CENTER for JUDICIAL ACCOUNTABILITY

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February 22, 1994

Hon. G. Oliver Koppell
Attorney General of the State of New York
120 Broadway
New York, New York 10271

ATT: Shelley Mayer, Esq.
Counsel to the Executive Committee

RE: Sassower v. Mangano, et al.

Dear Ms. Mayer:

This follows up our telephone conversation on Friday, February 18th. I must reiterate that it is inexcusable, indeed outrageous, for Assistant Attorney General John Sullivan to have been allowed to file his February 11th letter in the above matter opposing jurisdiction by the Court of Appeals, when, as he admitted to me on Wednesday, February 16th, he has never read the files in the "underlying disciplinary proceeding" nor any of the documents identified by my February 6th letter as dispositively establishing the falsity of the basis upon which your judicial clients dismissed my Article 78 proceeding, to wit, that my jurisdictional challenge could be addressed "in the underlying disciplinary proceeding".

My prior correspondence addressed to Attorney General Koppell, with copies to Mr. Sullivan, gave notice that no further defense of the Respondents in the Article 78 proceeding could ethically be afforded them, without investigation of the underlying files under A.D. 90-00315. As my February 6th letter stated, such files unequivocally prove that the aforesaid ground of the Second Department's dismissal--first urged by Mr. Sullivan in his dismissal motion--"was, and is, an outright lie".

Under such circumstances, if Mr. Sullivan was to be permitted to continue as attorney on the case, it was incumbent upon your office to have directed him to examine the files "in the underlying disciplinary proceeding", prior to preparing his response to the Court of Appeals' jurisdictional inquiry.

Supp. Exh. "5"

Mr. Sullivan was himself on notice of the absolute necessity to review the underlying files not only from my February 3rd and February 6th correspondence with Attorney-General Koppell--copies of which Mr. Sullivan acknowledged having received--but from my papers in opposition to his dismissal motion, which meticulously refuted the affirmative representations made in his moving papers, seeking sanctions by reason of their frivolous and perjurious nature[1]. An illustrative portion of my detailed documentary opposition to Mr. Sullivan's unfounded claims before the Appellate Division, Second Department was annexed to my Jurisdictional Statement as Exhibit "F-1".

Mr. Sullivan's knowledge that his statements before that court were not only unsupported, but contradicted, by the factual record may be inferred from the manner in which he presents them in his February 11, 1994 letter, wherein he does not affirmatively represent to the Court of Appeals that the positions he advocated before the Appellate Division are true and substantively meritorious. Thus, although Mr. Sullivan's letter (at p. 1) identifies his motion to dismiss as having rested on an "adequate remedy at law in the underlying proceeding" and the lack of "a clear legal right to the relief sought because the pertinent administrative procedures were properly complied with and petitioner received adequate notice and opportunity to be heard", he does not reallege such assertions.

Yet, the net effect of Mr. Sullivan's repetition of his false statements in his letter under the nomenclature of "Background" and his annexation thereto of his Memorandum to the Appellate Division and that of Ms. Olson, is to mislead the Court of Appeals into believing that such statements as therein contained are accurate and legitimate, rather than false and fraudulent, as the files of the "underlying disciplinary proceeding" clearly show.

Such misleading by Mr. Sullivan is plainly deliberate, since he does not make known to the Court of Appeals that he is not familiar with any of the files or transcripts in the "underlying disciplinary proceeding". This knowing omission by Mr. Sullivan repeats his similar practice before the Appellate Division, Second Department--duly noted and complained of by me, inter alia, at Point III of my July 19, 1993 Memorandum of Law, wherein I objected to his attempt "to convey the false and misleading impression that he speaks with a personal knowledge that he plainly does not have" (at p. 7, emphasis in the original, copy annexed, together with Point IX).

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[1] See, inter alia, my 7/2/93 Affidavit in support of my cross-motion, pp. 16-30; my 7/19/93 Affidavit, ¶¶2, 22, 26; and my 7/19/93 Memorandum of Law, Points III and IX.

