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ADDENDUM TO Eli Vigliano Response to NYSBA President Younger

"THE THREE-YEAR DEAL": A 20-Year Autobiographical Retrospective

By Doris L. Sassower, NYSBA member, 1972-1991

History

The genesis of the Three Year Deal (herein also referred to as the "Deal"), a deliberately designed deceit upon voters of New York's 9th Judicial District (Westchester, Putnam, Dutchess, Rockland, Orange), tailor-made by and for lawyers, was the critical change in the balance of power in the District. By 1989, Westchester and Rockland had already shifted from solid Republican to the Democratic column. That put in jeopardy the historically Republican-controlled Westchester Surrogate Office, third richest source of patronage in the nation when it became vacant in 1990 by expiration of the incumbent Surrogate's 10-year term when he also reached state-mandated 70-year retirement age.

The terms and conditions of this unprecedented Deal had to be iron-clad to *guarantee* retention of Republican control. Anthony J. Colavita, then was not only Westchester Republican County Chairman, going back to 1979, but also Republican State Chairman, a consummate politician and master of the art of deal-making, so powerful as to be a "*de facto* official of Westchester government," so described in the 1988 Report and Recommendations of the Commission on Governmental Integrity, chaired by John Feerick, Dean of Fordham Law School, later President of the New York City Bar Association. Virtually every state and county judge and other officials on the state and county payroll owed him their jobs. That explains why he was also known as "the kingmaker" and why Republican Party coffers had lots of money from kickback "donations" received from his many years of grateful chosen nominees thus assured of election.

To maintain this enviable record, the Surrogate race would have to be, and was, *fixed*, in advance, so that only the Republican nominee, and no other, could win it. Then, his nominee could continue in place just as before, with Colavita still in control of Surrogate Court patronage.

For the new Westchester Surrogate-to-be, could there be anything better than the young Italian lawyer, who practiced law in Republican Party Headquarters and over time become his protége? Yes, definitely Al Emanuelli was "the right man in the right place at the right time!" No matter

he was a matrimonial practitioner, with no prior judicial experience, never held public office or that he had never tried a case in the very court he would be blessed to become the new Surrogate.

The *quid pro quo* exchange for selling Westchester Democrats "down the river," giving up their all but certain gain of a Democratic Surrogate for the first time in recent Westchester memory, was the *guaranteed* nomination of Sam Fredman, who had his heart set on a Supreme Court judgeship, with a 14-year term. No matter he was 65 years of age, facing the mandated 70-year retirement age, or that he, like Emanuelli, was a matrimonial lawyer with *no* judicial experience. He had plenty of political experience. As past Chairman of Westchester Democratic County Committee, he too, was a "king-maker." With a big IOU to collect for delivering Westchester's Democratic vote to Mario Cuomo in his crucial 1982 and 1986 gubernatorial race, by 1988, Fredman had "payback time" coming to him, a bargaining chip to be reckoned with.

But, first, the stage had to be set for him to win the 1989 judicial nomination. V*oila,* a vacancy was magically created at the end of 1988 by the bipartisan manipulated early resignation of Republican incumbent Supreme Court Justice Lucille Buell, thus paving the way for our Democratic Governor Cuomo to appoint Fredman to fill the thus created vacancy for her unexpired term, ending December 31, 1990. Of course, Fredman got the nod and in May 1989, he was inducted as Supreme Court Justice Fredman. This is just one of the standard political "back door" ploys to evade the state constitutional requirement that our Supreme Court judges be elected by *We, the People*. Fredman could then capitalize to the fullest on Cuomo's "payback" interim appointment with "Keep Judge Fredman on the Bench" campaign signs, promoting his candidacy for a full 14-year term in the 1989 elections, albeit his age precluded his ever fulfilling. This all-too-familiar technique by party bosses leads voters to believe the candidate has long on-the-bench experience, with prior Senate confirmation required for full-term judicial appointments, all the while knowing he had neither.

