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FAX COVER SHEET

4/21/94

4:40 p.m.

DATE

TIME

Chris Herren, Esq.  
Voting Section, Civil Rights Division  
Department of Justice

TO:

202-307-3961 (telephone: 202-514-1416)

FAX NUMBER:

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This fax consists of a total of \_\_\_\_\_ pages, including this cover sheet. If you do not receive the indicated number of pages, or if there is a question as to the transmittal, please call (914) 997-8105.

Elena Ruth Sassower, Coordinator

FROM:

Dear Mr. Herren:

As discussed--and by way of a preview--I am faxing a copy of our March 20, 1992 letter to the Governor's Task Force on Judicial Diversity, including the request by Sherrilyn Ifill, on behalf of NAACP/LDF, to appear as amicus curiae for the Castracan Petitioners.

You will note that Sherrilyn Ifill is quoted in the New York Law Journal article on the Justice Department's investigation as saying:

"There's no question that political party control over slating and cross-endorsements contribute to the systematic exclusion of minorities."

A copy of that article is enclosed for your convenience, as is the "judicial map", which I promised you.

We greatly look forward to assisting you in your investigation and will be transmitting the Castracan v. Colavita and Sady v. Murphy cases in the next few days.

Yours for a quality judiciary,

*Elena*

4/19/94

# Justice Officials Set to Wind Up Inquiry Into Judicial Elections

BY MATTHEW GOLDSTEIN

IN ORDER TO assess the impact on minority voting of the creation of 14 new judgeships in Brooklyn and Staten Island, the U.S. Justice Department could wind up taking a look at the entire system for nominating State Supreme Court justices.

That was the view of several lawyers who have worked on voting

secure federal approval of the new judgeships, as required under the Voting Rights Act of 1965.

Since 1968, the Justice Department, pursuant to its mandate under the Voting Rights Act, has required state officials to "pre-clear" any change in an election law that could have a negative impact on minority voters in the Bronx, Brooklyn and Manhattan.

The State Legislature added 10 additional State Supreme Court judgeships in 1982 and four in 1990.

While officials at the State Board of Elections have conceded, in their submissions to the Justice Department, that they did not obtain federal approval before conducting elections for the 14 additional judgeships, they paint the omission as a mere oversight and seem confident their actions will ultimately receive federal approval.

The federal agency has requested from state election officials a detailed legislative history of the expansion of the Second Judicial District, as well as election returns for all judicial elections since 1980. Lawyers for the State Board of Elections, in consultation with the State Attorney General's office, have been complying with the requests.

The department also is reviewing whether other state judicial procedures are subject to pre-clearance,

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rights cases and were asked to comment on the ongoing Justice Department examination.

For the past 10 months, the federal agency has been seeking information from state election officials about the election of the 14 additional judges in the Second Judicial District. The investigation was prompted when it was discovered that the state had failed to

## Election Inquiry

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such as the 1993 law that requires all judicial candidates to have been a New York State lawyer for at least 10 years.

The Justice Department, which would not comment on the nature of the inquiry, said it expects to wrap up its work by the first week of June. At that time, the department is expected to announce whether it will retroactively approve the 14 additional judgeships, or formally object, said Myron Marlin, a Justice Department spokesman. Federal officials could sue the state to force it to hold new elections, or direct that the rules governing the election of judges be rewritten. However, several attorneys said it is rare for the department to oust a sitting judge from office.

Jeffrey Feldman, the Brooklyn Democratic Party's executive director, said state officials have told him the federal investigation is largely of a technical nature and will probably have little impact on the makeup of the Second Judicial District's bench.

However, George F. Carpinello, an attorney with Duker & Barrett and a former professor at Albany Law School, said that the Justice Department, with its "tremendous discretion" in such cases, could consider a variety of factors during its preclearance inquiry.

Since the late 1960s, the Justice Department has monitored election activity in Brooklyn, the Bronx and Manhattan, as well as towns and counties in 21 other states, to ensure that minority voters are not disenfranchised. Normally, preclearance inquiries occur prior to a new law having gone into effect.

## Party Endorsements

State Supreme Court justice candidates, unlike other elected officials who compete in open primaries, are nominated for a spot on the ballot by the political parties in their particular county. In New York City, judicial candidates often win cross-endorsement from Democrats and Republicans and run unopposed in the general election.

Four justices elected to fill the judgeships added in 1990, State Supreme Court Justices Melvin S. Barasch, Peter P. Cusick, Michael Feinberg and Abraham Gerges, were all cross-endorsed by Democratic and Republican organizations in Brooklyn and Staten Island.

"It's hard to imagine that Justice would not focus on those issues," said University of Maryland Law School Professor Sherrilyn Ifill, who has litigated voting rights cases for the NACCP Legal Defense and Educational Fund Inc. "There's no question that political party control over slating and cross-endorsements contribute to the systematic exclusion of minorities."

Only two of the 14 judgeships at issue are held by minorities, according to the State Office of Court Administration. Those justices, both black, are Supreme Court Justices Thaddeus E. Owens and Theodore T. Jones Jr.

The other justices elected to the 10 judgeships added in 1982 are Gabriel M. Krausman, Thomas R. Sullivan, Carolyn Demarest, Ronald J. Aiello, Frederick A. Meyerson, Julius Vinik, Ruth E. Moskowitz, Nicholas Coffinas and Charles A. Kuffner Jr.

State court officials, however, said one of the justices elected in 1982 should probably be eliminated from that list, since there were 11 vacancies filled in the Second Judicial District that year, but could not specify which justice was elected to a judgeship that had existed prior to the 1982 law.

Several justices who could be affected said they were not concerned about the federal inquiry. Justice Aiello, administrative judge for the Second Judicial District, commented, "I'm not losing any sleep over it."