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FAX COVER SHEET

9/9/94

6:10 p.m.

DATE

TIME

TO: MR. ELIOT SPITZER

FAX NUMBER: 212-808-9363 (tele: 212-808-0235)

This fax consists of a total of 6 pages, including this cover-sheet. If you do not receive the indicated number of pages, or if there is a question as to the transmittal, please call (914) 997-8105.

FROM: Elena Ruth Sassower, Coordinator

MESSAGE:

Dear Mr. Spitzer:

As a follow up to your telephone conversation with my mother earlier this afternoon, I am enclosing a copy of my letter to Gabe Pressman for use by him in his Sunday's News Forum, interviewing the four candidates for Attorney General, so that you can maximize this opportunity to show your leadership.

We expect that someone who is so tough on crime in our streets will not be soft on crime in our courts.

*Elena Ruth
Sassower*

AG Candidate
Eliot Spitzer

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By Fax: 212-664-6385

September 9, 1994

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

Dear Mr. Pressman:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As aforesaid, the question for the other candidates is:

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

September 9, 1994

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

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability

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