Crucial to the Deal was this agreed exchange of "sure-win" Republican Emanuelli nomination for "sure-win" Democrat Fredman nomination. By creative lawyering and skillful political ingenuity, all other terms and conditions of this convoluted Deal were subservient to that one overarching purpose, packaged under a "good government" label and promoted as such by the local media, so the voters would not even know that they were actually being robbed of their constitutionally-protected right to elect their judges, thereby "bamboozled" by what was, in reality, a blatant criminal fraud.

To achieve their goal, the party bosses of all five counties of the 9th Judicial District (Westchester, Putnam, Dutchess, Rockland and Orange) had to, and did, agree to nail down every foreseeable judicial vacancy in the 9th Judicial District over a three year period, cavalierly creating new ones, as needed, by the contracted-for "early resignation" expedient. One minor wrinkle had to ironed out. Care had to be taken to ensure that resignation would come too late for Cuomo to appoint a Democratic interim successor appointee, as when Republican Lucy Buell cooperatively resigned -- even if that meant that Emanuelli would run in 1989, cross-endorsed, for the Supreme Court bench and have to quit eight months later in August 1990. In New York State, a sitting judge can remain in office when he runs for a higher judicial office. Surrogate Court jurisdiction being county-wide and Supreme Court state-wide (though elected by plurality in the five counties), he would then be legally, as well as contractually, bound to resign.

at took additional delicate maneuvering. The major party bosses and their nominees all had to, and finally did, agree to another unique term and condition, i.e., judicial patronage would be equally split, as dictated by the leaders of the two *major* party bosses. After Emanuelli's guaranteed victory and January 1991 induction as Surrogate, this "musical chair" arrangement protected Republican Party boss Colavita by a condition that would force the Democrats to keep their word and designate Emanuelli as Westchester Surrogate in 1990. If they did not, they would be "stuck" with a Republican Supreme Court Justice for 14 years because of the unchanged Republican power in Putnam, Dutchess and Orange counties. To be sure Emanuelli did not renege on his part with "second thoughts" about resigning his Supreme Court post and waiting out the four months off-the bench until year's end (as, reportedly, was the case), Emanuelli was incentivized by the lure of a lucrative "of counsel" four month stint in the plush offices of a prominent Republican White Plains law firm -- the very same one that did double duty defending him, when the Deal was legally challenged the following year (see below). Nice deal. You win -- or you win ... that's a pretty good *quid* for a *quo*.

In the four years immediately after his 1990 "election" win and January 1991 induction as new Westchester Surrogate, that very same law firm (Hall, Dickler, Kent, Friedman & Wood, now Reed Smith), unsurprisingly, topped the list of Republican beneficiaries of his patronage largess, with a total fee award of more than *a quarter million dollars* out of the purely political "patronage pie" of Surrogate Court-directed business.

Repercussions

Unfortunately, no equivalent benefit was conferred on the hapless litigants (many of whom voted for him unawares), whose civil cases were before Supreme Court Justice Emanuelli at the time of his 1990 resignation from what was then "the Matrimonial Part" of that Court. (among the matrimonial bar, a/k/a "the disaster"). Entire families became innocent victims of the Deal's *four-month interregnum,* when Emanuelli's judicial office became, and callously, was kept vacant, while they suffered real prejudice by concomitant delay and unsought postponements of their long-awaited trials before him or of decisions on their pending motions, many emergency in nature. Divorcing spouses could not get custody hearings, leaving children at high risk, wives were left to endure their husbands' "starvation tactics," many facing mortgage foreclosure because of failure to make required payments, as well as of child support that likewise fell behind. Fathers were unable to enforce visitation or custodial rights, when their wives used the children as hostages for ransom. Children whose college tuition needed to be paid, but was not, had their educations interrupted when requisite immediate interim court orders were unobtainable. Lawyers could not get or enforce interim spousal support or interim counsel fee awards, which would have permitted them to take on or continue their spousal representation.

