Doris L. Sassower

283 Soundview Avenue
White Plains, New York 10606

Tel. (914) 997-1677
Fax (914) 684-6554

April 3, 1998

George Lange, III, Clerk
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, New York 10007

RE: §372(c) Complaint against the district judge
#97-8535 (District Judge Sprizzo)
§372(c) Complaints against the appellate panel
#97-8539 (Circuit Judge Jacobs)
#97-8540 (Circuit Judge Meskill)
#97-8541 (District Judge Korman)

Dear Mr. Lange:

Pursuant to 28 U.S.C. §372(c)(10) and Rule 5 of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers under 28 U.S.C. §372(c), I hereby petition the Judicial Council of the Second Circuit for review of the order of Chief Judge Ralph Winter, dismissing my above-cited four judicial misconduct complaints. This petition supersedes the draft filed on March 25, 1998, under an explanatory Notice that it was to be considered only if the Clerk did not accord me an extension of time pursuant to Rule 7(c), as requested in my March 23, 1998 letter. By letters from the Clerk's office, dated March 25, 1998 and March 26, 1998, I was informed that my March 23, 1998 letter had been filed as my petition for review and that the Notice would also be passed to the Judicial Council[1]. This statement is as "brief" as possible -- considering the massive misconduct reflected by Chief Judge Winter's dismissal order -- and its public interest significance.

Chief Judge Winter's dismissal order exemplifies the same kind of pernicious judicial misconduct as was the subject of my §372(c) complaints: It is a *knowingly dishonest* decision by a judge who has:

> (1) failed to disclose facts bearing upon his lack of impartiality, as is his statutory *sua sponte* obligation under 28 U.S.C. §455(e) and his ethical obligation under Canon 3D of the Code of Conduct for U.S. Judges and Canon 3F of the ABA Code of Judicial Conduct;
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> (2) ignored, *without* any adjudication, the threshold issue of his disqualification for bias and self-interest, as *explicitly* presented by my complaints;

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[1] Alternatively, I request that this finalized petition be considered a "supplement" to that March 25, 1998 filing -- there being no bar to such supplements in this Circuit's aforesaid Rules.

(3) ignored, *without* any adjudication, the threshold issue of the Circuit's disqualification for bias and self-interest, also *explicitly* presented by my complaints; and

(4) flouted the directives of the Judicial Conference and National Commission on Judicial Discipline and Removal, as *explicitly* highlighted by my complaints, calling upon Chief Judges who dismiss §372(c) complaints to do so by non-conclusory orders which address "the substantive ambiguity" of the 1980 Act and which build interpretive precedent.

First and foremost, however, the question presented by this petition for review is whether the four-member Judicial Council of the Second Circuit will respect its threshold duty to protect the integrity of the process by addressing the issue of the Circuit's disqualification, set forth with specificity in the record before it. This includes the specific disqualification of two of the members of the Judicial Council, by reason of their participation in events forming the background to these complaints -- events alleged by my complaints to establish the Circuit's disqualification for *actual* bias. These two judges are Circuit Judge Guido Calabresi and District Judge Thomas Griesa, Chief Judge of the Southern District (*See* discussion at pp. 5-8, 10).

CHIEF JUDGE WINTER FAILS TO ADJUDICATE THE THRESHOLD ISSUE RAISED BY THE COMPLAINTS OF HIS DISQUALIFICATION FOR BIAS AND SELF-INTEREST -- WHICH ISSUE HE ENTIRELY OMITS FROM HIS DISMISSAL ORDER

The PREFATORY NOTICE to my §372(c) complaints against the three-judge appellate panel asserted in no uncertain terms that Chief Judge Winter was "absolutely disqualified" from reviewing these complaints. Likewise my complaint against the district judge asserted that Chief Judge Winter was "absolutely disqualified" (p. 4, fn. 6).

As *expressly* identified in those complaints, the allegations that the complained-of judges engaged in fraudulent, retaliatory decision-making in *Sassower v. Mangano* mirror similar allegations in my prior §372(c) complaint against then Chief Judge Jon Newman for his fraudulent and retaliatory appellate decision in *Sassower v. Field* -- a decision in which Judge Winter was complicitous as a member of the appellate panel.

Because of the common issues presented by my prior and instant complaints -- each involving bad-faith, egregious judicial decisions, unredressed by the appellate process -- Chief Judge Winter had a self-interest in ensuring that the knee-jerk dismissal of my prior complaint on "merits-related" grounds was not jeopardized. This he could only do by NOT exploring whether, as my instant complaints contended, the Second Circuit's Rule 4(c)(2) mandating dismissal of "merits-related" complaints had to be stricken as violative of the §372(c) statute and in NOT exploring the factors governing the

appropriate exercise of the statutory discretion *not* to dismiss "merits related" complaints, *inter alia*, the availability and efficacy of judicial/appellate remedies. Sure enough, these issues[2], whose critical significance was detailed in my instant complaints, are wholly omitted from Chief Judge Winter's order. Based on his determination that the complaints are "merits-related", he has dismissed them automatically.

