No. 98-106

In the
SUPREME COURT OF THE UNITED STATES
October Term 1997

DORIS L. SASSOWER,

Petitioner,

- against -

HON. GUY MANGANO, PRESIDING JUSTICE OF THE APPELLATE DIVISION, SECOND DEPARTMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK, and the ASSOCIATE JUSTICES THEREOF, GARY CASELLA and EDWARD SUMBER, Chief Counsel and Chairman, respectively, of the GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT, GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT, Does 1-20, being present members thereof, MAX GALFUNT, being a Special Referee, and G. OLIVER KOPPELL, Attorney General of the State of New York, all in their official and personal capacities,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DORIS L. SASSOWER
Petitioner, *Pro Se*
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White Plains, New York 10606
914-997-1677

QUESTIONS PRESENTED

1. Does this Court have a duty to exercise its "power of supervision" where the record shows that two levels of the federal judiciary have so far departed from adjudicatory and ethical standards as to falsify the record to conceal petitioner's entitlement to a declaration that New York's attorney disciplinary law is unconstitutional, as written and as applied to her[1]?

   a. Does this Court have a duty under ethical codes of conduct to make disciplinary and criminal referrals when a Petition for Writ of Certiorari presents readily-verifiable evidence of official misconduct by federal judges?

2. Is constitutional due process denied where, on appeal, the Circuit Court fails to adjudicate the "pervasive bias" of the district judge, including his denial of a recusal motion under 28 U.S.C. §§144 and 455 and, additionally, fails to adjudicate, or to adjudicate with reasons, motions made for its own recusal, pursuant to §455 and the 5th Amendment to the U.S. Constitution?

   a. Is it misconduct *per se* for federal judges to fail to adjudicate or to deny, without reasons, fact-specific, fully-documented recusal motions?

   b. If so, where is the remedy within the federal judicial branch when §372(c) misconduct complaints against Circuit judges based thereon are dismissed as "merits related"?

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[1] These grounds of unconstitutionality of New York's attorney disciplinary law were particularized in petitioner's 1995 Petition for a Writ of Certiorari (*Sassower v. Mangano, et al.*, #94-1546) in connection with her state court challenge under New York's Civil Practice Law and Rules Article 78, which is part of the record in this §1983 action. The "Questions Presented" page from that Petition appears in the Appendix herein at A-117 and is incorporated by reference.

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TABLE OF AUTHORITIES

Constitutional, Statutory, Court Rule, and Ethical Code Provisions

Reports, Treatises, and Articles

Petitioner, Doris L. Sassower, respectfully prays for a writ of certiorari to review the Summary Order of the U.S. Court of Appeals for the Second Circuit, entered on September 10, 1997.

OPINIONS BELOW

The Second Circuit's Summary Order is unreported and appears in the Appendix herein at A-21. The district court's Memorandum Opinion and Order is reported at 927 F. Supp. 113 and appears at A-36. The Order of the Second Circuit's Chief Judge, dismissing petitioner's incorporated-by-reference §372(c) complaints against the appellate panel and district judge is unreported and appears at A-28. The Second Circuit Judicial Council's Order denying petitioner's Petition for Review of the Chief Judge's dismissal Order is unreported and appears at A-31.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and this Court's Rule 10.1. The Second Circuit's Summary Order, affirming the district court's Judgment dismissing the action, was entered on September 10, 1997. Its Order denying petitioner's Petition for Rehearing with Suggestion for Rehearing *In Banc* was entered on December 17, 1997 [A-27]. Justice Ruth Bader Ginsberg granted petitioner's motion to extend her time to seek certiorari up to and including May 16, 1998.

CONSTITUTIONAL, STATUTORY, COURT RULE, AND ETHICAL PROVISIONS INVOLVED

U.S. Constitution, 5th, 14th Amendments; 28 U.S.C. §§144, 455, 372(c), 1927, 1254; 42 U.S.C. §§1983, 1985(3); F.R.Civ.P. 1, 11, 12, 56, 60(b); U.S. Supreme Court Rule 10.1; Second Circuit Judicial Council Rule 4 Governing §372(c) Complaints against Judicial Officers; S.D.N.Y. Civil Rule 3(g), S.D.N.Y. General Rule 4; N.Y.S. Judiciary Law §§90(2), (6), (8), N.Y.S. Appellate Division, Second Department Rules Governing the Conduct of Attorneys, 22 N.Y.C.R.R. §§691.4, 691.13(b)(1); Code of Judicial Conduct for U.S. Judges, Canon 3; ABA Code of Judicial Conduct, Canon 3; A.B.A.

Model Rules of Professional Conduct, Rules 8.3, 8.4.

STATEMENT OF THE CASE

This is an action under 42 U.S.C. §§1983 and 1985(3) for violation of civil rights, guaranteed by the 1st, 5th, 6th, 8th, and 14th Amendments of the U.S. Constitution. Petitioner, the plaintiff herein, challenges New York's attorney disciplinary law, as written and as applied to her. Respondents, defendants herein, are the judges of New York's Appellate Division, Second Department [herein "the judicial defendants"], their at-will-appointees, and the New York Attorney General [herein "the A.G."], all sued in their official and personal capacities. Until the events giving rise to the lawsuit, petitioner was "a distinguished...lawyer, lecturer, and writer...in continuous good standing at the bar for over thirty-five years" with a "thriving private practice, an outstanding career, and a national reputation based on her legal writings, her public advocacy in the area of equal rights and law reform, and her litigation accomplishments in both the private and public sector." [A-53, ¶14]

The material allegations of petitioner's Complaint are wholly expurgated from the Second Circuit's Summary Order and expurgated only slightly less from the district judge's Memorandum Opinion. Likewise, the true state of the record and course of the proceedings are obliterated and falsified by these judicial documents. These are, therefore, set forth in greater detail than would otherwise be necessary.

The Unexpurgated Verified Complaint [1]**:** Appellant's Complaint was verified. Summing up many of its most critical allegations was its paragraph "3": that on June 14, 1991, the judicial defendants issued an order suspending plaintiff's law license "immediately, indefinitely, and unconditionally":

> "without notice of formal charges, without a hearing, without a finding of probable cause, or any other findings, administrative or judicial, and without any jurisdiction whatsoever...[that they] knew such Order to be unlawful and fraudulent and that it was being rendered for political, personal, and private ulterior motivations, totally outside the scope of their judicial/official duties for the sole purpose of discrediting, defaming, and destroying Plaintiff to cause her to cease her activities in exposing judicial corruption." [A-50, ¶3]

[1] The following recitation is adapted, with only slight changes, from petitioner's Petition from Rehearing with Suggestion for Rehearing *In Banc* [A-197-201]. The full Complaint appears at A-49-100.

Nearly 70 of the Complaint's allegations relate to the political context in which the judicial defendants issued, and thereafter perpetuated, the retaliatory "interim" suspension order. These include that the June 14, 1991 order [A-97] was served upon plaintiff the day before the last day to file the notice of appeal in the New York Court of Appeals in a public interest Election Law case in which plaintiff, as *pro bono* counsel, was challenging the manipulation of state judicial elections and judgeships by leaders of both major political parties [A-69, ¶103]. Prior thereto, on the day before plaintiff was scheduled to orally argue the Election Law case before the Appellate Division, Third Department [A-64, ¶78], the judicial defendants issued an October 18, 1990 order directing her to be medically examined to determine her mental capacity [A-132].

