

CENTER *for*  
JUDICIAL  
ACCOUNTABILITY



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By Hand

September 29, 1994

Board of Editors  
The New York Times  
229 West 43rd Street  
New York, New York 10036

RE: "New York's Mystery General"  
"No Way to Pick a Judge"

Dear Editorial Board:

Following up my yesterday's telephone message, I wish to inform you of the extraordinary fact that Times' reporters have no interest in pursuing the important issues identified in your above-mentioned editorials.

Indeed, relative to the editorial "New York's Mystery General", I have left innumerable recorded messages with the reporter who has been covering the Attorney General's race--and he simply does not even return my calls.

I note that The New York Times has written extensively about "conflict of interest" issues--and that your editorial position on the confirmation of Stephen Breyer to the U.S. Supreme Court was framed in the context of that issue.

However, whereas the "conflict of interest issue" in Justice Breyer's case was one about which ethicists differed [i.e. Professor Stephen Gillers v. Professor Monroe Freedman], there can be no dispute that our New York State Attorney General has broken the most fundamental rule regarding judicial disqualification and, without the slightest legal authority, has allowed judges sued in an Article 78 proceeding, challenging their conduct as criminal, to decide their own case.

Although the Article 78 remedy is a bulwark of our democracy--designed to afford independent review of governmental abuse--your reporters--who are not lawyers--have not the slightest knowledge of what it is and don't care about it or about conflicts-of-interest, no matter how brazen those conflicts are.

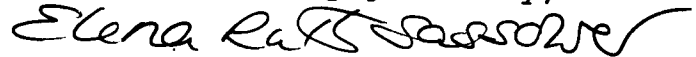
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Please read the enclosed "Letter to the Editor", which I faxed to the Times on September 26th--as yet unpublished. It outlines the extraordinary Article 78 proceeding, now before the Court of Appeals, which must properly be an issue in this campaign.

Please also read my September 29th letter to the Republican nominee for Attorney General, Dennis Vacco (c/o Mr. Flynn)--which refers to and annexes communications with the Democratic nominee, Karen Burstein.

The voters are counting on you to push the reporters of the Times to ask the candidates the questions that your September 17th editorial pose. Don't fail us!

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability

Enclosures: (a) 9/25/94 "Letter to the Editor"  
(b) 9/29/94 letter to Dennis Vacco, Esq.

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September 29, 1994

Dennis Vacco, Esq.  
Box 267  
Niagara Square Station  
Buffalo, New York 14201-0267

ATT: William Flynn, Esq.

RE: Campaign Issues in the Race for  
New York State Attorney General

Dear Mr. Flynn:

Per our telephone conversation yesterday, I enclose a copy of the September 17th New York Times' editorial, "After the Primaries: New York's Mystery General". I specifically draw your attention to its statement:

"...the voters need to know how the candidates intend to handle the job's meat-and-potatoes job of defending the state against legal actions..."

We agree. We believe that Mr. Vacco should let voters know whether he--like predecessor Attorney Generals--will disregard black-letter law and ethical rules regarding conflict-of-interest and judicial disqualification.

As discussed, when my mother<sup>1</sup> brought the Article 78 proceeding, Sassower v. Mangano, et al., charging the Appellate Division, Second Department with using its judicial offices to retaliate against her for "whistleblowing" on judicial corruption, it was the Attorney General who defended the judicial respondents. How

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<sup>1</sup> For your information, I annex a copy of my mother's credentials, as they appeared in the 1989 Martindale-Hubbell law directory. Additionally, in 1989 my mother was elected to be a Fellow of the American Bar Foundation, an honor reserved for less than one-third of one percent of the practicing bar in each state.

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did the Attorney General defend the judges, accused of heinous criminal acts? By allowing the very judges whose orders were the subject of the Article 78 challenge to decide their own case.

The case is presently pending before the New York State Court of Appeals, where Attorney General Koppell, without legal authority, argues that the Appellate Division, Second Department was not disqualified from adjudicating its own case. Likewise, without legal authority, he argues that there should be no appellate review of the Appellate Division's self-interested decision in its own favor, granting the dismissal motion of its own Attorney, the Attorney General.

Such grotesque insensitivity to conflict-of-interest by our State's highest law officer endangers the integrity of the judicial process and destroys the sanctity of Article 78 proceedings, historically designed to provide independent review of governmental abuses. It must be exposed and unequivocally disavowed by the candidates for Attorney General, vying for election in November.

Since Judiciary Law §14, as well as §100.3(c) of the Rules Governing Judicial Conduct, which is incorporated by reference in the New York State Constitution (Article VI, §20) each explicitly require that a judge disqualify himself from a case wherein he is a party or has an "interest that could be substantially affected by the outcome of the proceeding", the public is entitled to know--in advance of the election--whether Dennis Vacco, if elected Attorney General in November--will obey such clear-cut law and ethical rules. Indeed, were Mr. Vacco to be elected, Sassower v. Mangano, et al. would be on his desk in January.

As discussed, if the Court of Appeals does not grant review of Sassower v. Mangano, et al., we will prepare a petition for a writ of certiorari to the U.S. Supreme Court. What will be Mr. Vacco's position to such petition? To enable him to respond, we enclose the submissions which are now before the Court of Appeals.