That Mr. Sullivan should repeat conduct which my aforesaid Memorandum of Law pointed out to him constituted a sanctionable deceit upon the Court demonstrates that he views himself as above rudimentary rules of law and ethical standards applicable to lawyers representing private litigants. Presumably, this is because he expects the same "cover-up" from his superiors and judicial clients that he is affording them.

I surely do not have to remind you that Mr. Sullivan has a higher standard to meet. As a public officer, he has a special duty which "differs from that of the usual advocate; his duty is to seek justice" EC 7-13 of the Code of Professional Responsibility. "A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record". Id., EC 7-14.

Thus, Mr. Sullivan's affirmative representations of fact are given greater weight than those accorded a private attorney. Consequently, the presumptive credibility given to his statements make them far more prejudicial when, as here, they are completely false.

Review of my detailed Jurisdictional Statement shows that Mr. Sullivan's bald claim (at p. 2) that I have not met my "burden of showing that the purported constitutional questions sought to be raised" is flagrantly false--as would have been obvious had he confronted the issues substantiated not only by the factual record, but by the controlling legal authorities I cited.

But Mr. Sullivan does not confront either the facts or the law. This is not only reflected by his failure to controvert ¶¶7 and 22 of my Jurisdictional Statement that the "underlying disciplinary files" establish my clear legal right to the relief sought, but his failure to discuss even a single legal authority cited by my Jurisdictional Statement. Nor has Mr. Sullivan addressed the detailed Points, which I identified as issues on the appeal. The clear inference of such conspicuous omission is that the facts and law support jurisdiction of my Article 78 proceeding by the Court of Appeals.

Indeed, Mr. Sullivan wholly fails to address--and does not dispute--the apparent bias reflected by the dismissal of my Article 78 proceeding by a panel of four Second Department judges whose Orders were being challenged therein as fraudulent and criminal (¶¶6 and 7). Nor does he address or dispute that the September 20, 1993 decision, as detailed by Point I (at pp. 21-2 of my Jur. Statement), reflected actual bias in that it departed from controlling law in eight (8) different respects--indicative of the anarchy festering in the Second Department.

Mr. Sullivan similarly does not address or refute the issues of actual bias raised by Point II (at p. 23 of my Jur. Statement) relating to my "interim" suspension, discussed extensively in the body of the Jurisdictional Statement (at pp. 12-17). That Mr. Sullivan is entirely silent on the subject of my "interim" suspension, now extant for more than two and a half years without any hearing having been held before or since, and does not controvert my documentary showing (Exhibit "G" of my Jur. Statement) that I was entitled to immediate vacatur based, inter alia, on the Court of Appeals' 1992 decision in Russakoff, 72 N.Y.2d 520, 583 N.Y.S.2d 949, can only be seen as a concession by him of the substantial constitutional question that case raised, but which the decision did not reach, i.e., that such indefinite "interim" suspensions without prior or prompt post-suspension hearings are per se unconstitutional (¶20 of my Jur. Statement).

Mr. Sullivan engages in further false statements and misrepresentations as to Point III of my Jurisdictional Statement (at p. 23). Contrary to his false claim, "the issue of the referee's bias" was raised below, amply demonstrated by the transcripts of the preliminary conferences, annexed to the cross-motion as Exhibits "C" and "D"[2]. Moreover, as reflected by the transcripts of the hearings held in the "underlying disciplinary proceeding"--referred to at ¶¶14 and 15 of my Jurisdictional Statement, as well as in my February 6th letter, I not only sought recusal of the Referee, but specifically objected to his status as an "at will, per diem paid appointee" of the Second Department. Annexed hereto is a copy of a letter from the Second Department to the Referee, enclosing a voucher for payment of his fees, marked as Respondent's Exhibit "Z" for identification at the hearing, showing that I did, indeed, raise this issue below.

The foregoing demonstrates that Mr. Sullivan has, once again, brazenly made a false, fraudulent, and frivolous submission to a tribunal--in this case, the Court of Appeals--in violation of his legal and ethical duty. Such continued misconduct by him is for the purpose of covering up his own, as well as his clients', unlawful and tortious actions.

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[2] See, inter alia, p. 3 of my 7/2/93 Affidavit in support of my cross-motion and pp. 70, 93, 100 of Exhibit "D" thereto.

