled, "returned briefly to collect fees owed to him," then fled again to resurface in New York.

There are no exact figures on the number of Jewish lawyers who left Germany during the first years of the Hitler regime, according to Frank Mecklenburg, an expert on the period and co-author with Mr. Stiefel of *German Lawyers in the American Exile*, a book published in Germany three years ago.

An archivist at the Leo Baeck Institute in Manhattan, a research center and museum dedicated to the history of German-speaking Jewry, Mr. Mecklenburg estimates about 10 to 20 percent of the 50,000 lawyers in Germany in the 1930s were Jewish or classified as such by the Nazis. Approximately 2,500 emigrated to the U.S., with only several hundred at best able to eventually practice here, he said.

## Post-War Roles

In an ironic twist, he observed, a number of those exiled lawyers returned briefly to help in the post-war reconstruction, including drafting of a new constitution and legal system, and later in establishing the reparations system. Mr. Stiefel was a member of the War Department's Office of Military Government in Germany immediately after the war, and he remains active in German legal and academic circles. In 1946 and 1947, the individual German states automatically reinstated all lawyers disbarred under the Nazi regime.

Another of those returning to Germany after the war to help in the reconstruction was Hans Simons, a political scientist trained as a lawyer. He later was dean of New School for Social Research.

Mr. Speier, in reflecting upon his personal and professional upheaval, observed, "Many Jews have hated Germany and don't want anything to do with it. I'm not one of them. There were two kinds of people, the good ones and the bad ones. Unfortunately, the bad ones brought on the disaster."

Mr. Weinschenk also harbors no ill will toward his former homeland. He remembers returning in 1990 to a reunion of his public school class and "being overwhelmed" by the reception he received.

## *Disbarment of Jews to Be Marked*

ON A TRIP to the Holocaust Museum last year, Frederick M. Molod was intrigued by a chronological listing of "Major Acts of Anti-Jewish Legislation in Nazi Germany, 1933-1939."

For April 7, 1933, he saw "The Law on the Admission of Legal Practice forbids the admission of Jews into the legal profession." The same date saw the expulsion of Jews from the civil service, except for World War I veterans. In 1938, on Sept. 27, an Executive Order was issued stating that "all Jewish attorneys-at-law are disbarred."

Mr. Molod, the Guild's president, decided it would be appropriate to commemorate the 1938 order — one of hundreds directed at the destruction of the country's Jewish population. Along with Guild members Allen H. Isaac and Arthur Luxenberg, they settled on a commemorative program planned for Oct. 12 at 12:30 p.m. in the Rotunda of the New York County Courthouse at Foley Square. Included will be an exhibit of documents from the era, many of them collected by Erich Speier, one of those disbarred and eventually forced into exile in 1937. The group plans to make the exhibit available to bar associations.

For the commemoration of the "Day of Shame," the principal speaker will be Justice Israel Rubin of the Appellate Division, First Department.

— *Martin Fox*

16 Lake Street, Apt. 2C
White Plains, New York 10603
March 2, 1993

Gregory Joseph, Esq.
Fried, Frank, Harris,
Shiver & Jacobson
1 New York Plaza
New York, New York 10004

RE: Amicus Curiae

Dear Mr. Joseph:

It was a great honor to speak with you today. As I mentioned, your seminal text on sanctions was an important resource for us in preparing our "Cert" Petition. A copy of our Petition, filed with the Supreme Court on February 22nd, is enclosed.

We trust that you, as an expert on sanctions, will be most appalled by the decisions of the District Court and Second Circuit--and will recognize the importance of review by the Supreme Court.

We hope you will agree that our case dramatizes the imperative need for the Supreme Court to clarify the interface of inherent power and statutory and rule provisions--something it did not do in Chambers or Willy.

For your convenience, I am enclosing the pages from the Advisory Committee Notes to the proposed Amendments which cite Chambers and Willy, as well as G. Heileman.

We look forward to your comments--and, hopefully, your support.

