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January 26, 1998

Jerome J. Shestack, President
American Bar Association
c/o Wolf, Block, Schorr & Solis-Cohen
12th Floor Packard Building
S.E. Corner 15th & Chestnut Streets
Philadelphia, Pennsylvania 19102-2678

RE: Upholding Standards of Ethics and Professionalism at the ABA

Dear Jerry:

Congratulations on taking the helm as President of the American Bar Association, a well-earned honor, for which you worked with dedication for the 25 years I have known you[1]. May you have great success in bringing all your high hopes and those of your supporters to fruition!

The ABA is in *dire* need of the kind of leadership you can provide, coming from the background you do as former Chairman of its Section on Individual Rights and Responsibilities. I was heartened by your focus on professionalism, as stated in your first message as President in the September 1997 ABA Journal. You approvingly quoted Roscoe Pound's classic definition of that term[2]. Among the essential components you cited were "fidelity to ethics and integrity as a meaningful commitment", "civility", and a "commitment to improve the justice system and advance the rule of law".

It was because we wanted to give you a "running start" on these issues that exactly a year ago, after the

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[1] You may recall signing my petition back in 1976, when I entered the race to become the ABA's first woman Assembly Delegate.

[2] I am a Life Fellow of the Roscoe Pound Foundation and have been one for many years.

January 1997 ABA Journal reported ("Nourishing the Profession", at p. 52) your intention not only to make professionalism a "cornerstone" of your tenure, but to "go beyond the report" of the Professionalism Committee of the Section on Legal Education and Admission to the Bar" and "implement a comprehensive three-year plan on improving professionalism in every section and committee", that my daughter, Elena, as Coordinator of the Center for Judicial Accountability, Inc. (CJA), sent you a copy of her January 17, 1997 letter addressed to then ABA President N. Lee Cooper. That letter reported the grossly unprofessional conduct of the ABA Center for Professional Responsibility, its four constituent Standing Committees on Ethics and Professional Responsibility, Professional Discipline, Professionalism, and Lawyer Competence, as well as of its affiliated Association of Professional Responsibility Lawyers (APRL).

To these entities we had provided a copy of my February 1995 cert petition to the U.S. Supreme Court, whose single issue presented was the unconstitutionality of New York's attorney disciplinary law, as written and as applied to me. The cert petition chronicled the most heinous violation of my constitutional rights: the immediate, indefinite, and unconditional suspension of my law license, in June 1991, *without written* charges, *without* findings, *without* reasons, *without* a hearing, *without* any right of appeal, in retaliation for my *pro bono* challenge to the political manipulation of judicial elections in New York. Highlighting this retaliation was CJA's public interest ad, "*Where Do You Go When Judges Break the Law?*", published on the Op-Ed page of the October 26, 1994 New York Times and, thereafter in the New York Law Journal (Exhibit "A-1") -- copies of which we provided to the leadership of the ABA, including of these entities. Nonetheless, despite the serious threat to the legal profession and society at large, represented by an unconstitutional attorney disciplinary law and its misuse to retaliate against a judicial whistle-blowing attorney, the leadership of these ABA entities refused to comment on the cert petition and, without explanation, refused to place it on their agendas for consideration by their membership as to appropriate steps to be taken. This, notwithstanding I followed all the prescribed procedures for ABA consideration, including for *amicus curiae* assistance before New York's highest state court and in my §1983 federal civil rights action, both challenging New York's attorney disciplinary law, as written and as applied. Nor would they place on their agendas, or otherwise address, the finding of the National Commission on Judicial Discipline and Removal as to the "widespread reluctance" of lawyers to report judicial misconduct for fear they will suffer adverse consequences and CJA's request that the ABA develop "implementing structures" to advance the National Commission's proposed solution, to wit,

> "the birth and nourishment of a culture in which the bar stands together...in defending lawyers against retaliation against vindictive judges". (p. 101, Report of the National Commission on Judicial Discipline and Removal, annexed as Exhibit "C" to Elena's February 8, 1996 memorandum).

Instead, the ABA entities ignored our written communications and then viciously mistreated Elena at the February and August 1996 ABA Conventions, when she sought to ascertain the status of our long-standing, unresponded-to requests for ABA consideration and assistance.