From the record before him, Chief Judge Winter *knew* that unless he summarily dismissed my §372(c) complaints as "merits-related", he would be required to appoint a special committee, for whom it would be a *simple* matter to verify the complained-of bias and corrupt conduct of the appellate panel and the district judge. Annexed to the complaints against the appellate panel (Exhibit "A" thereto) was a line-by-line analysis of its Summary Order and annexed to the complaint against the district judge (Exhibit "A" thereto) was a line-by-line analysis of his Memorandum Opinion. These provided meticulous record references establishing those documents to be *knowing and deliberate* judicial frauds. Such frauds concealed the true state of the record in *Sassower v. Mangano* -- not only alleged to entitle me to full relief, *as a matter of law*, but so profound in its consequences as to lead to the potential unraveling of the judicial retaliation against me in *Sassower v. Field.* My complaints identified Judge Winter as a key player in that retaliation

Only Chief Judge Winter's self-interest in aborting a successful outcome of *Sassower v. Mangano* accounts for his failure, during the period in which my §372(c) complaints were *pending* before him, to request that a vote be taken on my Petition for Rehearing with Suggestion for Rehearing *In Banc.* The Petition, like these §372(c) complaints, particularized how two levels of the federal judiciary had subverted all adjudicatory standards. Like them, it was buttressed by my incorporated-by-reference fact-specific, fully-documented motion to vacate for fraud the appellate panel's Summary Order and the district judge's Judgment. Based thereon, *any* impartial Chief Judge would have acted to assure rehearing -- particularly if there were a possibility that he would be dismissing my §372(c) complaints as "merits-related". To do otherwise would result in fraudulent on-the-bench conduct by federal judges evading judicial review in the Circuit by way of rehearing *in banc* and §372(c) disciplinary review. Yet, Chief Judge Winter's self-interest required that he deprive me of *both* judicial and disciplinary remedies since either could expose his misconduct in *Sassower v. Field.*

It is to conceal his duplicity in dismissing my complaints as "merits-related" -- after having just allowed my Petition for Rehearing with Suggestion for Rehearing *In Banc* to be denied -- that his dismissal order purposefully omits *any* mention of the saliently-alleged fact that such Petition had even been filed. Likewise, he omits my allegation that *Sassower v. Mangano* is headed for the U.S. Supreme Court and ignores my *express* request that should my appellate panel complaints be dismissed as "merits-related", the dismissal order articulate "that the sole avenue for review of deliberate, on-the-bench misconduct by Circuit judges is in the U.S. Supreme Court...so that the

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[2] These issues were all previously presented in my May 30, 1996 petition for review of the dismissal of my §372(c) complaint against then Chief Judge Newman -- *without* any responsive adjudication by the Second Circuit Judicial Council. (*See* fn. 4).

Supreme Court can more fully appreciate -- and make appropriate provision for -- its transcendant appellate and supervisory obligation -- without which there is no disciplinary review in the Circuit". (*See* last sentence of appellate panel complaints).

That Chief Judge Winter *also* does not wish *any* review *outside* the judicial branch of my allegations against the complained-against judges may be seen from his failure to follow the Judicial Conference's recommendation that:

> "...if a chief judge or circuit council dismisses, solely for lack of jurisdiction under §372(c), non-frivolous allegations of criminal conduct by a federal judge, the order of dismissal shall inform the complainant that the dismissal does not prevent the complainant from bringing such allegations to the attention of appropriate federal or state criminal authorities" (3/15/94 Report of the Proceedings of the Judicial Conference, p. 30, #11)[3]

At bar, Chief Judge Winter has not dismissed my complaints as "frivolous", but solely on "merits-related" grounds. Indeed, in view of the serious and fully-documented nature of the allegations of my complaint of fraud and criminal conduct by federal judges, subverting all aspects of the judicial/appellate process in *Sassower v. Mangano*, Chief Judge Winter was bound by the same ethical obligations to take "appropriate action" in the face of such misconduct, as was highlighted in my appellate panel complaints (at p. 2): Canon 3B(3) of the Judicial Conference's Code of Judicial Conduct and Canon 3D of the ABA's Code -- which he has wholly flouted.

Under 28 U.S.C. §455(e) and Canon 3D of the Code of Conduct for U.S. Judges and Canon 3F of the ABA Code of Judicial Conduct, a judge is required to, *sua sponte*, disclose facts bearing upon his impartiality. Yet, Chief Judge Winter's dismissal order makes no disclosure based on the facts already in the record before him. Nor does he adjudicate my threshold contention that he is disqualified for bias and self-interest. Instead, he conceals such contention by omitting all references to it from his dismissal order. Chief Judge Winter thereby replicates the *very* judicial misconduct for which I sought §372(c) review: the appellate panel's failure to disclose facts in the record before it

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[3] The National Commission on Judicial Discipline and Removal's recommendation -- on which the Judicial Conference made its modification -- was as follows:

> "...a chief judge or circuit council dismissing for lack of jurisdiction non-frivolous allegations of criminal conduct by a federal judge bring those allegations, if serious and credible, to the attention of fedral or state criminal authorities and of the House Judiciary Committee. In situations where the chief judge or circuit council believe it inappropriate to act as an intermediary,...they [should] notify the complainant of the names and addresses of the individuals whose attention the charges might be brought." (Report, at p. 97)

bearing on its lack of impartiality, and its failure, in its Summary Order, to adjudicate my recusal application against it -- whose very existence it concealed by knowing omission. Indeed, my complaints *expressly* asserted, as a disciplinary principle, that:

> "Where...a recusal application is 'is not frivolous or fanciful, but substantial and formidable', it is misconduct for judges to deny it *without any reasons or findings as to its sufficiency*. It is certainly misconduct *per se* for judges not to confront bias issues squarely before them for adjudication..." (at p. 4, emphasis in the original).