The Complaint alleged that each of these orders was factually baseless, fraudulent, and violated jurisdictional and due process requirements mandated by the very court rules under which they were issued. In particular, although those rules call for a petition to commence a plenary proceeding thereunder, neither the Grievance Committee's order to show cause for an order directing plaintiff to be medically examined under 22 NYCRR §691.13(b)(1) [A-16] nor its order to show cause under 22 NYCRR §691.4(l) [A-15] for an order directing her immediate suspension for her alleged failure to comply with the October 18, 1990 order were supported by any petition. Nor was there any underlying disciplinary proceeding to which the October 18, 1990 and June 14, 1991 orders related. The Complaint further alleged that plaintiff had contested each order to show cause and had additionally moved by orders to show cause of her own to vacate the October 18, 1990 and June 14, 1991 orders, but that the judicial defendants summarily denied her relief, without

findings or reasons. [A-62-68]. §691.4(l)(1) requires a specific "finding that the attorney is guilty of professional misconduct immediately threatening the public interest" and §691.4(l)(2) requires the court to "state its reasons for its order of suspension" [A-15-16].

New York's attorney disciplinary statute, Judiciary Law §90, vests original and exclusive control of attorney discipline in the state's Appellate Divisions. These courts have promulgated statutorily-unauthorized interim suspension rules, without provision for appeal, such as the judicial defendants' §691.4(l). As alleged in the Complaint's First Cause of Action for Declaratory Judgment [A-89], the New York Court of Appeals in *Matter of Nuey*, 61 N.Y.2d 513, (1984), explicitly recognized that §691.4(l) is statutorily unauthorized and in *Matter of Russakoff*, 72 N.Y.2d 520 (1992) -- also cited in the Complaint [A-75, ¶134] -- implicitly recognized that §691.4(l) is constitutionally infirm for lack of a post-suspension hearing provision. The Complaint further alleged that §691.4(l) is facially unconstitutional because it permits an attorney to be suspended for failure to comply with a court order ,with no requirement of wilfulness or *mala fides* [A-89, ¶217].

Both *Nuey* and *Russakoff* require immediate vacatur of interim suspension orders rendered without findings. Yet, as alleged, the judicial defendants denied, without reasons, plaintiff's repeated motions for vacatur based thereon and for a post-suspension hearing [¶¶134, 143, 148, 159, 165] -- disregarding her *a fortiori* showing of entitlement [A-77, ¶148]. In violation of plaintiff's equal protection rights, the New York Court of Appeals denied her leave to appeal, which it had previously granted to interimly-suspended attorneys Nuey and Russakoff [A-76, ¶144-5]. It also denied her appeal as of right.

The Complaint alleged that plaintiff was denied all appellate review of the judicial defendants' June 14, 1991 "interim" suspension order. She was also denied any independent review when the judicial defendants refused to recuse themselves from the special proceeding she brought against them under New York's CPLR Article 78 and decided it themselves. In so doing, the judicial defendants granted the dismissal motion of their own attorney, the A.G. -- a motion plaintiff had opposed as legally insufficient and factually perjurious [A-81-2]. Such dismissal, on jurisdictional grounds, was alleged to be a fraud. The A.G.'s litigation misconduct then continued as he opposed review by the New York Court of Appeals of his client's dismissal [A-87,

¶203]. The Complaint identified the A.G.'s complicitous and unethical conduct in the Article 78 proceeding as the basis for his being named a defendant [A-52, ¶10, A-55, ¶26].

The Complaint particularized a pattern of fraud, misrepresentation, and misconduct by the judicial defendants' appointee, defendant Casella, Chief Counsel of the Grievance Committee, not only as to the October 18, 1990 and June 14, 1991 orders [A-132, A-97], but as to a barrage of spurious unrelated disciplinary proceedings he filed against plaintiff at the judicial defendants' direction -- all without probable cause and without compliance with the express jurisdictional due process requirements of §691.4 [A-13-15]. None of plaintiff's challenges to defendant Casella's jurisdictionless, lawless, malicious, and invidious conduct resulted in any adjudications by the judicial defendants other than no-reason, no-finding orders, denying her relief.

***The True Course of the District Court Proceedings*[2]:** Plaintiff was *pro se* throughout. Defendants were represented in both their official and personal capacities by the A.G., their co-defendant. Plaintiff requested, in the interest of judicial economy and because she did not have the A.G.'s resources to litigate on two fronts, that proceedings on her Complaint be held in abeyance pending this Court's decision on her Petition for a Writ of Certiorari from the New York Court of Appeals' order denying review of the judicial defendants' dismissal of her Article 78 proceeding. The district judge denied plaintiff's request after it was opposed, without reasons, by the A.G.

Nevertheless, the district judge granted the A.G.'s two requests for extensions of time to answer the verified Complaint. The A.G. then submitted an unverified Answer on behalf of all defendants, in which they collectively "den[ied]", "den[ied], upon information and belief", and "den[ied] knowledge and information sufficient to form a belief" as to most of the verified Complaint's allegations. Expressly "denied" were its allegations [A-54, ¶¶19-20] that the judicial

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[2] The following is an abridgement of the section entitled "The Course of the Proceedings Before the District Judge" from petitioner's Appellant's Brief (pp. 12-30). Such presentation to the Second Circuit -- in addition to being cross-referenced to the record -- was entirely undenied and undisputed by respondents.

defendants had general disciplinary jurisdiction under Judiciary Law §90(2) and that defendant Grievance Committee had general disciplinary jurisdiction under §691.4(a). As to the pleaded non-compliance by defendants with the explicit jurisdictional and due process requirements of Judiciary Law §90 and 22 NYCRR §§691.4 and 691.13(b)(1) [A-12-16], the A.G. referred the Court to those provisions for their terms. As to the significance of *Nuey* and *Russakoff*, he referred the Court to those cases for interpretation.

The A.G. moved to dismiss the Complaint under Rule 12(c) [A-8]. The motion consisted of a two-paragraph affidavit of the A.G., annexing unpublished decisions in four cases cited by his accompanying Memorandum of Law. The A.G.'s Memorandum of Law misrepresented the Complaint's pleaded allegations. It falsely asserted that: (1) the Complaint had alleged that plaintiff had been suspended "during an underlying disciplinary proceeding pending against her"; (2) that there was "no indication in the complaint that [the judicial] defendants were proceeding in the clear absence of all jurisdiction"; and (3) that the Complaint had not alleged that defendants' actions were "inconsistent with existing law or...violated plaintiff's 'clearly established statutory or constitutional rights of which a reasonable person would have known'". In reciting the Complaint's allegations, the Memorandum of Law omitted the allegations detailing the unlawful and unconstitutional manner in which the October 18, 1990 and June 14, 1991 orders were procured, as well as the unrelated disciplinary petitions. Omitted were the allegations that plaintiff was suspended without written charges, without reasons, and without any hearing prior thereto or thereafter. The Memorandum of Law did not discuss the jurisdictional and due process requirements of Judiciary Law §90 and 22 NYCRR §§691.4(l) and 691.13(b)(1) -- and made no mention of *Nuey* and *Russakoff*.

At the next scheduled court conference, the district judge, without hearing plaintiff, announced that the A.G.'s dismissal motion was "colorable" and required answering papers. He threatened plaintiff with contempt when she requested a "two-minute" inquiry into the A.G.'s motion and oral advocacy in connection therewith. Plaintiff asserted that such inquiry would dispense with the need for her and the Court to be burdened with the motion, which she contended was sanctionable under Rule 11.