This inexcusable mistreatment of Elena was contemporaneously detailed by her February 8, 1996 memorandum, addressed to the Center for Professional Responsibility and its four constituent committees[3], as well as by her September 18, 1996 letter, addressed to President Timothy Burke of the Association of Professional Responsibility Lawyers (APRL), also sent to the ABA entities[4]. No one denied or disputed what she particularized as having occurred at those Conventions. Copies of each were enclosed with her January 17, 1997 letter to President Cooper. Also enclosed was her January 17, 1997 memorandum addressed to the Center for Professional Responsibility and constituent committees, reiterating our call that they place on their agendas the issues highlighted by our prior correspondence.

We received *no* response from President Cooper or from you to this gravely serious correspondence, nor to the subsequent correspondence we sent both of you -- a copy of my January 24, 1997 letter to Herbert Sledd, Chairman of the Fellows of the American Bar Foundation (ABF). That letter detailed the unprofessional conduct of the Bar Foundation's leadership in disregarding the vote of its membership at its 1996 Business Meeting, instructing its Research Director, Brian Garth, to review my cert petition and render a report as to the constitutional issues and the responsibility of the organized bar to take appropriate action, as well as its disregard of my subsequent communications on the subject. Indeed, the ABA's *only* response to our January 1997 correspondence, chronicling, without controversion, shameful and appalling conduct by lawyers in ABA leadership positions were two January 28, 1997 letters from the ABA's Deputy General Counsel, Catherine Daubert, which were themselves shameful and appalling. The first, addressed to Elena, informed her, without explanation, that the issues which her January 17, 1997 memorandum to the Center for Professional Responsibility and constituent committees, requested be placed on the agenda would not be and, additionally, that she would not be permitted to register for the ABA midyear Convention or attend its meetings based on her "past conduct". The second letter, addressed to me, unceremoniously informed me, without any prior notice, that my ABA membership was terminated by reason of my suspension, which it falsely characterized as

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[3] The February 8, 1996 memorandum was also sent to then ABA President Roberta Cooper Ramo and to Marna Tucker, then Chair of the Fellows of the American Bar Foundation. My daughter's March 19, 1996 coverletter to them called their attention to the failure of the ABA Center for Professional Responsibility and constituent committees to meet "even minimal standards of professional responsibility and ethics" and expressly requested their assistance. We received *no* response from them.

[4] The September 18, 1996 letter was sent to the Center for Professional Responsibility and its constituent committees under a September 20, 1996 coverletter.

a "final" order[5].

These two letters, as well as my responding January 28, 1997 letter to ABA Deputy General Counsel Karen Blasingame, protesting her rude and unprofessional conduct, including hanging up on both me and on my daughter when we immediately telephoned the office of ABA Counsel to try to provide it with the true facts, as substantiated by documentary proof, are annexed to my January 29, 1997 letter to Carol Murphy, the American Bar Foundation's Staff Director. You were an indicated recipient of that letter, although it may not have been distributed to you, as was requested. A copy is therefore enclosed so that you can see for yourself the disgraceful manner in which the ABA wrongfully terminated my membership and a concocted false and defamatory pretense for excluding my daughter from attendance at ABA meetings.

Since then a whole year has passed. In that entire time, no one in ABA leadership, the Fellows of the American Bar Foundation, the Center for Professional Responsibility, nor the constituent ABA committees on ethics, professional responsibility, and discipline has responded to our January 1997 correspondence. The *only* response, other than the aforesaid wrongful termination of my ABA membership and exclusion of my daughter, was a January 24, 1997 two-sentence letter from the President Burke of APRL (Exhibit "B"), enclosing that organization's Certificate of Incorporation and By-Laws. Those documents belie the two-sentences in his previous September 25, 1996 letter[6] stating that "APRL is not in a position to pursue the matters raised in [our September 18, 1996] letter" to him. In fact, they establish precisely what that letter had alleged as to APRL's former President Ellen Pansky, to wit, that she had LIED when she claimed in her August 7, 1996 letter[7] to my daughter that APRL had "no authority to provide assistance...[or] to file *amicus* briefs." -- a position she claimed was based on review of APRL's Certificate of Incorporation and By-Laws by its Board of Directors. APRL's Board of Directors could *not* have come to such conclusion based on those documents since they give *explicit* authority to APRL to have provided assistance, including *amicus* support (Exhibit "B"). Of course, as my daughter's September 18, 1996 letter pointed out, the Director of the Center for Professional Responsibility, Jeanne Gray, had herself LIED when, in trying to pass off responsibility from the ABA to APRL for the serious issues presented by my daughter's February 8, 1996 memorandum, she stated --

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[5] The June 14, 1991 court order suspending my law license is an "interim" order -- a fact highlighted by my cert petition, which annexed a copy -- as well as by my ABA correspondence, including my January 24, 1997 letter to ABF Chairman Sledd.

