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

PETITIONER'S PETITION FOR REHEARING

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

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REHEARING APPENDIX
[RA-]

Abbreviation Guide:

A- Appendix to Petition for Writ of Certiorari
SA- Appendix to Supplemental Brief
RA- Appendix to Petition for Rehearing

TABLE OF AUTHORITIES

PETITION FOR REHEARING

Preliminary Statement

Out of respect for the venerable institution represented by our nation's highest Court, of whose bar petitioner is a member in good standing[1], this petition is offered to give the Justices a "last clear chance" to meet their constitutional, statutory, and ethical duty to uphold the Constitution and the rule of law.

Like the petition for a writ of certiorari, this petition for rehearing is not about the Court's discretionary power. It is about the Court's mandatory duty to respect ethical rules of judicial disqualification, which Congress, by statute, made applicable to its Justices, and to preserve the Constitution, which is its essential function.

The issue presented by the cert petition was corruption in the lower federal judiciary -- covering up state judicial corruption -- accomplished by its wilful subversion of the very statutes whose purpose is to ensure judicial impartiality and integrity: 28 U.S.C. §455 [A-3], relating to disqualification and disclosure, and 28 U.S.C. §372(c) [A-3], relating to judicial misconduct complaints. The issue has shifted on this rehearing petition to corruption in our highest federal judiciary, accomplished by its *own* wilful subversion of §455 and furthered by its purposeful failure to create a mechanism for disposition of judicial misconduct complaints against its Justices.

The Court's one-word denial of the cert petition -- with no disciplinary or criminal referral of the lower federal judges, whose corruption was documented therein -- is an unpardonable betrayal of its sacred constitutional duties. It further demonstrates the *actual* bias of its Justices, who have long-standing, personal and professional relationships with those lower federal judges. The appearance of such bias was the subject of petitioner's fact-specific and documented disqualification/disclosure application under §455 [RA-7]. The application was pending unadjudicated before the Justices when they denied the cert petition.

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[1] The Court has failed to act on petitioner's Rule 8 request for a show cause order, as set forth in her recusal/disclosure application [RA-14].

Procedural Posture of the Case

This rehearing petition is compelled by the Court's failure to act on petitioner's written request for recall/vacatur of its October 5, 1998 order [RA-2], summarily denying the cert petition. Said recall/vacatur request was incorporated in a judicial misconduct complaint against the Justices, dated October 14, 1998 [RA-52], based on their wilful failure to adjudicate petitioner's September 23, 1998 disqualification/disclosure application, pursuant to 28 U.S.C. §455 [RA-6]. The judicial misconduct complaint asserted that "absent legal authority or argument showing that the Justices were not obligated to adjudicate" that application, the October 5, 1998 order should be promptly recalled and vacated [RA-57].

By Order dated October 20, 1998 [RA-5], Justice Ruth Bader Ginsburg, without addressing the judicial misconduct complaint, including her own disqualifying bias, summarily denied that portion thereof as requested an extension of time for petitioner to file a rehearing petition pending the Justices' determination of the misconduct complaint and its recall/vacatur request [RA-57].

Petitioner's further request, contained in the judicial misconduct complaint and directed to the Court's Clerk, for information as to the Justices' procedures for handling misconduct complaints against themselves has also been ignored [RA-55]. The Chief Deputy Clerk has orally advised that none will be forthcoming [RA-59; RA-62].

The Issue: The issue on this petition for rehearing is the Justices' official misconduct herein, whose serious nature and gravity rise to a level warranting impeachment.

The Argument

On October 5, 1998, the very day on which the Court announced its denial of the cert petition [RA-2] -- turning its back on the annihilation of *all* adjudicatory and ethical standards by Second Circuit judges, whose judicial decisions were shown to be outright lies -- the House Judiciary Committee was deliberating as to whether lying under oath, false statements, and obstruction of justice by a public officer, even when committed in the context of a private civil litigation,

could be ignored, without serious consequences to the rule of law:

> "If lying under oath is tolerated, and when exposed is not visited with immediate and substantial consequences, the integrity of this country's entire judicial process is fatally compromised and that process will inevitably collapse."

This view by Majority Counsel at the opening of the Committee's proceeding was reiterated by Committee members on that day, "Truthfulness is the glue that holds our justice system together", and three days later, by members of the House of Representatives, voting for an impeachment inquiry:

> "Lying under oath and obstruction of justice are ancient crimes of great weight because they shield other offenses, blocking the light of truth in human affairs. They are daggers in the heart of our legal system and our democracy."[2]

Among House members, there was no partisan dispute that lying under oath, false statements, and obstruction of justice, committed by a public officer in the performance of his official duty, would be impeachable. That was uniformly recognized in the nationwide debate that raged non-stop throughout the preceding weeks and well before the September 9, 1998 date on which Independent Counsel, himself a former federal judge, delivered his report to Congress of "substantial and credible information", constituting potential grounds to impeach the President.

It was in this historic period that the cert petition presented the Court with "substantial and credible" evidence of heinous official misconduct by Second Circuit judges, expressly identified as both impeachable and criminal. For that reason, the petition did not seek discretionary action, but asserted (at 23-26) the Court's mandatory duty to grant review under its "power of supervision" or, at very least, under ethical codes, to make disciplinary and criminal referrals of the

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[2] The foregoing three quotes are, respectively, from statements of Majority Counsel David Schippers and Representative Bill McCollum on October 5, 1998 and from Representative Ileana Ros-Lehtinen on October 8, 1998.

subject federal judges. Such referral request was predicated on the petition's showing that, absent review, there was no remedy in the Judicial Branch for the systemic judicial corruption the petition particularized. Consequently, action would be necessary by the two other government Branches and, specifically, impeachment by the House Judiciary Committee and criminal prosecution by the Public Integrity Section of the Justice Department's Criminal Division. The Court was requested to include in its referral a statement that: "judges who render dishonest decisions -- which they *know* to be devoid of factual or legal basis -- are engaging in criminal and impeachable conduct." (at 26)

Petitioner's supplemental brief reinforced the exigent need for the Court's action. Detailing her unsuccessful attempts to independently obtain action by the House Judiciary Committee and Public Integrity Section, the supplemental brief showed that not only were all checks on judicial misconduct within the Judicial Branch corrupted, but, likewise, the checks within the Legislative and Executive Branches. Indeed, such showing was made not only as to the judicial misconduct in *this* case, but was demonstrated to be the *general* reality *vis-a-vis* individual judicial misconduct complaints filed with the House Judiciary Committee and the Public Integrity Section, as well as complaints filed with the federal judiciary under §372(c)[3].

The supplemental brief highlighted the profound constitutional significance of what was before the Court:

> "...the constitutional protection restricting federal judges' tenure in office to 'good behavior' does not exist because all avenues by which their official misconduct and abuse of office might be determined and impeachment initiated (U.S. Constitution, Article II, §4 and Article III, §1 [SA-1]) are corrupted by political and personal self-interest. The

[3] *See* SA-18-19 as to the federal judiciary's subversion of §372(c), including its own statistics [SA-19]; *See* SA-17-28 as to the House Judiciary Committee's wilful abandonment of its "oversight" role, either of the federal judiciary's implementation of §372(c) or by its own investigation of individual complaints of impeachable conduct, not even statistically reporting the numbers of such complaints it receives each Congress [SA-22]; *See* SA-47-59, especially A-54-9 as to the Public Integrity Section, including its failure to issue an Annual Report since 1995 [SA-59].

> consequence: federal judges who pervert, with impunity, the constitutional pledge to 'establish Justice', (Constitution, Preamble [SA-1]) and who use their judicial office for ulterior purposes." (Supplemental Brief, at 2)

The complete truth and accuracy of the factual recitation in the petition and supplemental brief was beyond question, each fact-specific and supported by appendix documents and, additionally, by corroborating materials lodged with the Clerk [RA-20]. The petition, which was *unopposed*, expressly urged that any doubt as to the Court's mandatory duty should be resolved by "requisitioning the record, which, since the case was 'dumped' in its pre-discovery stage, is not unduly voluminous" (at 25). The supplemental brief expressly urged the Court to elicit the views of the appropriate public officials in the three government Branches, each of whom petitioner had previously supplied with the record and cert petition (at 10). Specifically identified was the U.S. Solicitor General. Thereafter, in the context of petitioner's §455 disqualification/disclosure application, the Court was apprised that petitioner had provided those government Branch officials with her supplemental brief and had, herself, sought their response [RA-25]. Petitioner asserted that their failure to respond "must be deemed a concession as to the breakdown of all checks on federal judicial misconduct..." [RA-15].

It was in face of this undenied, evidence-supported presentation of the federal judiciary's corruption of the rule of law and the collapse of all government checks and against the historical backdrop of intense debate as to the importance of upholding the rule of law and of impeachment standards, that the Court, without dissent, and without adjudicating petitioner's §455 disqualification/disclosure application [RA-6], issued its October 5, 1998 order, summarily denying the cert petition [RA-2]. Such denial was without the requested requisitioning of the record or invitation of a response from government Branch officials -- including the U.S. Solicitor General. In so doing, the Justices, any one of whom could have invited a response from the Solicitor General[4], demonstrated that they did not

[4] *"Riding the Coattails of the Solicitor General"*, by John G. Roberts, Jr., Legal Times, March 29, 1993

want confirmation of what they already knew to be true from the submissions before them.

No fair and impartial tribunal -- and, certainly, not one charged with ultimate constitutional duties -- could ignore those submissions without committing impeachable offenses. Those documents showed that the Court was the People's last and only defense to a corrupt federal judiciary's deadly assault on the Constitution and rule of law, abetted by collusively-acting public officials in the other two federal Branches. The circumstances at bar showed that the Court was also the last and only defense to a corrupt New York state judiciary, which had retaliated against the lawyer-petitioner for her judicial whistle-blowing advocacy in defense of the People's voting rights in judicial elections, indefinitely suspending her law license, *without* written charges, *without* a hearing, *without* findings, *without* reasons, and *without* a right of appeal (cert petition, 2-5).

By denying the cert petition, without disciplinary and criminal referrals, the Court put its official imprimatur on federal and state subversion of the justice system without which constitutional government and democratic values cannot survive. Such denial not only emboldens the judicial corrupters, but discharges the legal community of its mandatory obligations under ethical codes to report judicial misconduct so as to preserve the integrity of the Constitution and the rule of law. The supplemental brief highlighted that the breakdown of checks on judicial misconduct went beyond the three Branches to include the leadership of the organized bar, such that there was no one protecting the public -- except for a few brave whistle-blowing lawyers, like petitioner, who took their ethical duties seriously.

In the current debate as to impeachment standards, the House Judiciary Committee's Ranking Member has cited the House Judiciary Committee's 1974 report when it considered impeachment of an earlier President:

> "'Impeachment is a constitutional remedy addressed to serious offenses against the system of government. And it is directed at constitutional wrongs that subvert the structure of government or undermine the integrity of office and even the Constitution itself.
>
> These words are as true today as they were in 1974.

> An impeachment is only for a serious abuse of official power or a serious breach of official duties. On that, the constitutional scholars are in overwhelming agreement."

By that definition, the Court's failure to recognize *any* mandatory duty herein is impeachable.

Adding to its subversion of the Constitution is its subversion 28 U.S.C. §455 [A-3]. That statute, applicable to all federal judges -- including this Court's Justices -- codified what is now Canon 3E of the ABA's Code of Judicial Conduct [A-17]. Indeed, in 1974, when Congress enacted the current §455, it was over the vote of the Judicial Conference, disapproving it as "unnecessary" because "...the ABA Code, relating to disqualification, is already in full force and effect in the Federal Judiciary by virtue of the adoption of the Code of Conduct for United States Judges by the Judicial Conference", H.R. 93-1453, pp. 9-10. Among the precipitating events leading to the enactment was then Associate Justice Rehnquist's failure to disqualify himself in *Laird v. Tatum*, 409 U.S. 824 (1972), reference to which appears in the legislative history. That failure has been characterized as "one of the most serious ethical lapses in the Court's history", in a book published before the current §455 was enacted, MacKenzie, John P., The Appearance of Justice, at 209, (1974)[5].

The Court is well familiar with §455, a majority of its Justices having decided two important cases involving it, *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1987), and *Liteky v. U.S.*, 510 U.S. 540 (1994). At issue in each of these cases was §455(a) -- the very subdivision to which petitioner's disqualification/disclosure application was addressed [RA-6].

The Court has recognized that §455 imposes "the obligation to identify the existence of...grounds [warranting disqualification] upon the judge himself" *Liteky*, at 548. Petitioner's §455 application identified that it was "'intended to assist the Justices in *sua sponte*

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[5] "That the new [ABA] code could not induce proper conduct by Justice Rehnquist at the ethical watershed of his first term on the Supreme Court is simply another indication that action by Congress is essential and overdue, *id.*, at 228. [MacKenzie's Appearance of Justice is cited in Wright, Miller & Cooper, Vol. 13A, Federal Practice and Procedure, 1995 supplement, at 551].

meeting their duty thereunder", "consistent with the view" of the *Liljeberg* dissenters that "'a judge considering whether or not to recuse himself is necessarily limited to those facts bearing on the question of which he has knowledge' (at 872).'" [RA-8]. Petitioner submitted that the facts set forth in her application "meet the standard for judicial disqualification under §455(a) [A-3] in that they raise reasonable question as to the Justices' impartiality." However, she pointed out that §455(e) allows "a party to waive disqualification after "full disclosure on the record [A-7]."

The Court's wilful failure to adjudicate that application not only flouts the very purpose of §455, designed "to promote confidence in the integrity of the judiciary by avoiding the appearance of impropriety whenever possible" [RA-7], but replicates the exact conduct of the Second Circuit, challenged in the cert petition as being a denial of constitutional due process, judicial misconduct *per se*, and as "make[ing] a travesty of the statute designed to foster confidence in the judiciary." Indeed, the issue presented by the cert petition (at 26-30) -- second only to the Court's mandatory duty under its "power of supervision" and ethical codes -- was the Second Circuit's wilful non-adjudication of petitioner's fact-specific, documented §455 recusal applications, or its denial thereof, without reasons.