Plaintiff's subsequent opposition to the A.G.'s dismissal motion included an application for Rule 11 sanctions. Points II-V of her Memorandum of Law [A-101-113] showed that defendants' pleaded defenses of 11th Amendment, *Rooker-Feldman*, collateral estoppel, abstention, and immunity all rested on the A.G.'s deliberate misrepresentation of the Complaint's factual allegations and of controlling law. Plaintiff's supporting affidavit annexed a critique of defendants' unverified Answer showing that more than 150 of their pleaded denials were false and in bad-faith. Plaintiff's opposing papers also requested that defendants' dismissal motion be converted under Rule 12(c) into one for summary judgment in her favor. She pointed out that defendants' dismissal motion failed to advance any interpretation contrary to the plain meaning of the statutory and court rule provisions under which the judicial defendants' disciplinary orders against her had been issued and that *Nuey*'s authority, which they did not deny or dispute, was controlling. To support her challenge to the constitutionality of New York's attorney disciplinary law, as written and applied, plaintiff annexed a copy of her Petition for a Writ of Certiorari for review of her Article 78 proceeding, relying on the arguments and legal authority set forth therein [A-118-131]. She also submitted a Rule 3(g) Statement [A-114], repeating, realleging, and reiterating the Complaint's allegations and specifically delineating the respects in which the judicial defendants' October 18, 1990 and June 14, 1991 orders were jurisdictionally void, procedurally violative, and fraudulent.

Defendants defaulted in responding. Plaintiff thereafter requested a date to present the district judge with an order to show cause for a preliminary injunction, with a temporary restraining order, for vacatur of the June 14, 1991 suspension order. It was nearly two months until the district judge provided her with a date to present it.

Plaintiff's preliminary injunction/TRO order to show cause sought to enjoin continued enforcement of the findingless June 14, 1991 suspension order, based on *Nuey* and *Russakoff*, and to enjoin the judicial defendants from continuing to adjudicate cases involving plaintiff. Additionally, it sought to vacate the February 27, 1992 order of the Southern District of New York suspending plaintiff's law license [A-134] -- an order issued by the Southern District, without a hearing, in violation of its own Rule 4(g) [A-11], which plaintiff had invoked [A-135-142].

At the presentment of plaintiff's order to show cause, the district judge purported to be ignorant of the most basic facts relevant to her suspension -- all recited in the papers before him. His only reaction to plaintiff's oral recitation of the litany of due process and equal protection violations of her rights by the state defendants and the retaliatory political context of her suspension was to assert that lower federal courts lack subject matter jurisdiction to review state court decisions even where a complaint alleges corruption by state judges -- which legal proposition plaintiff disputed.

The A.G. offered no opposing argument, other than to adopt the district judge's statement that plaintiff's sole remedy was in the U.S. Supreme Court. The district judge *sua sponte* raised abstention and laches defenses and refused to sign plaintiff's order to show cause so as to require responding papers from defendants. Over plaintiff's objection, he also relieved defendants of their default, without any motion, based upon the A.G.'s misrepresentations and his own speculation.

Plaintiff immediately ordered the transcript. Less than two weeks after its receipt, she hand-delivered an order to show cause for the district judge's recusal, pursuant to 28 U.S.C. §§144 and 455 [A-2-3]. It chronicled the district judge's pervasive actual bias throughout the proceeding, culminating in his conduct at the oral argument, as to which it showed, by the district judge's own decision in *Mason v. Departmental Disciplinary Committee*, 1989 WL 99809 (S.D.N.Y.), that he had misrepresented the law as to subject matter jurisdiction and abstention. This, in addition, to his having relieved defendants of their default, without papers or good cause shown [A-148].

Meantime, the A.G. had filed defendants' opposition to plaintiff's summary judgment application. It consisted of: (1) a 2-1/4 page affidavit of defendant Casella, which did not deny or dispute any of the Complaint's allegations or plaintiff's Rule 3(g) Statement or that defendants' Answer was knowingly false in its responses to more than 150 of the Complaint's allegations; (2) a Statement in Opposition to plaintiff's Rule 3(g) Statement, in which the A.G. asserted that defendants' dismissal motion was "dispositive", but, if denied, that "defendants reserve the right to move for summary judgment at a future time"; and (3) a 2-1/2 page Memorandum of Law devoted only to the sanctions issue, in which the A.G. cited no law and did not deny or dispute that defendants' Answer was fraudulent and that their

dismissal motion misrepresented the Complaint's allegations and controlling law.

At the oral argument, the district judge summarily limited plaintiff to "five minutes" to argue her recusal order to show cause, delivered to him the day before, and refused to accept her supporting Memorandum of Law. The A.G. presented no argument. Without signing plaintiff's order to show cause, the district judge denied recusal under both §§144 and 455 as "untimely" and as "insufficient" because the bias alleged related to his conduct in the proceeding [A-145].

The district judge then allowed the A.G. to argue his dismissal motion. Arguing against the Complaint's pleaded allegations, the A.G. insisted that this was "without reverting to a summary judgment motion". When specifically asked by the district judge "...She said she was deprived of a hearing. Do the statutes provide for no hearing?", the A.G. declined to discuss "what the state disciplinary rules say" [A-172].

In opposition, plaintiff reiterated her Rule 11 sanctions request against the A.G. for the persistent misrepresentations in his oral advocacy. The district judge gave her no opportunity to argue her summary judgment and other sanctions applications and, initially, would not permit her to submit an affidavit for further sanctions under Rule 56(g) [A-9] for defendant Casella's bad-faith 2-1/4 page affidavit in opposition to her summary judgment application.

The district judge's ensuing order, in addition to erroneously reciting the nature of the submissions before him and omitting entirely any mention of plaintiff's sanctions applications, *sua sponte*, directed plaintiff to submit copies of all documents from the state disciplinary file. Plaintiff's prompt letter response objected that his inaccurate recitation of the submissions was material and potentially prejudicial to her rights. She stated that she was "not averse to providing a copy of the state court disciplinary file", but asked clarification as to the purpose and legal authority for the district judge's *sua sponte* direction that she do so. She objected that if defendants' dismissal motion raised extraneous issues which could not be adjudicated on the motion papers, it had to be denied, *as a matter of law*, since "[i]t is the movant who has the burden of supporting his motion with such substantiating documents as may be appropriate, and defendants have failed to meet that burden.". Plaintiff pointed out there had been "*no*

evidentiary or testimonial opposition" to her summary judgment application. As to her yet unsigned preliminary injunction/TRO order to show cause, she reiterated *Nuey* and *Russakoff* as dispositive of her right to immediate vacatur of the June 14, 1991 findingless suspension order [A-97].

Neither the district judge nor the A.G. responded. Ten weeks later, plaintiff wrote again to the district judge, still with no response. Two weeks later she wrote again, contrasting the district judge's failure to respond to her letters seeking clarification of his facially-erroneous order with his Chamber's immediate response to the A.G., who -- following receipt of her previous letter -- was able to immediately obtain a variety of dates to present a Rule 41(b) sanction motion against her for "not cooperating" with that order and, thereafter, permission to file such motion without a pre-motion conference. Plaintiff also complained of the "irreparable prejudice" caused her by the district judge's inaction on her preliminary injunction/TRO order to show cause, requesting that if it were not granted, her letter be accepted as renewal of her recusal motion. She annexed a note from her physician confirming an incapacitating condition of her right hand, disabling her from typing. Plaintiff sent a copy of her letter to the chief judge of the Southern District, an indicated recipient. The district judge responded by order, which, without reasons, denied her unopposed request to proceed by letter.

