

CENTER for
JUDICIAL
ACCOUNTABILITY



Box 69, Gedney Station • White Plains, New York 10605-0069
TEL: 914/997-8105 • FAX: 914/684-6554

BY FAX: 212-416-8139
AND PRIORITY MAIL/CERTIFIED, RRR: P-271-548-611

June 9, 1994

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

RE: Article 78 Proceeding
Sassower v. Mangano, et al.

Dear Mr. Koppell:

It is now three months since our March 8th hand-delivered transmittal to you of the Appellate Division files under docket number 90-00315, which we had meticulously organized and indexed to facilitate your review. You assured us, when you telephoned on March 12th, that those files would be immediately reviewed and that we would hear from you promptly.

You understood the exigency of the circumstances, not only from our conversations on that date, but because my numerous letters to you since January put you on notice that perjury and deceit had been committed by lawyers on your staff in connection with their submissions in the Appellate Division, as well as in the Court of Appeals relative to my then-pending Article 78 proceeding.

Since our aforesaid March 12th telephone conversations, we have heard nothing from you, notwithstanding my fax of that date and two further letters, dated March 30th and April 9th, each of which stressed the urgency of the situation.

It would appear that you are so busy promoting your candidacy for a full term as Attorney General that you have not had the time to devote yourself to the proper functioning of the office to which you seek to be elected.

Ex "P"

In a May 5, 1994 column in the Gannett newspapers, David Bauder wrote:

"Since becoming attorney general in January, Koppell has been relentless in efforts to publicize what his office has been doing".

Between that column and Ian Fisher's April 28, 1994 article in The New York Times, the press does not seem particularly impressed with the nature of the cases in which you have seen fit to take action--or the motivations behind it.

Quite rightly so. Indeed, from the perspective of this voter--who, as you know, has been working pro bono in the public interest for many years--the story which should be reported is your wilful failure to act upon matters of major importance to the People of this State and the self-interested political reasons that would account for same.

As you know, what I have presented to you over the past five months--documented fully by the files transmitted to you--is corruption of the most profound and far-reaching nature in the judicial branch of government and the complicity of your office.

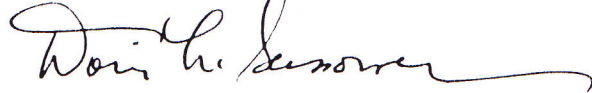
Such complicity has resulted in the destruction of the Article 78 vehicle, historically designed to provide aggrieved citizens with a right of independent review by a superior tribunal. Since you were given direct knowledge of the facts and, as the highest legal officer of the State, have the obligation to protect the sanctity of the Article 78 remedy, you are responsible for the abomination that has occurred by the dismissal of my appeal by the Court of Appeals on May 12th, not on the merits, but because it refused to provide the review, to which my Article 78 proceeding entitled me, as a matter of right.

This is your last opportunity to prevent Sassower v. Mangano from becoming the dangerous precedent it stands to be. That precedent is that judges, accused of fraudulent and criminal conduct in Article 78 proceedings, are free to decide their own case and to grant a dismissal motion of their own attorney, the Attorney General, who is free to fashion his motion on perjury and deceit. The further precedent--established under your "watch"--is that there shall be no right to appellate review of such perversion.

It is, therefore, your duty as Attorney General to move immediately for reargument of the Court of Appeals' May 12, 1994 decision.

If you do not intend to make such motion, I request the prompt return of the transmitted files so that we can make them available to others who will make appropriate use of them.

Very truly yours,



DORIS L. SASSOWER, Director
Center for Judicial Accountability

cc: David Bauder, Gannett
Ian Fisher, The New York Times

Enclosures: (a) 5/4/94, Gannett, "Koppell Pushes Incumbency Advantage"
(b) 4/28/94, NYT, "The Attorney General Rushes to Build a Platform"
(c) 5/12/94 Court of Appeals Order

5/5/94 Jannett

Koppell pushes incumbency advantage

If you don't know state Attorney General G. Oliver Koppell's name by now, don't blame him.

It's not for lack of trying. Even in jaded New York, Koppell's aggressive politicking since taking office as the state's top lawyer last December has attracted special attention.

Questions have been raised about matters serious — his appointment by Gov. Mario Cuomo as special prosecutor in a highly publicized rape case — to the relatively silly — how the phone is answered in his office.

Limits on the use of incumbency for electoral advantage, a common but controversial feature of the political landscape, are being tested again.

Koppell won a significant victory last week when a state judge agreed to reopen rape charges against five men charged with having sex with an unconscious woman in a bar in northern New York's Gouverneur.