That the Justices have not come forth with any "legal authority or argument" to justify their failure to adjudicate petitioner's disqualification/disclosure application, as requested in her judicial misconduct complaint [RA-57], shows they consider themselves "above the law" -- a constitutional anathema.

The Justices' *sub silentio* judicial repeal of §455 is a direct affront to Congress and violation of the solemn oath of office to which each justice swore (U.S. Constitution, Article VI, §3, 28 U.S.C. 453 [RA-1]). That oath expressly obliges each one to "faithfully and impartially discharge and perform all the duties incumbent upon [him] under the Constitution and laws of the United States". Not only is §455 one of those laws, but it is the fundamental law implementing the constitutional duty of impartiality, imposed by the oath of office, particularly where, as here, the perceived apparent bias of the Justices reflects their *actual* bias. From the current impeachment proceedings, it is clear that the oath of office is given great weight in evaluating the seriousness of the breach of official duty.

Unlike the President, federal judges do not serve for a fixed

period of years, but "during good behavior", Article III, §1 [SA-1]. As Alexander Hamilton put it in Federalist Papers, No. 79 , "...with regard to the judges...if they behave properly, [they] will be secured in their places for life...". Such tenure provision was propounded as "the best expedient which can be devised in any government to secure a steady, upright, and *impartial* administration of the laws", Federalist Papers, No. 78 (emphasis added), and was fortified with the further provision for undiminished financial compensation while in office. Together, these two constitutional provisions form the source of "judicial independence", whose intended purpose is to ensure fair and impartial judgments. Chief Justice Rehnquist has characterized judicial independence as "one of the crown jewels of our system of government", (April 9, 1996 speech, "The Future of the Federal Courts", American University).

The inextricable connection between judicial independence and judicial ethics was described in a speech by Justice Kennedy, a copy of which was annexed to petitioner's disqualification/disclosure application [RA-35-48, at 36]:

> "...there can be no judicial independence if the judiciary, both in fact and in public perception, fails to conform to rigorous ethical standards. Judicial independence can be destroyed by attacks from without, but just as surely it can be undermined from within. There is no quicker way to undermine the courts than for judges to violate ethical precepts that bind judicial officers in all societies that aspire to the Rule of Law."

Justice Kennedy stated "three important principles [which] must be observed if a judiciary is to establish and maintain high standards of judicial ethics, consistent with preserving its independence." [R-36]:

> (1) "judges must honor, always, a personal commitment to adhere to high standards of ethical conduct in the performance of their official duties..."; (2) "the judiciary itself must adopt and announce specific, written codes of conduct to guide judges in the performance of their duties"; and (3) "adequate mechanisms and procedures for the judiciary itself to receive and investigate allegations of misconduct and to take action where warranted, so that the public has full assurance that its interest in an ethical judiciary is enforced

and secured."

By Justice Kennedy's test, the "crown jewel" has been wholly despoiled. Not only have the Justices failed to adhere to rudimentary ethical standards of judicial impartiality, albeit set forth in their *own* Code of Conduct for U.S. Judges [A-17], annexed by Justice Kennedy to his speech [RA-48], but they have also violated the statute embodying its disqualification/disclosure standards, 28 U.S.C. §455. On top of this, they have failed to develop a disciplinary mechanism for misconduct complaints against the Justices [RA-63], although recommended five years ago by the National Commission on Judicial Discipline and Removal [RA-55].

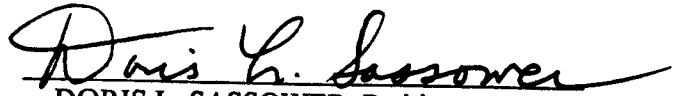
Justice Kennedy is not alone among the Justices in professing the federal judiciary's adherence to ethical standards and existence of adequate disciplinary mechanisms for ensuring compliance. This case resoundingly proves the contrary and provides a basis for an additional impeachment charge against the Justices for "lying to the American People" -- a charge being sought against the President.

Once Congress has concluded its impeachment deliberations as to the President, it will have the benefit of its newly-acquired expertise to turn its attention to the indisputably impeachable conduct of the federal judiciary.

CONCLUSION

> "A court's judgments will be given no serious consideration, no examination at all, if the public is not confident that its judges remain committed to neutral and principled rules for the conduct of their office." Justice Kennedy [RA-36]

The October 5, 1998 order summarily denying the cert petition must be recalled and vacated; the September 23, 1998 recusal/disclosure application must be adjudicated, and the cert petition must be granted in all respects, together with such other and further relief as may be just under the circumstances.



DORIS L. SASSOWER, Petitioner *pro se*
Member of the U.S. Supreme Court Bar

CERTIFICATE OF GOOD FAITH

I, DORIS L. SASSOWER, a member of the U.S. Supreme Court Bar, being the petitioner *pro se* herein, do hereby affirm and declare that this Petition for Rehearing is presented in good faith and not for purposes of delay.

DORIS L. SASSOWER

October 30, 1998
White Plains, New York

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. CONSTITUTION

Article VI, §2:
This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Article VI, §3:
The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;...

FEDERAL STATUTES

28 U.S.C. §453:
Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: 'I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God.'

28 U.S.C. §2106:
The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

OCTOBER 5, 1998 LETTER TO PETITIONER FROM WILLIAM K. SUTER, CLERK, U.S. SUPREME COURT

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

October 5, 1998

Ms. Doris L. Sassower
283 Soundview Avenue
White Plains, NY 10606

Re: Doris L Sassower v. Guy Mangano, Presiding Justice of the Appellate Division, Second Department, Supreme Court of New York, et al., No. 98-106

Dear Ms. Sassower:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
s/
William K. Suter, Clerk

OCTOBER 6, 1998 LETTER TO PETITIONER FROM DENISE McNERNEY, ADMINISTRATIVE ASSISTANT, U.S. SUPREME COURT

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

October 6, 1998

Ms. Doris L. Sassower
283 Soundview Avenue
White Plains, NY 10606-3821

Dear Ms. Sassower:

Your letter addressed to the Supreme Court of the United States has been received and forwarded to this office for a response.

It is not possible to inform you why your petition was denied. It is the Court's policy not to give reasons for denying a writ of certiorari or a petition for rehearing. Furthermore, please be advised that your petition was denied by the full Court.

In addition, the Supreme Court is exempt from the provision of the FOIA/PA Act. Furthermore, your matter before the Supreme Court has been closed, therefore, your papers are returned.

I regret that we cannot be of more assistance.

Sincerely,

WILLIAM K. SUTER, Clerk
By
s/
Denise J. McNerney
Administrative Assistant

DOCKET SHEET ENCLOSED WITH DENISE McNERNEY's OCTOBER 6, 1998 LETTER

Last page of docket
SHDKT PROCEEDINGS AND ORDERS DATE [10/6/98]

CASE NBR: [98100106] CFX STATUS [DECIDED]
SHORT TITLE: [Sassower, Doris L.]
VERSUS [Mangano, Presiding Justice] DATE DOCKETED: [072098]
PAGE: [01]

	DATE	NOTE	PROCEEDINGS AND ORDERS
1	Feb 26 1998	G	Application (A97-647) to extend the time to file a petition for a writ of certiorari from March 17, 1998 to May 16, 1998, submitted to Justice Ginsburg.
2	Feb 26 1998		Application (A97-647) granted by Justice Ginsburg extending the time to file until May 16, 1998.
3	May 18 1998	D	Petition for writ of certiorari filed. (Response due August 19, 1998)
4	Aug 6 1998		Waiver of right of respondent New York to respond filed.
5	Aug 12 1998		DISTRIBUTED. September 28, 1998 (Page 93)
6	Sep 2 1998	X	Supplemental brief of petitioner Doris L. Sassower filed.
7	Sep 3 1998		LODGING consisting of two Center for Judicial Accountability documents received from the petitioner.
8	Oct 5 1998		Petition DENIED.

OCTOBER 20, 1998 LETTER TO PETITIONER FROM FRANCIS J. LORSON, CHIEF DEPUTY CLERK, U.S. SUPREME COURT

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

October 20, 1998

Ms. Doris L. Sassower
283 Soundview Avenue
White Plains, NY 10606-3821

Re: Doris L. Sassower v. Guy Mangano, Presiding Justice of the Appellate Division, Second Department, Supreme Court of New York, et al.,
Application No. A-315 (98-106)

Dear Ms. Sassower:

The application for an extension of time within which to file a petition for rehearing in the above-entitled case has been presented to Justice Ginsburg, who on October 20, 1998, denied the application.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk
By: s/
Francis J. Lorson
Chief Deputy Clerk

Notification List:

Mr. Thomas D. Hughes
25th Floor, 120 Broadway
New York, NY 10271:

PETITIONER'S SEPTEMBER 23, 1998 DISQUALIFICATION/DISCLOSURE LETTER-APPLICATION, PURSUANT TO 28 U.S.C. §455, TO THE JUSTICES (10 originals filed with the Clerk's office, which distributed 9 to each of the Justices)

BY FAX AND EXPRESS MAIL

September 23, 1998

Justices of the United States Supreme Court
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Invocation of Judicial Disqualification and Disclosure under 28 U.S.C. §455
Sassower v. Mangano, et al., #98-106
Conference Calendar: 9/28/98

Honorable Justices:

The above-captioned case is about the lower federal courts' wilful disregard and perversion of congressional statutes designed to safeguard the integrity of judicial proceedings, 28 U.S.C. §455 among them[1]. 28 U.S.C. §455 is also applicable to this Court's Justices so that they, too, are bound by the appearance and actuality of impartial, detached decision-making -- the *sine qua non* without which justice can neither be done nor appear to be done.

[1] The pertinent text of 28 U.S.C.§455, as well as of §§144 and 372(c), is included in the appendix to my petition for a writ of certiorari at A-2-5.

This letter[2] outlines facts which, I respectfully submit, meet the standard for judicial disqualification under §455(a) [A-3] in that they raise reasonable question as to the Justices' impartiality . Although individual Justices may wish to recuse themselves in light thereof, §455(e) allows a party to waive disqualification following "full disclosure on the record"[3] [A-3].

[p.2] As set forth in my cert petition (at 27),

> "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 public confidence in the judiciary."

[2] Chief Deputy Clerk Francis Lorson has advised that letters for the Justices are to be sent directly to them at the Court, in separate envelopes, and not to the Clerk's office. He has also advised that the procedure for reminding the Justices of their obligations under 28 U.S.C. §455 and the ethical codes, in light of the specific circumstances of this case, would be by letter, filed with the Clerk's office, but that copies might also be sent to the Justices, individually. Consistent with Mr. Lorson's instructions, this letter is also being filed with the Clerk.

[3] *See*, also, Canons 3C(1) and D of the Code of Conduct for U.S. Judges [A-17-18] and Canons 3E and F of the ABA Model Code of Judicial Conduct [A-19-20].

28 U.S.C. §455 contains no procedural requirements. Like the ethical codes, it is self-executing. The facts herein summarized are intended to assist the Justices in *sua sponte* meeting their duty thereunder. Such is consistent with the view in Chief Justice Rehnquist's dissenting opinion in *Liljiberg* -- in which Justices Scalia and White joined and with which Justice O'Connor separately agreed -- that "a judge considering whether or not to recuse himself is necessarily limited to those facts bearing on the question of which he has knowledge" (at 872). I respectfully submit that the particulars are best known to the Justices, who, additionally, may be aware of further facts, not here presented, but warranting recusal or on-the record disclosure.

As highlighted in my supplemental brief (at p. 3), this Court is a role model, sensitizing the lower courts and legal community to their ethical obligations. The threshold obligations that must here be confronted are those relating to the appearance and actuality of each Justice's fairness and impartiality -- much as these must be the threshold obligations of every judge in performance of official duties.

The facts as to which the impartiality of the Court's Justices "might reasonably be questioned" [A-3] include the following: Firstly, the Justices have long-standing personal and professional relationships with many of the Second Circuit federal judges, whose official misconduct is the subject of the *unopposed* cert petition. Such official misconduct in covering up, by fraudulent decisions, New York state judicial corruption and collusion by the State Attorney General, is both indictable and impeachable -- and would result in indictment and impeachment of the subject federal judges were the Court to meet its supervisory duty under Rule 10[.1](a) to grant the writ or its ethical duty to make criminal and disciplinary referrals of the subject judges. [*See* cert petition, at 23-26].

[p. 3] Understandably, the Justices may be loathe to visit such damning fate upon their judicial colleagues and close personal friends[4].

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[4] Likewise, the Justices have long-standing personal and professional relationships with persons, in government and out, whose complicity in the misconduct of the subject federal judges is chronicled by the cert petition and supplemental brief. Most particularly, this includes the Assistant General Counsel in the Administrative Office of the United States Courts, to whom the substantiating record was long ago transmitted for presentment to the Judicial Conference [A-308-310; SA-79-89].

The Justices may, likewise, have personal and professional relationships with members of the New York state judiciary, implicated or complicitous in the state judicial corruption which is the gravamen of this civil rights action under 42 U.S.C. §1983. This would include, in particular, judges of the New York Court of Appeals.

