JUDICIAL MISCONDUCT COMPLAINT AGAINST JUDGE JON O. NEWMAN PURSUANT TO 28 U.S.C. 273(c)

Filed by: **Elena Ruth Sassower and Doris L. Sassower**

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This is a complaint under 28 U.S.C. 372(c) against Jon O. Newman, Chief Judge of the U.S. Court of Appeals for the Second Circuit. It sets forth--and by the record in *Sassower v. Field* (Docket No. 91-7891) documents--that Judge Newman, in his official capacity as presiding judge of an appellate panel of the United States Court of Appeals for the Second Circuit, *corruptly used his position and authority for ulterior, retaliatory purposes*, to wit, that he authored a decision, dated August 13, 1992, which he *knew* to be factually false and fraudulent, legally insupportable, and issued for the sole purpose of defaming and financially injuring the plaintiffs, who were the immediate family of a judicial "whistle-blower".

Such *wilful* abuse of judicial office, subverting "the effective and expeditious administration of the business of the courts"--and constituting impeachable conduct--was made the subject of exhaustive efforts to obtain judicial review, all unsuccessful. These include plaintiffs' Petition for Rehearing *En Banc* to the Second Circuit, their Petition to the U.S. Supreme Court for a Writ of Certiorari, seeking review under that Court's "power of supervision" and, following denial of "cert", their Petition for Rehearing and Supplemental Petition for Rehearing. Those documents, cross-referenced with record citations, should be the starting point for *verification* of this judicial misconduct complaint[1]--beginning with the eight-page Petition for Rehearing to the U.S. Supreme Court. That Petition was based upon Judge Newman's retaliatory motivation and that of the Second Circuit--as well as of District Court Judge Gerard Goettel, whose demonstrably biased and insupportable decision had to be--but was not--reversed on appeal *as a matter of law.*

As detailed therein, the judicial whistle-blower to which plaintiffs are related is George Sassower--well known to Judge Newman, as well as to many judges of the Second Circuit. Mr. Sassower's relationship to them--and their relationship to him--had, for many years, been fiercely antagonistic and adversarial. He had sued judges of the Second Circuit in a large number of litigations, calling them "criminals in black robes" and other unflattering epithets and characterizing the Circuit as a whole as "unfit for human litigation". Such adversarial litigation by Mr. Sassower is reflected in footnote 1 of Judge Newman's decision (CA-9)[2] and, more revealingly, at footnote 4 of District Judge Goettel's decision (CA-34). As may be inferred from

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[1] Copies of these four documents are enclosed.

[2] CA- refers to the Certiorari Appendix

articles published in the *New York Law Journal* on November 9, 1993 and March 14, 1994 (Exhibits "A-1" and "A-2", respectively), the docket numbers, captions, and allegations of Mr. Sassower's lawsuits and judicial misconduct complaints against Second Circuit judges as of August 13, 1992--the date Judge Newman's decision was rendered--are known to the Circuit or readily accessible by it[3].

George Sassower was not a party to the *Sassower v. Field* litigation, which was a civil rights action under the Fair Housing Act brought by his daughter, Elena, and his ex-wife, Doris. However, Mr. Sassower had a direct interest in its outcome since he shared occupancy with Elena in the apartment which was the subject of the case. As such, Judge Newman--acting for the Second Circuit on the appeal--was no more disinterested in the outcome of the proceeding than District Court Judge Goettel had been in ensuring that plaintiffs lost their case, that the litigation activities of George Sassower were disrupted by his dislocation from the apartment in which he lived with his daughter, and that the family that had provided him with a roof over his head be reputationally ruined, as well as financially punished. Such financial injury to George Sassower's family may have been of particular satisfaction to the Second Circuit, whose judges had been unable to deter George Sassower's litigation activities by imposition of monetary sanctions against him because he had no assets (CA-34, fn. 6). Indeed, Judge Goettel and Judge Newman were so plainly bent on causing financial injury to plaintiffs that they did not care that the "extraordinary" $100,000 imposed upon plaintiffs would result in a "windfall" double payment to fully-insured defendants, who had no standing to seek a counsel fee/sanctions award and--as subsequently proven--no intention to reimburse the insurer (Cert Petition, pp. 2, 6-7, 9, 10, 13, 25-7; see plaintiffs' motion vacate, filed 11/26/91; denied without reasons 8/13/92 (CA-22); plaintiffs' motion for procedural relief, filed 9/24/92; denied without reasons 10/1/92 (CA-26)).