[6] Annexed as Exhibit "B"to my daughter's January 17, 1997 memorandum to the Center for Professional Responsibility and affiliated committees.

[7] Annexed as Exhibit "A" to my daughter's September 18, 1996 letter to APRL President Burke.

by a February 14, 1996 letter[8] -- that she would contact APRL and its then President Pansky about providing me assistance. Indeed, as my daughter's September 18, 1996 letter recites, Ms. Pansky knew nothing about our requests for assistance. The foregoing recitation should suffice to make you understand that the exalted heights of professionalism to which you wish to hold the ABA and its committees are more in the realm of rhetoric than reality. The very entities within the ABA charged with promulgating and espousing standards of honesty, decency, and civility are controlled by a leadership which shamelessly jettisons the most *minimal* standards of ethics and professional responsibility so as to ignore -- without explanation or by misrepresentations and outright lies -- the transcending issues before them, affecting not just the rights of a single ABA member, but of thousands of New York lawyers, the profession, and, indeed, society as a whole.

These larger societal issues now include the obligation of the organized bar to act in the face of evidentiary proof that the judicial process on the federal level has been corrupted. No longer is the judicial corruption responsible for my retaliatory suspension and its unlawful perpetuation confined to the state level. This is highlighted by CJA's public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "A-2"), which appeared in the August 27, 1997 New York Law Journal two days before oral argument of my appeal to the Second Circuit from the district court's summary judgment dismissal of my §1983 federal action challenge to New York's attorney disciplinary law, as written and as applied. Events at the argument -- and subsequent thereto -- dramatically demonstrate the Second Circuit's unabashed subversion of any semblance of the rule of law and administration of justice. This is fully-documented by the post-appellate proceedings, which are enclosed with the rest of the record so that you can direct this important public-interest case to appropriate ABA committees for *amicus* and other assistance. This should include referral to *each* of the ABA entities which had comprised the ABA Task Force on Judicial Removal, charged with monitoring the work of the National Commission on Judicial Discipline and Removal: the National Conference of Federal Trial Judges, JAD; Appellate Judges Conference, JAD; Standing Committee on Judicial Selection, Tenure and Compensation; Standing Committee on Federal Judicial Improvements; the Standing Committee on Ethics and Professional Responsibility; and Section of Litigation. An inventory of the case file transmittal is annexed as Exhibit "C".

As the very first page of my Petition for Rehearing with Suggestion for Rehearing *In Banc* to the Second Circuit states, this case is not only *en route* to the U.S. Supreme Court on a petition for a writ of certiorari, but will be presented to the House Judiciary Committee to refute the National Commission on Judicial Discipline and Removal's conclusions about the adequacy of "peer disapproval" and the "appellate process" as "fundamental checks" of judicial misconduct -- and to establish how unabashedly the federal judiciary has eviscerated the recusal statutes, 28 U.S.C. §144 and §455. In that regard, I ask you to *personally* examine -- in addition to my Petition for Rehearing with Suggestion for Rehearing

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[8] Annexed as Exhibit "D"to my daughter's September 18, 1996 letter to APRL President Burke.

In Banc -- the other post-appellate proceedings: my October 10, 1997 recusal/vacatur for fraud motion, and my two incorporated-by-reference judicial misconduct complaints against the district judge and against the Second Circuit panel, filed under 28 U.S.C. §372(c), "the 1980 Act".

As you know, the ABA Task Force on Judicial Removal rendered a Report to the House of Delegates in February 1994, endorsing "generally" the National Commission's recommendations as "seem[ingly] sound and likely to make the processes of judicial discipline and removal more effective and efficient". It specifically endorsed three Commission recommendations to improve the 1980 Act (Exhibit "D"). These three recommendations were then approved by the ABA, including the recommendation that the Circuit Councils establish committees, broadly-representative of the bar and possibly including "informed lay persons", to assist in handling §372(c) complaints and whose function would include "to defend...lawyers against retaliation by judges". Yet, as of this date, the Second Circuit has no such committee and, according to Jeffrey Barr, the Assistant General Counsel at the Administrative Office and its "point man" on judicial discipline issues, there are no such committees in the other Circuits. This, notwithstanding that in March 1994 the Judicial Conference agreed to recommend to the Circuits and relevant courts that they consider the creation of such committees "or other structures or approaches" for "the purpose of assuring that justified complaints are brought to the attention of the judiciary without fear of retaliation". Nor has the federal judiciary followed through with the other specific ABA-endorsed recommendation that it create and disseminate a body of precedential decisions relative to §372(c) complaints -- albeit the Judicial Conference endorsed reasoned decisions and agreed to urge that precedential orders be submitted for publication to West Publishing Company and Lexis. Mr. Barr, while conceding that he does not believe that there are more than a handful of precedential opinions that have been published beyond the 15 referred to in his underlying 1993 study for the National Commission on Judicial Discipline and Removal[9], to which he served as consultant, has refused to run an electronic WestLaw/Lexis search so as to verify the precise number.