Secondly, my ex-husband, George Sassower, has a sharply adversarial relationship with this Court, based on claims that the Court has, in fact, protected its brethren in the lower federal judiciary and on the New York state level by denying his petitions for extraordinary writs and for certiorari. Upon information and belief, the serious allegations in Mr. Sassower's petitions -- as to which the Court has denied review -- are not dissimilar from the allegations in my instant petition, to wit, that the lower federal judiciary has authored factually-false, fabricated, and fraudulent decisions to cover-up New York state judicial corruption in which the State Attorney General is actively complicitous and that he was unconstitutionally denied due process and wrongfully stripped of his law license. Indeed, the Court's response to Mr. Sassower's *in forma pauperis* petitions has been not only to deny them, but ultimately to issue, without any prior warning or notice, a *per curiam* order, *prospectively* banning him from seeking *in forma pauperis* status for his petitions in non-criminal matters, *In Re Sassower*, 510 U.S. 4 (1993) (Exhibit "A"). To justify such draconian procedure, the Court's order cites *In re McDonald*, 489 U.S. 180 (1989) and *In re Sindram*, 498 U.S. 177 (1991). In both those cases, where the petitioners were prospectively barred from *in forma pauperis* petitions seeking extraordinary writs, the dissenting justices commented on the unprecedented nature of the Court's action, with the four-judge dissent in *McDonald* opening with the words: "In the first such act in its almost 200-year history, the Court today bars its door to a litigant prospectively."

Comparing *McDonald* and *Sindram* to *In Re Sassower* only accentuates that the Court's "impartiality might reasonably be questioned". Whereas the *per curiam* orders in both *McDonald* and *Sindram* recite the gravamen of the petitioners' contentions therein, there is no recitation of Mr. Sassower's contentions in the *per curiam* order against him, which does no more than note that his 11 prior petitions over the preceding three years "all were denied **[p. 4]** without recorded dissent" and to characterize his 10 pending petitions as "all of them patently frivolous" (Exhibit "A"). Moreover, in *McDonald*, the four dissenting Justices, Justices Brennan, Marshall, Blackmun, and Stevens, and, in *Sindram*, the three justices, Justices Marshall, Blackmun, and Stevens -- Justice Brennan being no longer on the bench -- joined in dissent based on general principle. Yet, in *In Re Sassower*, there is no principled dissent by Justices Blackmun and Stevens, the two formerly dissenting Justices still on the bench. By contrast, each of these two Justices dissented, in principle, in the only other case cited as precedent in *In Re Sassower -- Martin v. District of Columbia Court of Appeals*, 506 U.S. 1 (1992) -- wherein the Court prospectively barred Mr. Martin from *in forma pauperis* status for non-criminal petitions. However, from the order it appears that prior thereto, the Court had five times before denied Mr. Martin's *in forma pauperis* requests, the first of which was by *per curiam* order, *Zatko v. California*, 502 U.S. 16 (1991), wherein Justices Blackmun and Stevens, likewise, gave principled dissent.

I have sought to ascertain from the Clerk's office the number of litigants restricted prospectively from *in forma pauperis* status for petitions in non-criminal matters, in addition to Mr. Martin and Mr. Sassower, who appear to have been the first two in the annals of the Court. I was told that the "ballpark" number is about 16 or 17. My requests for their names for purposes of accessing their orders and comparing them to *In Re Sassower* (Exhibit "A") was denied, with the statement that my daughter, who made the inquiry, should do her own research. However, I am personally aware of one such litigant, "Glendora", restricted by the Court from prospective *in forma pauperis* filings in non-criminal matters. The Court's March 9, 1998 order in *Glendora v. John Porzio, et al.* (#97-7300) recited the allegations of her filings and referred to its prior denial of her request for *in forma pauperis* status in *Glendora v. DiPaola*, 522 U.S. ____

(1997). Justice Stevens, the only member of the original *McDonald* dissent on the bench, gave principled dissent based on *McDonald*.

On information and belief, Justices Thomas and Ginsburg absented themselves from *In Re Sassower* (Exhibit "A") because they recognized the appearance or actuality of their bias against Mr. Sassower based on his public advocacy against their Senate confirmation to the Court. Such opposition derived from his contention that, as judges of the D.C. Circuit, they wrongfully participated in protecting the state and federal defendants he sued in connection with his state judicial corruption claims.

Although I am unaware of the nature and extent of Mr. Sassower's advocacy against members of this Court and have seen *In Re Sassower* for the first time only this past week, I have just learned that Mr. Sassower has sued Chief Justice Rehnquist and has publicly made known what he views as the Chief Justice's role in the federal judicial cover-up that his litigations chronicle. The Chief Justice's failure and refusal, as head of the Judicial **[p. 5]** Conference of the United States, to ensure appropriate action on a May 29, 1998 letter[5] about the Judicial Conference's fraudulent claims to the House Judiciary Committee as to the efficacy of 28 U.S.C. §§144, 455, and 372(c), hand-delivered for him to the Court's Clerk, William Suter -- as recounted in the Center for Judicial Accountability's written statement to the House Judiciary Committee for inclusion in the record of its June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary" [SA-17-28, *See* SA-21, SA-25-27] -- must be seen in that context.

While I am reluctant to outrightly state that the Court would transfer hostile feelings toward Mr. Sassower onto me, it has already been my unfortunate experience to have been retaliated against by federal judges, angry at Mr. Sassower's activities and ready to hurt him by harming his innocent family. That is precisely what happened in

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[5] The letter is at R-61-65 of the evidentiary compendium, supporting CJA's written statement to the House Judiciary Committee, *infra*, lodged with the Clerk's office [*See* Exhibit "B-1"].

Sassower v. Field, which came before this Court more than five years ago (#92-1405), in which my daughter and I were co-plaintiffs. In that civil rights action involving housing discrimination, the Second Circuit Court of Appeals -- without identifying a single argument raised on the appeal, including the bias of the district judge, whose decision was shown to be factually unsupported and legally insupportable -- *sua sponte* and without notice invoked the district judge's "inherent power" to uphold a completely arbitrary and uncorrelated $100,000 sanction against us, without a hearing, in favor of fully-insured defendants, for whom it was a windfall double-recovery, and whose litigation fraud and other misconduct was documented by our *uncontroverted* Rule 60(b)(3) fraud motion, which was part of the appeal.[6]

This Court not only denied the *Sassower v. Field* cert petition, without reasons or dissent, but, thereafter, my petition for rehearing and supplemental petition for rehearing, which identified the Second Circuit's retaliatory *animus* against Mr. Sassower as the only explicable basis for its lawless and factually false and dishonest decision. That this Court could close its eyes to such profoundly serious charge -- substantiated by a Circuit decision, *on its face* violative of this Court's black-letter law[7] -- suggests either that the Court approved of the Second Circuit's retaliatory use of its judicial

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[6] The Second Circuit's vicious judicial retaliation against me in *Sassower v. Field* is part of the instant case -- having been grounds upon which I moved for the Second Circuit's recusal from the appeal in *Sassower v. Mangano, et al.* and from its adjudication of my §372(c) judicial misconduct complaints against the district judge and circuit panel. *See Sassower v. Mangano* cert petition, pp. 13, 19, and appendix documents, A-187-191; A-243, fn.3; A-251, fn. 1; A-256, A-273-280, A-314-16. *See*, also SA-39-41; SA-55-56.

[7] These multitudinous violations of this Court's decisional law, evident from *the face* of the Second Circuit's decision in *Sassower v. Field*, were succinctly itemized at pp. 4-6 of my supplemental petition for rehearing therein. Such supplemental petition was precipitated by the Court's granting of cert to *Liteky v. U.S.*, 510 U.S. 540 (1994), to interpret 28 U.S.C. §455(a).

power, perhaps because it was already familiar with Mr. Sassower's whistleblowing litigation by reason of his 11 petitions it had previously denied (*see* fn in *In Re Sassower*, Exhibit "A"), or that it was unwilling to expose the official misconduct of its Second Circuit friends. Certainly, had the Court taken remedial steps, consistent with its "power of supervision", which I expressly invoked in the *Sassower v. Field* case, it would have opened the Second Circuit up to scrutiny as to whether its fraudulent and retaliatory decision in *Sassower v. Field* was part of a pervasive pattern of misconduct, such as Mr. Sassower alleged[8].

Likewise raising reasonable question as to this Court's impartiality was its similar denial, without dissent or reasons, of my cert petition in the state Article 78 proceeding, *Sassower v. Mangano, et al.* (#94-1546). The constitutional abominations therein particularized -- and now part of the instant petition -- included the spectacle of the Appellate Division, Second Department's adjudicating the Article 78 proceeding, to which it was a party in interest, by granting the fraudulent and perjurious dismissal motion of its own attorney, the New York State Attorney General, and a flagrantly unconstitutional attorney disciplinary law, being used to retaliate against a judicial whistle-blowing attorney, suspended thereunder, without written charges, hearing, findings, reasons, or right of appeal, and thereafter denied any post-suspension hearing, leave to appeal, or any independent review by the common law writs, codified as Article 78[9].

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[8] It may be noted that *In Re Sassower* was issued four months after the Court denied the rehearing petitions in *Sassower v. Field*. Upon information and belief, some of the 10 certiorari petitions as to which that Court's order denied Mr. Sassower's *in forma pauperis* status referred to and/or related to events in the *Sassower v. Field* case, as to which the district judge, after denying him the right of intervention, authored decisions defaming him.

[9] The "Questions Presented" by that cert petition as to the unconstitutionality of New York's attorney disciplinary law, as written and as applied, are incorporated by reference in the "Questions Presented" in my instant petition and reprinted at A-117 . Likewise reprinted are the "Reasons for Granting the Writ" and four-point legal argument addressed to those

28 U.S.C. §2106 expressly empowers the Court to take action as "may be just under the circumstances". As highlighted by my petitioner's reply memorandum (at 8), "summary reversal and immediate vacatur" of the Appellate Division, **[p. 7]** Second Department's June 14, 1991 order suspending my state law license were "constitutionally mandated".

There seems to me one further fact raising reasonable question as to the Court's impartiality: namely, my membership at the Supreme Court bar. Deputy Clerk Francis Lorson has advised that my request for issuance of a Rule 8 show cause order is now pending before the Justices. As set forth in my September 2, 1998 letter to him (Exhibit "B-1"), notwithstanding the explanation from the Clerk's office that the reason the Court did not previously issue such order was because it was not notified by the Appellate Division, Second Department of its June 14, 1991 order [A-97], the Appellate Division's Clerk has asserted that the Court was so-notified[10]. While superficially the Court's failure to adhere to its Rule 8 by suspending my bar membership and issuing a show cause order could be favorably interpreted, the Court has thereby deprived me of vindication by its reinstatement of my Supreme Court membership and its express refusal to respect the suspensions of my state and federal law licenses -- which would be the inevitable result were it to afford me the opportunity presented by a show cause order. My response would demonstrate the complete denial of my constitutional and due process rights in both state and federal tribunals. Pursuant to Rule 8.2, I would be entitled to "a hearing if material facts are in dispute". Such hearing as to the facts pertaining to these two fraudulent and retaliatory suspension orders would be the FIRST I have ever had before any tribunal in all these many years.

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questions [A-118-131].

[10] As indicated by my September 2, 1998 letter (Exhibit "B-1", p. 2), the Southern District of New York has not disclosed whether -- as its procedures require -- it notified the Court of its February 27, 1992 order suspending my federal license in the Southern District [A-134].

Finally, as to other matters related to the pending cert petition, annexed hereto is a copy of a September 4, 1998 letter to which the Justices are indicated recipients (Exhibit "C"). Said letter transmitted copies of my supplemental brief to the non-parties identified by my September 2, 1998 certificate of service -- all of whom possess copies of the *Sassower v. Mangano* case file, with the exception of the U.S. Solicitor General, who presumably has access to the copy possessed by the Justice Department's Public Integrity Section. These non-parties are: (1) the U.S. Solicitor General; (2) the Chief of the Public Integrity Section of the Justice Department's Criminal Division; (3) the Administrative Office of the U.S. Courts; (4) the House Judiciary Committee; (5) the Commission on Structural Alternatives for the Federal Courts of Appeals; and (6) the American Bar Association. The letter also identified a further non-party possessing a copy of the *Sassower v. Mangano* case file --the Association of the Bar of the City of New York -- whose President was also an indicated **[p. 8]** recipient of the letter[11].

I respectfully submit that since these governmental and bar association recipients of that September 4, 1998 letter have not come forth with any response thereto, their silence must be deemed a concession as to the breakdown of all checks on federal judicial misconduct by the three governmental Branches and the organized bar, as particularized in my supplemental brief.

Lastly, it has come to my attention that in November 1998 Justice Kennedy will be speaking at the "Judicial Independence and Accountability Symposium" at the University of Southern California (Exhibit "E-1"). Presumably, there will be future occasions when other Justices will also be addressing this critical topic. Based on Justice Kennedy's sanguine remarks at a 1996 conference on "Judicial

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[11] The receipts, verifying mailing on September 5, 1998 to all the interested" non-parties and confirmation of delivery, are also enclosed (Exhibit "D"). Hand-delivery to the President of the Association of the Bar of the City of New York was made on September 8th *via* the Association's General Counsel, who promised to transmit same to the President, with whom my daughter personally spoke about such matter on September 9th.

Ethics and the Rule of Law" (reprinted in 40 St. Louis L.J. 1067: Exhibit "E-2"), I would be remiss if I did not point out that the fully-documented case of *Sassower v. Mangano, et al.*, #98-106, will transform the customary dialogue on judicial independence and accountability and serve as the benchmark of the Court's true commitment to these fundamental constitutional principles.

Most respectfully,
s/
DORIS L. SASSOWER
Petitioner *Pro Se*

cc: New York State Attorney General,
Respondent and Counsel to Co-Respondents

Exhibit "A" to Petitioner's Disqualification/Disclosure Application: *IN RE GEORGE SASSOWER*, 510 U.S. 4, 114 S.Ct. 2, 126 L.Ed.2d 6 (1993)

In re George SASSOWER (Two Cases)

George SASSOWER v. MEAD DATA CENTRAL INC., et al.

George SASSOWER v. D. MICHAEL CRITES, et al.