This pathetic, chaotic situation prevailed until arrival on the scene of his pre-ordained successor, Francis A. Nicolai, a County Court Judge (handling only felony cases), with no real, if any, matrimonial experience. As a sitting judge of County Court, along with other sitting judges similarly involved in the 1989 Deal, he had no compunctions about becoming a party, beneficiary, and signator of the Deal, so that, pursuant to its contracted-for terms, despite his lack of relevant experience, he could be upgraded to Supreme Court upon his "early resignation" from County Court, three years before expiration of his 10-year term, also violative of his oath of office. Inevitably also innocent victims of the Deal were those whose criminal cases (including

those wrongly accused) were being handled by then County Court Judge, soon-to-be Supreme Court Justice Francis A. Nicolai. They, too, were caught up in and also delayed by the inexorably compelled judicial transition.

Many innocent victims of the Deal were those with the misfortune to suffer loss of relatives, whose wills had to be probated and estates administered in the Westchester Surrogate's Court, all presided over by a judge with no experience whatever as practicing lawyer or judge in that court. His deficient job performance, rising to official misconduct, was revealed more and more in ensuing years, complaints as to which were exposed in the year 2000, when incumbent Surrogate Albert J. Emanuelli's 10-year term was expiring and he was running for "re-election." Unexplained, of course, was how you can possibly "re-elect" someone, who was never truly "elected" in the first place. See my article, *"Time for a New Westchester Surrogate,"* published the week before Election Day and thereafter reprinted the day before Election Day 2000 as a *$4,000* paid ad in Gannett Newspapers day was made possible by donations of that amount by *Victims of Surrogate's Court.* http://www.victimsofsurrogatescourt.org/surrogate.htm, said to be instrumental in his defeat at the polls .the following day.

Left behind when Emanuelli lost that election, the first and only known Republican incumbent Surrogate in the history of the Westchester Surrogate's Office to lose his office on Election Day, was the heritage of years of still-pending litigation and complaints arising out of flagrant injustice complained of by aggrieved Surrogate Court litigants. On the other hand, Emanuelli suffered no real loss at all. As if the Westchester Surrogate's Office did not have enough work for him to do full-time, during his term as Surrogate, he enhanced his Surrogate job, in 1995, by administrative appointment as an "Acting Supreme Court Justice, in and for all the counties of the Ninth Judicial District ... in addition to his other duties," presumably with corresponding increase in pay, pension and "perks," for which no Senate confirmation was required. Once again ignored was the state constitutional mandate for *election* of Supreme Court Justices.

When his ten-year Surrogate term expired in 2000, he ran again in 2000 on the Republican line. This time, even with endorsement of *four* minor parties, but without the pivotal Democratic cross-endorsement status he enjoyed under the 1989 Deal, he lost his first real race. No problem. In 2001, thanks to Governor Pataki, Emanuelli, then 63 years old, got a Senate confirmation-required NYS Court of Claims judgeship with a nine year term.

Appointments to the Court of Claims, the usual back door" to Acting Supreme Court Justice jobs, are crucially important to the Governor and other public officials. Grateful Court of Claims' nominees are right there in place to protect the government from liability, when it is sued. See, http://www.judgewatch.org/published/dailynews-ltr-2-13-98- rourke.pdf; http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny_orourke.htm; http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny-wetzel.htm

Nonetheless, despite the high taxpayer cost of such repeated judicial turnovers, Emanuelli quit that judgeship too, just two years later when he turned 65, again flouting his oath of office, including his statutorily identified term of office, retired from the bench and left the State.

Castracan v. Colavita, *et al.* and Sady v. Murphy

The full record of the Ninth Judicial Committee's two Election Law cases, *Castracan v. Colavita, et al* and the 1991 Second Department companion case of *Sady v. Murphy, Colavita, et al.*, challenging political manipulation of state judicial elections, in manifest violation of constitutionally guaranteed voting rights, is accessible at http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-elections.htm

***NYS Election Law, §17-158* Corrupt use of position or authority** is the controlling law, making specific acts prohibited under its four subdivisions punishable as felonies, including a promise for a promise of public employment. It follows that the barter of promised action in exchange for a promise of public office, with no exemption for judicial office, is, therefore, a felony within the letter and spirit of the Election Law proscription.