Even that victory came with a political price. Opposing attorneys had accused Koppell and Cuomo of using the case for political advantage. Koppell had taken the unusual step of arguing the case in court himself.

Despite a 20-year career in the Assembly, few New Yorkers knew much about Koppell before he was elected by his colleagues in the Legislature to replace fellow Bronx Democrat Robert Abrams, who quit last year.

Since becoming attorney general in January, Koppell has been relentless in efforts to publicize what his office has been doing. He's traveled to Buffalo to fight for fans victimized by Super Bowl ticket rip-offs, to Rochester to expose a telemarketing scheme, to Albany to start a task force on lawsuits filed by prison inmates and to New York City to attack brokers marking up Barbra Strei-



DAVID BAUDER

'I don't think it's illegitimate in the least, and I don't think it's any different from what anyone else does.'

— G. Oliver Koppell
state attorney general

sand concert tickets.

His office has instituted a consumer "warning of the week" in the form of a column distributed to newspapers.

His news releases have been so frequent that reporters at the Capitol joke about the "morning Koppell" and "afternoon Koppell."

In recent months, people answering the phone in the attorney general's office have been instructed to mention Koppell's name when they say hello, instead of just saying "attorney general's office."

"Either he's got an incredible ego or he's intending to advance his own name at the expense of the dignity of the office," said Dennis Vacco, a former Republican U.S. attorney from Buffalo who wants Koppell's job.

That's one of Koppell's problems: Se-

veral people want his job. Vacco is one of two Republicans who are announced candidates. Koppell is also expected to face a bruising Democratic primary against Brooklyn District Attorney Charles Hynes and former Brooklyn Family Court Judge Karen Burstein, a former head of the state Consumer Protection Board. Both Democrats are arguably better known than Koppell.

"There's not one politician in the world, when they run for election, (who) doesn't pay a little more attention to their public relations," Koppell said.

"Of course, I'm running for re-election, and that means I have to be particularly conscious of the fact that people should know what I'm doing," he said. "I don't think it's illegitimate in the least, and I don't think it's any different from what anyone else does."

He concedes the advantages of incumbency, but said few people also recognize that being in office gives him a record opponents can attack.

Koppell drew embarrassing headlines earlier this month by changing office policy to allow for the hiring of younger lawyers. Abrams had required lawyers to have two years of experience before working for the attorney general. Koppell argued that policy made it impossible to hire talented interns and meant his office missed out on the best law school graduates.

His first hire under the new policy? The daughter of the Erie County Democratic chairman, a Koppell supporter.

Koppell said what was coincidence became an "unfortunate coincidence" when newspapers wrote about the hiring.

David Bauder has covered New York state government and politics for The Associated Press since 1988.

NYT 4/28/94

The Attorney General Rushes to Build a Platform

Some Say Koppell's Aggressive and Effective. Others Say He's Politicizing His Office.

By IAN FISHER

Special to The New York Times

ALBANY, April 27 — He promised to accomplish many things when his colleagues in the Assembly named him to succeed Robert Abrams as New York State Attorney General in December, but he pursued one goal with special vigor: Voters would know the name G. Oliver Koppell before the election this November.

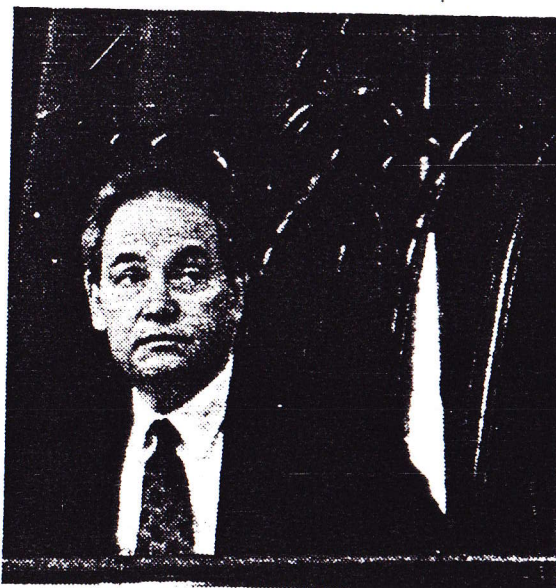
In his 119 days in office, Mr. Koppell, a brainy but awkward Democratic lawmaker from the Bronx, has issued 130 news releases, weighing in at two pounds of paper. He has defended tenants in Manhattan and Bills fans in Buffalo. He has despaired at the unfairness of having to eat all the cereal in a box before getting a \$1 mail-in rebate. He took the risk of personally arguing a difficult motion in a rape case in northern New York, and he won.