George SASSOWER v. KRIENDLER & RELKIN, et al.

George SASSOWER v. Lee FELTMAN, et al.

George SASSOWER v. PUCCINI CLOTHES, et al.

George SASSOWER v. A.R. FUELS, et al.

George SASSOWER v. Janet RENO

George SASSOWER v. Robert ABRAMS, Attorney General of New York.

Nos. 92-8933, 92-8934, 92-9228, 93-5045, 93-5127 to 93-5129, 93-5252, 93-5358 and 93-5596

October 12, 1993

PER CURIAM.

Pro Se petitioner George Sassower requests leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request pursuant to Rule 39.8. Sassower is allowed until November 2, 1993, within which to pay the docketing fees required by Rule 38 and submit his petitions in compliance with this Court's Rule 33. For the reasons explained below, we also direct the Clerk not to accept any further petitions for certiorari nor any petitions for extraordinary writs from Sassower in noncriminal matters unless he pays the docketing fee required by Rule 38 and submits his petition in compliance with Rule

33.

Prior to this Term, Sassower had filed petitions in this Court over the last three years. Although Sassower was granted *in forma pauperis* status to file these petitions, all were denied without recorded dissent.[1] During the last four months, Sassower has suddenly increased his filings. He currently has 10 petitions pending before this Court -- all of them patently frivolous.

Although we have not previously denied Sassower *in forma pauperis* status pursuant to Rule 39.8, we think it appropriate to enter an order pursuant to *Martin v. District of Columbia Court of Appeals*, 506 U.S. 1, 113 S.Ct. 397, 121 L.Ed.2d 305 (1992). In both *In re Sindram*, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991) (*per curiam*), and *In re McDonald*, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989) (*per curiam*), we entered orders similar to this one without having previously denied petitioners' motions to proceed *in forma pauperis* under Rule 39.8. For the important reasons discussed in *Martin*, *Sindram*, and *McDonald*, we feel compelled to enter the order today barring prospective filings from Sassower.

Sassower's abuse of the writ of certiorari and of the extraordinary writs has been in noncriminal cases, and so we limit our

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[1] See *Sassower v. New York*, 499 U.S. 966, 111 S.Ct. 1597, 113 L.Ed.2d 660 (1991) (certiorari); *In re Sassower*, 499 U.S. 935, 111 S.Ct. 1405, 113 L.Ed.2d 460 (1991) (mandamus/prohibition); *In re Sassower*, 499 U.S. 935, 111 S.Ct. 1405, 113 L.Ed.2d 461 (1991) (mandamus/prohibition); *Sassower v. Mahoney*, 498 U.S. 1108, 111 S.Ct. 1015, 112 L.Ed.2d 1097 (1991); *In re Sassower*, 499 U.S. 904, 111 S.Ct. 1124, 113 L.Ed.2d 232 (1991) (mandamus/prohibition); *In re Sassower*, 498 U.S. 1081, 111 S.Ct. 1027, 112 L.Ed 2d 1108 (1991) (habeas corpus); *In re Sassower*, 498 U.S. 1081, 111 S.Ct. 1026, 112 L.Ed.2d. 1108 (1991) (mandamus/prohibition); *Sassower v. United States Court of Appeals for D.C. Cir.*, 498 U.S. 1094, 111 S.Ct. 981, 112 L.Ed.2d 1066 (1991) (certiorari); *Sassower v. Brieant*, 498 U.S. 1094, 111 S.Ct. 981, 112 L.Ed.2d 1066 (1991) (certiorari); *Sassower v. Thornburgh*, 498 U.S. 1036, 111 S.Ct. 703, 112 L.Ed.2d 692 (1991) (certiorari); *Sassower v. Dillon*, 493 U.S. 979, 110 S.Ct. 508, 107 L.Ed.2d 511 (1989) (certiorari).

sanction accordingly. The order therefore will not prevent Sassower from petitioning to challenge criminal sanctions which might be imposed on him. The order, however, will allow this Court to devote its limited resources to the claims of petitioners who have not abused our process.

It is so ordered.

Justice THOMAS and Justice GINSBURG took no part in the consideration or decision of the motion in No. 93-5252.

Exhibit "B-1" to petitioner's September 23, 1998 disqualification/disclosure application: PETITIONER'S SEPTEMBER 2, 1998 LETTER (by her paralegal assistant) TO FRANCIS LORSON, CHIEF DEPUTY CLERK, U.S. SUPREME COURT

BY EXPRESS MAIL
EM025604722US

September 2, 1998

Francis Lorson, Chief Deputy Clerk
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: *Sassower v. Mangano, et al.*,
Supreme Court Docket #98-106

Dear Mr. Lorson:

As discussed, enclosed are 40 copies of petitioner's Supplemental Brief, with a certificate of service. Also enclosed are the documents to be lodged in the Clerk's office -- copies of which were sent in July to respondents' counsel, the co-respondent New York State Attorney General. These documents, indicated by footnote 2 of the Supplemental Brief (at p. 9), are:

> (1) CJA's evidentiary compendium supporting its written statement to the House Judiciary Committee for inclusion in the record of the Committee's June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary" [SA-17]; and
>
> (2) the exhibits to petitioner's July 27, 1998 letter to the Chief of the Public Integrity Section of the U.S. Justice Department's Criminal Division [SA-47].

As also discussed -- and as reflected by the cert petition (at p. 24) -- petitioner remains a member in good standing of the Supreme Court bar. Although suspended by the Appellate Division, Second Department, by order dated June 14, 1991 [A-96-97], and by the Southern District of New York, by order dated February 27, 1992 [A-134], she was not suspended by the Supreme Court nor served with a Rule to Show Cause, pursuant to its Rule 8. I was told that this was because the state court, which has the responsibility of furnishing the Court with notification, had never done so.

However, the Clerk of the Appellate Division, Second Department who handles disciplinary matters, Robert Rosenthal, informed me -- after checking petitioner's disciplinary file -- that the Appellate Division, Second Department had notified the Supreme Court of the June 14, 1991 order. Indeed, **[p. 2]** Mr. Rosenthal sent me the notification list, circling the Supreme Court. A copy is enclosed. Should you wish to speak with Mr. Rosenthal directly, his number is 718-875-1300.

I have been unable to ascertain whether the Southern District of New York notified the Supreme Court of its February 27, 1992 order. The Southern District's Local Civil Rule 1.5(g) explicitly states that its Clerk forwards such disciplinary orders to courts in which the affected attorney is known to be admitted to practice. I have been told that this was the procedure, as well, under the Southern District's predecessor Rule 4, in effect when petitioner was suspended. In petitioner's case, her admission to the U.S. Supreme Court bar was reflected at the outset of her Martindale-Hubbell Law Listing [A-137], which was included in her response to the Southern District's order to show cause.

So that the Supreme Court's records will accurately reflect petitioner's legal status, I have requested Mr. Rosenthal to send to your attention a certified copy of the Appellate Division, Second Department's June 14, 1991 order. I have also requested that Ruth McClean of the Clerk's office in the Southern District (212-805-0652) send you a certified copy of that court's February 27, 1992 order.

Inasmuch as the Southern District of New York deemed the Appellate Division, Second Department's June 14, 1991 order sufficient to issue an order to show cause for petitioner's suspension from the Southern District, and, thereafter, to suspend her based thereon, petitioner expects — and desires -- that the Supreme Court will promptly issue a Rule 8 show cause order. This will permit the Justices to address petitioner's Supreme Court bar status simultaneous with their consideration of the cert petition, involving those two unconstitutional and retaliatory federal and state suspensions. Such would serve both the interests of justice and judicial economy.

Your kind assistance is greatly appreciated

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Paralegal Assistant

Letter read and approved by:
s/
DORIS L. SASSOWER
Petitioner *Pro Se, Sassower v. Mangano, et al.*

Enclosures
cc: New York State Attorney General, counsel for respondents

Exhibit "B-2" to petitioner's September 23, 1998 disqualification/disclosure application: PETITIONER'S SEPTEMBER 17, 1998 LETTER (by her paralegal assistant) TO FRANCIS LORSON, CHIEF DEPUTY CLERK, U.S. SUPREME COURT

BY FAX 202-479-3021
4 pages

September 17, 1998

Francis Lorson, Chief Deputy Clerk
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: RULE 8 SHOW CAUSE ORDER
Supreme Court bar membership of Doris L. Sassower

Dear Mr. Lorson:

As requested, enclosed is petitioner's September 2nd letter, addressed to you, which you stated you had not seen.

The pertinent concluding paragraph reads as follows:

> "Inasmuch as the Southern District of New York deemed the Appellate Division, Second Department's June 14, 1991 order sufficient to issue an order to show cause for petitioner's suspension from the Southern District, and, thereafter, to suspend her based thereon, petitioner expects — and desires -- that the Supreme Court will promptly issue a Rule 8 show cause order. This will permit the Justices to address petitioner's Supreme Court bar status simultaneous with their consideration of the cert petition, involving those two unconstitutional and retaliatory federal and state suspensions. Such would serve both the interests of justice and judicial economy."

Since the *Sassower v. Mangano, et al.* cert petition, #98-106, is on the Court's September 28, 1998 conference calendar, petitioner respectfully requests that a Rule 8 show cause order issue expeditiously.

Thank you very much.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Paralegal Assistant

Enclosure
cc: New York State Attorney General, counsel for respondents

Exhibit "C" to the September 23, 1998 disqualification/disclosure application: THE CENTER FOR JUDICIAL ACCOUNTABILITY'S (CJA) SEPTEMBER 4, 1998 LETTER-MEMORANDUM TO GOVERNMENTAL AND BAR RECIPIENTS OF PETITIONER'S SUPPLEMENTAL BRIEF

TO: U.S. Solicitor General Seth P. Waxman
Lee Radek, Chief, Public Integrity Section/Criminal Division
U.S. Department of Justice
Administrative Office of the U.S. Courts
ATT: William Burchill, General Counsel
Jeffrey Barr, Assistant General Counsel
House Judiciary Committee: Courts Subcommittee
Republican Majority:
ATT: Tom Mooney, General Counsel; Blaine Merritt, Chief Counsel
Democratic Minority:
ATT: Perry Apelbaum; Robert Raben, Counsel
Commission on Structural Alternatives for the Federal Courts of Appeals
ATT: Byron White, Chairman
American Bar Association
ATT: ABA President Philip S. Anderson

FROM: Elena Ruth Sassower, CJA Coordinator

RE: Your ethical and professional obligations, based on the record-supported presentation in *Sassower v. Mangano, et al.*, S.Ct. #98-106

DATE: September 4, 1998

Enclosed is a copy of the supplemental brief in *Sassower v. Mangano, et al.*, S.Ct. #98-108, to which you are each indicated as recipients by petitioner's certificate of service, a copy of which is also enclosed.

The supplemental brief describes the breakdown of checks on federal judicial misconduct within the Legislative and Executive Branches of government -- compounding the breakdown of checks within the

Judicial Branch, as particularized by the cert petition. Such state of affairs -- destroying the constitutional balance and endangering the public -- requires response from those, like yourselves, in positions of leadership and influence. As pointed out in the supplemental brief (at p. 10), because each of you not only has the petition, but the substantiating record, it would be appropriate for the Supreme Court to invite your views with respect thereto, including your views as to your ethical and professional obligations in the face of such evidence-supported presentation.

[p. 2] Based on the substantiating record, it should not require the Court's invitation for you to confront those obligations. Nor should it require our request that you do so. Nonetheless, by this letter, we expressly make such request and solicit your *amicus* support for the Court's review of the petition -- which we ask that you expeditiously make known to the Court.

Since the Association of the Bar of the City of New York also has a copy of the petition, as well as the substantiating record, which we long ago provided it, a copy of this letter and supplemental brief is also being sent to its president, Michael A. Cooper, reiterating our long-standing request for the City Bar's *amicus* support and assistance. In the event Mr. Cooper has not seen our extensive correspondence with the City Bar, we enclose a copy of our most recent letter to its General Counsel, transmitting the petition.

s/
ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Letter read and approved by:

s/
DORIS L. SASSOWER, Petitioner *Pro Se*
Sassower v. Mangano, et al.

Enclosures
cc: President Michael A. Cooper,
Association of the Bar of the City of New York
[By Hand]
Justices of the U.S. Supreme Court

Enclosure to CJA's September 4, 1998 letter-memorandum to governmental and bar recipients of Petitioner's supplemental brief: petitioner's September 2, 1998 certificate of service, filed with the U.S. Supreme Court

No. 98-106
IN THE SUPREME COURT OF THE UNITED STATES
October Term 1997

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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.

----------x

I, DORIS L. SASSOWER, hereby affirm and certify that on this 2nd day of September 1998, three copies of my Supplemental Brief in the above-entitled matter were mailed, first class postage prepaid, to counsel for Respondents:

Attorney General of the State of New York
120 Broadway
New York, New York 10271

I further affirm and certify that all parties required to be served have been served.