Plaintiff thereupon moved for reargument, reconsideration, and renewal of her recusal order to show cause, particularizing the district judge's continuing course of abusive conduct and annexing a transcript of the prior oral argument. As part thereof, plaintiff also sought an injunction, as well as sanctions against defendants and the A.G. Simultaneously, the A.G. moved to dismiss the Complaint pursuant to F.R.Civ.P. 41(b) based on plaintiff's alleged failure to comply with the district judge's order to produce the state disciplinary file and her alleged failure to prosecute the action.

Plaintiff sent a copy of her motion to the Southern District chief judge under a cover letter requesting that he invoke his "supervisory power over a district judge whose manifest bias has caused him to run amok". Seven weeks later, with no response, she again wrote the chief judge, suggesting his inaction might be due to his conflict of interest, since he was the judge who issued the February 27, 1992 order suspending her federal law license in the Southern

District, without a hearing [A-134] -- vacatur of which was part of her preliminary injunction order to show cause. Plaintiff requested her letter to him be accepted "in lieu of a formal motion for [his] recusal" and that the case be referred to a judge able to impartially discharge supervisory duties. Three weeks later, with no response from the chief judge, the district judge issued his Memorandum Opinion and Order [the "Decision"] [A-36] and Judgment [A-34].

The District Judge's Decision [A-36]: By his Decision, the district judge omitted the fact that plaintiff's recusal motion, which he had denied as "untimely" and "insufficient", had been made pursuant to 28 U.S.C.§455, not just §144 [A-43]. After misrepresenting the basis upon which plaintiff had moved for reconsideration thereof, he denied that motion [A-43]. *Sua sponte* and without notice, he converted defendants' dismissal motion -- the subject of plaintiff's sanctions applications -- to one for summary judgment in their favor, stating, falsely, that both parties had filed "voluminous affidavits" [A-42, fn.3]. In fact, the only affidavits submitted by defendants was defendant Casella's 2-1/4 page affidavit -- the subject of plaintiff's Rule 56(g) sanctions application [A-163]. Without reasons, the district judge denied plaintiff's summary judgment application, misrepresenting it as a "cross-motion" [R-42]. He also denied, without reasons, plaintiff's order to show cause for preliminary injunction, likewise misrepresenting it as a "cross-motion" [A-42]. In view of his dismissal of plaintiff's action, the district judge stated there was no need for him to consider defendants' Rule 41(b) motion [A-48]. As to plaintiff's documented and uncontroverted applications for sanctions against defendants and the A.G. for litigation misconduct and fraud, the district judge not only did not adjudicate them, he omitted any mention of them from his Decision. At the same time, his Decision replicated the stratagem of misconduct those applications had protested: stripping the Complaint of its defense-vitiating material allegations.

Appellate Case Management Phase: Plaintiff -- now appellant -- insisted on a pre-argument conference when originally-assigned Second Circuit staff counsel, thereafter recusing himself on her bias objection, dispensed with it. The order directing the conference required attorneys attending to be knowledgeable about the case and

have authority to settle or narrow issues. The attorney who had handled the case in the district court for the A.G. did not appear. Instead, the A.G. sent an attorney unfamiliar with the case, with no authority to agree to the most minimal and legally-compelled stipulations, such as amending the caption to reflect successor parties, as proposed by staff counsel.

At the conference, appellant asked the A.G. to join in a Rule 60(b) motion to vacate for fraud the district judge's Judgment or to join in the appeal, which she requested be transferred to a different Circuit. She also requested his consent to immediate vacatur of her suspension pursuant to *Nuey and Russakoff* and discussed his conflicts of interest as a named defendant, representing himself and his co-defendants in both their official and personal capacities. Although staff counsel directed the attorney appearing for the A.G. to obtain a response from her superiors, none was forthcoming. Thereafter, the attorney who had handled the case in the district court resurfaced for the appeal. He refused to discuss anything and, without reasons, would not consent to any of the proposed stipulations. Appellant's efforts to obtain oversight from his superiors -- including from the A.G. personally -- were rebuffed by the A.G.'s office with the statement that said attorney was doing "a good job". This led to appellant's omnibus motion for contempt and sanctions against the A.G. for "fraudulent and frivolous conduct in defeating the purposes of...[the] pre-argument conference".

Prefacing appellant's supporting affidavit was a request that the Circuit *sua sponte* recuse itself for bias and transfer the motion to a judge outside the Circuit. Appellant particularized that bias, apparent as well as actual [A-187-191]: (1) the Circuit judges' personal and professional relationships with the high-ranking state judges named as defendants or implicated in their misconduct; (2) appellant's familial relationship with George Sassower[3], with whom the Circuit has a widely-publicized, long-standing, and bitterly adversarial relationship, arising from his "avalanche" of lawsuits and judicial misconduct complaints against its judges[4]; and (3) appellant's

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[3] She had been married to him for 32 years, with 3 children together.

[4] So described by the New York Law Journal [A-187, fn.3] in a front-page article (3/14/94) reporting on the decision, *In re George Sassower*, 20 F.3d 42

own publicly adversarial relationship with the Circuit, stemming from its judicial retaliation against her in the case of *Sassower v. Field*[5] because of her familial relationship with Mr. Sassower [A-187-191]. Appellant also pointed out [A-189-190] that it was on the day preceding oral argument of her appeal in *Sassower v. Field* that the Southern District, in violation of its own Rule 4(g), which she had invoked, issued the February 27, 1992 order suspending her federal law license [A-134].

None of appellant's particularized allegations of the A.G.'s misconduct in the case management phase of the appeal were denied or disputed. Nor did the A.G. deny or dispute the facts giving rise to appellant's recusal request -- or that they created the proscribed appearance of impropriety. Appellant's reply affidavit highlighted this and that the A.G.'s bad-faith and fraudulent opposition reinforced the need for sanctions.

(2nd Cir. 1994) by the Second Circuit's Chief Judge on behalf of the Second Circuit Judicial Council, citing back to an earlier decision about Mr. Sassower by the Chief Judge for a three-judge panel, *In re Martin-Trigona*, 9 F.3d 226 (2nd Cir. 1993), also reported on the front-page of the Law Journal (11/9/93). Appellant's Reply Affidavit specified that the basis for Mr. Sassower's lawsuits and complaints is his claim that the Circuit's judges author fraudulent decisions to cover up corruption in the New York State judiciary, in which the State Attorney General is a collusive participant. *See* Petition for Rehearing with Suggestion for Rehearing *In Banc* [A-205].

[5] *Sassower v. Field* was the subject of a Petition for a Writ of Certiorari to the U.S. Supreme Court (#92-1405). In a Supplemental Petition for Rehearing, precipitated by the Court's granting of review to *Liteky v. U.S.*, *infra*, to interpret 28 U.S.C. §455(a), appellant identified the Second Circuit's *animus* against Mr. Sassower as the motive behind its retaliatory decision in *Sassower v. Field*. In that decision, a Second Circuit appellate panel, *sua sponte* and without notice, invoked the "inherent power" of the district judge in the case to uphold a $100,000 sanctions award against appellant on a record devoid of any sanctionable conduct by her. Such award was in favor of fully-insured defendants, to whom it was a "windfall", and whose litigation fraud and misconduct appellant had documented in an uncontroverted Rule 60(b)(3) motion against them, which was part of her appeal. The Circuit became complicitous in the appellate panel's decision by its denial of appellant's Petition for Rehearing with Suggestion for Rehearing *En Banc* and, several years later, by its factually and legally insupportable dismissal of her §372(c) misconduct complaint against its judicial author, by then its Chief Judge.

Immediately upon learning the identity of the panel assigned to the recusal/sanctions motion, appellant filed a further affidavit in which she asserted that its presiding judge was disqualified by reason of her direct participation in events identified by the motion as demonstrating the Circuit's actual bias.