But the whoosh of this man forever in a blue suit has raised questions about how he is using the power of his short incumbency to gain advantage in what may be the most hotly contested statewide primary this year. Aside from disdain at the endless stream of paper, his political opponents and indeed some disgruntled workers within the Attorney General's Office complain about what they say is a marked politicization of the office of the people's lawyer.

The Question of Balance

Mr. Koppell, they say, has hired a number of lawyers backed by political leaders in a way they say Mr. Abrams never did, despite the former Attorney General's considerable talent at self-promotion.

The lawyers include Nancy Sorrentino Kania, the daughter of the chairman of the Erie County Democratic Committee; Benjamin L. Zwirn, the former North Hempstead supervisor recommended by the Nassau County Democratic Chairman, and three others recom-



Jack Manning/The New York Times

G. Oliver Koppell

mended by Assembly members. Mr. Koppell also brought in an aide from his Assembly staff, Patricia Cicogna, to shepherd complaints and concerns, especially those from other elected officials.

No one is suggesting that the 53-year-old Mr. Koppell, who enjoyed a spotless reputation in his 23 years as an Assemblyman, has done anything illegal or even unethical. And for every political critic of his actions, there is a consumer advocate or environmentalist to praise Mr. Koppell for what he has done. But the question of

balance that all elected officials face — where the fine line falls between public and political action — is already an issue in the campaign.

"You need to be careful about how you treat the institution," said Dennis C. Vacco, a Republican and former United States Attorney in Buffalo who announced his candidacy last week with an attack on Mr. Koppell. "You need to be careful not to cheapen it with classical political maneuvering and the type of political paybacks that you could get away with in other offices where it is more expected."

Mr. Koppell's Democratic opponents include the Brooklyn District Attorney, Charles J. Hynes, and Judge Karen S. Burstein of Family Court in Brooklyn, both of whom plan all-out races in the party's primary in September. Ms. Burstein is expected to announce her candidacy officially next week. Aside from Mr. Vacco, Joseph Holland, a lawyer from Harlem, is seeking the Republican nomination.

In an interview, Mr. Abrams, a sometime mentor to Mr. Koppell whose political roots trace to the same Bronx Democratic reform movement, said he did not want to criticize Mr. Koppell but hinted he was less than pleased. "I worked hard at building a professional and nonpolitical office," said Mr. Abrams, who retired in December, a year after he lost a bitterly contested race for United States Senate. "And it would be my hope that Oliver Koppell maintains that tradition."

He added, without elaboration: "I'm concerned that the transition is turning out to be rockier than I imagined but I assume that it will smooth itself out."

For his part, Mr. Koppell replies to criticism with the aching earnestness and openness that colleagues say characterized his tenure in the Legislature, where he was the sponsor of 280 bills and one of the body's most

Continued on Page B7

NEW YORK STATE

Koppell Rushes to Build a Platform

Continued From Page B1

respected and intellectual members. (Indeed his fellow Democrats virtually crowned him acting Attorney General upon Mr. Abrams' departure.) As for his tireless courting of the cameras, he said voters liked to see their Attorney General "out there scrapping for them."

Asked about three lawyers he hired who had political sponsors, Mr. Koppell in short order supplied the names of two more, as a way of showing that he had nothing to hide and that the majority of the 23 lawyers he has hired since taking office did not have political sponsors.

In Politics, 'He's Learning'

"We've had some politically recommended and some not," said Mr. Koppell, who maintained that political ties did not guarantee a job. "Every single one of these people is more than capable and in fact many of them are absolutely superb."

"Does it help to hire someone who is recommended by another politician?" he asked. "Not one of them was hired to do political work. All of them were hired to work as assistant attorneys general."

But still, does it help? "Sometimes it helps, sometimes it doesn't," he said.

Mr. Koppell's many friends in the Legislature say that he has done nothing different from any other politician, and that his self-promotion is largely a question of degree from people like his predecessor. They say Mr. Koppell, an ambitious but shy man who must be prodded by his aides to shake the hands of strangers, is just clumsier about it.

"Oliver hasn't had a race in 25 years," said Assemblyman Richard L. Brodsky, Democrat of Westchester. "They don't believe in elections in New York City. They have primaries only occasionally. Oliver was never

The Attorney General's busy, and he makes sure you know it.

burdened by the vagaries of American politics. Now politics are becoming a key issue for him. He's learning."

Indeed, Mr. Koppell, who holds undergraduate and law degrees from Harvard, is doing exactly what he said from the outset. "You have to use incumbency," he said bluntly in an interview in December, recalling how he lost a bitter race for Bronx Borough President in 1979 after the newly appointed incumbent, Stanley Simon, strategically dispensed city services around the borough.