I would certainly hope that the Attorney-General will act swiftly to rectify this complicity in Respondents' misconduct so as not to further compound the injustice already done and that he will require accountability by the culpable parties, "commensurate with the offenses they committed"[3].

I again reiterate that your office should immediately obtain from either Respondents Casella or Galfunt copies of the hearing transcripts in their possession so that you can see for yourself the grotesque perversion of due process represented by those hearings, not the least of which was the Respondent Referee's refusal to require Respondent Casella to prove compliance with jurisdictional requirements or to permit me to prove that same had not been met.

Finally, I would note that when Attorney-General Koppell was Chairman of the Assembly Judiciary Committee, he reviewed the question of whether disciplinary hearings should be opened to the public. As reflected by the enclosed article from the September 26, 1993 issue of The New York Times, then Assemblyman Koppell took the position that "a secret process is inherently suspect". I could not agree with him more. Indeed, review of the files under A.D. #90-00315 will unequivocally establish that the secrecy insisted on and maintained by the Respondents--with the cooperation of the Attorney General's office via Assistant Attorneys General Sullivan and Olson--has been not for the protection of the accused attorney, as was legislatively intended by Judiciary Law §90(10), but to conceal Respondents' criminal and fraudulent conduct in misusing disciplinary proceedings to further their own retaliatory and politically-motivated purposes.

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[3] Attorney General Koppell, quoted in today's New York Times article, "New Inquiry on Plea Deal in Rape Case: Cuomo Names Koppell as Special Prosecutor"

In my capacity as Director of the Center for Judicial Accountability, I formally request that steps be immediately taken to investigate the corruption of our third branch of government, with a view toward ultimate designation of Attorney General Koppell as a special prosecutor--as today's New York Times reports has just been done in the case of an upstate rape victim.

With all due respect, I submit that the rape of the public that occurs when public officers fail to maintain the integrity of our judicial branch of government and allow it to become politicized and corrupted is far more deserving of the immediate attention and active intervention of the highest legal officer in our State.

Very truly yours,

DORIS L. SASSOWER

DLS/er
Enclosures:
(a) Points III and IX of my 7/19/93 Memorandum of Law
(b) Exhibit "Z" introduced at the hearings in the "underlying disciplinary proceeding"
(c) "Debate over Public Disciplinary Hearings for Lawyers", NYT, 9/26/93, p. 41
(d) "New Inquiry on Plea Deal: Cuomo Names Koppell as Special Prosecutor", NYT, 2/22/94, B1

cc: John Sullivan, Esq.

POINT III

RESPONDENTS' DISMISSAL MOTION IS LEGALLY INSUFFICIENT

Respondents' Motion Must Be Denied Since It Is Unsupported By Affidavits Based On Personal Knowledge and Probative Facts.

Almost a century ago, in Fox v. Peacock, 97 App.Div. 500, 90 N.Y.S. 137 (1904), the Court stated:

> "It has too long been the rule to need citation of authority, that such averments in an affidavit have not (sic) probative force. The court has a right to know whether the affiant had any reason to believe that which he alleges in an affidavit."

The sole affidavit offered in support of Respondents' dismissal motion is that of Assistant Attorney-General John Sullivan, whose undocumented and conclusorily-stated moving Affidavit dated May 14, 1993 fails to state that it is on information and belief, fails to set forth any reason why he has not furnished an affidavit by a party with personal knowledge, and fails to set forth the source(s) of his knowledge, information or belief. Indeed, Mr. Sullivan, in failing even to indicate that his Affidavit is made on information and belief, attempts to convey the false and misleading impression that he speaks with a personal knowledge that he plainly does not have.

The palpable deficiencies of Mr. Sullivan's Affidavit in failing to comply with long-settled and elementary rules of law designed to insure the reliability and trustworthiness of affidavits submitted to Court mandate denial of his motion,

since any dismissal order to be rendered in Respondents' favor would be subject to vacatur. Fox v. Peacock, supra; Pachucki v. Walters, 56 A.D.2d 677, 391 N.Y.S.2d 917 (3d Dept. 1977).

