CENTER for JUDICIAL ACCOUNTABILITY

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March 30, 1994

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

RE: Sassower v. Mangano, et al.
A.D. #93-02925

Dear Mr. Koppell:

This letter[1] follows up my conversation yesterday with Abigail Petersen, to whom--over my vehement objection--you delegated review of this matter.

As you know, on March 12th, when you stated to me that you would assign Ms. Petersen to replace Ms. Mayer, I protested that Ms. Petersen was not only self-interested since as Mr. Sullivan's immediate supervisor, she was responsible for his misconduct, but that she had already actualized her apparent bias by opining, without any review of the underlying files, that Mr. Sullivan's defense of the Article 78 Respondents was proper and that there was "nothing wrong" with Respondent Second Department's presiding over an Article 78 proceeding against it, challenging its conduct as criminal.

Yesterday, Ms. Petersen reiterated that she saw nothing wrong with accused judges reviewing their own conduct in an Article 78 proceeding, which she claimed was supported by legal authority--although she was unable to furnish any. When I pressed her to defend her position in light of what was presented in my attorney's recent submission to the Court of Appeals, relating to the historical genesis of Article 78 proceedings to provide

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[1] My attorney, Evan Schwartz, Esq., has authorized direct communication between myself and your office.

Ex "N"

review by an independent, superior tribunal[2], Ms. Petersen was unable to discuss it--even while claiming to have read that submission "word for word".

Such inability by Ms. Petersen replicates her inability to discuss the specifics of the underlying file under A.D. #90-00315--which she also purported to have read fully. When queried yesterday, Ms. Peterson did not deny that the October 18, 1990 Order (Ex. "D-2" to the Jur. Stmt.) directing my medical examination contained seven errors--five of which were designed to conceal the lack of jurisdiction by the Court[3]. Moreover, Ms. Petersen agreed that the June 14, 1991 Order (Ex. "D-6" to the Jur. Stmt.) suspending me for alleged "non-cooperation" with the October 18, 1990 Order made no findings whatever, did not incorporate any findings by the Grievance Committee (since none were made), and that no hearing was ever afforded me--either before my suspension or in the nearly three years since[4]. Yet Ms. Petersen purported she was unable to form any legal conclusion that such suspension Order required vacatur under the controlling Court of Appeals' decisions in Matter of Nuey, 61 N.Y.2d 513 (1984) and Matter of Russakoff, 72 N.Y.2d 520 (1992). Ms. Petersen was not prepared to concede that my case is in all respects a fortiori to Russakoff--and seemed unfamiliar with my extensive presentation on that subject in the underlying files--part of which is annexed as Exhibit "G" to my Jurisdictional Statement. As Ms. Petersen should know from her alleged review of the files, my dispositive evidentiary demonstration that my case is a fortiori, repeatedly presented by me to the Second Department in the underlying proceeding, is entirely unrebutted.

As of yesterday, Ms. Petersen indicated that she had not obtained the transcripts of the hearings held on the February 6, 1990 Petition--although the importance of those transcripts was

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[2] The pertinent pages of Mr. Schwartz' March 14, 1994 letter to the Court of Appeals are enclosed herewith.

[3] Those errors--referred to at fn. 10 of my Jurisdictional Statement and, again, at fn. 2 of Mr. Schwartz' March 14, 1994 ltr to the Court of Appeals--are enumerated at ¶30 of my November 19, 1993 Dismissal/Summary Judgment Motion in the underlying proceeding--a fact highlighted in the inventory of File Folder "D-2", transmitted to you on March 8, 1994.

[4] See, Jur. Statement: ¶¶18-20, as well as the documents reflected by the inventory to File Folders "D-4/5/6", "D-7", "D-12/13", "D-17", transmitted to you on March 8, 1994.

not only discussed in my submissions to the Court of Appeals[5], and my prior correspondence with you and your office[6], but re-emphasized last Thursday, March 24th when I spoke with her at length by telephone. The transcripts unequivocally and frighteningly reveal the total abandonment of cognizable standards of due process by the Respondents. As stated in my Jurisdictional Statement:

> "The deliberate and sadistic abuse of power by Respondents Referee and Casella at those hearings, denying Appellant any semblance of due process, provide a separate and additional basis for this Court's jurisdiction to grant Article 78 relief..." (at ¶15)

