CENTER for JUDICIAL ACCOUNTABILITY

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BY HAND

October 3, 1994

Mr. Joseph Berger
Westchester Bureau Chief
The New York Times
235 Main Street, 4th Floor
White Plains, New York 10601

Dear Mr. Berger:

Enclosed, per your request, is a copy of the Appellate Division, Second Department's June 14, 1991 interim suspension order (Exhibit "A"), which suspended my mother from the practice of law immediately, indefinitely and unconditionally.

On its face, you will see that the order states no reasons and makes no findings[1]. Since at the time it was issued the Appellate Division, Second Department's own rules (Exhibit "C-1")[2] and decisional law of the Court of Appeals (Exhibit "C-2")[3] required reasons and findings, that order was unlawful.

Yet, for more than three years, the Appellate Division, Second Department has perpetuated this unlawful order by repeatedly--and without reasons--refusing to vacate it--even after the 1992 decision of the Court of Appeals in Matter of Russakoff (Exhibit "D")[4]. That decision reiterated that interim suspension orders without findings must be vacated as a matter of law.

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1 So as to permit you to understand what "findings" and "reasons" are, I enclose the Appellate Division, Second Department's recent interim suspension order in Matter of Jenny M. Maiolo, published in the September 16, 1994 issue of The New York Law Journal (Exhibit "B"). You will readily see the contrast between that order and the Appellate Division, Second Department's June 14, 1991 interim suspension order against my mother.

2 22 N.Y.C.R.R. §691.4(l)(2)

3 Matter of Nuey, 61 N.Y.2d 513, 474 N.Y.S.2d 714 (1984)

4 Matter of Rusakoff, 72 N.Y.2d 520, 583 N.Y.S.2d 949 (1992)

Moreover, notwithstanding that in Russakoff the Court of Appeals recognized that an attorney is entitled to a prompt post-suspension hearing, where there has been no hearing prior thereto, the Appellate Division, Second Department, which did not afford my mother a hearing before it suspended her, has repeatedly--and without reasons--refused to direct a post-suspension hearing.

The Appellate Division's deliberate refusal to direct a hearing reflects its knowledge that the June 14, 1991 suspension order is a criminal fraud--which would be exposed at any hearing held on the subject. Such knowledge can also be inferred from that court's failure to set forth any reasons or findings in its suspension order (Exhibit "A"). Plainly, if there were any evidentiary or legal basis for such order, the Appellate Division would have had no difficulty in setting that forth, as the law required it to do.

We are ready to prove to you--indisputably and based on the underlying files--that there is no legal or factual basis for the suspension and that its issuance and perpetuation by the Appellate Division, Second Department is a vicious retaliation against my mother for her activities as a judicial "whistleblower". Such serious contention was first raised by my mother immediately upon her suspension more than three years ago and repeated in my mother's October 24, 1991 letter to Governor Cuomo, calling for the appointment of a special prosecutor (Exhibit "E").

My mother's letter outlined the politically sensitive case of Castracan v. Colavita, which she brought as pro bono counsel to our grass-roots citizens' group, then called the "Ninth Judicial Committee"[5]. It also described the Appellate Division's finding-less suspension of her license as having been issued within days of publication by The New York Times of her "Letter to the Editor", discussing the Castracan case[6].

In Castracan v. Colavita, my mother charged judges, would-be judges, and prominent political leaders of both major parties in the Ninth Judicial District[7] with criminal conduct. This included the violation of fundamental Election Law requirements

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[5] The Center for Judicial Accountability is the successor to the Ninth Judicial Committee.

[6] A copy of my mother's "Letter to the Editor" is annexed as part of Exhibit "E".

[7] The Ninth Judicial District is comprised by Westchester, Putnam, Dutchess, Orange, and Rockland Counties.

at judicial nominating conventions and the disenfranchisement of voters by a corrupt and unethical political deal. By such deal, Democratic and Republican party leaders traded seven judgeships through cross-endorsements, contracted for judicial resignations, and pledged patronage.

My mother's October 24, 1991 letter reported to Governor Cuomo that at every level in Castracan v. Colavita and in the companion case of Sady v. Murphy the courts had disregarded elementary legal standards and falsified the factual record to sustain dismissals of those two Election Law cases. This included the New York Court of Appeals' denial of review by the pretense that the issue of whether judicial cross-endorsements disenfranchises the voters is not a "substantial constitutional question".

It should be borne in mind that notwithstanding Article VI, subdivision 6(c) of the New York State Constitution gives voters the right to elect Supreme Court justices, judicial cross-endorsement is a "way of life" in this state, with a substantial proportion of Supreme Court justices relying on judicial cross-endorsement to gain and/or maintain their seats on the bench[8].

My mother supported her request for the appointment of a special prosecutor by urging the Governor to requisition the files in Castracan v. Colavita and Sady v. Murphy and proffering the files relating to her suspension.

What is evidenced by those files--which we are ready to show and explain to you--is that where the issues involve judicial fraud, corruption, and collusion, the state courts jettison all standards of law and adjudication.

Indeed, the Article 78 proceeding, about which I tried to interest you, exemplifies the brazenness with which law and standards are totally abandoned so as to cover-up of judicial corruption.