Last year, in its much heralded report, the ABA's Commission on Separation of Powers and Judicial Independence did *not* identify the federal judiciary's failure to implement these two important recommendations relative to the 1980 Act[10]. This ABA Commission -- on which the former Chairman of the National Commission on Judicial Discipline and Removal, Robert Kastenmeier sat as a member

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[9] Research Papers of the National Commission on Judicial Discipline and Removal, Vol. I, "*Judicial Discipline: Administration of the 1980 Act*", at p. 544.

[10] As to the third recommendation to increase awareness of the 1980 Act, the *only* recommendation identified by the ABA Commission on Separation of Powers and Judicial Independence in the body of its Report states that efforts by state and local bar associations to elicit such awareness "have not been forthcoming" (Exhibit "E", p. 58).

and whose "reporter", Charles Gardener Geyh, had been a liaison to the National Commission[11] -- lauded the National Commission's examination of the 1980 Act as "rigorous" (Exhibit "E", at p. 34) and "a careful, empirical study" (Exhibit "E", at p. 59) and described the Act as "a powerful mechanism for holding judges accountable for misconduct" (Exhibit "E", at p. 59).

Since the data from which the National Commission based its conclusions as to the efficacy of the 1980 Act is *not* publicly-accessible -- because the federal judiciary made complaints filed thereunder "confidential" -- the ABA should be interested in an unobstructed view of how complaints are actually handled. The Second Circuit's disposition of my §372(c) complaints against the district judge and Second Circuit panel would be a good start -- beginning with whether, as I have requested, the complaints are transferred to another Circuit.

As the 1997 Report of the ABA Commission on Separation of Powers and Judicial Independence identifies (Exhibit "E", pp. 34, 59), the House Judiciary subcommittee has already held a hearing on legislation that would amend the §372(c) statute to require transfer of judicial misconduct complaints to different circuits for resolution (H.R. 1252, §4). It appears that the ABA Commission believes that this legislation and others would be defeated were Congress familiar with the National Commission's Report. In that context, the ABA Commission expressly recommended that:

> "Congress should hold hearings on and consider appropriate responses to the 1993 Report of the National Commission on Judicial Discipline and Removal. That process should be completed before Congress considers any proposals for additional legislation or constitutional amendments in the area of judicial discipline and removal." (at p. 59).

We agree with the ABA Commission that Congress should hold hearings on the National Commission's Report -- and have already notified the House Judiciary Committee of our endorsement of that recommendation. Such hearings, however, will convince Congress that it has been disserved and deceived by the National Commission's Report as to the adequacy of existing disciplinary and removal mechanisms and that sweeping change is required[12]. In the event you have not seen Elena's article about

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[11] Professor Geyh's consultant's study to the National Commission, entitled "*Means of Judicial Discipline Other than Those Prescribed by the Judicial Discipline Statute, 28 U.S.C. §372(c)*", is reprinted in Research Papers of the National Commission on Judicial Discipline and Removal, Vol. I, pp. 713-866. As to the efficacy of the recusal statutes, 28 U.S.C. §144 and §455, Professor Geyh's study asserted: "...judicial construction has limited the statutes' application, so that recusal is rare, and reversal of a district court refusal to recuse, is rarer still." (at p. 771).