Chief Judge Winter does not deny or dispute such vital disciplinary principle -- which is plainly relevant to his conduct. Rather, he conceals this principle by omitting any mention of it from his dismissal order, together with ALL my complaints' factual allegations pertinent thereto.

That Chief Judge Winter should engage in the very conduct asserted by my §372(c) complaints as "misconduct *per se*" warrants disciplinary action by this Circuit Council. This is consistent with Canon 3(B)(3) of the Code of Conduct for U.S. Judges and Canon 3(D) of the ABA Code of Judicial Conduct. By such misconduct and his demonstrably dishonest decision, as herein detailed, Chief Judge Winter has acted to obstruct justice -- a criminal and plainly impeachable offense.

CHIEF JUDGE WINTER FAILS TO ADJUDICATE THE THRESHOLD ISSUES RAISED BY THE COMPLAINTS AS TO THE APPEARANCE AND ACTUALITY OF THIS CIRCUIT'S BIAS, AS WELL AS ITS SELF-INTEREST -- WHICH ISSUES HE ENTIRELY OMITS FROM HIS DISMISSAL ORDER

No fair and impartial Judicial Council, worthy of supervisory and disciplinary responsibilities, would allow a judge within its jurisdiction to adjudicate a matter without having first addressed the threshold bias issues raised against him. That Chief Judge Winter has so flagrantly done so suggests that he confidently believes that the Judicial Council will collusively cover up for him -- much as it did for Acting Chief Judge Amalya Kearse after she dismissed my prior §372(c) complaint against then Chief Judge Newman by a dishonest and conclusory order[4]. Indeed, in addition to *not* adjudicating his own

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[4] Copies of my petition for review of Acting Chief Judge Kearse's dismissal of my §372(c) complaint against then Chief Judge Newman -- and the Judicial Council's generic affirmance -- were annexed to my incorporated-by-reference October 10, 1997 recusal/vacatur for fraud motion to substantiate the *actuality* of this Circuit's bias. By letter dated November 10, 1997, Supervising Administrative Attorney Beth Meador advised me that they had been "removed from the motion", stating "Judicial Misconduct Complaints are confidential and, therefore, cannot be included in papers in the public file". In truth, the §372(c) statute does *not* require the confidentiality of §372(c) complaints -- a fact highlighted by my daughter's article "*Without Merit: The Empty Promise of Judicial Discipline*" [Long Term View, (Massachusetts School of

disqualification for bias and self-interest, Chief Judge Winter's dismissal order does *not* adjudicate my contention that the bias and self-interest of the Circuit require that my §372(c) complaints be transferred to a different Circuit. The very contention is likewise omitted from his dismissal order.

As hereinabove stated, the threshold issue of the Circuit's disqualification for bias and self-interest must be determined by the Judicial Council BEFORE any other -- and by a determination which responds to those specifics. To do otherwise would subject the Judicial Council to the same *per se* misconduct charge, asserted in my complaints against the appellate panel.

To date, the Circuit has refused to address its disqualification by *any* reasoned determination. On April 1, 1997, even before the appellate panel was assigned to *Sassower v Mangano*, I made a motion for the Circuit's recusal. That fact-specific motion was denied, *without* reasons, by a Circuit panel presided over by Judge Kearse -- whose disqualification, based on her cover-up of the judicial misconduct in *Sassower v. Field*, was the subject of separate affidavit objection[5]. Sitting with Judge Kearse on the Circuit panel was Judge Calabresi. Thereafter, in my Petition for Rehearing with Suggestion for Rehearing *In Banc* of the appellate panel's Summary order, I substantiated my assertion (at p. 14) of the Circuit's disqualifying *actual* bias by a fact-specific, fully-documented motion for the Circuit's recusal, which I incorporated by reference. The Circuit failed to request a vote on my Suggestion for Rehearing *In Banc* and the appellate panel denied, *without reasons*, my Petition for Rehearing. This followed the appellate panel's denial, *without reasons*, of my aforesaid post-appeal recusal motion. It is that comprehensive, fully-documented motion, dated October 10, 1997, which is *explicitly* referred to in the first sentence of the PREFATORY NOTICE to my appellate panel complaints. Page 1 of those complaints *explicitly* cites the prior April 1, 1997 recusal motion.

My §372(c) complaints themselves summarized the content of those motions, with particulars of both *actual* and apparent bias. As to the appearance of impropriety in this Circuit's adjudication of matters involving me, I included (1) the Circuit's personal and professional relationships with the state judges sued for corruption in *Sassower v. Mangano*; (2) my familial relationship with judicial whistle-blower, George Sassower; this Circuit's nemesis' -- as reflected by his lawsuits and complaints against its judges[6]; and (3) my own whistle-blowing public advocacy against this Circuit for retaliating against me because of that familial relationship, including by its dishonest appellate decision in *Sassower v.*

Law Journal), Vol. 4. No. 1], annexed as an exhibit to my instant complaints.

[5] *See* my April 28, 1997 Supplemental Affidavit.