Will Mr. Vacco also argue--without citation to legal authority (because there is none)--that permitting accused judges to decide an Article 78 proceeding against themselves is okay? And what position will he take as to the constitutionality of the Article 78 statute and Judiciary Law §90--discussed in detail at pp. 4-10, 16-23 of my mother's enclosed reargument/renewal motion--but ignored entirely by Mr. Koppell, notwithstanding that the Attorney General has the affirmative duty to address the constitutionality of statutes, where they are impugned. (See, my mother's Reply Affidavit, ¶¶10-13)

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The public is also entitled to know how Mr. Vacco, as Attorney General, proposes to handle complaints of judicial corruption--such as here presented. The extensive correspondence with Attorney General Koppell, annexed to my mother's Court of Appeals submissions<sup>2</sup>, shows the complete failure of his office to respond to the documentary evidence provided it. Since Mr. Vacco, if elected our new Attorney General, will have on his desk the evidentiary proof of criminal, fraudulent, and collusive conduct by sitting judges--that question is actual, not speculative or abstract.

As you may recall, on September 12, 1994, The New York Times described Ms. Burstein's view of the Attorney General's role regarding governmental corruption as:

"favors an expansion of duties for attorney general but is uncertain of exact role."

Now that Ms. Burstein is the Democratic candidate, it is time for her--as well as for Mr. Vacco--to articulate for the voters how the Attorney General will handle issues involving governmental corruption.

Indeed, the Times' September 17th editorial specifically asks the questions: "What, exactly, does the New York State Attorney General do? What should the job be?"

As reflected by my mother's August 4th letter to Ms. Burstein, Ms. Burstein was made aware of the "real life" situation of Sassower v. Mangano, et al, wherein independent review of the allegations of judicial corruption was cynically blocked by the Attorney General.

Although Ms. Burstein's hand-written note to my mother claims she "will look into this matter when [she is] attorney general", the voting public knows better than to rely on vague promises of politicians. Ironically, the September 12th New York Times quotes Ms. Burstein as saying: "Promises are very easy to make and cheap in fact".

It would, therefore, be refreshing for Mr. Vacco--as a candidate for Attorney General--to define how the Attorney General's office, under his leadership, will handle judicial corruption issues. Certainly, we would not expect that someone like

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<sup>2</sup> See the correspondence annexed to Mr. Schwartz' 3/14/94 letter to the Court of Appeals as Exhibits "2", "4", "5", "6", "7", "8", "9", and to my mother's 7/19/94 reargument motion as Exhibits "M", "N", "O", "P", "R".

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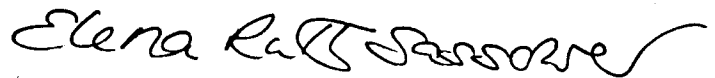
Mr. Vacco, who is "tough" on crime in our streets, would be "soft" on crime when it is committed by judges in our courtrooms.

As discussed, Ms. Burstein, who was given copies of our Court of Appeals' papers, has refused to disavow the actions of her Democratic predecessors--even on the single issue of letting accused judges decide their own case. Indeed, she would not even give her own opinion on the propriety of such conduct, when we pressed her for an answer in a telephone conversation on August 8th. It seems quite plain that Ms. Burstein--for all her civil liberties rhetoric--is part of the Democratic machine and will not show leadership, where to do so would threaten her political patrons.

Consequently, it is up to Mr. Vacco to let the public--and the editors of The New York Times--know how he intends to handle the "meat-and-potatoes" work of the Attorney General in a real case involving a suit against the State, Sassower v. Hon. Guy Mangano, et al..

Finally, I draw your attention to The New York Times' September 27th editorial "No Way to Pick a Judge". That editorial is directly germane to the judicial corruption issues involved in Sassower v. Hon. Guy Mangano, et al., since that Article 78 proceeding alleges that the criminal conduct of the Appellate Division, Second Department arises from its retaliation against my mother for her activities as pro bono counsel in an Election Law case challenging a political judge-trading deal in the Ninth Judicial District, implemented at illegally-conducted judicial nominating conventions. On that subject, I refer you to pp. 14-16 of my mother's reargument/renewal motion. Annexed thereto as Exhibit "K" is her October 24, 1991 letter to Governor Cuomo. By such letter, my mother three years ago called upon the Governor to appoint a special prosecutor to investigate documentary evidence of judicial corruption and the politicization of the bench. As reflected by Sassower v. Hon. Guy Mangano, et al., the documentary evidence, warranting that appointment--including that of the complicity of the Attorney General's office in the cover-up of such corruption--is even more overwhelming today.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability

Enclosures: see next page

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- Enclosures:
- (a) 1989 Martindale Hubbell listing
  - (b) letter from the Fellows of the American Bar Foundation
  - (c) New York Times editorial, 9/17/94
  - (d) New York Times, 9/12/94 article and grid
  - (e) New York Times editorial, 9/27/94
  - (f) 8/4/94 ltr to Karen Burstein
  - (g) Karen Burstein's hand-written response
  - (h) Judiciary Law §14
  - (i) §100.3(c) of Rules Governing Judicial Conduct
  - (j) Article 78 papers before the Court of Appeals
    - (1) 1/24/94 Jurisdictional Statement
    - (2) 2/11/94 ltr of Attorney General
    - (3) 3/14/94 ltr of Evan Schwartz
    - (4) 7/19/94 Reargument/Renewal Motion
    - (5) 8/4/94 "Memorandum of Law"  
of Attorney General
    - (6) 8/8/94 DLS Reply Affidavit

cc: Dennis Vacco, Esq.  
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The New York Times: Board of Editors [By Hand]