However, the non-probative nature of Mr. Sullivan's papers pales against its utter factual falsity, fully exposed by Petitioner's July 2, 1993 Affidavit in support of her cross-motion and in opposition to his dismissal motion.

It is bad enough that Respondents should permit such a legally deficient submission to be made by their attorney, the Attorney General, who surely should know better. Far more serious is Respondents' knowledge that the factual and legal assertions made by the Attorney General on their behalf are completely false and unsupported by the factual record.

Respondents' failure and refusal to retract same, sua sponte, even after being called upon to do so (Ex. "O-2", Ex. "O-4") only further bears out "the appearance of impropriety" and makes all the more compelling the need for recusal and transfer from this Department, discussed hereinafter at Point II.

POINT IV

RESPONDENTS HAVE FAILED TO SHOW THEIR ENTITLEMENT TO DISMISSAL OR SUMMARY JUDGMENT OR TO SHOW ANY TRIABLE ISSUES IN OPPOSITION TO PETITIONER'S CROSS-MOTION

Respondents' Motion Must Be Denied Since Summary Judgment in Their Favor Could Not be Granted

A motion to dismiss an Article 78 petition cannot succeed where no valid legal objections are raised establishing the petition as legally insufficient or factually unmeritorious.

POINT IX

RESPONDENTS' BAD FAITH LITIGATION CONDUCT WARRANTS AN AWARD OF COSTS AND FINANCIAL SANCTIONS UNDER 22 NYCRR §130.1-1 et seq.

Contrary to Ms. Olson's spurious argument that Respondents are protected by "absolute judicial, quasi-judicial and prosecutorial immunity" from the consequences of their litigation misconduct, 22 NYCRR §130-1.1 et seq. contain no exclusion for public officers who violate those rules, applicable without exception to all litigants and their attorneys "in any civil action or proceeding". Nor do any of the cases cited by Ms. Olson hold otherwise.

It is not a judicial, quasi-judicial, or prosecutorial function to engage in frivolous conduct, as defined by those rules, when such public officers are sued for their official misconduct or to interpose defenses or file motions for improper purposes. Thus, there is no logical reason or social policy to extend the common law doctrine of immunity to justify any such exemption. This view is consistent with that taken in the federal courts (with which Respondents' counsel is presumed to be familiar, since she relies on federal law to support her position), in analogous cases under Rule 11. In such cases, it is well established that monetary sanctions for frivolous litigation conduct may be imposed against state officials, see, e.g. Frazier v. Cast, 771 F.2d 259 (7th Cir. 1985), and even against the United States, see, e.g. Mattingly v. United States, 711 F.Supp. 1535, 1543 (D. Nev. 1989), rev'd. on other grounds,

939 F.2d 816 (9th Cir. 1991) (affirming on question of government's liability for Rule 11 sanctions).

Moreover, as our highest Court held most recently in Antoine v. Byers & Anderson, Inc., ___ U.S. ___, 113 S.Ct. 2167 (June 1993): "[t]he proponent of a claim to absolute immunity bears the burden of establishing the justification for such immunity, at 2169. In its footnote thereto, the Court states:

> "We have consistently emphasized that the official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question. The presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties. We have been quite sparing in our recognition of absolute immunity, and have refused to extend it any further than its justification would warrant: Burns v. Reed, 500 U.S. ___, 111 S.Ct. 1934, 1939, 114, L.Ed. 2d 547 (1991) internal quotation marks and citations omitted."

In the instant case, Respondents and their counsel chose to make a dismissal motion they knew could not succeed, if controlling law were to be followed. They knew that the law requires that affidavits submitted to Court be based on the personal knowledge of the affiant or that the source of knowledge be identified and that the affiant's factual statements be testimonially admissible on the trial of the action. Nonetheless, Respondents through their counsel submitted an affidavit disregarding such most basic rules and chose not to submit any affidavits of their own to support their dismissal motion or to oppose Petitioner's cross-motion. Mr. Sullivan's non-probative attestations on Respondents' behalf were factually

and legally baseless and known by Respondents to be such. Such motion by definition is frivolous. In addition, such affidavit was known by Respondents to be false and misleading in material respects.