The terms and conditions of the 1989 judicial cross-endorsement Deal, reduced to writing, approved in Resolution form by all party bosses of the five-county 9th Judicial District, expressly accepted by their judicial nominees at both major party's judicial nominating conventions, including sitting judges, effectively *guaranteed* election of all judge and lawyer parties to, and beneficiaries of, the Deal, destroying the value of their votes, anathema to a democracy.

Early on, lawyer Eli Vigliano, an office mate in my firm's White Plains, NY law suite, founded a grass-roots group, the Ninth Judicial Committee, whose goal was to set up a judicial screening committee in our county, modeled after one the Reform Democrats had created in New York County. He reached out to the law school faculty at nearby Pace Law School, where he had been an Adjunct Professor, for support. No luck there. The Westchester legal community was not yet ready for so "radical" a departure from party boss-controlled *status quo*, in which their own professional futures and of the Law School itself, was heavily invested.

Nonetheless, good citizen and true patriot that he was, faced with what, plainly, was an *emergency* situation, he decided that exigent action was needed to stop the Three-Year Deal from going forward on Election Day, at very least, to keep it from becoming the prototype for future political deals of that ilk. That notion was publicly so promoted by the political *maestros* who orchestrated it, masking its sinister purpose by urging it as the best way to "good government," which would eliminate the need of judicial candidates to "beg" for campaign monies.

Mr. Vigliano took action by public advocacy, writing a four-page citizen's complaint letter dated November 1, 1989, with supporting documents, addressed to then Governor Mario Cuomo, http://www.judgewatch.org/correspondence-nys/1989/11-1-89-ltr-governor.pdf, enclosing a copy of the written Three-Year Deal, http://www.judgewatch.org/correspondence-nys/1989/11-1-89-ltr-exA.pdf and traveled down from his White Plains office to hand-deliver it to the Governor's Executive Offices in New York City before Election Day. The letter alerted the Governor to the Election Law violations, including palpable criminal fraud, that had occurred in the Ninth Judicial District. Due to the entrenched politicization of the Republican Westchester D.A. Office, he urged the Governor to appoint a Special Prosecutor to conduct an independent investigation of the facts and redress the constitutional and statutory wrongs complained of. Incredibly, he received no response to his letter, before or after Election Day.

With copy of the "smoking gun" Three Year Deal written Resolution in hand, Mr. Vigliano persuaded me to become *pro bono* counsel to the Ninth Judicial Committee and well prior to the 1990 elections, we expressed our public advocacy opposition in various ways. Despite our best efforts, the second phase of the Deal went forward like clockwork. Undaunted in what we both considered our patriotic duty to challenge, we immediately took up the cudgels to protect our democratic values. Together, we prepared and filed the requisite Election Law Objections and Specifications with the New York State Board of Elections, the state agency charged with protecting the public from election fraud. See, http://www.judgewatch.org/web-pages/judicial-selection/nys/castracan-v-colavita.htm Predictably, the party-controlled Republican and Democratic Commissioners turned a deaf ear and a blind eye to petitioners' complaints.

With no viable alternative, we turned to the courts for redress and timely filed the matter of *Mario M. Castracan & Vincent F. Bonelli, acting pro bono publico, Petitioners v. Anthony J. Colavita, Chairman Westchester Republican Party Committee, and 11 other named public Respondents,* seeking judicial review of the constitutionality, legality and ethical propriety of the Three-Year Deal, as well as of the sham implementing judicial nominating conventions, specifically as they related to the 1990 phase of the Deal.

On October 16, 1990, *Castracan* came on before State Supreme Court Justice Lawrence E. Kahn, sitting in Albany County, later to become federal Judge Kahn (Northern District, NY). Cognizant of time constraints, Justice Kahn, on consent of counsel, ignoring procedural objections of both parties, dismissed the case "on the merits" in a written decision rendered overnight, with the hand written words *"So Ordered!"* below. In fact, Justice Kahn failed to rule on the merits of the crucial issues as to applicability of NYS Election Law, §17-158 to judicial cross-endorsements in general or to the particular Three Year Deal at issue.