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[8] As illustrative, in Castracan, the panel of the Appellate Division, Third Department which denied the case the mandatory preference to be heard before election day--to which it was entitled under the court's own rules, as well as the Election Law, was comprised of five judges--each one cross-endorsed: two judges having been cross-endorsed by four parties; two judges having been cross-endorsed by three parties; and one judge cross-endorsed by two parties. As to the panel which ultimately heard the case--and sustained dismissal--three of its members had been cross-endorsed judges, including the presiding justice, with a triple cross-endorsement. Neither panel made any disclosure that in a case challenging cross-endorsement so many of its members were themselves the product of cross-endorsement.

In that case, entitled Sassower v. Hon. Guy Mangano, et al., my mother sued the Appellate Division, Second Department, charging it with criminal conduct in manipulating the disciplinary mechanism--which it controls--to retaliate against her for judicial "whistleblowing". This includes its fraudulent suspension of her license.

What happened in that case? Although Judiciary Law §14, as well as §100.3(c) of the Rules Governing Judicial Conduct explicitly prohibit a judge from deciding a matter in which he is a party or has an interest in the outcome (Exhibit "F"), the Appellate Division, Second Department refused to recuse itself from my mother's Article 78 proceeding against itself[9]. Instead, it granted the dismissal motion of its own attorney, the Attorney General.

By so doing, the Appellate Division, Second Department--aided and abetted by our state's highest law officer--not only flouted elementary conflict-of-interest rules mandating judicial disqualification, but, even more egregiously, destroyed the Article 78 remedy. Such remedy is a bulwark of democracy since its very purpose is to provide citizens aggrieved by governmental misconduct with independent review of their allegations.

So much for democracy and our rule of law--subverted by the judges of our courts and the New York State Attorney General, who defends them when they are sued. Oh well.

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[9] Annexed hereto as Exhibit "G" is a copy of my mother's recent complaint against the justices of the Appellate Division, Second Department, who violated their mandatory duty to disqualify themselves from adjudicating her Article 78 proceeding. That complaint, filed on September 19, 1994 with the Commission on Judicial Conduct, is deserving of a story in and of itself.

Indeed, I would point out that The Times has written extensively during the last few months--both in articles and editorials--about "conflict of interest" issues. The most recent article appeared on September 20, 1994, and is annexed for your convenience (Exhibit "H"). As reflected therein, various ethics experts were quoted on the subject. Assuredly, were you to consult such experts relative to my mother's September 19, 1994 complaint, they would be unanimous in strong condemnation of the unprecedented--and suspect--behavior of the Appellate Division, Second Department in failing to recuse itself.

The above description of lawlessness should enable you to recognize that there is an important connection between the Times' September 27th editorial "No Way to Pick a Judge" (Exhibit "I-1") and its September 17th editorial "New York's Mystery General" (Exhibit "I-2"). What the September 27th editorial (Exhibit "I-1") describes is a despicable and cynical horse-trade in judgeships. However, when such manipulation of judgeships is challenged, the courts not only disregard the law to dump the case brought, but use their power to go after the lawyer who brought it. This brings us to the September 17th editorial (Exhibit "I-2") because when that lawyer--in this case, Doris Sassower--sues the judges for retaliating against her by an unjustified suspension of her license, they are defended by the Attorney General. And how does the Attorney General defend his judicial clients? By disregarding the law and arguing without any legal authority that his judicial clients are not disqualified from deciding their own case. And who does the Attorney General argue this to? None other than to his own judicial clients, who are only too happy not to allow allegations that they have engaged in criminal conduct to be decided by an independent and impartial tribunal.

And so, judgeships continue to be traded. The party bosses know they are protected by those they have put on the bench and who need their support to remain on the bench--and to be advanced. Besides, there are very few fearless lawyers[10] willing to challenge this "business as usual" politicking in judgeships, when to do so means putting their licenses and livelihoods on the line.

Believe me, what we are presenting you is more than a prize-winning story, it is a major scandal in state government.

Perhaps you will mention as much to Kevin Sack, who in his August 21, 1994 Times' article on Governor Cuomo stated:

> "Remarkably, his administration has been untouched by major scandal."

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[10] My mother's credentials are reflected in her 1989 listing in the Martindale Hubbell law directory, annexed to her October 24, 1991 letter to the Governor (Exhibit "E"). As reflected therein, my mother has been in the forefront of legal and judicial reform. Indeed, in 1989 she was elected to be a Fellow of the American Bar Foundation, an honor reserved for less than one-third of one percent of the practicing bar of each state.

I would add that on December 10, 1993, at a meeting at the State Capitol, I confronted Governor Cuomo with his lack of response to my mother's October 24, 1991 letter--and the two follow-up letters she thereafter sent him[11]. Perhaps you read my exchange with Governor Cuomo, as reported by the Times on Saturday, December 11, 1993. Members of Ansche Chesed did--and heralded me for having "taken on the Governor". I annex a copy as Exhibit "J" in case you missed it.

I also annex (as Exhibit "K") my September 25, 1994 letter to the Editor, detailing the necessity that candidates for New York State Attorney General be required to address the issues raised by my mother's Article 78 proceeding. If this is not an aspect of the story that you wish to handle--please immediately recommend it to the reporters who are covering the race for Attorney General.

Please call me sooner--rather than later. With the elections just six weeks away, time is of the essence.

Yours for a quality judiciary,

Elena Ruth Sassower

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability

Enclosures

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[11] At that December 10, 1993 meeting, I gave a duplicate of the October 24, 1991 letter to the Governor's aide, who was accompanying him.