Respondents cannot escape culpability for their counsel's patently improper and legally insufficient Affidavit. They knew same to be non-probative not only because it was not based on personal knowledge but also because it included dehors the record factual allegations concerning the content of the ex parte July 31, 1989 Committee Report which would not be competent for purposes of a dismissal or summary disposition under CPLR §3211(c). Respondents further knew their counsel's conclusory statements concerning the July 31, 1989 Report were false and misleading, and nonetheless failed to rectify it after same was brought to their attention by Petitioner. Despite their personal knowledge of the true facts, they did not come forward with their own affidavits concerning the "implicit" exigency claimed by their counsel.

Additionally, Respondents knew that their refusal to furnish Petitioner with a copy of the July 31, 1989 Committee Report, particularly where their counsel had placed it directly in issue on their dismissal motion was a position "completely without merit in law or fact" and that it could not "be supported by a reasonable argument for an extension, modification or reversal of existing law", in violation of 22 NYCRR §130-1.1(c)

Respondents should properly be held accountable for

the bad faith overwhelmingly demonstrated by their counsel's knowingly false statements of fact and law. Under such circumstances, an award of costs and monetary sanctions against Respondents and their counsel is fully warranted.

CONCLUSION

RESPONDENTS' DISMISSAL MOTION SHOULD BE DENIED AND PETITIONER'S CROSS-MOTION AND PETITION SHOULD BE GRANTED IN TOTO.

Dated: White Plains, New York
July 19, 1993

Respectfully Submitted,

DORIS L. SASSOWER
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

Resp. Ex. (2) for ident.
9/29/93
JP

MARTIN H. BROWNSTEIN
CLERK OF THE COURT

Appellate Division
Supreme Court of the State of New York
Second Judicial Department
Brooklyn, N.Y. 11201

PERSONAL AND CONFIDENTIAL

November 2, 1990

Hon. Max H. Galfunt
216 Beach 143rd Street
Neponsit, New York 11694

Re: Doris L. Sassower, an attorney.

Dear Judge Galfunt:

Enclosed is a copy of an order of this court, dated November 1, 1990, , referring to you for hearing and report, the issues raised in a disciplinary proceeding brought against the above named attorney as set forth in the attached copies of the petition and the answer.

Also enclosed is a voucher for the services you are to render with an instruction sheet for the preparation of same. You may return it with the report to be submitted herein, making reference to it in your covering letter and it will be processed for payment.

Sincerely yours,

MARTIN H. BROWNSTEIN

Clerk

MHB:rjr
Encls.

ebate Over Public Disciplinary Hearings for Lawyers

By JAN HOFFMAN

w rules of conduct for New York rce lawyers have prompted a p debate on whether disciplinary ings against them should be ed to the public.

a State Assembly hearing last k, supporters of a more open pro- said the system now is one of vyers protecting lawyers," while State Bar Association said that ging the process could unfairly ish lawyers' reputations.

he debate stems from a decision ugust by New York's top judge to ose a sweeping new set of rules ng divorce lawyers' clients far re rights.

lost of the rules, which say clients entitled to a written fee schedule which prohibit sexual relations ween lawyers and their clients ing a case, needed the approval y of the judge, Judith S. Kaye. But rule on disciplinary proceedings ds legislative approval.

Secrecy Is Suspect

ssemblyman G. Oliver Koppell, is the chairman of the Assem- 's Judiciary Committee, said, "a ret process is inherently suspect." was joined by members of the erican Bar Association, who said w York, which usually takes the d in legal developments, is behind national trend to open disciplin- hearings.

Twenty-eight states have opened ciplinary proceedings to the public er probable cause has been estab- ed, and West Virginia and Florida en them after an investigation has gun. Beyond that, for 17 years Ore- has allowed its residents to know soon as a grievance is filed.

But Archibald R. Murray, the pres- nt of the New York State Bar sociation, said he was worried out the harm that might be done to vyers, especially in small towns, if ch a system was imposed in New rk. "Exoneration doesn't remove e stigma," he said.

The public, Mr. Murray said, is otected through interim suspen- ns that grievance committees can ue during investigations. He said at an overwhelming majority of mplaints against lawyers are dis- issed as frivolous. In 1991, of the 58 complaints filed with the First dicial Department, which includes anhattan and the Bronx, 93.8 per- nt were dismissed after an initial view or a staff investigation.