Additionally, copies of the Supplemental Brief are being mailed, first-class, certified mail/return receipt, to the following:

U.S. Solicitor General Seth P. Waxman
Room 5614
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
[Certified Mail/RRR: Z-470-945-084]

Lee Radek, Chief
Public Integrity Section, Criminal Division
U.S. Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530
[Certified Mail/RRR: Z-470-945-085]

Administrative Office of the U.S. Courts
ATT: William Burchill, General Counsel
Jeffrey Barr, Assistant General Counsel
One Columbus Circle, N.E.
Washington, D.C. 20544
[Certified Mail/RRR: Z-470-945-086]

House Judiciary Committee: Subcommittee on Courts and Intellectual Property
Republican Majority: ATT: Tom Mooney, Mitch Glazier, Counsel
B-351-A Rayburn Building
Washington, D.C. 20515
[Certified Mail/RRR: Z-470-945-087]
Democratic Minority: ATT: Perry Apelbaum, Robert Raben, Counsel
B-351-C Rayburn Building
Washington, D.C. 20515
[Certified Mail/RRR: Z-470-945-088]

Commission on Structural Alternatives for the Federal Courts of Appeals
ATT: Byron White, Chairman
One Columbus Circle, N.E.
Washington, D.C. 20544
[Certified Mail/RRR: Z-470-945-089]

American Bar Association
c/o President Philip S. Anderson
Wiliams & Anderson
111 Center Street, Suite 2200
Little Rock, Arkansas 72201
[Certified Mail/RRR: Z-470-945-090]

s/
DORIS L. SASSOWER
Plaintiff-Appellant *Pro Se*
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

Enclosure to CJA's September 4, 1998 letter-memorandum to governmental and bar recipients of petitioner's supplemental brief: CJA's August 12, 1998 letter to Alan Rothstein, General Counsel of the Association of the Bar of the City of New York

BY HAND

August 12, 1998

Alan Rothstein, General Counsel
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036-6689

RE: The City Bar's Responsibilities under the Professional and Ethical Codes of Conduct

Dear Mr. Rothstein:

Following up our yesterday's telephone conversation, enclosed are: (1) the cert petition in *Sassower v. Mangano, et al.*; (2) our July 20, 1998 letter to the U.S. Solicitor General; (3) our July 27, 1998 letter to the Public Integrity Section of the U.S. Justice Department; (4) the Attorney General's notification, dated August 4, 1998, that respondents are waiving their right of opposition.

In view of the serious corruption issues particularized by the cert petition and further highlighted in our correspondence with the Solicitor General and Justice Department, we request the City Bar's *amicus* support in obtaining Supreme Court review. Due to the shortness of time for the City Bar to participate in this all-important cert stage -- where an *amicus* brief would need to be submitted by the August 19th date on which respondents -- had they not waived a response -- were due to have submitted their reply brief, we request that the City Bar take emergency action to communicate with the Solicitor General its endorsement of our request for his *amicus* support and that it reinforce his obligations under Rule 8.3 of the

ABA's Model Code of Professional Conduct[1] to make disciplinary and criminal referrals consistent with the record.

The City Bar is already familiar with the record in *Sassower v. Mangano*. Over a year ago, on August 5, 1997, I hand-delivered to the City Bar the record on appeal and appellate briefs. On October 14, **[p. 2]** 1997, I hand-delivered our petition for rehearing with suggestion for rehearing *en banc* and, on November 8, 1997 hand-delivered copies of our §372(c) judicial misconduct complaints against the district judge and appellate panel.

Of course, it is not just the Solicitor General which has obligations to make disciplinary and criminal referrals under Rules 8.3 and 8.4. Those obligations apply also to the City Bar and we request that it meet its obligations thereunder, based on the record in *Sassower v. Mangano*, long in its possession. Plainly, such ethical obligations will be all the more essential should the Supreme Court not grant review.

On a different subject, I reiterate my request for the date on which the City Bar rendered its evaluation approving Alvin Hellerstein for a federal judgeship in the Southern District of New York. If you deem such information as "confidential", please explain the reason therefor so that we may incorporate it in our formal statement to the Senate Judiciary Committee in opposition to Mr. Hellerstein's confirmation.

As discussed, the basis for CJA's opposition to Mr. Hellerstein rests on his performance as Chairman of the City Bar's Judiciary Committee when our 1992 critique of the federal judicial screening process and Andrew O'Rourke's City Bar rating was directed to him by then President Feerick. This was discussed with you in mid-December of last year, when I called you about the City Bar's responsibilities in the face of Governor Pataki's nomination of Mr. O'Rourke to the State Court of Claims and discussed, as well with Daniel Kolb, successor Chairman of the City Bar's Judiciary Committee, in our frequent conversations throughout December and

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[1] Rule 8.3, "Reporting Professional Misconduct", and Rule 8.4, "Misconduct" are reprinted in the cert petition at A-20.

January when, to no avail, I sought to get the City Bar to retract its insupportable approval rating of Mr. O'Rourke, consistent with its obligations under New York's DR 8-102(a) of the New York's Code of Professional Responsibility and Rule 8.3(a) of the ABA's Model Code of Professional Conduct.

For your information, a copy of CJA's July 30, 1998 and August 3, 1998 letters to the Senate Judiciary Committee, protesting its sham confirmations procedures, are enclosed. Since the Senate is in recess until September 1st, there is still time for the City Bar to meet its ethical duty and address the evidence of Mr. Hellerstein's self-interested protectionism, as reflected by his February 3, 1993 letter to us.

[p. 3] Finally, in the event you are unaware of CJA's April 24, 1998 testimony before the Commission on Structural Alternatives for the Federal Courts of Appeals -- which highlighted (at p. 3) the City Bar's faulty procedures for screening federal judicial candidates, including its "screening out" of adverse information -- as to which it took no corrective steps, enclosed is a copy.

Yours for a quality judiciary,

s/

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosures

Exhibit "E-1" to petitioner's September 23, 1998 disqualification/disclosure application: UNIVERSITY OF SOUTHERN CALIFORNIA LAW SCHOOL SYMPOSIUM

USC
The Law School

JUDICIAL INDEPENDENCE AND ACCOUNTABILITY SYMPOSIUM

NOVEMBER 20-21, 1998

PLEASE CONSIDER JOINING some of our nation's leading jurists, lawyers, social commentators and scholars to address an issue of paramount importance: the proper balance of judicial independence and accountability.

The last decade has seen intense criticism of some federal judges' rulings with threats of impeachment and proposals to amend the Constitution to eliminate life tenure for the federal judiciary. At the state level, many incumbents have been defeated in retention elections and overall, the costs of judicial campaigns have increased enormously. These events raise serious concerns about the independence of the judiciary. At the same time, these events raise legitimate questions about judges' responsibility to their limited roles in our democratic systems and of their accountability when, arguably, they exceed the limits of their authority.

Our investigation of the crucial balance between legitimate independence and appropriate accountability will take form as an historic symposium and bring together speakers such as U.S. Supreme Court Associate Justice Anthony Kennedy; Anthony Lewis, *New York Times* columnist; leading scholars; and distinguished state and federal judges.

The Program will focus on these key issues:

What is Judicial Independence and Does it Matter?
-- What is Judicial Independence and How is it Defined and Assessed?
-- What has been the History of Judicial Independence?
-- What are the Perspectives of Critical Theory on the Issue of Judicial Independence?

What are the Contemporary Threats to Judicial Independence?
-- Does Electoral Review Affect Judges' Independence in Deciding Death Penalty Cases?
-- Is the Financing of Judicial Elections a Threat to Judicial Independence?
-- Are there Structural Threats to Judicial Independence?

What are the Alternative Models to Judicial Independence?
-- What lessons can be Learned from Other Countries?
-- What can be Learned from Political Theory?

How is the Need for Judicial Accountability to be Balanced with the Need for Judicial Independence?

What is a Research Agenda for Judicial Independence Issues in the Future?

If this early registration form came by mail, you will receive additional information shortly. If you did not receive this form by mail and would like to be added to our mailing list, please call (213) 740-2582, fax (213) 740-9442 and/or e-mail to symposia@law.usc.edu

You can also obtain complete program information by visiting our website at http://www.usc.edu/dept/law/symposia/judicial

Registration has been underwritten for all members of the judiciary. Registration fee for academics and government and public interest attorneys, $130; and for private attorneys, $195. Registration deadline is November 10, 1998. Early registration is encouraged as space availability may be limited.

Exhibit "E-2" to petitioner's September 23, 1998 disqualification/disclosure application: SPEECH OF JUSTICE ANTHONY KENNEDY, "JUDICIAL ETHICS AND THE RULE OF LAW"

Saint Louis University Law Review - Summer, 1996 40 St. Louis L.J. 1067 — 4911words

PROGRAM IV: JUDICIAL ETHICS AND THE RULE OF LAW -- ANTHONY M. KENNEDY*
* Associate Justice of the Supreme Court of the United States.

SUMMARY:
... These conventional standards for assessing the wisdom of a court decree are quite irrelevant, however, if the court which issues the judgment is not recognized as an institution governed by a strict ethical code. ... When the public turns its attention to the judiciary, will its view be one of condemnation and cynicism? Or will it be one of admiration? My esteemed colleague Justice Breyer and other distinguished members of this conference spoke yesterday about judicial independence. ... For there can be no judicial independence if the judiciary, both in fact and in the public perception, fails to conform to rigorous ethical standards. ... Furthermore, all too often the appearance becomes the reality. ... The tales of personal hostility that emerge are inaccurate because the law clerks have not yet practiced long enough to know the difference between a professional disagreement and a personal one. ... Judges must know and remember that we have a language, a logic, a structure, a tradition, a principled discourse, and a link to ancient teachings that transcends the political process. ... In the federal system, we have structures both for the enforcement of ethical rules and for the advice and consideration of ethical questions. ... Finally, this process embodies a vital principle: Enforcement of judicial ethics should remain within the judiciary itself, lest judicial independence be threatened. ... If we honor our professional ethic, others will admire the law that we enforce. ...
TEXT: [*1067]

The power of a court, the prestige of a court, the primacy of a court stand or fall by one measure and one measure alone: the respect accorded its judgments. How does a court earn respect for its judgments and continued respect from year to year and from generation to generation? That question refers us to the full scope of the law, the study of a lifetime. Respect for a judgment depends upon its coherence, its logic, its intellectual force, its fairness, its common sense, its roots in ancient principles of law and justice, and its continued vitality in a world of change. These conventional standards for assessing the wisdom of a court decree are quite irrelevant, however, if the court which issues the judgment is not recognized as an institution governed by a strict ethical code. A court's judgments will be given no serious consideration, no examination at all, if the public is not confident that its judges remain committed to neutral and principled rules for the conduct of their office.

We live in a time in which the public seeks to become better informed about governmental institutions. When the public turns its attention to the judiciary, will its view be one of condemnation and cynicism? Or will it be one of admiration? My esteemed colleague Justice Breyer and other distinguished members of this conference spoke yesterday about judicial independence. Today's session concerns judicial ethics. The two subjects are intertwined. For there can be no judicial independence if the judiciary, both in fact and in the public perception, fails to conform to rigorous ethical standards. Judicial independence can be destroyed by attacks from without, but just as surely it can be undermined from within. There is no quicker way to undermine the courts than for judges to violate ethical precepts that bind judicial officers in all societies that aspire to the Rule of Law.

Three important principles must be observed if a judiciary is to establish and maintain high standards of judicial ethics, consistent with preserving its independence. First, judges must honor, always, a personal commitment to adhere to high standards of ethical conduct in the performance of their official duties and in their personal and social relations; second, the judiciary itself must adopt and announce specific, written codes of conduct to guide judges in [*1068] the performance of their duties; and third, there should be adequate mechanisms and procedures for the judiciary itself to receive and

investigate allegations of misconduct and to take action where warranted, so that the public has full assurance that its interest in an ethical judiciary is enforced and secured. In the federal judiciary, we have been successful, for the most part, in adhering to these precepts.

It is a delicate task to address lawyers or judges on the subject of ethics. We might prefer to follow our own consciences without help from outside interference such as statutory requirements. But it is our duty to define, to explore, and to state in clear terms just what our ethics are and ought to be. I will not undertake today to offer a comprehensive code of ethics for judges. Attached to these pages is an example of one of these codes, the Code of Conduct for United States Judges.

I believe it was Learned Hand, a judge of our United States Court of Appeals from 1924 until 1961, and one of the common law's greatest judges, who once said, "Here I am an old man in a long nightgown making muffled noises at people who are no worse than I am." Hand's view may be too self-deprecating for us to embrace in full, but he does convey the essential point that judges are, if nothing else, fallible. A specific, accepted code of conduct acknowledges this reality.

In order to maintain judicial independence, ethics ought to be enforced by judges with a minimum of political intervention. It does not follow from this premise, however, that each judge is free to define his or her own ethical standards. If that were the case, we would exempt ourselves from the principle we enforce against others: that definite, specific standards of moral and ethical behavior are essential in human undertakings. The ethical responsibilities of judges ought to be announced with clarity and precision.

Some codes of conduct for judges tend to sound grandiloquent or pompous. Critics might say that they do no more than state vague platitudes. There must be a beginning point, however. If general statements do not suffice to give necessary guidance, more specific rules will be demanded. That, in fact, happened to United States judges when we did not follow specific rules respecting conflicts of interest. Considering our earlier standards were vague, Congress rushed in with restrictive and burdensome rules on conflict of interest,

rules that now have become permanent features of the judicial code of conduct.

My discussion touches today upon three areas of concern with respect to judicial ethics. First, rules guiding judges in all their relations with attorneys and parties in litigation; second, rules governing judges in their relations to other judges; and third, rules governing the judge's activities in society. [*1069]

I. Introduction

The essential rule of judicial relations concerning lawyers and litigants is this: a judge must be fair and impartial. All sides to a controversy must be given a full and fair hearing. As a consequence, a judge may not meet with an attorney or a party without the opposing attorney or parties present. The very nature of fair and open justice precludes either the fact or the appearance of a system in which essential communications occur without all sides present. We undermine respect for the judiciary if we allow it to be charged with adopting secret understandings or private agreements. Of course, emergencies arise when a judge must be contacted by one party, there being no time or opportunity to notify opposing counsel. And there are some instances in which law enforcement and prosecuting authorities must meet in private with the judge, for instance in the application for search warrants. Furthermore, there may be occasions when certain administrative details, such as scheduling hearings or the routine filing of papers, requires communication between the judge and one party. These instances must be kept to a minimum, however; the meetings must be a matter of record; notice must be given the other party of what transpired and the opposing party must be given opportunity to respond.