[6] *See, inter alia, In re George Sassower*, 20 F3d 42 (2nd Cir. 1994) -- a decision alleged (at p. 1) in my May 30, 1996 petition for review of my prior complaint against then Chief Judge Newman -- to be "the only 'precedential' published decision of this Circuit relating to §372(c) complaints in the 16 years since the statute was enacted by Congress". I believe such remains true today.

Field (*See*, p. 2 of appellate panel complaints).

As to its *actual* bias, my complaints described this Circuit's complicity in the maligning and fraudulent decision in *Sassower v. Field* by its failure to grant my dispositive Petition for Rehearing with Suggestion for Rehearing *En Banc* therein, as well as Southern District Chief Judge Griesa's suspension of my law license in violation of the Southern District's own Rule 4 and my constitutional rights[7]. My complaints *expressly* asserted that by such actions, the Circuit had demonstrated its retaliatory self-interest in depriving me of my good name, financial well-being, and law license -- all of which were at issue in *Sassower v. Mangano* and which would necessarily be restored if the case were decided on the facts and law. Indeed, the $100,000 that the Circuit had judicially robbed from me in *Sassower v. Field*, by its *sua sponte* invocation of "inherent power", was a proverbial "drop in the bucket" compared to the millions of dollars to which I am entitled in compensatory and punitive damages from the *Sassower v. Mangano* defendants (*See* p 3 of appellate panel complaints).

My complaints further noted that this Circuit's self-interest in *Sassower v. Mangano* also derived from the fact that Mr. Sassower would directly benefit from a declaration that New York's attorney disciplinary law is unconstitutional and has been misused by the state judicial defendants to retaliate against me -- since he had long contended in his lawsuits and judicial misconduct complaints that his state disbarment was a judicial fraud. Moreover, as my Petition for Rehearing with Suggestion for Rehearing *In Banc* pointed out (at pp. 13-14), verification of my claims that two levels of the federal judiciary had, by fraudulent decisions in *Sassower v. Mangano*, covered up corruption in the New York State courts in which the State Attorney General was a collusive, active participant would lend powerful support to Mr. Sassower's claims that dishonest decisions were the means by which the federal judiciary -- and particularly this Circuit -- had been disposing of his cases raising similar issues of state court corruption, aided and abetted by the State Attorney General (*See* pp. 3-4 of appellate panel complaints).

No unbiased Circuit could ignore the transcendant issues I raised as to the corruption of the judicial process in my Petition for Rehearing with Suggestion for Rehearing *In Banc* and its incorporated-by-reference October 10, 1997 recusal/vacatur for fraud motion. The fact that not a single one of its judges requested a vote on the *In Banc* suggestion demonstrates, *prima facie*, the Circuit's bias. It also supports the view that the Circuit has a self-interest in not exposing the heinous judicial misconduct chronicled therein because, as alleged, it was committed in furtherance of Circuit objectives (*See* p. 2 complaint against the district judge).

By denying *In Banc* review, this Circuit has put its imprimatur on a Summary Order appellate "affirmance" of a district judge's "Judgment" -- both demonstrated to be fraudulent by my Petition for Rehearing. This includes Judge Calabresi and Judge Joseph McLaughlin, who having declined to request a vote on the Suggestion for Rehearing *In Banc*, became complicitous in the fraudulent judicial documents on which these §372(c) complaints rest (*See* fn. 17, quoting *Green v. Seymour*,

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[7] *See* p. 2 of complaint against the district judge.

59 F.3d 1073, 1077 (10th Cir. 1995)). Unless they "dump" these complaints, their role in subverting my judicial/appellate remedies in *Sassower v. Mangano* will be exposed. Indeed, were the Council to consider these complaints as "merits-related", which they are not, their cognizability under the §372(c) statute would require it to examine the available judicial/appellate processes, alleged by the complaints to have been corrupted by the Circuit's bias and self-interest. The consequence is that Judges Calabresi and McLaughlin's evaluation of the cognizability of these complaints will rest on their judging their own conduct.

CHIEF JUDGE WINTER'S DISMISSAL ORDER IS BASED ON OMISSION OF THE MATERIAL ALLEGATIONS OF THE COMPLAINTS -- WHOSE LEGAL SIGNIFICANCE IS DISPOSITIVE OF THE COGNIZABILITY OF THESE §372(c) COMPLAINTS

Having ignored, *without* adjudication, the threshold disqualification issues relating to himself and the Circuit, Chief Judge Winter has further actualized his bias by the very misconduct as was alleged by my §372(c) complaints to demonstrate, *prima facie*, the *actual* bias of the district judge and appellate panel. Like those judges, whose decisions in *Sassower v. Mangano* were alleged to have purposefully obliterated the pivotal allegations of my Verified Complaint that made it invulnerable to pleading defenses, Chief Judge Winter has followed a similar *modus operandi*. His dismissal order purposefully obliterates the pivotal allegations of my §372(c) complaints which -- were they identified -- would have prevented him from dumping the complaints as "merits-related". And just as the complained-against judges falsified the evidentiary record, so Chief Judge Winter substitutes exculpatory speculation for transcript evidence as to the single allegation which, *without* explanation, he has deemed within the purview of disciplinary examination.