But clients' advocates contended d the head of the First Judicial epartment's disciplinary commit- e conceded that many cases are smissed not because they are frivo- us, but because the investigative aff is too small to look into all mplaints. Mr. Koppell said that nce so many cases are dropped, ients should at least receive timely d full explanations on those that re pursued.

Now, clients file grievances with offices overseen by the state's appellate divisions. Then the waiting begins. Judge E. Leo Milonas, the chief administrative judge of New York's courts, said that filing a complaint "was like sending a letter to the Bermuda Triangle."

If the grievance committee decides to dismiss the case, the client usually learns about it from a three-sentence form letter. The public, said Judge Milonas, feels summarily rejected, all of which underscores the perception "that lawyers are protecting lawyers," he said.

Deirdre Akerson, a Westchester County woman whose divorce case has been in the courts for four years, described her experience before a grievance committee as "insulting and demeaning." Ms. Akerson, now a member of the Coalition for Family Justice, a group whose tales of injustice at the hands of the courts and their divorce lawyers helped prompt the new rules, was furious when she learned that the complaints she had lodged against her lawyer w dropped, without explanation.

Years can pass before a cas resolved, during which time, oth argued, new clients may hire law without having any notion that for charges, much less grievances, h been filed against them.

A Triage System

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Years can pass before a case is resolved, during which time, others argued, new clients may hire lawyers without having any notion that formal charges, much less grievances, have been filed against them.

A Triage System

Haliburton Fales, the chairman of the First Judicial Department's disciplinary committee, said complaints are now investigated through a system of triage. "You just have to move on to the serious cases and that's the way the world works," he said.

Much of the debate was over not only whether the proceedings should be opened, but also at what stage. Gloria Jacobs, a representative of NOW-New York State, and others argued that the public should be informed as soon as a complaint is filed. But John D. Feerick, president of the City Bar Association in New York, urged that confidentiality should be dropped only when probable cause that a grievance had been committed had been established. That is when a grievance committee has decided to bring charges against the lawyer.

Raymond R. Trombadore, a Somerville, N. J., lawyer who is chairman of the American Bar Association's commission on the Evaluation of Disciplinary Enforcement, played down concerns about damage to reputations of small-town lawyers. "Oregon is a state of little towns," he said. Its lawyers seem not have found full disclosure a serious problem, he said.

When the proceedings were first opened in Oregon, he said, there was an initial flurry of press attention, which tapered off. The problem with New York lawyers, he said, is that "We just think we're too newsworthy. And we're not."

The Metro Section
The New York Times

TUESDAY, FEBRUARY 22, 1994

New Inquiry On Plea Deal In Rape Case

Cuomo Names Koppell As Special Prosecutor

By JON NORDHEIMER

Gov. Mario M. Cuomo of New York yesterday announced that he was naming Attorney General G. Oliver Koppell as a special prosecutor to investigate an upstate case in which five men accused of raping a woman in a restaurant were permitted to plead guilty to misdemeanor counts of sexual misconduct.

Mr. Cuomo acted on a recommendation by the State Commission of Investigation, which concluded, after a six-month review of the case, that the case was an exception to the rule of double jeopardy, the legal concept that bars multiple prosecutions for the same offense.

The commission said the St. Lawrence County District Attorney, Richard V. Manning, made a procedural error when he dropped felony rape charges against the men and allowed them to plead guilty to the misdemeanor charge before a Town Justice in Gouverneur.

The justice, Wallace A. Sibley, a fertilizer salesman and former bus driver who is not a lawyer, fined each of the men $750 and $90 in court costs. A first-degree rape conviction, by contrast, carries penalties of up to 25 years in prison.

The plea bargain drew national attention to the small town of Gouverneur, about 95 miles north of Syracuse and 20 miles from the Canadian border. At the time Mr. Sibley defended the sentences, saying the fines were the largest he had ever had imposed on first-time offenders.