Moreover, his omission was open to a "perception of impropriety" and/or deliberate "cover-up" for the politically-motivated purpose of protecting the leaders of both parties, as well as his own self-interest in a future federal judgeship, one he brought to fruition some short years later. His dismissal decision opined that the case "no doubt will continue to fuel the debate concerning the manner in which candidates for judicial office are selected." Why then did he not give his decision to the Law Journal for publication to the legal profession so as to permit its wider circulation to by the profession as well as the public at large, more conducive to debate, as the circumstances surely compelled in the public interest. (the decision is, nonetheless, accessible on our website at http://www.judgewatch.org/judicial-selection/castracan-v-colavita/record-supp/2-kahn-decision-10-16-90.pdf . Why, too, did His Honor close his eyes to blind himself to cited Election Law provisions making a conditional promise of public employment in exchange for specific promised actions, a felony. Indeed, nothing more was required. *"A promise for a promise is 'valuable consideration,' as any first year law student knows."*

Those very italicized words were spoken by then NYS Court of Appeals Associate Judge Richard D. Simons at the two-judge pre-argument conference Mr. Vigliano and I both attended, traveling up from White Plains to Albany to have petitioners' appeals heard by our state's highest court,. he, as counsel for petitioners in *Sady v. Murphy, Colavita, et al.,* http://www.judgewatch.org/web-pages/judicial-selection/nys/sady-v-murphy.htm and I, as counsel to petitioners in *Castracan v. Colavita, Nicolai, et al.* -- even though by then, I had already been served with an Appellate Division, 2nd Dept. Order, dated June 14, 1991,

suspending my law license (about which more below). Such occurred shortly after Appellate Division, 3rd Department's May 15, 1991 affirmance of Justice Kahn's dismissal of *Castracan.* Indeed, the transparently retaliatory nature of such suspension order induced Judge Simons to lift the suspension order so as to permit me to resume my representation for that one day.

Judge Simons went further, referring to the Three Year Deal, after reading a copy thereof that I presented up to him, he had no compunction in candidly saying "It's a disgusting deal." I quoted those words to Governor Cuomo in my October 24, 1991 10-page letter to him, reiterating the vital necessity of his appointment of a Special Prosecutor for investigation. See, http://www.judgewatch.org/nys-commission-judicial-conduct/1991/10-24-91-ltr-cuomo.pdf

Justice Kahn's decision, oddly, took the position that, although the Deal was "questionable -- the practice of cross-endorsement is not presently prohibited by the Election Law" and there was "no proof" that the judicial conventions were illegally convened or conducted." Therefore, "any change in the method of judicial selection would require a New York State legislative amendment. To arrive at that conclusion, His Honor chose to disregard two critical undeniable and indisputable facts:: (1) NYS Election Law, §17-158 prohibited exchange of "valuable consideration" for public employment -- with no exception for judgeships or barter arrangements; and (2). the record before the appellate and lower courts showed that he had denied petitioners their rights to a due process hearing, at which such evidentiary *proof* could have been presented.

Justice Kahn's Law Secretary informed me that the Court's Monday, October 15, 1991 calendar had been "cleared" to accommodate argument of respondents' counsel's dismissal motions and my cross-motion, the outcome thereof to determine whether or not a hearing was necessary. If so, an evidentiary hearing would follow his expected from-the-bench decision on motions. The Court, as well as defense counsel, was made aware at the outset that petitioners' eye-witnesses to the judicial nominating conventions were sitting in the courtroom, awaiting the promised hearing to begin in that day's afternoon session, if not before.

In any case, as the record corroborates, Justice Kahn did not issue his dispositive bench decision/order that day on our oral argument until the following day. His Honor had, thus, moved directly from argument to decision, without the promised hearing. That, he ascribed to reasons of "judicial economy" and the need for "expeditious" rendition of an appealable order, which counsel to the parties accommodated the Court's advisement that it had to address an intervening unrelated criminal matter requiring his immediate attention. Thereby also violated was the Election Law requirement of priority of attention, entitling such cases to automatic preference.