The response of the panel, from which such disqualified judge did not recuse herself as presiding judge, was a one-word denial of the motion in its entirety, without reasons [A-32].

The Appeal: Appellant's Brief presented a sole transcending issue: the district judge's disqualifying "pervasive bias", "as evidenced by the course of the proceedings and the subject Decision" [A-143]. The Brief opened by asserting that the appeal was "not about good-faith error by the District Judge, but about a willful course of behavior", protecting the defendants who had no legitimate defense to the Complaint's material allegations, all substantiated by uncontroverted evidentiary proof. It concluded by requesting disciplinary and criminal referral of the district judge, as well as of defendants and the A.G. for fraud and obstruction of justice. In between, the Brief gave record references establishing that the Decision wholly misrepresented and falsified the course of the proceedings and the allegations of the Complaint. Its five-point legal argument demonstrated that the district judge's rulings and failures to rule on the motion submissions before him were all egregious and unsupported, both factually and legally. Point I argued that appellant's order to show cause for recusal and her reargument/renewal motion met the standard set by *Liteky v. U.S.*, 510 U.S. 540 (1994) [A-145-151]. Point II showed that the district judge's failure to rule on appellant's uncontroverted, fully-documented sanctions applications against defendants -- which he obliterated from the Decision -- was because doing otherwise would have exposed the very allegations of the Complaint which vitiated defendants' pleading defenses [A-152-162]. The Brief demonstrated the deliberateness with which the district judge, in his Decision, followed the defense stratagem of obliterating and falsifying these allegations. It annexed, as an appendix, a line-by-line analysis of the Decision's recitation of the Complaint, compared with the Complaint itself [A-177].

Point VB [A-166-176] highlighted that there was "not a scintilla of evidence" to support the district judge's *sua sponte*,

without notice, summary judgment to defendants -- and that the Decision identified no evidence of defendants' compliance with the jurisdictional and due process prerequisites of Judiciary Law §90 and NYCRR §§691.4 and 691.13(b)(1), which the Complaint had specifically alleged they had wilfully violated as to the medical examination order, the suspension order, and the unrelated disciplinary proceedings. It showed that defendants had not even purported compliance with these prerequisites. Nor could they, since their Answer -- the subject of one of appellant's unadjudicated sanctions applications -- had deferred to the Court for its interpretation of New York's attorney disciplinary law and of *Nuey* and *Russakoff*. Yet, as the Brief pointed out, the Decision did not interpret either §691.13(b)(1), the rule under which the examination order was issued, nor §691.4(l), the rule under which appellant was suspended, which it misrepresented as §691.13(b)(1)[6]. Nor did the Decision answer, address, or otherwise refer to the specific question that the district judge had asked the A.G. at the oral argument, *viz.*, whether the disciplinary law provided for "no hearing" [A-172]-- even though appellant's suspension, without a hearing, was the only violation which the Decision identified as alleged by appellant [A-37]. Nor did the Decision, which omitted any mention of *Nuey*, interpret *Russakoff*, which answered the question about no hearing provision [A-39].

Point VI(B) further pointed out [A-169] that special considerations govern §1983 actions asserting free speech claims, such as at bar, and that, notwithstanding *Rooker-Feldman*'s inapplicability by reason of the Complaint's material allegations of state court bias and due process denials, appellant's challenge to New York's attorney disciplinary law, as written, was not, as the Decision claimed, "inextricably intertwined" with her as-applied challenge [A-44-45]. Also noted was that the appeal presented an important opportunity for the Circuit to clarify the meaning of "inextricably intertwined" and to explore whether the *Rooker* doctrine was an anachronism [A-173-174].

Not a single fact or legal argument in the Appellant's Brief

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[6] This, in addition to misrepresenting the plain meaning of Judiciary Law §90(2) and 22 NYCRR §691.4(e)(5) so as to confer upon defendants Second Department and Grievance Committee the general disciplinary jurisdiction, which their Answer expressly denied [A-170]

was denied or disputed by respondents, whose Opposing Brief did not even refer to the Brief. Instead, the A.G. argued for affirmance by repeating the Decision's expurgated recitation of the Complaint -- including its misrepresentations[7] -- and by omitting from his presentation any reference to the district judge's *sua sponte*, without notice procedure for awarding defendants summary judgment based on their non-existent "voluminous" affidavits. Appellant's Reply Brief highlighted this and sought maximum sanctions under Rule 11 and 28 U.S.C. §1927, as well as disciplinary and criminal referral of defendants and their counsel for engaging in the same kind of litigation fraud on appeal as they had in the district court.

***The Oral Argument*[8]:** Appellant, who requested 20 minutes for oral argument, was given 5 minutes -- the least of any appeal on that day's calendar. Within the first minute, the Circuit panel judges interrupted appellant's prepared presentation with superficial

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[7] This included the Decision's false statements that the June 14, 1991 order suspending appellant's law license was pursuant to §691.13(b)(1) and that such suspension was pending her compliance with the October 18, 1990 order directing her to be medically examined. Appellant's uncontroverted Brief had set forth the true facts: The suspension order was pursuant to §691.4(l) and was unconditional -- as shown by the order itself, annexed to the Complaint [A-97]. Likewise repeated by the A.G. was the Decision's misrepresentation that the June 14, 1991 suspension order became "final" after the New York Court of Appeals denied leave to appeal the judicial defendants' dismissal of her Article 78 proceeding, cross-referencing her cert petition. Appellant's Brief had pointed out that the cert petition made no such assertion and emphasized throughout that the June 14, 1991 order is a "non-final", "interim" order.

[8] Two days before oral argument, the Center for Judicial Accountability, Inc. (CJA), the national, non-partisan, non-profit citizens' organization of which petitioner is co-founder and director, ran a public interest ad in the New York Law Journal, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", inviting the public to attend [A-261]. The ad was subsequently annexed to petitioner's recusal/Rule 60(b) vacatur for fraud motion. CJA's prior ad, "*Where Do You Go When Judges Break the Law?*", referred to therein as having been printed on the Op-Ed page of New York Times (10/26/94) and, thereafter, in the New York Law Journal (11/1/94)) [A-269], was part of the record before the district judge [R-606] -- relevant because it highlighted the Complaint's material allegations.

questions, charged against her time. Appellant's answers reiterated the record: that she had had no full and fair opportunity to litigate in the state forum, that her law license had been suspended without a petition, findings, reasons, a pre- or post-suspension hearing, and right of appeal; that the judicial defendants had subverted her Article 78 remedy by refusing to recuse themselves, that the suspension order was a fraud and judicial retaliation against her for exposing political manipulation of state judicial elections, and that the attorney disciplinary law was unconstitutional for failing to provide a right of appeal to interimly-suspended attorneys. Appellant reiterated her objection that the Circuit was disqualified for bias, as particularized in her prior motion [A-187-191]. From such oral recusal application, the presiding judge cut her off, mid-sentence, with no ruling, threatening to have her removed from the courtroom if she continued and refusing to allow her to offer a copy of her written statement, which she had been prevented from delivering as her oral argument.

***The Appellate Panel Summary Order* [A-21]:** Less than two weeks after oral argument, the appellate panel issued a not-for-publication Summary Order, signed by each of its three judges. It did not rule on appellant's recusal application -- nor even identify such application as having been made. None of the material facts presented by appellant at oral argument were included in the Summary Order -- although additionally alleged by the Complaint and documented by the record. Indeed, the Summary Order never once cited to the Complaint or the record. Its only citations were to the district judge's Decision, which it praised as "cogent", relying on its recitation of "the complex facts and procedural history of [the] case". The Summary Order also did not rule on or identify the sole transcending issue presented by appellant's Brief: the district judge's "pervasive bias". It expressly stated that it was not addressing the district judge's adjudications of the motion-submissions before him [A-24] -- all of which appellant had challenged as establishing that bias. Nor did it address or identify appellant's sanctions applications against defendants and the A.G. for their litigation misconduct on the appeal and in the district court.