Of course, judges cannot be isolated. At Washington social affairs, we may see attorneys who have matters before us. We greet them and enjoy their company, but there is a very clear understanding that cases must never be discussed. We are careful to ensure that other persons are present while we visit together, so that only appropriate conversations take place and so there is no suspicion otherwise.

Another specific rule designed to ensure impartiality is that a judge, and his or her family, must have no financial interest in the proceedings. Because Congress believed that judges had not gone far enough, or at least had not been specific enough about the rules, it enacted a restrictive statute to control our conduct. n1 In the federal system, a judge is disqualified from sitting on a case where the judge, his or her spouse or minor child owns even a single share of stock in a corporation involved in the litigation. n2 And, unlike members of the Executive or Legislative Branch, judges may not have so-called blind trusts (trusts holding assets consisting of companies and investments unknown to the judge).

----------Footnotes----------
n1. 28 U.S.C. 455(b) (1994).
n2. 28 U.S.C. 455(b)(4), (d)(4) (1994).
----------End Footnotes----------

A congressional requirement designed to enforce disqualification rules is the law that requires all United States judges and other high level officials to make annual public disclosure of their assets, holdings, and outside income and [*1070] those of their spouse. It is embarrassing for some judges to disclose how much they have and for others to disclose how little they have; the disclosure rules can be so onerous and objectionable as to discourage well-qualified and successful attorneys from seeking federal judicial positions. Yet it is imperative that we maintain the appearance as well as the reality of impartiality. So, I see no likelihood that our conflict of interest or disclosure rules will be made less onerous.

At this point it is well to note that, just as appearances count in most human affairs, so too in judicial ethics. The public must have confidence that its judges are committed to impartiality, and for that reason the appearance, as well as the fact, of judicial neutrality must be maintained. Confidence in the entire system is eroded when the public sees a judge violating simple rules, for instance by communicating with only one party or by hearing a case where there is a conflict of interest. Furthermore, all too often the appearance becomes the reality. If we do not maintain the appearance of neutrality, small deviations become the accepted norm, and as a

consequence undermine the integrity of the judiciary.

Most judges believe they are incorruptible and that no harm can come from a brief private discussion or by hearing a case where a judge has a remote financial interest, because the judge has sufficient discipline to keep an open mind. But that is beside the point. Judges need rules just as do the citizens whose cases we hear. In the Federalist Papers, written to urge ratification of the Constitution, James Madison said, "If men were angels, no government would be necessary." n3

----------Footnotes----------

n3. The Federalist, No. 51, at 322 (James Madison) (Clinton Rossiter, ed., 1961).

----------End Footnotes----------

A further responsibility of the judge consists in the duty to conduct himself or herself with the utmost civility, courtesy, and respect to all attorneys and all parties. If it is to endure, the law must teach; and the law's teaching begins with the proposition that a society built upon the rule of law is a society that insists upon decency, decorum, and respect for its fellow members. Judges must follow this essential rule in their own conduct. Strict rules of civility and deportment must prevail in all judicial proceedings. Judges must behave with discipline, moderation, and restraint.

Sometimes it is necessary to reprimand an attorney, and of course a judge must not tolerate incivility, disrespect, or shoddy practice in his or her courtroom. But if an attorney is to be reprimanded, it must be in a restrained and professional way, lest the court itself become subject to censure or derision. Attorneys, of course, can try our patience, but patience is one of the attributes that justifies our holding judicial authority. Judicial reprimands must be confined to rare instances; and when they are necessary, they must be cast [*1071] in terms that preserve the dignity of the court, making all due allowance for those frailties that are latent in us all.

II. Judicial Relations with Colleagues

From time to time, writings about my own Court circulate in the press

and the book trade. We are sometimes portrayed as being hostile and unfriendly to one another. This is myth. The myth arises because reporters and writers often get their information from the young clerks who have just left us. Those clerks have an oath of confidentiality, but in a few instances they have ignored or misunderstood it. The tales of personal hostility that emerge are inaccurate because the law clerks have not yet practiced long enough to know the difference between a professional disagreement and a personal one. On our Court, and I venture to say on yours, most of our differences are of the professional kind. We do well, however, to remind ourselves of the distinction. Of course, we disagree about cases and legal issues. We are supposed to do that. We would violate our professional oath were we not to express our own views and conclusions. We are sworn to disagree with our colleagues when our own conscience and our own understanding of the law leads us to conclude that our colleagues are mistaken. From these very disagreements the law will emerge. It is destructive, though, for the public, or for the judiciary itself, to forget the distinction between personal and professional disagreements.

As in many questions of ethics, it is easier to state the ideal than to live the reality. It can be difficult to accept the fact that a colleague with whom we disagree has approached the case with the same open mind that we did. Nonetheless, it is the ethical duty of every judge to examine and to re-examine his or her own first premises, and we must presume that our colleagues adhere to the same principle. Biases and prejudices are dangerous for the very reason that they are disguised and subtle. It is the duty of a judge to read, to inquire, to teach, to learn, so that his or her own mind remains open to an honest plea from all sides in a dispute, including from his or her own colleagues.

To avoid personal disagreements and those petty animosities which might lead to more permanent hostility, courts have certain rules, customs, and traditions. In the federal courts, one custom followed in order to eliminate small disputes is the rule of seniority, by which judges with longer tenure take precedence in discussion and in various other ways, such as in the assignment of the responsibility to write the court's opinions. Perhaps seniority is not the ideal rule, but it does diminish the force of politics, ideology, and ad hoc alliances within the judicial hierarchy. And in practice, the judges in the federal system are

solicitous of the views of colleagues with less tenure, allowing them full opportunity to exercise the authority to which their commission entitles them. This custom is but one example. I find it is useful [*1072] to cling to every custom and rule of judicial etiquette as a means of maintaining the collegiality requisite to a great court.

The collegiality of the judiciary can be destroyed if we adopt the habits and mannerisms of modern, fractious discourse. Neither in public nor in private must we show disrespect for our fellow judges. Whatever our failings, we embody the law and its authority. Disrespect for the person leads to disrespect for the cause.

III. Judicial Relations with Society

Much of what we have discussed with reference to demeanor and civility also applies to our communications and interchange with the public at large. The life of a judge can be difficult. Neutrality requires detachment, and detachment is often not compatible with social discourse and community participation. In the United States, a very exciting and rewarding part of social life revolves around the support and participation in charitable enterprises and endeavors. One of the splendid, distinguishing marks of American society is its commitment to charitable and eleemosynary endeavors, including the support of hospitals, universities, and societies for noble causes of every sort. Much of this activity, however, requires the raising of monies. Federal judges who participate in these activities, however, violate the Code of Conduct for federal judges. The rule is based on the premise that judges must not be in the position of asking members of the community to support a cause by pledging monies, no matter how worthy that cause is. This puts judges at a significant disadvantage in many of society's most rewarding endeavors. Our withdrawal from these activities is sometimes misunderstood and misinterpreted. But that cannot be helped.

There are other aspects of the judge's ethical duties with reference to public communication, but I shall mention just two. One concerns outside employment. Congress has placed limits on the types of outside employment that judges and other officials may undertake. Even though there is a long tradition of judges serving as law faculty

- to the benefit of both the judges and students - Congress has placed an upper limit on the amount of income federal judges may earn from teaching courses, and prohibited them from taking any money for speaking honorarium, as opposed to a teaching salary.

A second aspect that has been the subject of some recent debate is the question of whether it is proper for a judge to take his or her grievance with the judicial system, usually a grievance originating from the decision of a higher court, to the press. That is, is it proper for a judge who disagrees with a decision to run to the press to lament the outcome?

In my view, the answer to this question is no. The judge who appeals his case to the press is, first of all, unfair, for he or she knows that judges of different ethical sensibilities are restrained from responding. And in a larger [*1073] sense, a judge who runs to the press with his or her grievances is announcing, in effect, that the judicial system is incapable of analyzing the cases it hears in a calm, dispassionate, rational and neutral way. Few charges could be more calculated to cast disrespect upon the judiciary and its members.

As we have discussed, there will be disagreements among us, which is as it should be. The more fundamental point, however, is that the very essence of judicial power, the very essence of respect for judicial judgments, is that by our language and by our traditions, we have the power to go over the head of the press to the people. The rule of law is based on the proposition that reason, fairness, and neutrality in decision-making will lead to a rational exposition of the truth. Judges must know and remember that we have a language, a logic, a structure, a tradition, a principled discourse, and a link to ancient teachings that transcends the political process. Our institutions and our exposition of the law is within a different framework than the discussion of issues in the popular press or even in the political branches of the government. That is not to say that we are superior to the political process or to public opinion, for in many respects we must be subordinate to their deliberations if a democratic society is to prevail. But our processes and our discoveries are different and distinct from other institutions, and are valuable for that reason. Individual judges from time to time will be frustrated by the system.

But in a fair and open judicial system such as ours, judges must confine their disagreements to the judicial forum, with its own superb vocabulary and traditions.

IV. Elaboration of Judicial Ethics in the Federal System

In the federal system, we have structures both for the enforcement of ethical rules and for the advice and consideration of ethical questions.

I referred earlier to the Code of Conduct for federal judges. The United States Judicial Conference adopted this Code in 1973 and has amended it several times since then. The Code is based on a model code promulgated by the American Bar Association. Forty-seven of the fifty states, and the District of Columbia, have adopted codes based on the American Bar Association model. The three other states have adopted their own rules of judicial ethics.

There are a few things you need to know about the Code. First its canons are advisory. Judges are expected to comply with them, but there is no sanction if they do not. Of course, to the extent the Code's philosophy is reflected in specific statutes, such as disqualification for ownership of stock, the judge is obligated to comply by law.

Although compliance with the Code is not mandatory, almost all federal judges are most diligent in conforming their conduct to its provisions. Our judges want to follow high ethical standards, and they regard the Code as an appropriate and essential guide. [*1074]

An important additional development with respect to the Code is the existence of procedures by which judges can ask for interpretive opinions as they confront specific problems. The Code's canons are general and, by their terms, do not reach many of the specific ethical decisions with which a judge might be faced. For this reason - and to keep the Code up to date - the Judicial Conference has created a Committee on the Codes of Conduct. The Committee offers confidential advice to judges about interpreting the various canons. At least twenty-two states have also established some means by which judges can seek guidance as to the application of the Code that applies to judges of that state's courts. Suppose, for instance, a judge has

done substantial work in a case when he discovers for the first time that a relative owns stock in a corporation which is a party. What choices does the judge have? Suppose the son or daughter of a judge is employed in a prosecutor's office. May the judge hear cases from that office so long as the son or daughter is not the counsel of record? When these and myriad other questions arise, we find it most useful to have a source to consult for guidance. The correspondence between the Committee and the requesting judge is kept confidential, though from time to time the Committee publishes its opinions, using a general frame of reference that does not identify the judge who asked the question. The procedure provides guidance both to individual judges and to the federal judiciary as a whole.

V. Dealing with Charges of Judicial Unfitness

In the American judiciary, both federal and state, there are systems for taking some action in those rare circumstances in which a judge so misbehaves that some response is necessary. In the United States, considering both the federal and state court systems, there are three broad types of mechanisms. First, the federal Constitution provides that the president, vice-president "and all civil Officers of the United States" - this includes judges - "shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." n4 Most states have similar provisions. We are proud to say that in the more than 200 years of federal judicial history, only eight judges have been removed from office after impeachment.

----------Footnotes----------

n4. U.S. Const. art. II, 4.

----------End Footnotes----------

Second, election of judges is still common in our state court systems, and in those rare instances that a sitting judge is challenged in an election, an alleged ethical infraction might be the basis for the challenge.

Third, the federal and all of the state governments have established commissions or panels to receive citizen complaints of judicial

unfitness. All [*1075] but one of the state commissions include a combination of judges, attorneys, and non-lawyer, citizen members. The commissions' sanctions range from private admonitions to removal from office. These state commissions have become so omnipresent that one of the leading court reform organizations in the country, the American Judicature Society, has established a Center for Judicial Conduct Organizations, which publishes a Judicial Conduct Reporter.

The federal system does not have a judicial conduct organization similar to those in the states. Rather, there is in each of our twelve regional circuits, a statutory Judicial Council with an equal number of appellate and district judges, chaired by the chief judge of the court of appeals of the circuit. The Council has responsibility to "make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit." n5 In 1980, Congress provided that

----------Footnotes----------
n5. 28 U.S.C. 332(d)(1) (1994).
----------End Footnotes----------

any person alleging that a circuit, district or bankruptcy judge, or magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint.... n6

----------Footnotes----------
n6. 28 U.S.C. 372(c)(1) (1994).
----------End Footnotes----------

The statute provides a broad ground for complaints. They need not be based on a specific statute, and are rarely based on specific provisions of the Code of Conduct.

The statute establishes procedures by which the chief judge may dismiss the complaint as frivolous or provide for its reference to the

Judicial Council, which in turn may dismiss the complaint. Procedures are provided to protect the object of the complaint, who is to receive a copy of the complaint and any findings in writing.

The experience in the United States yields four lessons. First, at least on the federal level, the procedure does not appear to have posed a threat to judicial independence. A Federal Judicial Center investigation examined the 2,405 complaints brought under the statute between 1980 and 1991. It found that the great majority of complaints were dismissed because they involved the merits of a judge's decision. The researchers also subjected a sample of the complaints to a more thorough analysis. That analysis uncovered, in the words of their report, "no matter that can be considered to have directly interfered with or seriously threatened independent judicial decision-making," although it found "two instances ... that appeared to implicate judicial independence" - both involving corrective action requested by chief circuit judges for comments judges made during hearings to determine criminal sentences to impose on defendants. [*1076]

Second, even though most complaints are dismissed, the very fact that there are public bodies to which citizens can submit complaints provides a measure of public confidence in the federal judiciary and the administration of justice.