Justice Kahn's rush to judgment meant that the only way we could make the October appellate term was to serve and file Appellants' Briefs by 4 p.m., the next day, Wednesday, October 17, 1990. If not, the appeal would go over to the November term, not to be heard before elections. To avoid that inexorable fate, a volunteer local lawyer working with our Ninth Judicial Committee labored around the clock with me and Mr. Vigliano to produce a Record and Brief on Appeal, photocopied necessary copies to serve on counsel for all 12 named Respondents (some *6,000* pages), served upon them at six different locations in three different counties, and timely filed them with the Albany County Clerk's Office. With such combined superhuman effort, we complied with that seemingly impossible deadline by duly delivering our proofs of service to the

Appellate Division, 3rd Dept. Clerk. As promised, he then calendared it for oral argument on Friday, October 19, 1990, the very last day our appeal could be heard in the October term. See, fn.2, in my letter to Governor Cuomo as to the Appellate Division's sudden, unexplained cancellation of the oral argument scheduled for that day, as well as other suspect political manipulation designed to prevent the Castracan appeal from going forward until *after* Election Day. http://www.judgewatch.org/nys-commission-judicial-conduct/1991/10-24-91-ltr-cuomo.pdf

Our Record included the three sworn eyewitness accounts in affidavit form, which were before the lower court, attesting to the material facts as to the illegal manner in which the 1989 Judicial Nominating Conventions were conducted, e.g., Affidavit of eye-witness Lehman College Political Science Professor Vincent Bonelli, attesting to specific *facts* proving that they did not comply with Election Law requirements, were *not* properly convened, a requisite quorum was *not* present, and a majority of that quorum did *not* duly vote for the candidates named as respondents. http://www.judgewatch.org/documents/173-bonelli-aff.pdf .

Thus, the boiler-plate Affidavits of Due Compliance signed by lawyers for the major parties to gain certification of the judicial nominees' results were perjurious and fraudulent. Mr. Vigliano and I so swore in our written submissions before Justice Kahn and I so reiterated in my oral argument, based on our direct personal knowledge of the facts. Justice Kahn having no evidentiary basis for his decisional assertion to the contrary, absent a hearing, was required by black letter law to accept petitioners' factual allegations as true, on a respondent's motion to dismiss for failure to state a cause of action. As such, all lawyers and judges involved in the Deal and the implementing Judicial Nominating Conventions, including their defense counsel, faced dire consequences, including not only disbarment, but also potential time *behind* bars for . Election Law felonies.

While recognizing that "Supreme Court had specifically decided not to address any procedural issues and chose to dismiss the petitioners on the merits," the Third Department Decision and Order entered on May 15, 1991 in *Castracan & Bonelli v. Colavita, et al.*, affirming Justice Kahn's dismissal "for failure to state a cause of action" was likewise egregiously erroneous factually and legally. Justice Kahn's decision was *not* on the merits of the various terms and conditions of the deal or its impact on voting rights, which he sidestepped entirely by limiting his review simply to the question of whether they were statutorily proscribed, without regard to constitutional or ethical proscriptions, deliberately ignoring procedural objections on both sides..

Quite apart from the irrefutable lower court record showing that petitioners' had not only been denied a hearing, to which they were entitled by due process as a matter of right, but that Justice Kahn had also misapplied CPLR 3211(a)7, which precluded his granting a respondent's dismissal motion, where the critical facts petitioners' alleged, if true, a required assumption for purposes of that motion, absolutely stated a cause of action. If the procedural points treated as less consequential than the transcending public interest in the substantive issues petitioners raised, were to become a basis for affirmance, the fact that Justice Kahn had dispensed with the hearing at which petitioners' eye-witnesses could have presented from the stand the *proof* of illegality to which their three eyewitness affidavits attested to in their supporting papers, at very least the appellate panel, was legally required to remanded for a hearing, *albeit* such could no longer have occurred *before* Election Day 1990. Moreover, were the panel, without notice, going to affirm Justice Kahn's dismissal on procedural grounds, rather than his substantive error

in granting dismissal for "failure to state a cause of action," justice required that petitioners' dispositive procedural objections to such motion also be specifically addressed.