[12] It has also been deceived by the National Commission's presentation on the subject of the federal judicial appointments process. The inadequacy of screening of judicial candidates, both *pre*-nomination and *post*-nomination, including the *pre*-nomination screening performed by the

the National Commission's methodologically-flawed and dishonest Report, including her description of our *direct, first-hand* experience with the National Commission, the House Judiciary Committee, and the Administrative Office of U.S. Courts, published in the Massachusetts School of Law's journal, The Long Term View, a copy is annexed (Exhibit "F"). We invite the ABA to comment on the article *in advance* of such congressional hearings -- and would be pleased to provide the substantiating documentation on which the article is based. Congress would undoubtedly find it extremely useful if the ABA would also place its comments about the article in the context of what is demonstrated by the enclosed file of my §1983 federal action, including the two §372(c) judicial misconduct complaints it contains. We firmly believe that Congress will be more interested in the ABA's response to the readily-verifiable specifics of flagrant judicial corruption on state and federal levels, documented by that file, rather than in the generalities that characterize its Commission's 1997 Report[13]. We also believe that Congress will want the ABA to explain its wilful refusal to advance the National Commission's suggestion as to:

> "the birth and nourishment of a culture in which the bar stands together...in defending lawyers against retaliation against vindictive judges". (National Commission's Report, p. 101)

and wilful refusal to address a cert petition particularizing retaliatory judicial misconduct during a period in which the ABA was creating its Commission on Separation of Powers and Judicial Independence, to put forward a programmatic outline for defending judges against "unjust criticism".

ABA's Standing Committee on Federal Judiciary, is well known to the ABA -- having received from us voluminous evidentiary materials -- none of which it has chosen to address. CJA has repeatedly brought the ABA's ethical responsibility in this matter to the attention of its leadership -- to no avail. Indeed, I understand from my daughter that in her telephone conversation with you three weeks ago, thereafter reiterated in her written communications to you, she expressly requested that an advisory opinion be obtained from the ABA's Committee on Ethics and Professional Responsibility as to its duty to retract ratings which were fraudulently-obtained and demonstrated to be the product of inadequate ABA investigation, as well as its obligation to take remedial steps to improve its Standing Committee's defective investigative procedures and to ensure the integrity of the Senate's demonstrably sham judicial confirmation process.

[13] These include its blanket endorsement of appeal as a corrective for judicial "error" and its unqualified assertion that a judge's decision should not subject him to discipline, either by way of impeachment or under 28 U.S.C. §372(c). (*See, inter alia*, pp. 48-49, p. 34: fn. 132).

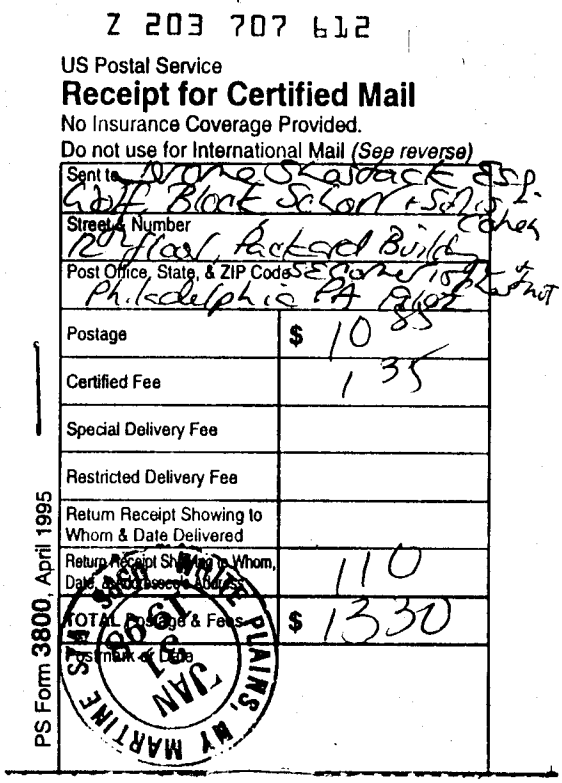
It is up to you, as ABA President, to restore credibility to the ABA and demonstrate that it can meet its ethical and professional responsibility -- when the issues concern judicial misconduct and the retaliatory suspension of an attorney's license. Only by so doing can the high-sounding platitudes of the ABA codes of ethics for attorneys and judges be perceived by the bar and the public at large as having some practical application.