As part of the plea bargain their lawyers worked out with Mr. Manning last June, the defendants acknowledged that they had sexual relations on Oct. 26, 1991, with the victim, a hospital technician who was 22 at the time, after she had passed out in the rest room of a local restaurant, Casablanca, after having several drinks. The men,

Continued on Page B5

NEW YORK STATE

New Investigation in Rape Case That Ended With Fines

Continued From Page B1

described as acquaintances of the victim, carried her to a lounge, after the restaurant closed for the night, where they removed her clothes and took turns assaulting her, according to the indictment.

The victim said she had no recollection of the incident and was unaware that the assaults had taken place until two weeks later, when a friend told her that the men were boasting about it. The subsequent police investigation reportedly cleared two state police troopers, who were off duty on the night of the attack and were in the restaurant hours before closing time, of any involvement in the crime.

The Governor asked the commission to look into Mr. Manning's handling of the case after he received numerous requests for the prosecutor's removal from office. Women's groups and other advocates for victims of sexual assaults had been particularly vocal in their outrage, and some county residents contended that political pressure was used to get the charges dropped against the wishes of the victim.

The commission concluded that the Gouverneur Town Court had no jurisdiction to accept the case while the rape indictments were still pending. "Double jeopardy may not be a consideration because it does not apply in cases where a court lacked jurisdiction to dispose of a criminal case," a statement released by the Governor's office said yesterday.

"Case law has consistently held that a guilty plea cannot be entered in a court that lacks jurisdiction to dispose of a case," said Cecily Bailey, a spokeswoman for the Governor.

The victim in the case, Krista Absalon, said she was elated by the Governor's decision.

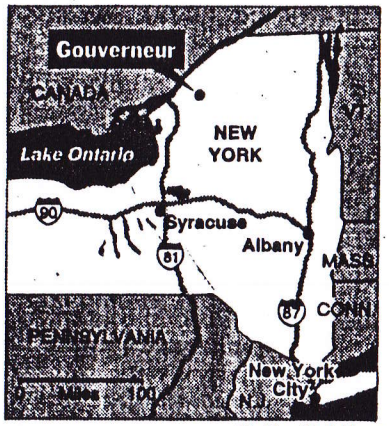
"I knew the state was taking this case seriously, but I didn't think they could do anything about it," said Ms. Absalon, who has been speaking out in public on the issue of rape and said she did not need to have her identity shielded.

"I never had my fair day in court because of the way this case was mishandled," she said in a telephone interview. "Now maybe there will be justice."

Special Prosecutor

The defendants in the case, all in their mid or late 20's, could not immediately be reached for comment. They are Mariano G. Pistolesi, a son of the restaurant's owner; Mark A. Hartle, David E. Cummings, Michael Curcio and Gregory L. Streeter.

By calling for a special prosecutor to take charge of the case, the commission made it clear that there was unwillingness to involve District Attorney Manning again, saying he "is unable to objectively proceed with any further proceedings concerning this case."



The New York Times

The prosecutor and justice in Gouverneur have been criticized for their handling of a rape case.

Mr. Manning's office was closed for the observance of Washington's Birthday and The Associated Press reported that a woman who answered the telephone at his home said he would not be available for comment.

In a statement yesterday, Mr. Koppell, the State Attorney General, promised quick action to determine whether there was "justification" for the sentences the men were given. "If not, we will do everything possible to see to it that those responsible receive sentences commensurate with the offenses they committed," he said.

Mixed Emotions

For the victim the attention paid to the case in the last year has produced mixed emotions.

"Before all the publicity, no one in Gouverneur believed me," said Ms. Absalon, who is divorced and has two children. 'They thought it was my fault, that I shouldn't have been drinking at the Casablanca. It took me spilling my guts out on national television before anyone stood up for me and started thinking about my side."

She has filed a $4 million civil suit against the five defendants and the restaurant, charging that she was caused extreme physical, emotional and social suffering by the attack.

"There are people who think of me as a troublemaker," she said. In a community of less than 1,000 residents, it is impossible to avoid crossing the paths of the defendants in the case, she said.

"When this mess is finally over," she said, "I believe I'll have to be the one to move away, not them."

P 714 200 959

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Shelley Mayer, Esq.
Office of the Attorney Gen.
25th floor
120 Broadway
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