Because of the Second Circuit's *animus* against George Sassower, Judge Newman knew that no matter how abhorrent and retaliatory his decision was, he could count on his Second Circuit brethren to deny a petition for rehearing *en banc*--much as Judge Goettel knew that the Second Circuit would sustain him on appeal. The fact that the Second Circuit, by denying plaintiffs' dispositive Petition for Rehearing *En Banc*, put its imprimatur on Judge Newman's palpably retaliatory decision, requires that this judicial bias complaint, resting on that decision in which the Second Circuit was complicitous, be transferred to another Circuit.

That Judge Newman saw the appeal of Elena and Doris Sassower as a means of retaliating against George Sassower through his family is *readily verifiable* from the decision itself (CA-6). On its face, the decision is repugnant to *fundamental* adjudicative standards and *black-letter* law--including case law of the Second Circuit itself--reflective of its improper

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[3] Upon information and belief, among Mr. Sassower's serious allegations against judges of the Second Circuit is that they have been defrauding the U.S. Government. Although sued by him in their personal capacities, they have nonetheless been defended therein by the U.S. Department of Justice *without* being "scope"-certified, as required by 28 U.S.C. Sec. 2679(d), and *without* any notice of claim being filed, as required by 28 U.S.C. Sec. 2675(a).

motivation. This was detailed in plaintiffs' Petition for Rehearing *En Banc* to the Second Circuit, in their Cert Petition, and in their Supplemental Petition for Rehearing, which, at pages 4-6, succinctly summarized and cross-referenced the violations of Supreme Court decisional law and statutory and ethical rules verifiable from the face of Judge Newman's decision.

This unabashed retaliation and lawlessness is highlighted by Judge Newman's unprecedented use of "inherent power", *without* due process or any finding of due process to sustain the hearing-less, nearly $100,000 monetary sanction against plaintiffs--for no reason other than Judge Goettel's failure to meet the fundamental prerequisites of Rule 11 and 28 U.S.C. Sec. 1927 (Cert Petition, pp. 7-8, 12-13, 19-23). "Inherent power" is itself a usurpation of power--a concession that there is NO LAW to permit the court to do what it wants to do. And the reason there was NO LAW to sustain the sanction award against plaintiffs is because the law requires--in the case of Rule 11--specificity of findings: identification of specific documents, signators, and correlation of costs (Br. 47-48). Yet, Judge Goettel's completely arbitrary $50,000 Rule 11 sanctions award announced that it was dispensing with such requisites (CA-52). Likewise, 28 U.S.C. Sec. 1927 requires specificity, correlating the allegedly sanctionable conduct by lawyers with excess costs (Br. 49),which requirement Judge Goettel's similarly arbitrary $42,000 award flouted (CA-52-3).

From the Appellate Brief (Br. 8-40, 48-9) and Record on Appeal before him, Judge Newman *knew* that the reason Judge Goettel had made no findings to support his Rule 11 and 28 U.S.C. 1927 sanction awards (CA-52-3) was because there were no evidentiary facts in the record on which to base such findings. There simply was no sanctionable conduct on plaintiffs' part[4]. Consequently, Judge Newman knew that if Judge Goettel's guarantuan monetary award against plaintiffs were to be maintained--which was the pre-determined result he and the Circuit desired--he would have to jettison the findings requirement. And this is what his August 13, 1992 decision did--using "inherent power" to sustain Judge Goettel's arbitrary, uncorrelated $50,000 Rule 11 award (CA-14), as well as an unidentified portion of his $42,000 award under 28 U.S.C. Sec. 1927 against Elena Sassower (CA-16-7), the unidentified balance of which Judge Newman maintained against Doris Sassower, in flagrant violation of the specificity required by 28 U.S.C. Sec. 1927 (CA-16).

The demonstrable *bad-faith* of Judge Newman's decision is reflected by its conspicuous failure to identify *any* issue raised by plaintiffs on their appeal (CA-18)--including the factual baselessness of Judge Goettel's decision. This is understandable since had Judge Newman identified such issue (or *any* other) he might have had to refute the copious *undenied and unrefuted record references* in plaintiffs' Appellate Brief and Reply, establishing Judge Goettel's

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[4] As dispositively documented by plaintiffs' *uncontroverted* Rule 60(b)(3) motion--expressly incorporated herein by reference--plaintiffs were not only entitled to sanctions against defense counsel, their clients, and the insurer for their flagrant litigation misconduct, but to a new trial. (See, Appellate Brief, pp. 27-33, 49-54; Reply Brief, pp. 22-27; Petition for Rehearing *En Banc*, pp. 4, 5-6; Cert Petition, pp. 4-6, 13, 26-8).

decision as flagrantly fraudulent, unsupported, and demonstrative of Judge Goettel's virulent actual bias. That Judge Newman knew no factual refutation was possible is evident from his decision which notably does not refute even a single one of plaintiffs' record references or otherwise independently examine the record. Instead, Judge Newman's affirmance rests entirely on Judge Goettel's decision--which Judge Newman varyingly paraphrases or quotes verbatim. This includes those portions of Judge Goettel's decision that plaintiffs' Appellate Brief (Br. 2, 54, & errata sheet) had expressly identified--without any rebuttal by defendants' Respondent's Brief--as *ex parte*, *dehors* the record, false and defamatory.