Sincerely,

Elena Ruth Sassower

ELENA RUTH SASSOWER

Enclosures

As illustrative of the aberrant decision-making at issue, the Second Circuit's Decision (CA-6-19), on its face:

> (1) conflicts with Christiansburg v. E.E.O.C., 434 U.S. 412 (1978), by maintaining intact the District Court's $92,000 award under the Fair Housing Act, notwithstanding it vacated same based on Christiansburg (CA-12-13; Pet at 16-19)[3];
>
> (2) conflicts with Alyeska Pipeline v. Wilderness Society, 421 U.S. 240 (1975), by using inherent power to effect substantive fee-shifting[4] (Pet. at 19);
>
> (3) conflicts with Business Guides v. Chromatic Communications, 498 U.S. 533 (1991), by allowing the District Court's admittedly uncorrelated $50,000 award under Rule 11 (CA-

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[3] The unprecedented nature of the Second Circuit's "trumping" of the standard of Christiansburg was set forth in the Petition (at 17) as follows:

> "Research has failed to find a single case, before or after 1988, in which a federal court has resorted to inherent power to shift a totality of litigation fees against losing civil rights plaintiffs, where, as here (CA-13), the action was found not to be 'meritless' under the standards of Christiansburg."

[4] Such substantive fee-shifting is evident from the face of the Judgment (CA-23-4) affirmed by the Second Circuit (CA-20), which made distributive allocations to the respective Respondents solely according to the District Court's Fair Housing Act award (Pet. at 9; 13; 19). As pointed out in the Petition (at p. 19, fn. 14), the effect of the Second Circuit's vacatur of the award under the Fair Housing Act should have rendered the Judgment based thereon a nullity.

52-3) to remain intact, notwithstanding it vacated the Rule 11 award for failing to identify a single sanctionable document (CA-14; Pet. at 7, fn. 4; 19-20);

(4) conflicts with the plain language of 28 U.S.C. Sec. 1927 by keeping intact an unidentified portion of the $42,000 sanction awarded thereunder as to Doris Sassower (CA-at 14-6); which unidentified sum was totally uncorrelated to any sanctionable conduct--let alone to any "excess costs" "reasonably incurred" (CA-5; Pet. at 7-8; 19-21);

(5) conflicts with Chambers v. Nasco, 111 S.Ct. 2123 (1991)[5]--the sole authority on which it relies for its use of inherent power--by, inter alia,: (a) omitting the requisite finding that available sanctioning rules and provisions were inadequate so as to establish any "necessity" for such invocation; and (b) omitting the requisite finding that due process had been met before inherent power was invoked (Pet. at 21-24; Reply Br. 1-6);

(6) violates the Code of Judicial Conduct by including dehors the record matter, inadmissible hearsay, and knowingly false and defamatory

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[5] The NAACP Legal Defense and Educational Fund, which participated in this case as amicus curiae before the Second Circuit, recently cited the Second Circuit's Decision as "an unwarranted expansion of Chambers" "indicative of a growing trend too undermine the American Rule as explicated in Alyeska..." (see Appendix to Pet. for Rehearing, para. 6).

> material obtained ex parte and as to which Petitioners were given no notice or opportunity to be heard (Pet. at 10-11; Reply Br. at 7; Pet. for Rehearing at 4).

Not apparent on its face was the Second Circuit's disregard of United States v. Aetna Casualty & Surety Co., 338 U.S. 366 (1949), and Brocklesby Transport v. Eastern States Escort, 904 F.2d 131 (1990), when it denied--without discussion--Petitioners' threshold jurisdictional objection that the fully-insured defendants were not the "real parties in interest" and that the sanction award was a "windfall" to them, proscribed by countless decisions of this Court, including Hensley v. Eckerhart, 461 U.S. 424 (1983) (Pet. at 9; 10; 25-26; 27).

These and other deviant aspects of the Second Circuit's Decision were detailed--with citation to legal authorities--in Petitioners' Petition for Rehearing and Suggestion for Rehearing En Banc[6]. Said Petition further showed (at pp. 10-11) that the "facts" relied on by the Second Circuit to support its $92,000 fee-shifting award were wholly false and contradicted by the record[7]. The refusal of the judges of the Second Circuit--each of whom were furnished a copy of that Petition--to grant rehearing to Petitioners is, in view of that Petition, an abdication of their adjudicative responsibilities so extraordinary as to be confirmatory of a bias overriding those duties.

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[6] A copy of said Petition for Rehearing is on file with this Court as Exhibit "C" to Petitioners' December 2, 1992 motion to extend time to file their Petition for Certiorari.

[7] For the convenience of the Court, the pertinent excerpt from pages 10-11 was annexed as a Supplemental Appendix to Petitioners' Reply Brief.