Among the critical allegations of my complaints obliterated by Chief Judge Winter's dismissal order are those pertaining to the general principles to be applied for the "initial review" phase of §372(c) complaints relative to the statutory ground of dismissal, "directly related to the merits of a decision or procedural ruling":

(1) that complaints alleging bad-faith, biased conduct, which is egregious, are not "merits-related";

(2) that even "merits-related" complaints are *not* required to be dismissed under the statute;

(3) that the Circuit's Rule 4(c)(2) requiring dismissal of "merits-related" complaints must be stricken as violative of the statute;

(4) that the unavailability or ineffectiveness of judicial/appellate remedies are proper factors for the statutory discretion to review "merits-related"

complaints; and

(5) that the discretion to review "merits-related" complaints is properly exercised where the criteria set forth in the Commentary to Canon 1 of the Code of Conduct of U.S. judges have been met.

Likewise obliterated from his order is my assertion that the Judicial Conference and National Commission on Judicial Discipline and Removal had long ago recognized the need to resolve the "substantive ambiguity" of the 1980 Act by interpretive precedent and that my complaints were suitable for interpretive determinations.

In dismissing my complaints as "directly related to the merits", which he does pursuant to both 28 U.S.C. §372(c)(3)(A)(ii) **AND** the Second Circuit Judicial Council's Rule 4(c)(2), Chief Judge Winter simply ignores that the statute -- unlike the rule -- does *not* require dismissal of "merits-related" complaints. And by obliterating from his dismissal order virtually all the judicial/appellate odyssey that is part of my complaints, he demonstrates the correctness of my contention that the discretion afforded by the statute not to dismiss "merits-related" complaints is:

> "...particularly warranted where judicial and appellate remedies are unavailable -- or, as at bar, unavailing by reason of the protectionism and self-interest complained of." (p. 4 of complaint against the district judge)

It is to set the stage for his "merits-related" dismissal that his skimpy five-sentence "Background" section (at pp. 1-2) goes from a description of my §1983 action, to the district judge's summary dismissal, to the Second Circuit's affirmance. He thereby seeks to create the illusion that the Second Circuit affirmed the issue presented by my appeal: the dismissal of my action, with the story ending there. This is untrue -- and highlighted by the very paragraphs of the complaint that immediately proceed the above quote.

On appeal to the Second Circuit, the SOLE transcending issue presented by my brief was the district judge's pervasive bias, as manifested by his egregious rulings on the motion submissions before him and by his failure to rule on my uncontroverted, fully-documented sanctions applications against defendants for their litigation fraud. Yet, the appellate panel failed to adjudicate or even address the issue of the district judge's bias and *expressly* did *not* adjudicate the propriety of his rulings (or non-rulings) on the motion submissions before him. Nor did the appellate panel adjudicate or address the issue of its own bias -- raised at oral argument. My complaints highlighted these facts, presenting a record showing a combined total of eight bias/recusal applications in the *Sassower v. Mangano* litigation, as well as a shocking array of *unadjudicated* sanctions applications against defendants for their litigation fraud -- all uncontroverted and fully-documented. This was not only essential "Background" to these complaints, but had the extraordinary facts as to the disposition of those recusal and sanctions applications been presented, it would have sufficed to establish the basis for my allegations of a pattern of wilful cover-up and conspiracy by judges of this Circuit and the Southern

District.

Thus, while my §1983 federal action was before the district judge, I made repeated applications to him for sanctions against defendants for their litigation fraud. The district judge *failed to adjudicate* any of these sanction applications, notwithstanding they were fully-documented and uncontroverted. I also made a motion for the district judge's recusal pursuant to 28 U.S.C. §144 and §455 [R-643-733] (#1), which he denied from the bench [R-762-765], thereafter denying my motion for reargument, renewal, and reconsideration [R-743-864] (#2) as part of his Opinion dismissing the case [R-14]. It was while that reargument motion was pending that I turned to the district judge's superior, Southern District Chief Judge Griesa, to exercise his "supervisory power over [the] district judge whose manifest bias ha[d] caused him to run amok" (Br. 3) [3/8/96 ltr: R-901]. Chief Judge Griesa's failure to respond resulted in my requesting his recusal on specified conflict of interest grounds -- to which he also *failed to respond* [5/3/96 ltr: R-903-907] (#3).

On appeal, the overarching issue of the district judge's bias was particularized as including his wrongful denial of my recusal and reargument (Br. 31-37) motions and his failure to adjudicate the fraud/sanctions applications against defendants (Br. 38-50). *Prior* to designation of the appellate panel, I filed a motion for the Circuit's recusal and transfer to another Circuit[8], to which was joined a fully-documented sanctions motion against the defendants for their fraudulent conduct in the case management phase of the appeal (#4). This was denied, *without* reasons, by a three-judge panel which included Judge Calabresi and, as presiding judge, Judge Kearse, against whom I had filed an affidavit objection based on her disqualifying *actual* bias[9] (#5). Thereafter, I reiterated that recusal motion at oral argument of the appeal (#6), but was cut-off, mid-sentence, *without* any ruling on it by the appellate panel, which also failed to disclose facts bearing on the appearance of its lack of impartiality[10].

Following the appellate panel's Summary Order -- which did *not* adjudicate the issue of the district judge's bias, including his denial of recusal and reargument thereof and his failure to rule on the sanctions applications against defendants, nor adjudicate its own bias or my application for sanctions against defendants for their fraudulent opposing brief -- I encompassed a request for the Circuit's recusal in a Petition for Rehearing with Suggestion for Rehearing *In Banc* (at pp. 14-15) (#7). The SOLE transcending issue raised by that Petition was the "integrity of the judicial process".