Instead, the panel fashioned its own *sua sponte* without-notice

dismissal of appellant's Complaint -- presumably on the pleading[9], based on unidentified and non-existent state court "judgments" [A-25], which it falsely claimed had deprived appellant of her law license. As to these, it made no finding of jurisdiction, due process, or anything else. Such dismissal, for lack of subject matter jurisdiction under *Rooker-Feldman* and on unspecified preclusion principles, had been shown by appellant's Brief to be inapplicable to the Complaint's material allegations -- all of which the Summary Order expurgated, together with her arguments related thereto. Appellant's specific arguments on *Rooker-Feldman* [A-172-174], which the Summary Order purported to identify [A-25], were truncated to delete any mention of §691.4(l) [A-15], the facially-unconstitutional rule under which appellant was suspended by the judicial defendants' June 14, 1991 "interim" order [A-97], and of *Nuey* and *Russakoff*. Indeed, the Summary Order made no reference to any of the judicial defendants' attorney disciplinary rules or to the specific grounds for appellant's challenge to New York's attorney disciplinary law, as written and as applied to her.

***Appellant's Petition for Rehearing with Suggestion for Rehearing In Banc* [A-192]:** The issue presented by appellant's Petition for Rehearing with Suggestion for Rehearing *In Banc* was "the integrity of the judicial process". It posed the question: "...whether -- and to what extent -- appellate review and 'peer disapproval' are 'fundamental checks' of judicial misconduct, as claimed by the National Commission on Judicial Discipline and Removal in its 1993 Report -- and whether a remedy for such judicial misconduct exists under 28 U.S.C. §372(c)". The Petition asserted that the Circuit's answer would "demonstrate whether judicial discipline should be reposed, as it presently is, in the Circuit". A footnote stated that a presentation was being prepared for the House Judiciary Committee to remove judicial discipline from the federal judiciary [A-192].

The Petition particularized that the panel's Summary Order, like the district judge's Decision, was the product of judges who had wrongfully failed to recuse themselves for bias and who had used their

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[9] Yet the Summary Order "affirmed" [A-22] the district judge's Judgment, which disposed of the motion-submissions by, *inter alia*, granting summary judgment to defendants [A-34].

judicial office to protect the high-ranking judicial defendants and the A.G., who had freely engaged in litigation misconduct, including fraud, because they had no legitimate defense to the Complaint's material allegations -- obliterated by the Summary Order and Decision. The Petition incorporated by reference: (1) a fact-specific, documented motion to recuse the panel and Circuit, pursuant to 28 U.S.C. §455 and the 5th Amendment, to which was joined a motion to vacate for fraud the panel's Summary Order and the district judge's Judgment, invoking Rule 60(b)(3), (6), and the Court's inherent power [A-206]. Annexed to appellant's 43-page supporting affidavit was a transcript of the oral argument before the appellate panel and a line-by-line analysis of the Summary Order, as compared with the record, establishing it to be a fraud; [A-221]; and (2) fact-specific, documented §372(c) judicial misconduct complaints against the appellate panel [A-251] and district judge [A-242] for their protectionism of the state defendants and their failure to recuse themselves for bias. The complaints also specified the grounds for the Circuit's recusal for bias and self-interest [A-243-245, A-255-258]. As to the Circuit's Chief Judge, the complaints asserted that he was "absolutely disqualified", identifying his direct participation in *Sassower v. Field* [A-251, A-247]. Petitioner requested that any question as to the Circuit's duty to transfer the complaints and the federal judiciary's duty to investigate them be certified to the U.S. Supreme Court, pursuant to 28 U.S.C. §1254(2) [A-251]. As to appellant's entitlement to a §372(c) investigation, the complaints asserted that allegations of biased, bad-faith conduct are not "merits-related", that even "merits-related" complaints are not required to be dismissed under the §372(c) statute, and that the discretion to review "merits-related" complaints "is particularly warranted where judicial and appellate remedies are unavailable -- or, as at bar, unavailing by reason of the protectionism and self-interest complained of." [A-247]. The complaints stated that in the absence of judicial/appellate remedies in the Circuit, any order dismissing the complaints on "merits-related" grounds should define "merits-relatedness" in the context of complaints alleging bad-faith, biased conduct that is egregious, including clarification of the relationship between disciplinary and judicial/appellate remedies. The complaints concluded with the assertion:

> "Should it be maintained that the sole avenue for review of deliberate, on-the-bench misconduct by Circuit judges is in the U.S. Supreme Court -- then the dismissal order should state as much so that the Supreme Court can more fully appreciate -- and make appropriate provision for -- its transcendant appellate and supervisory obligation...." [A-260]

Defendants filed no response. The Circuit's response was as follows: In a one-word order, unsigned by any judge, appellant's recusal/Rule 60(b) vacatur for fraud motion was denied, without reasons [A-33]. The Circuit Chief Judge dismissed her §372(c) complaints in an order [A-28] which failed to address, or even identify, that the complaints had asserted that he and the Circuit were disqualified for bias and self-interest. His dismissal, on "merits-related" grounds, was without any reference to the facts presented in the complaints as bearing upon appellant's entitlement to disciplinary review. Omitted was the fact that the district judge's bias had not been adjudicated by the appellate panel and that the panel had itself had been the subject of a recusal application, which it had not adjudicated and then not adjudicated with reasons when it denied appellant's recusal/Rule 60(b) vacatur motion [A-33]. Likewise omitted was all mention of appellant's post-appeal judicial proceedings -- and their outcome, including the Circuit's failure to request a vote on appellant's Petition for Rehearing with Suggestion for Rehearing *In Banc* in the very period the complaints were pending [A-27]. No venue for review of the purportedly "merits-related" judicial misconduct was identified by the Chief Judge's dismissal order. This was highlighted by appellant's Petition for Review to the Second Circuit Judicial Council [A-272], which particularized the innumerable respects in which the Chief Judge's order was factually and legally dishonest and *prima facie* proof of his disqualifying actual bias and self-interest [A-282-292]. Appellant reiterated her request that any question as to the Circuit's duty to transfer the §372(c) complaints and the federal judiciary's duty to investigate them be certified to this Court [A-292-293]. The Circuit Judicial Council responded by denying the Petition "for the reasons stated in the order of the Chief Judge" [A-31] and advised appellant "there is no further review".

REASONS FOR GRANTING THE WRIT

This petition is not about judicial error or good-faith decision-making by Second Circuit judges. It is about the Second Circuit's corruption of the judicial process, the appellate process, and the §372(c) disciplinary process -- to such a degree that all adjudicatory and ethical standards have been wiped out. The "Statement of the Case" only summarizes the subversion of the rule of law that has occurred on the district and circuit levels. Yet, it suffices to show that what is involved is criminal conduct by federal judges. Their decisions, when compared to the record, are readily verifiable as frauds and *prima facie* evidence of their disqualifying actual bias, for which their disqualification had been sought.

Such conduct, undermining the integrity of the judiciary and public confidence, would be egregious in any case. It is all the more so in a civil rights action under 42 U.S.C. §1983 -- a remedy specifically created by Congress to protect citizens from having their constitutional rights trampled on by government officials, acting "under color" of state law.