Third, these bodies do confront occasional cases of **judicial misconduct.** The sanctions available in the federal system range from requesting corrective action, to certifying a judge's disability, to suspending temporarily the judge's caseload, to public censure. In extreme cases, the councils can recommend to the United States Judicial Conference that the Conference advise the House of Representatives that there may be grounds for impeachment.

Finally, this process embodies a vital principle: Enforcement of judicial ethics should remain within the judiciary itself, lest judicial independence be threatened.

VI. Conclusion

The ethical principles that shape and inform the judicial mission

demand our scrupulous adherence. Judges and lawyers use the language of the law with an ease and familiarity that lead us to forget, from time to time, that it is a language with its source in ethical principles. Day-to-day immersion in the details of the law must not cause us to become indifferent to its underlying meaning. We must be conscious always of the truth that the law consists of words and concepts that have an intrinsic ethical content, an objective moral force. Our duty to the law in this respect requires us to conform to specific and objective rules of ethical conduct in the performance of our duties.

Maintaining cordiality and collegiality with lawyers and with our fellow judges can be a trying task. We judges, however, are bound to each other in a splendid fellowship. Our guild is small, elite, committed to a noble cause and united together by experience in facing common difficulties and concerns. The ties, the bonds, the kinship among judges worldwide are palpable, tangible, real and essential to preserving the rule of law. If we honor our professional ethic, others will admire the law that we enforce. [*1077]

Appendix A

Code of Conduct for United States Judges
Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary
Canon 2. Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities
Canon 3. A Judge Should Perform the Duties of the Office Impartially and Diligently
Canon 4. A Judge May Engage in Extra-Judicial Activities To Improve the Law, the Legal System, and the Administration of Justice
Canon 5. A Judge Should Regulate Extra-Judicial Activities To Minimize the Risk of Conflict with Judicial Duties
Canon 6. A Judge Should Regularly File Reports of Compensation Received for Law-Related and Extra-Judicial Activities
Canon 7. A Judge Should Refrain from Political Activity

PETITIONER'S SEPTEMBER 29, 1998 LETTER (by her paralegal assistant) TO FRANCIS LORSON, CHIEF DEPUTY CLERK, U.S. SUPREME COURT (original plus 9 copies for the Justices, distributed to them)

BY EXPRESS MAIL
EM025604736US

September 29, 1998

Francis Lorson, Chief Deputy Clerk
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: *Sassower v. Mangano, et al.*,
Supreme Court Docket #98-106

Dear Mr. Lorson:

This letter reiterates the voice message I left for you about an hour or so after our very brief phone conversation at 12:15 p.m. today. In that phone conversation you confirmed what I had learned when I called the Clerk's office at about 9:15 this morning, to wit, that the *Sassower v. Mangano* docket does not reflect petitioner's judicial disqualification/disclosure application, made by letter to the Justices, dated September 23, 1998. Nor does it contain any reference to petitioner's request for a Rule 8 show cause order, as set forth in her September 2, 1998 letter to you, and reiterated by letter dated September 17, 1998[1].

Petitioner respectfully requests that her September 23rd letter, invoking her rights under 28 U.S.C. §455 and filed with the Clerk's office as per your instructions, be docketed. As you know, the

[1] Petitioner's September 2nd and 17th letters are Exhibits "B-1" and "B-2", respectively, to her September 23rd letter.

express mail envelope[2] in which that letter arrived on September 24th contained nine separate envelopes addressed to each of the Justices, enclosing originals of that letter for each of them. Petitioner trusts that these were promptly distributed for the Justices' consideration. As reflected by the letter, the New York State Attorney General, respondents' counsel and himself a co-respondent, was an indicated recipient. A copy was sent to him -- much as a copy of petitioner's September 2nd letter had previously been sent to him.

[p. 2] Although we were long ago informed that *Sassower v. Mangano* was to be on yesterday's conference calendar, you responded to my question as to the status of petitioner's judicial disqualification/disclosure application and her Rule 8 show cause request by stating that they were still pending. As to the Court's disposition of the *Sassower v. Mangano* cert petition (and supplemental brief), you stated that no information would be available until next Monday. You also told me that the only cases on yesterday's conference calendar whose disposition was publicly available were those for which cert had been granted. When I asked whether this, therefore, meant that the Court had not granted cert to *Sassower v. Mangano*, your answer was no.

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[2] Annexed hereto is Petitioner's express mail receipt, confirming mailing on September 23rd, as well as the fax coversheet to you and the confirmation receipt, reflecting fax transmission on that date.

It would seem obvious -- and I so stated -- that the Justices cannot properly decide the *Sassower v. Mangano* cert petition (and supplemental brief) without their first addressing the threshold issue of judicial disqualification/disclosure, presented by petitioner's September 23rd letter, as well as the related issue of the Rule 8 show cause order, which is part thereof[3].

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Paralegal Assistant

Letter read and approved by:
s/
DORIS L. SASSOWER, Petitioner *Pro Se*
Sassower v. Mangano, et al.

Enclosures
cc: New York State Attorney General,
Counsel for respondents and co-respondent
Justices of the U.S. Supreme Court

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[3] *See* p. 7 of petitioner's September 23rd letter.

PETITIONER'S OCTOBER 14, 1998 LETTER/APPLICATION/JUDICIAL MISCONDUCT COMPLAINT, ADDRESSED TO WILLIAM K. SUTER, CLERK, U.S. SUPREME COURT (10 original copies sent, 9 distributed to the Justices)

BY EXPRESS MAIL
EM025604930US

October 14, 1998

William K. Suter, Clerk
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: *Sassower v. Mangano, et al.*, S.Ct. #98-106
(1) Procedures for Recusal Applications;
(2) Procedures for Judicial Misconduct Complaints;
(3) Recall/Vacatur of the October 5, 1998 Order;
(4) Rule 44 Extension Request for Filing of Petition for Rehearing;
(5) Use of "good standing" status as a member of the Supreme Court bar on letterheads, professional cards, etc.

Dear Mr. Suter:

As hereinabove reflected, the purpose of this letter is five-fold.

Firstly, I request clarification of Supreme Court procedures pertaining to applications for the Justices' recusal. According to Chief Deputy Clerk Francis Lorson[4], the general policy of the Clerk's office is *not*

[4] Mr. Lorson's representations, as set forth herein, were made in the course of telephone conversations with my paralegal assistant/daughter on October 5th and October 8th. Her verification thereof appears at the end of this letter.

to docket recusal applications unless the Justices act upon them. Mr. Lorson gave this as the *sole* reason why my September 23, 1998 letter-application for the Justices' disqualification and disclosure, pursuant to 28 U.S.C. §455, had not been docketed -- notwithstanding he confirmed that it had been distributed to each of the Justices in connection with their consideration of my then pending petition for a writ of certiorari in the above-entitled matter. On October 5, 1998, the Court entered an order denying the cert **[p. 2]** petition, with no mention of my September 23rd application or disposition thereon[5].

Please confirm that the general policy of the Clerk's office is, in fact, to docket *only* recusal applications which are acted on by the Justices -- and provide legal authority therefor. It seems obvious that such policy, if it exists, creates a "false record", wherein the Clerk's office not only conceals the existence of filed recusal applications, but the misconduct of the Justices, whose denial of cert petitions is tainted by their failure to adjudicate those threshold applications. I am unaware of legal authority that would permit any judge -- let alone Justices of our Supreme Court -- to fail to act upon a recusal application. I respectfully submit that a recusal application must be denied, granted, or otherwise addressed.

Please also advise why, notwithstanding my September 23rd recusal letter-application was, according to Mr. Lorson, distributed to the Justices and, though not docketed, part of a permanent correspondence file of the case, the Clerk's office has now returned it under a completely incomprehensible coverletter, dated October 6, 1998, signed by Denise McNerney, an Administrative Assistant,

[5] Likewise, the Court's October 5th order neither mentioned nor adjudicated my written requests for issuance of a Rule 8 show cause order relative to my membership in "good standing" at the Supreme Court bar. Mr. Lorson similarly confirmed that such requests were before the Court in conjunction with its consideration of my cert petition. These written requests were, additionally, annexed as "Exhibits "B-1" and "B-2" to my unadjudicated September 23th recusal application.

enclosing the docket sheet (Exhibit "A")[6]. Ms. McNerney purports to be responding to my "letter addressed to the Supreme Court of the United States"-- the date of which she does not identify. However, her responses do not reflect ANY inquiry I made in ANY of my letters: [p. 3] NOT in my September 23rd letter-application, addressed to the Justices, which she returned[7], NOR in my September 29th letter, addressed to Mr. Lorson, formally requesting docketing of my September 23rd recusal letter. According to Mr. Lorson, that September 29th letter was also distributed to the Justices, who were indicated recipients thereof[8].

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[6] On October 9th, following receipt of Ms. McNerney's letter, my daughter telephoned Ms. McNerney about it. Ms. McNerney stated she did not recall who had forwarded to her the letter to which she purported to respond and put my daughter "on hold"for the next five minutes. As a result, my daughter hung up and telephoned Mr. Lorson, leaving a message on his voice mail, requesting that he or Ms. McNerney call back to discuss the letter. My daughter also called back Ms. McNerney, but her phone was answered by "Amy". "Amy" refused to give her last name, refused to identify whether she was a co-worker or superior to Ms. McNerney, and, hung up on my daughter after she objected to "Amy's" misinformation as to the time for filing a petition for rehearing. As of today, neither I nor my daughter have received any return call from Ms. McNerney or Mr. Lorson about the October 6th letter. Indeed, my daughter tells me that notwithstanding Mr. Lorson's voice mail states that he will return phone calls, he has, since early August, consistently not returned any of her phone calls, thereby necessitating further calls – also unreturned. It is my daughter's recollection that Mr. Lorson only once returned a phone call -- and that either in late July or early August.

[7] Such returned document is herewith enclosed.

[8] The concluding paragraph to that letter was as follows:

> "...the Justices cannot properly decide the *Sassower v. Mangano* cert petition (and supplemental brief) without their first addressing the threshold issue of judicial disqualification/disclosure, presented by petitioner's September 23rd letter, as well as the related issue of the Rule 8 show cause order, which is part thereof".

Secondly, please advise as to the procedures for filing judicial misconduct complaints against the Justices. Mr. Lorson stated that he was unaware of any procedures, that he was unaware of any response from the Court to the recommendation in the National Commission's 1993 Report on the subject, and that he does not know who at the Court would be able to provide information as to the Court's actions, if any, with respect to the National Commission's aforesaid recommendation.

Pages 121-123 of the National Commission's Report pertaining to the Supreme Court are enclosed for your convenience (Exhibit "B"). These identify that "[u]nder current practice a complaint is referred to the Justice to whom it relates." (at 122). Not included is how the complained-about Justice then addresses the misconduct complaint, if at all[9]. The National Commission's recommendation, included in those pages, is:

> "...that the Supreme Court may wish to consider the adoption of policies and procedures for the filing and disposition of complaints alleging misconduct against Justices of the Supreme Court." (at 123).

[p. 4] It was this recommendation to which the Judicial Conference's Committee to Review Circuit Council Conduct and Disability Orders referred when it stated, in its March 1994 report to the Chief Justice and the Judicial Conference, that:

> "One recommendation [of the National Commission] is directed to the Supreme Court of the United States and is therefore not within the purview of the Judicial

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[9] *Cf.*, the National Commission's discussion and recommendations relative to §372(c) judicial misconduct complaints involving the lower federal judiciary, where the Circuit Chief Judges who receive such complaints are not supposed to dismiss them except by non-conclusory orders addressed to the particulars of the complaint, which orders are to be publicly accessible and statistically reported to the Administrative Office of the U.S. Courts. Such recommendations were endorsed by the Judicial Conference in its March 15, 1994 report of its proceedings.

Conference." (at 11)

Please advise as to the Court's response to this single recommendation relative to judicial misconduct complaints against its Justices, directed to it and within its purview.

Thirdly, so as not to delay the filing of a judicial misconduct complaint against the Justices, based on their wilful failure to adjudicate my application for disqualification and disclosure, pursuant to 28 U.S.C. §455, while proceeding to summarily deny my cert petition, I respectfully request that this letter be deemed a judicial misconduct against them, individually and collectively. For that reason, I am enclosing nine originals of this letter-complaint for distribution to the Justices -- each with my original signature beneath the verification.

Individually and collectively, the Justices' purposeful failure to adjudicate my recusal application cannot be viewed as anything but a subversion of 28 U.S.C. §455 -- replicating the subversion of that essential statute by Second Circuit judges, for which my cert petition sought review. Indeed, the second "Question Presented" by my cert petition -- affirmatively answered in Point II therein -- was:

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

In support of this judicial misconduct complaint against the Justices, I rest on the pertinent legal argument in Point II of my *unopposed* cert petition (at 26-30), including the statement that "the reasonable inference 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." (at 26-27). Additionally, I rely on this Court's decisional law, which, over and again, has recognized that justice and public confidence in the judicial system require both the actuality and appearance of a fair and impartial tribunal. There can be neither justice nor public confidence, where a fact-specific recusal application is, as here, purposefully unadjudicated.

[p. 5] Absent legal authority or argument showing that the Justices were not obligated to adjudicate my fact-specific September 23rd application, pursuant to 28 U.S.C. §455, notwithstanding such statute applies to them[10], I respectfully request that they promptly recall/vacate their October 5th order denying the cert petition and adjudicate that threshold application with its incorporated, likewise unadjudicated, Rule 8 show cause request (at p. 7). These corrective steps would obviate my being burdened with filing a formal petition for rehearing. Such rehearing petition would be addressed to the Court's subversion of the §455 statute, as well as its actualized bias and official misconduct, manifested by its summary denial of cert, with no disciplinary and criminal referral of the subject federal judges[11]. That this official misconduct rises to a level justifying the Justices' impeachment -- based on my *unopposed* cert petition and supplemental brief detailing heinous judicial corruption in the Second Circuit, unrestrained by any checks -- may be seen from the current all-consuming public discussion as to grounds for impeachment, including the requirement that public officials uphold the rule of law and the integrity of the judicial process.