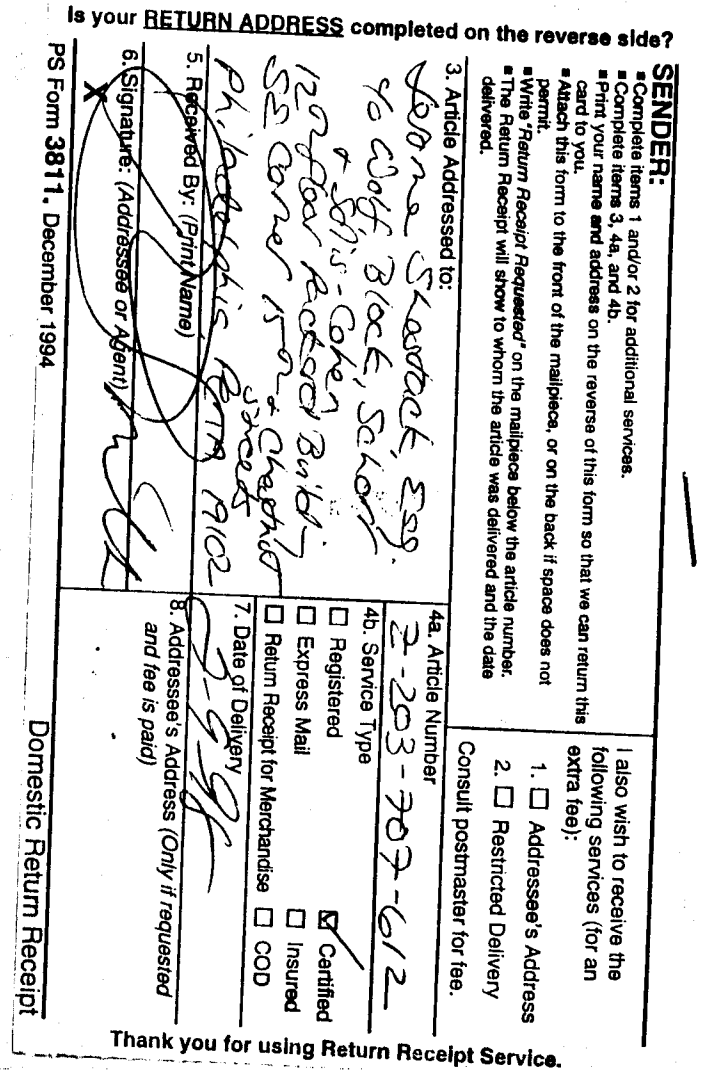
Best personal regards,

DORIS L. SASSOWER, Director
Center for Judicial Accountability, Inc.

Enclosures

cc: American Bar Foundation
Center for Professional Responsibility
(and four constituent Standing Committees of Ethics and Professional Responsibility, Professional Discipline, Professionalism, and Lawyer Competence)
Association of Professional Responsibility Lawyers
U.S. House Judiciary Committee
Administrative Office of U.S. Courts





INVENTORY OF TRANSMITTAL TO AMERICAN BAR ASSOCIATION
Doris L. Sassower v. Mangano, et al. (2nd Cir. #96-7805)

THE APPEAL:

1. Plaintiff's Appellant's Brief (1/10/97)
2. Record on Appeal
3. Defendants' Appellees' Brief (3/4/97)
4. Appellant's Reply Brief (4/1/97)

APPELLATE CASE MANAGEMENT PHASE:

1. Appellant's Recusal/Sanctions Motion (4/1/97)
2. Affidavit of Assistant Attorney General Weinstein (in opposition) (4/16/97)
3. Appellees' Memorandum of Law in Opposition (4/16/97)
4. Appellant's Affidavit in Reply and in Further Support of Appellant's Motion (4/23/97)
5. Appellant's Supplemental Affidavit (4/28/97)
6. Second Circuit's one-word Order, "DENIED" (4/29/97) (Kearse, Calabresi, Oberdorfer)

POST-APPEAL PROCEEDINGS:

1. Appellant's Petition for Rehearing with Suggestion for Rehearing *In Banc* (9/24/97)
2. Appellant's Recusal/Vacatur for Fraud Motion (10/10/97)
3. Appellate panel's one-word Order, "DENIED" (10/22/97) (Jacobs, Meskill, Korman)
4. Appellant's §372(c) complaint against District Judge John Sprizzo (10/28/97), with acknowledgment, dated 11/14/97
5. Appellant's §372(c) complaint against three-judge Second Circuit appellate panel (11/6/97): Circuit Judges Dennis Jacobs, Thomas Meskill, and District Judge Edward Korman, with acknowledgment, dated 11/28/97
6. Second Circuit's denial of Petition for Rehearing/Rehearing *In Banc* (12/19/97)
7. Second Circuit's issuance of Mandate (12/29/97)