The whole purpose behind "lifetime" tenure for federal judges is to provide them with a maximum of judicial independence so that they can fearlessly address constitutional violations, even when committed by high government officers -- including judges. Yet, here, both the Second Circuit and the district judge used their "lifetime" judicial offices not to examine the allegations of lawless and retaliatory conduct by state officials -- as was their solemn duty -- but to conceal the heinous violations petitioner's verified Complaint alleged and her uncontroverted evidentiary proof substantiated. They thereby protected those state defendants from the absolute liability they faced for their constitutionally-tortious and corrupt conduct, the gravamen of the Complaint.

The state defendants' conscious knowledge of that liability is clear from the litigation strategy they employed, resting on fraud [A-152]. Such misconduct was wholly endorsed by the lower federal courts, which not only failed to take corrective steps on their own initiative under Rule 11(c)(1)(B) [A-7] or by exercise of inherent power, but failed to adjudicate petitioner's documented and uncontroverted sanctions applications, whose very existence, like the allegations of the Complaint, they obliterated from their decisions [A-

202, A-242, A-253].

The fact that the state defendants protected by the district judge and Circuit include high-ranking state judges only reinforces the public perception that "judges cover up for judges". This case is "EXHIBIT A" for that viewpoint. It shows not only how federal judges cover-up for state court judges, sued in §1983 actions, but how federal judges cover up for federal judges, whether their misconduct is raised by recusal motions, by appeal, by §372(c) disciplinary complaints, or by monitoring requests to supervisory judges.

As such, this case allows the Court to confront that legitimate public perception and do so in a way that is meaningful -- by reinforcing and clarifying the recusal statutes under 28 U.S.C. §§144 and 455 (*see* Point II, *infra*) and by articulating the operative principles for disciplinary review under 28 U.S.C. §372(c). Indeed, as to §372(c), only in the rarest case, such as this, where the §372(c) judicial misconduct complaints are incorporated into the record before the Circuit and are an integral part of the questions raised in a petition for rehearing before it, would this Court have the opportunity to give guidance to the Circuits on summarily-dismissed §372(c) complaints. The Circuits are in dire need of guidance from this Court. In the 18 years since Congress enacted §372(c), they have not developed any case law on the interface between appellate and disciplinary remedies, or defined the "merits-related" ground for dismissal under §372(c), or the discretion afforded by the statute to review even "merits-related" complaints [A-4]. The deliberateness with which they have not done so -- leaving the "merits-related" category vague so as to dump virtually all complaints on that ground and promulgating statutorily-violative implementing rules [A-10] -- is underscored by the Second Circuit's disposition of the §372(c) complaints herein, where petitioner expressly challenged it to address these threshold issues.

Once this Court reinvigorates these critical statutory remedies, whose purpose, before they were judicially-gutted, was to enhance judicial integrity and public confidence, it can move on to the merits of this §1983 action so as to resuscitate that civil rights statute. This includes articulating, loud and clear, the predicate facts that must exist for invocation of defenses that are routinely used, without essential findings of those predicate facts, to toss out §1983 actions -- as well as re-examining some of these defenses, among them, judicial immunity -- particularly where appellate remedies are unavailable or

subverted [A-110] -- and whether changed times and circumstances warrant reformulation of the *Rooker* doctrine [A-174]-- both of which have resulted in federal and state judicial unaccountability at bar.

The Court will also, at long last, be able to address the unconstitutionality of New York's attorney disciplinary law. Nearly 25 years ago, Judge Jack Weinstein dissented from a 3-judge district panel in *Mildner v. Gulotta*, 405 F.Supp. 182, 191 (E.D.N.Y 1975), to hold it unconstitutional. As stated in petitioner's prior Petition for a Writ of Certiorari, the pertinent extracts from which are included in the Appendix herein [A-118-131],

> "[t]his Court affirmed *Mildner*, without opinion, on the issue of abstention -- never reaching the transcendent issues as to the constitutionality of Judiciary Law §90. Yet, Justices Marshall and Powell apparently agreed with the view of concurring Judge Moore of the District Court that 'the constitutional question is of sufficient importance to be resolved by our highest court...' (at 199). This Court's Memorandum Decision in *Mildner* shows that those two justices wished to 'postpone consideration of the question of jurisdiction to a hearing of the case on the merits.' 425 U.S. 901 (1976)." [A-118]

This case is the right vehicle to address definitively the constitutional issues not there addressed because there were no bias claims against the state tribunal. As graphically depicted by the verified Complaint [A-49], those claims are here present in profusion.

POINT I

A. This Court's Power of Supervision is Mandated

Under its Rule 10.1, this Court has a "power of supervision" to grant review "when a United States court of appeals...has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court...".

Because this case meets that standard on both counts, the *pro se* petitioner has perfected this Petition for a Writ of Certiorari, at

impeachment, such referral should identify that judges who render dishonest decisions – which they *know* to be devoid of factual or legal basis -- are engaging in criminal and impeachable conduct.

As to New York's Attorney General, whose litigation fraud in the district court was the subject of petitioner's fully-documented and uncontroverted sanctions applications -- all unadjudicated -- and whose continued litigation fraud before the Circuit was the subject of her further fully-documented and uncontroverted sanctions applications -- denied by the Circuit, without reasons -- appropriate disciplinary and criminal referral must also be made. Otherwise, the public will continue to believe that New York's highest law enforcement officer, himself a defendant, is not restrained by the legal and ethical standards of conduct applicable to other lawyers [A-261].

POINT II

It is a Denial of Constitutional Due Process and Judicial Misconduct *Per Se* for a Court to Fail to Adjudicate, or to Deny Without Reasons, Fact-Specific, Documented Recusal Motions.

Over and again, this Court has held that "a fair trial in a fair tribunal is a basic requirement of due process", *In re Murchison*, 349 U.S. 133, at 136 (1955). In *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 821 (1986), the Court reiterated that "it certainly violates the Fourteenth Amendment...to subject [a person's] liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case". Justice Brennan reinforced this principle in his concurrence, stating that he did not interpret this to mean that only such interest would constitute a due process violation (at 829-830). The Court, in *Aetna*, further recognized that "in extreme cases" a judge's personal bias or prejudice can also violate constitutional due process rights (at 821). Assuredly, "pervasive bias", reaching the "impossibility of a fair trial" standard articulated by the Court's majority in *Liteky*, *supra*, presents such an "extreme" case.

Since this type of recusal motion, by its very nature, raises constitutional issues, a court cannot leave such motion unadjudicated, without compounding the potential constitutional violation. The inference reasonably drawn from a court's failure to rule on such due

process-determining motion is that it cannot meet the constitutional issues presented as to its bias. Likewise this is the inference where it denies the motion, without reasons.

Congress strengthened the self-executing judicial code provisions of disqualification by enacting 28 U.S.C. §455. The onus is not on the litigant to move for a judge's disqualification under warranted circumstances, but on the judge. Only as to §455(a) [A-3], providing for disqualification where a judge's "impartiality might reasonably be questioned", is there a provision for parties to waive the ground of disqualification -- and then only after full, on-the-record disclosure. It is *a fortiori* that where a recusal motion is made under the non-waivable §455(b) or what might be construed as subsumed within its ambit, the subject judge -- unless he grants the disqualification motion -- must respond with reasons that would be appropriate disclosure under §455(b), if waiver were permitted.