Fourthly, inasmuch as my petition for rehearing is presently due on October 30th, I request that, pursuant to Rule 44, my time for such filing be extended by the Court or a Justice pending the Justices' determination of this judicial misconduct complaint against them and its request for recall/vacatur of the October 5th order.

Finally, out of respect for the Court, I believe it appropriate to give notice of my intention to include my "good standing" status as a

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[10] *See, inter alia*, the Court's November 1, 1993 press release "Statement of Recusal Policy", relative to its obligations under 28 U.S.C. §455 where their spouses, children or other relatives are involved as practicing attorneys in cases before the Court. Printed at pp. 1068-1070 of Judicial Disqualification: Recusal and Disqualification of Judges, Richard E. Flamm, Little, Brown & Company, 1996.

[11] The Court's duty under ethical codes to make criminal and disciplinary referrals was detailed at Point IB of my *unopposed* cert petition (25-26) and in my supplemental brief (2-3, 10).

member of the Supreme Court bar on my letterhead, professional cards, etc. I trust the Court will have no objection since, as summarized in my unadjudicated September 23rd recusal application (at p. 7), it has not removed me from membership in the Supreme Court bar or issued a show cause order, pursuant to Rule 8.

[p. 6] I await your prompt response with respect to all of the foregoing.

Very truly yours,
s/
DORIS L. SASSOWER, Petitioner *Pro Se*
Member in good standing, U.S. Supreme Court bar

I affirm under penalties of perjury that the factual statements made in the foregoing letter-complaint are true and correct to the best of my knowledge, as hereinabove stated.

s/
DORIS L. SASSOWER

I affirm under penalties that the factual recitations in the foregoing letter-complaint as to telephone conversations with Francis Lorson, Denise McNerney, and "Amy" of the Clerk's office are true and correct to the best of my knowledge.

s/
ELENA RUTH SASSOWER
Paralegal Assistant

cc: New York State Attorney General,
Counsel to Respondents and Himself a Respondent
Justices of the United States Supreme Court

PETITIONER'S OCTOBER 26, 1998 LETTER (by her paralegal assistant) TO FRANCIS LORSON, CHIEF DEPUTY CLERK, U.S. SUPREME COURT (with 10 copies for distribution to the Justices)

BY EXPRESS MAIL
EM025604943US

October 26, 1998

Francis Lorson, Chief Deputy Clerk
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Petitioner's October 14, 1998 letter/application/judicial misconduct complaint
Sassower v. Mangano, et al.,
Supreme Court Docket #98-106

Dear Mr. Lorson:

This letter memorializes my phone conversations with you on Friday afternoon, October 23rd. You confirmed that petitioner's October 14, 1998 letter, addressed to Mr. Suter, had been distributed to the Justices as a judicial misconduct complaint against them. You also informed me that Justice Ruth Bader Ginsburg, as the Court's Justice for the Second Circuit, had denied petitioner's Rule 44 application, contained therein, to extend her time to file her petition for rehearing[12].

You further stated that there would be no response by Mr. Suter to the October 14, 1998 letter, notwithstanding its specific inquiries,

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[12] You also confirmed that the deadline for that rehearing petition is October 30, 1998, by which date it must be postmarked by the U.S. Post Office.

expressly addressed to him, related to procedures of the Clerk's office and the Court. You yourself declined to provide a written response and did not deny or dispute the accuracy of the letter's factual recitations relating to you. This includes your representations, as recounted therein:

> (1) that the *sole* reason why petitioner's September 23, 1998 recusal/disclosure application, distributed to the Justices, was *not* docketed was because it was *not* acted upon by them;
>
> (2) that the general policy of the Clerk's Office is *not* to docket recusal applications which are *not* acted on by the Justices; and

[p.2]

> (3) that you do *not* have information as to the Court's procedures for the filing and disposition of judicial misconduct complaints against the Justices and do not know who at the Court would have such information, including whether the Court took any action on the 1993 recommendation of the National Commission on Judicial Discipline and Removal pertaining to adoption of judicial misconduct complaint procedures against the Justices.

By separate letter to Mr. Suter, I will particularize the misconduct of personnel at the Clerk's office during the past week as I sought to obtain information as to when petitioner could expect Mr. Suter's response to her October 14th letter and the status of her incorporated Rule 44 extension request. You did not seem particularly concerned by that misconduct, including my notification to you that it appears that bogus names have been used by female personnel in the Clerk's office. Indeed, you confirmed that there is only one "Denise" in the

Clerk's office -- and she is Denise McNerney, Mr. Suter's secretary -- and, additionally, that there are no persons named "Amy" or "Kelly".

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Paralegal Assistant to Petitioner

Enclosure

cc: William K. Suter, Clerk
New York State Attorney General,
Counsel for respondents and co-respondent
Justices of the United States Supreme Court

PETITIONER'S OCTOBER 26, 1998 LETTER (by her paralegal assistant) TO WILLIAM K. SUTER, CLERK, U.S. SUPREME COURT (with 10 copies for distribution to the Justices)

BY EXPRESS MAIL
EM025604943US

October 26, 1998

William K. Suter, Clerk
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Petitioner's October 14, 1998 letter/application/judicial misconduct complaint
Sassower v. Mangano, et al.,
Supreme Court Docket #98-106

Dear Mr. Suter:

As stated in my enclosed letter of today's date to Mr. Lorson, on Friday, October 23rd, Mr. Lorson advised that you do not intend to respond to petitioner's October 14, 1998 letter, addressed to you. Such advice, in a phone call initiated by me, came after four days of futile attempts to ascertain directly from your office -- and from other personnel under your supervision -- when petitioner could expect your response to that letter and the status of her Rule 44 request, incorporated therein, for an extension of time to file a petition for rehearing[13]. Rather than answer these two simple, straight-forward

[13] In an envelope postmarked October 21st, we have now received, by mail, a letter dated October 20th, and signed by Mr. Lorson, advising that the Rule 44 extension request was denied by Justice Ginsburg on October 20th. Coincidentally or not, October 20th is the date of my first phone messages inquiring, to no avail, as to the status of the extension request

questions, your staff, including your secretary, Denise McNerney, engaged in shockingly unprofessional behavior. As you know, petitioner's October 14th letter recounts (at p.2 and fn.3) Ms. McNerney's prior behavior, as well as that of a person who answered Ms. McNerney's line on October 9th and identified herself as "Amy". Mr. Lorson has now advised that the name "Amy" is unknown to him as belonging to any staff person.

It must be noted that the clear inference of your failure to respond to petitioner's October 14th letter is that you cannot defend, with legal authority, the false records being created by the Clerk's office, in not docketing recusal applications, such as petitioner's, distributed to the Justices -- nor the fact that the Clerk's office is thereby concealing the Justices' misconduct in failing to act on such **[p.2]** distributed recusal applications. Likewise, the clear inference is that you cannot defend Ms. McNerney's inexplicable October 6, 1998 letter returning petitioner's September 23, 1998 recusal/disclosure letter-application, pursuant to §455 -- an application Mr. Lorson represented as having been distributed to the Justices. Ms. McNerney's improper return of that application for a stated reason belied by the very date of the application and the face of the docket sheet she enclosed, could not have occurred had the application been docketed -- as formally requested by petitioner's September 29, 1998 letter. Obviously, one of the functions served by docketing is to secure the record and ensure that there is no question as to the precise documents before the Court, whether distributed to the Justices or lodged with the Clerk.

Additionally, the clear inference of your failure to identify the Court's procedures for judicial misconduct complaints against the Justices is that the Court did not act on the 1993 recommendation of the National Commission on Judicial Discipline and Removal to adopt procedures for their filing and disposition and that the current procedures are a one-way referral of judicial misconduct complaints to the complained-against Justice, who is free to ignore it.

-- whose outcome we were unaware until my October 23rd phone conversation with Mr. Lorson.

Should you belatedly recognize your professional duty to respond to the informational inquiries in petitioner's October 14th letter, please include responses to the following additional information requests:

(1) the number of recusal applications, distributed to the Justices, but *not* docketed by the Clerk's office because the Justices did *not* act on them;

(2) the number of judicial misconduct complaints against the Justices and whether the complained-against Justices disposed of them by written order; and

(3) the number of individuals who the Court has barred from *in forma pauperis* status in their petitions for writs of certiorari and extraordinary writs, their names, and/or file/citation number of Court's orders.

Since your conduct and that of the Clerk's office reflect directly on the Court, what follows is a recitation of the particulars of that conduct relative to my inquiries as to when petitioner could expect your response to her October 14, 1998 letter and its incorporated Rule 44 extension request.

My first phone messages for you were on Tuesday, October 20th, at approximately 3:10 p.m.. At that time, I left a message for you with the Court's operator, after she tried to ring through to your line but discovered that no one was in. Shortly thereafter, I left a message, also for you, with Aaron **[p. 3]** Smith, an intern at the Clerk's office. Since Mr. Smith recommended that I speak with Deputy Clerk Chris Vasil, I also left a message on his voice mail, including a request that, in view of time exigencies, it would be appreciated if response to petitioner's October 14th letter were faxed to us at 914-428-4994, as well as mailed.

On Wednesday, October 21st, at approximately 2:40 p.m., with no call back from anyone from the Clerk's office, I again phoned Mr. Vasil (202-479-3027) . Once more, I got his voice mail and reiterated my prior message about petitioner's October 14th letter, including our request that response thereto be faxed. Still no call or fax from Mr. Vasil or anyone on your behalf.

On Thursday, October 22nd, at approximately 9:25 a.m., I again called Mr. Vasil. This time, he answered his phone. After identifying myself, I inquired whether he had gotten my two prior messages. He responded by asking what my question was, to which I repeated my question as to whether he had gotten my two prior messages. Mr. Vail answered "yes", then put me on hold. The phone was thereupon disconnected. Although I immediately phoned back, Mr. Vasil did not pick up. Instead, I got his voice mail. I left a message stating that I certainly hoped he had not purposely disconnected the conversation and requesting that he call back so that we could discuss the status of the October 14th letter. However, Mr. Vasil did not call back, then or thereafter.

I thereupon tried to speak directly to you. I telephoned the Court operator (202-479-3000), who connected me with a woman stating to be your secretary. I believe this woman was Denise McNerney. She advised that you would not be available that day or the next. She claimed to be unfamiliar with petitioner's October 14th letter addressed to you, sent with nine original copies for distribution to the Justices. As a convenience to her, I offered to fax her a copy of the letter. However, she refused to give me permission to use the fax number and insisted that I mail another copy to her. Ms. McNerney intimated that, despite my advice to her that the Post Office had confirmed delivery to the Court on October 15th of the express mail package containing the letter, it might not have been received. She then put me to the burden of calling the mailroom.

Fortunately, and in sharp contrast to personnel in the Clerk's office, personnel in the mailroom and filing room are professional and conscientious. Mr. Ronnie Gibson, a mailroom clerk (202-479-3271), checked the mailroom records and confirmed that the express mail package had been received, before noon on October 15th. He then

suggested that I speak with Calvin Todd, supervisor of the filing room (202-479-3048), to further track the package. Mr. Todd confirmed from the filing room records that the package had been received and delivered to the Clerk's office on the 15th. Out of concern for the whereabouts of the package, Mr. Todd then offered to himself call your secretary and to phone me back. Within 15 minutes or so, he did call back to report that your secretary had told him that the letter had been distributed to the Justices. In response to my inquiries, Mr. Todd identified the secretary with whom he had spoken as Denise, but did not know if her last name was McNerney.

[p. 4] Mr. Todd gave me Denise's direct number (202-479-3014). At approximately 10:20 a.m., I dialed her number, but was told that she had stepped away. The person to whom I spoke identified herself as "Kelly" and took a message for Denise to return my call. She stated that Denise would be back shortly. Four hours later, with no return call from Denise, I called again. Once more, "Kelly" picked up the line and told me that Denise was not in, but that she had been given my earlier message. I asked "Kelly" if you had any other secretary. I was told that you have a second secretary, whose name is Sandy Nelson, but that Ms. Nelson was out sick and had been out sick all that week. I then gave "Kelly" a second message for Denise to call me back. However, Denise did not return my call.

On Friday, October 23rd, at approximately 11 a.m., I dialed your number and asked to speak with Ms. Nelson. I was told that Ms. Nelson was out sick. In response to my query as to whether the woman answering my call was "Kelly", she told me that there is no "Kelly" and that she was Denise. I asked if she was Denise McNerney, but she said no and told me that there was more than one Denise in the Clerk's office. However, she refused to give me her last name. Denise then asked whether I hadn't spoken to Mr. Todd the day before. In the midst of my reply, she put me on hold, where I remained and remained, until finally, I hung up. Denise did not thereafter return my call.

Some hours later, I telephoned Mr. Lorson (202-479-3024). The substance of our phone conversation is reflected by the accompanying letter.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Paralegal Assistant to Petitioner

P.S. As previously discussed with Mr. Lorson, in the event the Court does not grant petitioner's soon-to-be filed petition for rehearing, petitioner requests that the Court return to her the excess copies of her cert petition, supplemental brief, and petition for rehearing that are not sent to the various law school/library collections and which would otherwise be discarded. These materials were extremely costly for Petitioner to reproduce and bind for the Court, and it is her intention to put them to good use in advancing a proper dialogue on judicial independence and accountability issues.

Read and approved by:
s/
DORIS L. SASSOWER, Petitioner *Pro Se*
Sassower v. Mangano, et al.

[p. 5]

Enclosure
cc: New York State Attorney General,
Counsel for respondents and co-respondent
Justices of the United States Supreme Court