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[8] *See* my April 1, 1997 recusal/sanctions motion [Appellate Case Management Phase].

[9] *See* my April 28, 1997 Supplemental Affidavit and the one-word denial Order, dated April 29, 1997, of Judges Kearse, Calabresi, and Oberdorfer [Appellate Case Management Phase].

[10] *See* transcript of the August 27, 1997 oral argument, pp. 9-10 [annexed as Exhibit "K" to my October 10, 1997 recusal/vacatur for fraud motion [Post-Appeal Proceedings].

Incorporated therein by reference was my separately-filed motion for recusal of the appellate panel and Circuit, pursuant to 28 U.S.C. §455 (#8), to which was joined a fully-documented motion to vacate for fraud the appellate panel's Summary Order and the district judge's judgment. *Without reasons*, the appellate panel denied that post-appeal recusal/vacatur for fraud motion[11]. Likewise, *without reasons*, it denied the Petition for Rehearing *In Banc* and, together with the Circuit judges, failed to request a vote on the Petition's Suggestion for Rehearing *In Banc*[12].

ALL of the foregoing -- with the exception of appellate panel and Circuit disposition of my Petition for Rehearing with Suggestion for Rehearing *In Banc*, then *sub judice* -- were either *expressly* alleged by my complaints as pivotally significant or readily-discernible from the record. Yet, they are not only completely omitted from the "Background" section of Chief Judge Winter's dismissal order, but almost as completely omitted from the seven-sentence "Allegations" section (pp. 2-3).

Thus, although the order's three-sentence description of my complaint against the district judge (p. 2) identifies that I alleged that he "wilfully fail[ed] to adjudicate [my] applications for sanctions", that "pervasive bias" and "flagrant dishonesty" accounted for his denial of my recusal and reargument motions"[13], and that he "violated canons of judicial ethics by failing 'to take corrective steps in the face of misconduct' by the judges and attorneys who are the defendants...", Chief Judge Winter fails to identify what my complaint alleged had happened to ALL these issues on appeal, to wit, they were ALL ignored, *without* adjudication, by the appellate panel.

Nor does his four-sentence description of the allegations of my complaints against the appellate panel (pp. 2-3) contain *any* equivalent mention of my motions for *its* recusal or *its* wilful failure to adjudicate my sanctions applications against defendants for their fraudulent defense of the appeal. And it misrepresents my allegations of the appellate panel's "violations of canons of judicial ethics" as being based on its "failure to take action against the judicial officers named as defendants in the underlying action". In fact, it was based on the panel's failure to take action against the district judge and defendant state officials colluding in fraud and against the co-defendant state Attorney General, whose fraud continued on through the appeal (*See* pp. 1-2 complaints against appellate panel)..

Indeed, Chief Judge Winter goes out of his way to conceal that recusal/vacatur for fraud motions had been made against the appellate panel. Thus, in the first sentence of the four-sentence description of my appellate panel complaints, he states (p. 2), "Complainant seeks to incorporate by reference hundreds of pages of material from the underlying suit". Chief Judge Winter avoids *any* identification

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[11] *See* one-word denial Order, dated October 22, 1997, of the appellate panel [Post-Appeal Proceedings].

[12] *See* Order dated December 17, 1997 [Post-Appeal Proceedings].

[13] Chief Judge Winter misrepresents the motion to reargue the district judge's denial of my recusal motion as a "motion to reargue the dismissal" (at p. 2).

of what the essence of that material is -- material *expressly* identified by my complaints to include my October 10, 1997 recusal/vacatur for fraud motion[14]. Similarly, in the third sentence, he acknowledges that I alleged that "Judge C[15] 'cut [Complainant] off, mid-sentence' at oral argument", but conceals that it was during my oral recusal application that I was cut off. This was *expressly* alleged by the very first paragraph of my appellate panel complaints. As to this specific allegation of being "cut off", the "Disposition" section of the dismissal order continues the concealment:

> "The allegations of misconduct in these complaints are rooted in judicial rulings. Apart from one assertion that Judge C cut off Complainant at oral argument -- an act that is often required to curtail loquacity and that, **without more**, does not constitute judicial misconduct -- the alleged infirmities of the rulings are the only 'evidence' cited in support of the sweeping charges." (at p. 3, emphasis added)

Chief Judge Winter omits that there is "**more**" to my assertion of having been "cut off" -- and that it is not only alleged by my complaints but documentarily established by the transcript of the oral argument, which my complaints *expressly* identified[16] as annexed to my October 10, 1997 recusal/vacatur for fraud motion and analyzed in 17 pages of my 43-page affidavit supporting that motion. That Chief Judge Winter knows that his speculation as to "loquacity" is bogus may be inferred from the fact that he does *not* refer to the transcript to establish its relevance. This contrasts sharply with what appears to be his general practice of examining transcripts in other judicial misconduct complaints. Thus, he examined the transcripts for the following §372(c) complaints, filed both before and after my own: (a) *In re Charge of Judicial Misconduct*, #97-8524, filed on July 22, 1997 and dismissed on September 11, 1997; (b) *In re Charge of Judicial Misconduct*, # 97-8534, filed on October 14, 1997 and dismissed on January 20, 1997; and (c) *In re Charge of Judicial Misconduct*, # 98-8505, filed on January 16, 1998 and dismissed on March 4, 1998. Two of these complaints were before Chief Judge Winter during the same period as my own.