More than two weeks have now elapsed since your assignment of this matter to Ms. Petersen. It is clear from my above two telephone conversations with her--yesterday and last Thursday--that, to put it charitably, she is professionally incompetent as to elementary rules of law and procedure applicable to disciplinary and Article 78 proceedings, having made no effort to familiarize herself therewith in the intervening time. As further illustrative, I might mention that on Thursday Ms. Petersen stated her belief that the disciplinary proceedings before the Appellate Division are "administrative"--apparently unable to differentiate between pre-petition "administrative" procedures before the Grievance Committee--which the record shows I was denied--and judicial proceedings commenced after application to the Court by the Grievance Committee, which the record shows were commenced without any "probable cause" finding ever having been made[7].

Ms. Petersen further displayed her abysmal ignorance in last Thursday's conversation when she stated her view that a complaint letter, which is unsworn, is equivalent to the written notice of charges, as required under 22 N.Y.C.R.R. §691.(e)(4) or the

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[5] Jurisdictional Statement, ¶14-15 and fn. 8; Mr. Schwartz' March 14, 1994 ltr to the Court of Appeals, p. 17.

[6] February 6, 1994 ltr (at p.2); February 22, 1994 ltr (at p.5); March 8, 1994 ltr (at p.2).

[7] See, inter alia, my November 19, 1993 Dismissal/Summary Judgment Motion, pp. 4-11, as well as the documents referred to in the inventory to File Folders "D-1", "D-4/5/6", "D-8/9", "D-15", "D-16", transmitted to you on March 8, 1994.

charges required under Judiciary Law §90(6). The record of the underlying file under A.D. #90-00315 shows that even Respondent Casella--whose fertile pathological imagination knows no bounds--does not make such ludicrous argument.

Yesterday, Ms. Petersen took the position that her role is to present to you the "contentions of both sides in a neutral way". Yet, Ms. Petersen seems to be unable to identify that there are no findings of fact or "probable cause finding" anywhere in the record of the underlying disciplinary proceedings to support my suspension or any other disciplinary prosecution of me--even though the task was made easy for her by my meticulous November 19, 1993 Dismissal/Summary Judgment Motion, delineating, with great particularity, the total absence of all jurisdictional prerequisites for initiation of disciplinary proceedings[8].

Should the foregoing not suffice to persuade you that you are being no better served by Ms. Petersen, than by Ms. Mayer, I request that Ms. Petersen discuss her review of this matter at a meeting at which I am present to demonstrate, with the probative evidence and controlling law, which is part of the files she has ostensibly reviewed, the extent to which she has betrayed your trust.

I most respectfully request that you personally read my attorney's March 14, 1994 letter to the Court of Appeals in support of my Jurisdictional Statement. For your convenience, I enclose the pages thereof relating to the common law origin of Article 78 proceedings so that you, as a legislator for almost a quarter of a century, can recognize the extent to which your office has not only condoned, but actively participated in the destruction of the Article 78 vehicle created by the Legislature.

As "the People's lawyer", you cannot approve the denial of the right of appeal from a judgment in an Article 78 proceeding emanating from the Appellate Division as the court of first instance--and particularly, where, as here, the Appellate Division, Second Department has decided the lawfulness of its own conduct. These represent threshold legal and ethical issues--quite apart from the merit of my case, which your official duty also requires you to evaluate.

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[8] See, inter alia, pp. 4-11 therein. It may be noted that all papers submitted in connection with that dispositive motion were transmitted to you under my February 6, 1994 coverletter.

Were Ms. Petersen to do an honest and competent job she would tell you that the files in your possession are not only dispositive in my favor as to the merits, but show that any continued defense of Respondents, at state expense, puts you in complicity with their criminal and tortious acts.

Time is running out. The Court of Appeals must be immediately notified that your office withdraws its opposition to its jurisdiction over my appeal. Indeed, the record in this case requires you to urge our highest Court to take jurisdiction as a matter of constitutional right.

Very truly yours,

Doris L. Sassower

DORIS L. SASSOWER, Director
Center for Judicial Accountability

DLS/er
Enclosure: pp. 8-12 of Mr. Schwartz' March 14, 1994 letter in support of Court of Appeals' jurisdiction

cc: Evan Schwartz, Esq.
Abigail Petersen, Assistant Attorney General

P 801 449 662

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