In *Liljiberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1987), the Court more than once stated: "The very purpose of §455 is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible. See S.Rep. No. 93-419, at 5; H.R. rep. No. 93-1453, at 5." (at 865). Plainly, as to a motion made under §455(a), where a judge's impartiality might "reasonably be questioned", the very word "reasonable" contains within it the word "reason". Once a reasoned basis is given for a judge's recusal -- one persuasive to the "objective observer" -- the judge must provide reasons that would counter those proffered for "reasonably" questioning his impartiality. Doing otherwise makes a travesty of the statute designed to foster confidence in the judiciary.

At bar, petitioner made recusal applications at various stages of the litigation: against the district judge, the Chief Judge of the district, the Second Circuit, specific Second Circuit judges, and against the appellate panel. These applications, based not just on the appearance of bias, but its actuality, were fact-specific and documented. Yet, all were either ignored without adjudication or denied without reasons, except in the case of petitioner's order to show cause under §§144 and 455 for the recusal of the district judge, and her motion for reargument thereof, which the district judge denied for reasons whose falsity was demonstrated on appeal [A-148], but not adjudicated by the appellate panel's Summary Order [A-21]. Indeed, the Summary Order not only did not adjudicate whether, as

petitioner contended, those recusal applications met the *Liteky* standard [A-146], but did not adjudicate or even identify the sole overarching issue of the appeal [A-143], to wit, the district judge's "pervasive bias", even apart from his wrongful denial of the recusal order to show cause and reargument motion. At the same time, the appellate panel did not adjudicate or even identify petitioner's application for its own disqualification. To this perversion of petitioner's constitutional right to an unbiased tribunal, the Second Circuit gave its imprimatur by failing to request a vote on her *In Banc* suggestion [A-27], where, additionally, her Petition for Rehearing showed that the panel's Summary Order, no less than the district judge's decision, was totally devoid of factual or legal support [A-192]. The result was a further violation of petitioner's constitutional rights under the due process clause (*Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960). In failing to grant *In Banc* review, the Circuit neither ruled on, nor identified, that its own disqualification was sought as part of that *In Banc* Petition [A-205], the basis for which was further particularized by petitioner's incorporated-by-reference recusal/Rule 60(b) vacatur for fraud motion. Such motion was separately denied, without reasons [A-33].

As this case shows, the Second Circuit's disregard for threshold disqualification issues is not confined to judicial/appellate contexts. It infects the §372(c) disciplinary mechanism at its highest echelon. Thus, the Chief Judge, whose absolute disqualification for bias and self-interest petitioner asserted in the §372(c) complaints themselves [A-251, A-247], dismissed them in an order [A-28] which failed to adjudicate or identify such issue as to himself or as to the Circuit, against which it was also asserted in the complaints. Likewise, the Second Circuit Judicial Council, which upheld the Chief Judge's dismissal [A-31], failed to identify, or adjudicate, such disqualification issues, focally reiterated in petitioner's Petition for Review [A-272-281] -- together with her showing that the dismissal of her §372(c) complaints was legally and factually insupportable and that she was entitled to disciplinary review of the bias of the district judge and of the appellate panel, as to which she had been unable to obtain rulings or rulings with reasons, *via* normal judicial/appellate channels [A-282-292]. This failure to address the disqualification issues was in the face of petitioner's explicit contention that:

> "where, as at bar, a recusal application is 'not frivolous or fanciful, but substantial and formidable', it is misconduct for judges to deny it *without any reasons or findings as to its sufficiency*. It is certainly misconduct *per se* for judges not to confront bias issues squarely before them for adjudication..." [A-258, A-277, emphasis in original].

It is inconceivable that any "objective observer" knowing these skeletal facts would have a shred of confidence in, let alone respect for, the federal judiciary. Certainly, were such "objective observer" to be given the full facts, including the opportunity to compare the complained-of court decisions with the record, he would waste no time in calling for disciplinary and criminal investigations -- and impeachment of the federal judges involved.

In *Liteky*, the Court viewed the bias allegations as so insubstantial that the majority disposed of them in two paragraphs. The minority agreed that was all that was required because they were "unimpressive" (at 1163). This case, by contrast, presents substantial bias allegations of all varieties: extrajudicial, intrajudicial, actual, and apparent, under §§144, 455, and the Fifth Amendment, in judicial, appellate, and disciplinary contexts -- on a record which is both perfectly protected and relatively compact. As such, it permits the Court to move away from the confusing theoretical abstracts of *Liteky*, which hardly provide a practical guide for the profession or the public, and to grapple with substantive facts to illuminate the meaning of its "impossibility of a fair trial" standard for intrajudicial bias, as well as the "appearance of impropriety" standard for extrajudicial bias. This, in addition, to exploring its own mistaken assumptions about judicial bias, particularly of the intrajudicial nature.

Here presented in one case is an unparalleled opportunity for the Court to address a range of recusal questions, with which it has never dealt -- and perhaps dodged. The "objective observer" might find it startling that, notwithstanding the critical and ever-recurring nature of judicial disqualification issues, some of the most basic procedural and adjudicative questions pertaining to both §§144 and 455, individually and in combination, have not been resolved by this Court. The result is an irreconcilable confusion within the Circuits

uniformly reflected by the treatises and law review articles[12]. Indeed, the uniformity achieved by this Court's failure to take cases involving §§144 and 455 is the consistent view by scholars that these vital statutes have been reduced to complete ineffectiveness by the strict interpretations imposed by the lower federal courts, contrary to normal rules of construction for remedial legislation:

"There is general agreement that §144 has not worked well." Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d §3542, at 555, citing law review articles and quoting from *Statutory Disqualification of Federal Judges*, David C. Hjelmfelt, Kansas Law Review, Vol. 30: 255-263 (1982): "Section 144 has been construed strictly in favor of the judge...Strict construction of a remedial statute is a departure from the normal tenets of statutory construction."; Because of this strict construction, "disqualification under this statute has seldom been accomplished", initially and upon review, Flamm, *op. cit*, at 737, "...§144's disqualification mechanism has proven to be essentially ineffectual." Flamm, *ibid*, at 738; "While the text of sections 144 and 455 appear to create a relaxed standard for disqualification that would be relatively easy to satisfy, judicial construction has limited the statutes' application, so that recusal is rare, and reversal of a district court refusal to recuse, is rarer still.", Charles Gardner Geyh, "*Means of Judicial Discipline Other Than Those Prescribed by the Judicial Discipline Statute, 28 U.S.C. Section 372(c)*", Research Papers of the National Commission on Judicial Discipline and Removal, Vol. I, at 771 (1993).

CONCLUSION

This Petition for a Writ of Certiorari should be granted, with such other and further relief as this Court deems just and proper.

Doris L. Sassower

DORIS L. SASSOWER, Petitioner *Pro Se*

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[12] e.g.,"The uncertainty regarding how §§144 and 455 are supposed to interact has generated considerable confusion. For example, it has yet to be firmly resolved whether the procedural requirements set forth in §144 are also to be applied to motions made under §455.", Flamm, *op. cit*, at 741.

Sassower v. Mangano, et al.
S.Ct. #98-106

ERRATA SHEET: CERT PETITION

p. 7: third line from the bottom, after the word "license":

insert "in the Southern District"

p. 30: footnote 12 and text:

Omitted is the title of the treatise authored by Richard E. Flamm, Judicial Disqualification: Recusal and Disqualification of Judges, Little, Brown & Company (1996)

* * *

ERRATA SHEET: CERT APPENDIX

A-137: second line of Petitioner's Martindale-Hubbell Law Listing:

The correct year of Petitioner's admission to the NY bar is 1955

A-207 and A-221: Caption Headings:

The correct filing date for Petitioner's Recusal/Rule 60(b) Motion to Vacate for Fraud is October 10, 1997