Hopscotching for Cameras

Since then, he has hopscotched across the state, arguing personally that rape charges should be reinstated against five men in St. Lawrence County (Mr. Abrams appeared in court only once in 15 years, a former associate said) and completing a settlement against an all-white firefighters' club on Long Island. He argued before the Supreme Court. He has set up a special office, to be headed by Mr. Zwiirn, for health care fraud, and he has attacked ticket scalpers, misleading advertisements for car repairs and home-improvement contractors who overcharge.

Along the way he issues two, sometimes three, news releases a day, each headlined with Mr. Koppell's name followed by a zingy verb.

"I think he is putting P.T. Barnum and Donald Trump to shame," said Hank Morris, the political consultant for Ms. Burstein. "He's been running

from one end of the state to another trying to figure out how to get his name in the newspaper. He's shameless about it."

What his political opponents scorn as shameless self-promotion, some consumer and environmental groups see as aggressive action. He is also likely to earn praise for his victory in the rape case, which clears the way for a possible trial in a case that ignited public outrage.

Promoting or Producing?

"It's clearly more than headline grabbing," said Travis B. Plunkett, associate legislative director for the New York Public Interest Research Group. "There is real, substantial consumer protection going on."

While most of the negative attention to Mr. Koppell has focused on the hiring and the news releases, several lawyers in the office, speaking anonymously, said morale was falling poorly. They said he had demanded to review every settlement and start to an investigation, that he had regulated how they answer the phone ("Attorney General Koppell's office" rather than "Attorney General's Office") and how they must sign letters (never "Sincerely" but "Very truly yours").

They also said an atmosphere of distrust has arisen and they worried about the perception of political hires and more attention being paid to the complaints of politicians.

"I understand that he is running for election and he's got to do something because nobody knows him outside of the Bronx," said one assistant attorney general in Albany. "The question is whether he has gone too far. And a lot of people here think he has."

Mr. Koppell said some disruption



Michelle V. Aguiar/The New York Times

Questions have been raised about how G. Oliver Koppell, New York State Attorney General, is using his short incumbency to gain advantage in what may be the most hotly contested state primary this year.

among the staff was inevitable, especially considering Mr. Abrams's 15-year tenure. He conceded that he had been hard on some staff members in an effort to correct what he called "slacking off" at the end of Mr. Abrams's administration and as he

got to know the office's workings.

He said he would have liked a less hurried introduction to the office of the Attorney General — his dream job and a position he will clearly fight hard to keep. But political reality has not allowed the luxury, he said.

"If I had been elected for four years I wouldn't be so hard-driving to get things done as quickly," he said. "I have to run on a record. I can't wait to do things I want because I don't have time. I've got to do them right away and we're doing them."

State of New York,
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the ^{twelfth} day
of May 1994

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

Mo. No. 529 SSD 41

In the Matter of Doris L.

Sassower,

Appellant,

v.

Guy James Mangano, &c., et al.,


Respondents.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal, insofar as it is taken from that part of the Appellate Division order that denied petitioner's cross motion, be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that that part of the order does not finally determine the proceeding within the meaning of the Constitution; and it is

ORDERED, that the appeal, insofar as it is taken from the remainder of the Appellate Division order, be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

Judges Levine and Ciparick took no part.


Donald M. Sheraw
Clerk of the Court



P 271 548 611



Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

| | |
|---|---------------------------------|
| Sent to | <i>Attorney General Koppell</i> |
| Street and No. | <i>120 Broadway</i> |
| City, State and ZIP Code | <i>NY NY 10271</i> |
| Postage | <i>\$ 1.22</i> |
| Certified Fee | <i>1-</i> |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Sent to Whom & Date Delivered | <i>1-</i> |
| Return Receipt Shipped to Whom, Date, and Addressee's Address | |
| TOTAL Postage & Fees | <i>\$ 2.22</i> |
| Postmark Date | <i>6/14/84</i> |

E 3800, June 1991

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
*G. Oliver Koppell
 Attorney General
 120 Broadway
 New York, NY 10271*

4a. Article Number:
P-271-548-611

4b. Service Type

| | |
|---|---|
| <input type="checkbox"/> Registered | <input type="checkbox"/> Insured |
| <input checked="" type="checkbox"/> Certified | <input type="checkbox"/> COD |
| <input type="checkbox"/> Express Mail | <input type="checkbox"/> Return Receipt for Merchandise |

7. Date of Delivery
6/14/84

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)
T. Olliv

Thank you for using Return Receipt Service.