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FAX COVER SHEET

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DATE: 8/25/97 TIME: 3:20 pm FAX #: 212-696-4514

TO: Al Robbins
NYCLU

RE: CJA's ad

FROM: ELENA RUTH SASSOWER, Coordinator

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MESSAGE: As requested, the paragraphs of the Complaint relating to the AG have been sent to you FFF 10 + 26

Also hereto are the pertinent pages from NY appellant's brief ~~42-4~~ 41-43.

Also – the intro is faxed hereto as is revised last page.

Although the District Judge stated that his denial of Plaintiff's request was based on his view that Defendants' dismissal motion was "colorable" [R-188, ln. 9], he refused to conduct a "two-minute inquiry" into whether, as Plaintiff argued, his decision as to the "colorability" of Defendants' dismissal motion was based on their "pivotal" misrepresentations in that motion [R-190, ln. 20]. Instead, he required Plaintiff to include her Rule 11 sanctions objections in her opposition, stating he would defer consideration "until such time as I have ruled upon the merits of the motion" [R-191]. As plain from the Decision, it was more than a year later that the District Judge ruled on the so-called "merits" of Defendants' motion and, even then, did not adjudicate Plaintiff's sanctions entitlement.

The March 3, 1995 transcript shows that the District Judge stated: "if my decision as to colorability can be satisfactorily proved it was based upon his misrepresenting facts to me, I will hear that on October 27th" -- the date he scheduled for oral argument of Defendants' dismissal motion. Yet, on October 27th, he ignored the issue entirely. On that date, the undisputed and indisputable record before him showed that: (1) Defendants' dismissal motion was predicated on falsification, distortion, and concealment of the material allegations of the Complaint and deliberate misrepresentation of law [R-168b; R-460]; (2) Defendants' Answer was knowingly false, fraudulent, and in bad-faith as to over 150 allegations of the Complaint [R-275]; (3) Defendants' bald denials of her Rule 3(g) Statement, buttressed only by Casella's irrelevant, non-probative, and misleading affidavit [R-630], was sanctionable under Rule 56 [R-734].

The litigation misconduct of Defendants and their co-Defendant counsel, documented in the record before the District Judge, presented a classic Rule 11 case. Indeed, beyond that, it rose to the level of "fraud upon the court", as that term has been applied in this Circuit, Martina

Theatre Corp. v. Schine Chain Theatres, Inc., 278 F.2d 798, 801 (2d Cir. 1960); Kupferman v. Consolidated Research & Mfg. Corp, 459 F.2d 1072, 1078, 1081 (2d Cir. 1972); Gleason v. Jandrucko, 860 F.2d 556 (2d Cir. 1988), Hadges v. Yonkers Racing Corp., 48 F.3d 1320, 1325 (2d Cir. 1995); See also, Cresswell v. Sullivan & Cromwell, 771 F. Supp. 580, 586 (S.D.N.Y. 1991)[25]. The law is well-established that courts possess inherent power and a duty to defend their integrity and protect themselves from "fraud upon the court", Chambers v. Nasco, Inc., 501 U.S. 32 (1991); Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944); Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 580 (1946) and, particularly, where, as here, it involves more than the individual litigants.

At bar, the issues involved corruption by public officials, including high-ranking sitting judges of the State of New York and the state's highest legal officer, the New York State Attorney General, and deliberate misuse of judicial and disciplinary power to retaliate against a judicial whistle-blower, combined with an unconstitutional attorney disciplinary law. Unquestionably, this case transcended the individual litigants. Yet, the District Judge not only ignored Plaintiff's uncontroverted sanctions applications, but disregarded his "own initiative" power under Rule 11(c)(1)(B), as well as his inherent power to evaluate and punish Defendants' fraudulent and deceitful conduct. Exercise of such "initiative" and inherent power is even more warranted where it is on behalf of an unrepresented litigant, who is to be afforded the court's

[25] See also, DR 7-102(A.5) of the Model Rules of Professional Responsibility: a lawyer may not "knowingly make a false statement of law or fact"; ABA Model Rules of Professional Conduct, Rule 3.3, "Candor Toward the Tribunal"; Rule 8.4 "Misconduct".

protection, Haines v. Kerner, 404 U.S. 519 (1972)[26].

The District Judge's refusal to adjudicate the fraud and misconduct before him constitutes his complicity and collusion therewith. It demonstrates his overriding bias and wrongful protection of Defendants -- not just from liability for sanctions, but from ultimate liability in Plaintiff's federal action. Indeed, the very issues that were at the heart of Plaintiff's sanction applications, if resolved, would have made it impossible for judgment to be rendered to Defendants. The District Judge's awareness of this fact shows in his Decision.