The inference of Chief Judge Winter's above-quoted assertion in his "Disposition" section that my allegations of judicial misconduct are "rooted in judicial rulings" and his quote from *In re Charge of Judicial Misconduct*, 685 F.2d 1226, 1227 (9th Cir. Jud. Counc. 1982) that

> "To determine whether a judge's rulings were so legally indefensible as to mandate intervention would require the same type of legal analysis as is afforded on appeal."

is that appeal would afford such analysis. Yet, conspicuously his dismissal order says nothing about

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[14] *See* first sentence of my PREFATORY NOTICE to my appellate panel complaints, as well as the second paragraph of page 4 thereof.

[15] Presiding Judge Jacobs is "Judge B" -- not Judge "C".

[16] *See* appellate panel complaints, p. 4, para 2.

whether the appellate panel had afforded *any* "type of legal analysis" on my appeal of the district judge's rulings. Indeed, from the innumerable allegations of my complaints -- ALL omitted by Chief Judge Winter -- he knew it had not. Nor does his dismissal order acknowledge my further allegation that the *only* appellate review available from the appellate panel's Summary Order, aside from my Petition for Rehearing with Suggestion for Rehearing *In Banc*, is in the United States Supreme Court, a statistical unlikelihood (*See* p. 5, appellate panel complaints).

Chief Judge Winter's failure to comment upon the integrity and efficacy of the Second Circuit appellate process in *Sassower v. Mangano* -- impugned by my complaints -- or to illuminate the subject of venue within the federal judiciary for review of the serious misconduct alleged by my complaints is in the face of my *explicit* allegations that a non-conclusory order would require fact-specific exposition (*See* p. 5, appellate panel complaints).

The complete exhaustion and ineffectiveness of judicial/appellate remedies within the Circuit, alleged by my complaints, stands in marked contrast to the situation in *In re Charge of Judicial Misconduct*, *supra*, 1227. There, the Ninth Circuit's Chief Judge based his dismissal of the complaint on his "analysis" that "each of the rulings or failures to rule could have been appealed to the district court or the court of appeals" -- an "analysis" with which that Circuit's Judicial Council agrees. The inference is the complained of rulings and failures to rule were not appealed. What could be more inapposite than that case to the case at bar!

In truth, the ONLY relevance of *In re Charge of Judicial Misconduct*, *supra*[17] -- is for the

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[17] The ONLY seeming relevance of Chief Judge Winter's citation to *Green v. Seymour*, 59 F.3d 1073, 1077-78 (10th Cir. 1995) -- which is *not* a decision involving a §372(c) complaint -- is to add a superfluous citation. Its inclusion underscores precisely what was summarized in the article, "*Without Merit: The Empty Promise of Judicial Discipline*", annexed to my complaints: that there is little caselaw on §372(c) because the federal judiciary has not generated precedential decisions in a deliberate effort to keep the "merits-related" category undefined so as to dump virtually every §372(c) complaint it receives on that ground. Chief Judge Winter's conclusory and unpublished dismissal order herein reinforces that point -- as do the Circuit's other conclusory and unpublished dismissal orders, on file in a binder in the Clerk's Office. This includes the Judicial Council's Memorandum and Order in its most recent investigation of a §372(c) complaint, #96-8523. All fail to explore the "merit-related" category and make dismissal on that ground automatic.

It may be noted that *Greene v. Seymour*, *supra*, is, in other respects, extremely relevant to my complaint, including by its statement:

> "Except for cases involving fraud on the court, we know of no basis upon which a decision of a court of appeals, valid on its face, and the denial of rehearing en banc of that decision, may be challenged as the product of a conspiracy among the judges to deny the losing litigant his rights."

proposition for which I myself cited it in my complaint against the district judge:

> "We need not reject the possibility of an exceptional case developing where the nature and extent of the legal errors are *so egregious* that an inference of judicial misconduct might arise, but that would be a rare case, and it has not occurred here. We note, moreover, that there is neither an assertion or evidence that the judge acted with *improper motive*." (*See* p. 5 of my complaint against the district judge, emphasis added).

Chief Judge Winter's "Disposition" section does not deny or dispute the validity of these principles or that, as alleged by my complaint against the district judge (at p. 5), this is the "rare case". Moreover, it acknowledges that my §372(c) complaints alleged egregious conduct and improper motive, stating:

> "Complainant's argument is that Judge A's rulings, and the affirmance by Judges B, C, and D, were *so egregiously wrong* that they could have only resulted from *bias and deliberate wrongdoing*." (at p. 4, emphasis added)

and further that my complaints had contended that the complained-of judges had "*intentionally* omitted and misrepresented" facts in their rulings (at p. 5, emphasis added). Turning back to the "Allegations" section (pp. 2-3), the dismissal order quotes from my complaint that the district judge had issued a "*knowingly* false, fabricated, and fraudulent decision of dismissal" and had "*wilfully* fail[ed] to adjudicate" my sanctions applications and that the appellate panel had issued a "*knowingly* false and fraudulent not-for-publication, no-citation Summary Order" (emphases added). As to the improper motive, the "Allegations" section -- although conspicuously omitting the protectionism of the state judicial defendants alleged, with particularity, in my complaint against the district judge -- and expunging that all-important improper motive from its recitation of my complaints against the appellate panel, nonetheless identified one illicit motive as having been alleged, "to retaliate for the 'judicial whistle-blowing advocacy' of Complainant and others in her family" (at p. 3).