Judge Newman's repetition of the aforesaid objected-to *ex parte, dehors* the record statements by Judge Goettel was no gratuitous insert (CA-11, fn. 2). It was purposely intended by him to create an illusion that Doris Sassower was a notorious "public enemy"--against whom it would not be shocking that a federal court would impose a gargantuan monetary sanction. Such purpose was reinforced by Judge Newman's *sua sponte* addition of his own *irrelevant, dehors* the record defamatory hearsay--which appears at the very outset of his decision in a reference to a September 11, 1991 *New York Law Journal* article, headlined "Attorney Sanctioned by Court of Appeals" (CA-8). Judge Newman intended that readers of his judicial decision believe that Doris Sassower was the attorney sanctioned. In fact, the attorney referred to by the headline was not Doris Sassower and was totally unconnected with plaintiffs (Exhibit "B").

Judge Newman's ostensible excuse for including such improper, extraneous, and false matter in his decision was, according to him, that Doris Sassower's "current status [at the bar] is in some doubt" (CA-8). However, a September 11, 1991 *New York Law Journal* article, which was almost a year old as of the date of Judge Newman's August 13, 1992 decision, would plainly not provide information as to Doris Sassower's "current status". Indeed, "current" information as to her status in both the state and federal courts was provided directly to Judge Newman on February 28, 1992, at the oral argument of plaintiff's' appeal, when he interrupted plaintiffs to inquire of Doris Sassower on that subject. Such completely irrelevant[5] and embarrassing inquiry, in a crowded courtroom, may have been recorded by the court. If so, the recording would substantiate that Judge Newman's courtroom inquiry provided him with more "current" information than the September 11, 1991 *New York Law Journal* article, published five months before the oral argument and nearly a year before his August 13, 1992 decision.

The retaliatory and malicious nature of Judge Newman's decision, which as hereinabove shown is *readily verifiable*, gives rise to a further suspicion that Judge Newman was, in some *ex parte*, behind-the-scenes manner involved in the procedurally unauthorized February 27, 1992 order, signed by the Chairman of the Southern District's Grievance Committee,

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[5] As highlighted at pp. 7-8, 10-11 of plaintiffs' Petition for Rehearing *En Banc*, and pp. 20-1, 22-3 of their Cert Petition, Doris Sassower's status at the bar was irrelevant to the sanctions issue since, as established by the record, there was no sanctionable conduct by her or excess proceedings for which she was responsible.

suspending Doris Sassower's license to practice in the Southern District[6]. That order, dated February 27, 1992[7]--the day before the February 28, 1992 oral argument of the appeal before Judge Newman in *Sassower v. Field*--violated Rule 4 of the General Rules of the District Courts for the Southern and Eastern Districts of New York. Indeed, under Rule 4, such order could not properly issue since Doris Sassower's papers in opposition to the Southern District's September 11, 1991 Order to Show Cause to suspend her detailed that she had been suspended in the New York state courts *without* written charges, *without* any hearing, *without* any findings, and *without* reasons and requested a hearing before the Grievance Committee of the Southern District. For the purposes of this misconduct complaint, those opposition papers--which enclosed a copy of her July 19, 1991 motion to the New York Court of Appeals for leave to appeal--are incorporated by reference.

cc: House Judiciary Committee
Subcommittee on Courts and Intellectual Property
U.S. Department of Justice
Public Integrity Section, Criminal Division
Administrative Office of the United States Courts
Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in the Courts
Congresswoman Nita Lowey

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[6] Much as Judge Newman became Chief Judge of the Second Circuit in the year following his authorship of the retaliatory August 13, 1992 decision in *Sassower v. Field*, so the Chairman of the Grievance Committee for the Southern District, who signed the procedurally-unauthorized February 27, 1992 suspension order, became Chief Judge of the Southern District.

[7] Annexed as Exhibit "C" is a copy of the Southern District's February 27, 1992 order. As may be seen, it refers to the New York Court of Appeals' denial of Doris Sassower's motion for leave to appeal her state court suspension. Upon information and belief, such document--if not the content of the full federal disciplinary file--was accessible to Judge Newman.