As illustrative, in the Decision's first sentence, the District Judge ambiguously refers to Plaintiff's suspension as resulting "out of state disciplinary proceedings" [R-4]. In the "Background" recitation, he makes it appear, by shearing off the pertinent allegations of the Complaint, that there is some causal connection between the Suspension Order and the February 6, 1990 disciplinary petition [R-5-7]. Thereafter, the District Judge grants the Second Department absolute judicial immunity for acting within its jurisdiction, making reference to a "disciplinary petition" [R-18].

No issue was more pivotal to Plaintiff's repeated sanction requests against Mr. Weinstein than his false claim in Defendants' dismissal motion that her Complaint alleged an "underlying disciplinary proceeding" [R-144], his selective recitation of the Complaint's allegations to make it appear, but without saying so, that there was a causal connection between the Suspension Order and the February 6, 1990 disciplinary petition [R-144-145], and his affirmative claim in his oral

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[26] In the context of her recusal Order to Show Cause [R-657, ¶24], Plaintiff expressly directed the District Judge's attention to his special obligations to her, as a pro se litigant, under Haines v. Kerner. Cf. the District Judge's own citation to Haines v. Kerner in his decisions in other cases: Sadler v. Brown, 793 F. Supp. 87, 88 (1992); Jones v. Capital Cities/ABC, 874 F. Supp. 626, 628 (1995).

RESTRAINING "*LIARS IN THE COURTROOM*" AND ON THE PUBLIC PAYROLL

***On June 17th,** The New York Law Journal published a Letter to the Editor from a former Assistant State Attorney General, whose opening sentence read "Attorney General Dennis Vacco's worst enemy would not suggest that he tolerates unprofessional or irresponsible conduct by his assistants after the fact". Yet, more than three weeks earlier, we had submitted a proposed Perspective Column to the Law Journal, detailing the Attorney General's knowledge of, and complicity in, his staff's litigation misconduct -- before, during, and after the fact. The Law Journal refused to print it and refused to explain why. Because of the transcending public importance of that proposed Perspective Column, we have paid $2,872.85 so that you can read it.*

Meantime, in a §1983 federal civil rights action (*Sassower v. Mangano, et al*, 94 Civ. 4514, 2nd Cir. #96-7805), we are suing the Attorney General as a party defendant for subverting the state Article 78 remedy and for "complicity in the wrongful and criminal conduct of his clients, whom he defended with knowledge that their defense rested on perjurious factual allegations made by members of his legal staff and wilful misrepresentation of the law applicable thereto". Here too, Mr. Vacco's Law Department has shown that there is no depth of litigation misconduct below which it will not sink. Its motion to dismiss the complaint falsified, omitted and distorted its critical allegations and misrepresented the law. As for its Answer, it was "knowingly false and in bad faith" in its responses to over 150 of the Complaint's allegations. Yet, the federal district judge did not adjudicate our fully-documented and uncontroverted sanctions applications. Instead, his decision, *sua sponte* and without notice, converted the Law Department's dismissal motion into one for summary judgment for the Attorney General and his co-defendant high-ranking judges and state officials -- where the record is wholly devoid of any evidence for anything but a grant of summary judgment to the plaintiff, Doris Sassower -- which she expressly sought.

Once more, although we gave particularized written notice to Attorney General Vacco of his Law Department's "fraudulent and deceitful conduct" and the district judge's "complicity and collusion", he took no corrective steps. To the contrary, he tolerated his Law Department's further misconduct on the appellate level. Thus far, the Second Circuit has maintained a "green light". Its one-word order "DENIED", *without* reasons, our fully-documented and uncontroverted sanctions motion seeking disciplinary and criminal referral of the Attorney General and his Law Department. Our perfected appeal (*Sassower v. Mangano, et al.*, 2nd Cir. #96-7805), seeking similar sanctions against the Attorney General, as well as the district judge, is to be argued **THIS FRIDAY, AUGUST 29TH**. It is a case that impacts on every member of the New York bar -- since the issue presented is the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*. You're all invited to hear Attorney General Vacco *personally* defend the appeal -- if he dares!

We agree with Mr. Lifflander that "what is called for now is action". Yet, the impetus to root out the perjury, fraud, and other misconduct that imperils our judicial process is not going to come from our elected leaders -- least of all from the Attorney General, the Governor, or Legislative leaders. Nor will it come from the leadership of the organized bar or from establishment groups. Rather, it will come from *concerted* citizen action and the power of the press. For this, we do not require subpoena power. We require only the courage to come forward and publicize the readily-accessible case file evidence -- *at our own expense, if necessary*. The three above-cited cases -- *and this paid ad* -- are powerful steps in the right direction.