Yet, contrary to *In Re Judicial* Misconduct, *supra*, where the Ninth Circuit Judicial Council determined that the judges' complained-of rulings did not reach a level of "egregiousness" and that there was neither an assertion nor evidence of "improper motive", Chief Judge Winter makes no findings as to "egregiousness" or "improper motive". Instead, he rejects my complaints as not being cognizable under §372(c) with the bald claim:

> "...all of the alleged misconduct -- including the claims that facts were intentionally omitted and misrepresented and that the Judges did not comply with canons of judicial ethics -- is intertwined with the substance of those rulings." (at p. 5)

No legal authority is supplied for this proposition -- which is contrary to *In re Charge of Judicial Misconduct, supra*. Indeed, in order to advance such false claim, Chief Judge Winter then "shifts gears" and -- in the end of his "Disposition" section (at p. 5) -- leaps to the pretense that my §372(c) complaints are about good-faith conduct, in other words, "simply objections to substantive or procedural error", for which he includes the irrelevant continuation of the quote from *In re Charge of Judicial Misconduct, supra*:

> "More important, the gravamen of the complaint is not the fitness of the judge, but the merit of his decision. Disciplinary procedures must not be used to correct judicial mistakes."

Yet, not only did my complaints *expressly* emphasize that they were not about good faith judicial "error", but Chief Judge Winter's own descriptions of them -- including his above-cited quotes -- make manifest that they *are* about the fitness of the complained-of judges, being grounded in allegations of their bad-faith, knowingly corrupt judicial conduct. This would have been even more evident had Chief Judge Winter not expurgated the most relevant particulars of my complaints, including my extensive presentation of the illicit motive for the misconduct. As reflected by the article, "*Without Merit: The Empty Promise of Judicial Discipline*", annexed to my complaints, allegations of biased, bad-faith conduct are not "merits-related" and are reviewable *irrespective* of whether there is an appellate remedy[18].

CONCLUSION

My PREFATORY NOTICE gave counsel ignored by Chief Judge Winter. It is applicable to the Judicial Council on this petition for review:

> "Under 28 U.S.C. §1254(2), the Circuits may certify questions to the U.S. Supreme Court as to which they desire instruction. Should there be any question as to this Circuit's duty to transfer [these] fully-documented complaint[s] and the federal judiciary's supervisory and ethical obligation to investigate [them], it should be certified to the U.S. Supreme Court, in conjunction with my intended petition for a writ of certiorari, and sent, as well, to the Judicial Conference for an advisory opinion, *inter alia*, to its Committee on Codes of Conduct and its Committee to Review Circuit Council Conduct and Disability Orders."

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[18] *See* also p. 2 of my prior May 30, 1996 petition for review, citing *In re Charge of Judicial Misconduct*, 593 F.2d 881 (1979) as enunciating the governing standard for disciplinary review: to wit, whether the complaint presents:

> "...any suggestion of corruption or other impropriety or any indication of a broader pattern of conduct evidencing incapacity, arbitrariness, or neglect of office."

Under §372(c)(7)(A), the Judicial Council "may, in its discretion, refer any complaint" to the Judicial Conference. A referral is mandated under §372(c)(7)(B), where the Council determines "that a judge appointed to hold office during good behavior" may have engaged in conduct which is impeachable or which, "in the interest of justice, is not amenable to resolution by the judicial council".[19] Such circumstances are presented by my instant complaints, setting forth conduct by four federal judges, which is, and was alleged to be, impeachable -- and which this Circuit's Chief judge has sought to cover up by a dishonest dismissal, itself impeachable conduct.

Indeed, disciplinary action must also be taken against Chief Judge Winter, pursuant to Canon 3(B)(3) of the Code of Conduct for U.S. Judges, Canon 3(D) of the ABA Code of Judicial Conduct and §372(c)(7)(B) for his flagrant subversion of the §372(c) remedy, as herein particularized.

So that this Judicial Council may be fully knowledgeable of the extent to which its actions will be affording Congress a "front-seat" view of the federal judiciary's commitment to "self-policing", I am annexing copies of the Center for Judicial Accountability's March 10, 1998 and March 23, 1998 Memoranda to the House Judiciary Committee as Exhibits "A" and "B". As reflected by the March 23rd Memorandum, the record of these §372(c) complaints, including the appellate file in *Sassower v. Mangano*, has been forwarded to the Committee. This should go far in enabling Congress to undertake -- finally -- the "vigorous oversight" it promised when it passed the 1980 Act.

DORIS L. SASSOWER

cc: New York State Attorney General Dennis Vacco
House Judiciary Committee
Judicial Conference of the United States
c/o Administrative Office of the United States Courts
Jerome Shestack, President, American Bar Association

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[19] Referrals under §372(c)(7)(A) *expressly* do not require a report from a special committee after investigation and under §372(c)(7)(B) may be based on "information otherwise available to the council".