The 3rd Department's Decision and Order of dismissal was the product of an appellate panel, whose five judges failed to recuse themselves or make disclosure of the material disqualifying conflict of interest fact, as ethically required and called upon by me so to do, that they themselves had been parties to, and beneficiaries of, multiple party judicial cross-endorsements that had likewise effectively guaranteed their election.. http://www.judgewatch.org/judicial-selection/castracan-v- colavita/memooflaw.pdf. See also, New York Times Westchester Weekly, Sunday edition, May 19, 1991 article by Tessa Melvin, *Lawyer to Pursue Suit On Cross-Endorsement* http://www.judgewatch.org/press-suppression/nyt/1991/5-19-91-nyt-article.pdf, quoting me as having "vowed to challenge a ruling handed down this month by an appellate panel that included judges who had themselves been cross-endorsed."

I reiterated my intention to do so in my published Letter to the Editor of the Sunday Times Westchester Weekly on July 9, 1991, headlined "Cross-Endorsement: Questions of Protection," referring to the protective cover-up of the Deal by the Times and other mainstream media, which abysmally failed to protect the voters' right to know the fraud being perpetrated upon them. See http://www.judgewatch.org/documents/ltr-to-editor-6-9-91.pdf .

Mr. Vigliano wound up as my successor *pro bono* counsel to the Ninth Judicial Committee and himself brought on the Election Law case of *Sady v. Murphy, Colavita, et al.* by Verified Petition, filed August 2, 1991, in Westchester Supreme Court, after the second year phase of the Deal was implemented by then Supreme Court Emanuelli' contracted-for resignation from that post and the filing of designating petitions to run for Westchester Surrogate, all per the Deal, which Mr. Vigliano duly challenged by Objections and Specifications to Objections before the politically-controlled Westchester County Board of Elections, a challenge predictably doomed to failure. http://judgewatch.org/web-pages/judicial-selection/nys/sady-v-murphy.htm

By then, I myself had become a casualty of the Deal, due to the Appellate Division, 2nd Department's due process-less retaliatory suspension of my law license by its June 14, 1991 Order. "No good deed goes unpunished."

By a "So Ordered" bench decision dated August 13, 1991, Justice Vincent Garahian summarily denied the August 2, 1991 Election Law Petition on the merits, rejecting Petitioners' claims of illegality and unconstitutionality of judicial cross endorsements, with particular reference to the 1990 phase of the Deal, with no analysis whatever of Election Law 17-158. Justice Garahian cavalierly accepted respondents' argument relying on Justice Kahn's view that there was no statutory prohibition of judicial cross-endorsements and similarly disregarded, as had Justice Kahn, the petitioners' right to a hearing as to their position as to the illegality of the judicial nominating conventions. http://judgewatch.org/sady-v-murphy/AA-5-decision-8-12-91.pdf

On appeal, the Appellate Division, 2nd Department, Guy Mangano, P.J., wasted no time in issuing, one day after oral argument, its August 21, 1991 one-page affirmance, stating as the one and only reason therefor, i.e., that "the petitioners failed to adduce evidence sufficient to warrant invalidating the petitions designating the respondent-respondent Murphy." Obviously, that Court, like the 3rd Department was untroubled by the fact that the lower court had denied petitioners their

right to a due process hearing at which such evidence could have been adduced, a crucial fact underlying their appeal of right, as well as their motion for leave to appeal to the Court of Appeals, whose Judges were similarly untroubled by that sacrosanct Rule of Law. http://judgewatch.org/sady-v-murphy/BB-6-decision-8-21-91.pdf

On August 28, 1991, the very same day I, along with Mr. Vigliano, appeared at the NY Court of Appeals for argument of *Sady v. Murphy*, it issued its one-page Order dated August 28, 1991, issued "on the Court's own motion," the Court of Appeals, Chief Judge Sol Wachtler presiding, dismissed *Sady* petitioners' appeal taken as of right, "upon the ground that no substantial constitutional question is directly involved" and also denied their motion for leave to appeal. http://judgewatch.org/judicial-selection/castracan-v-colavita/Folder-F-reargument-recusal-leave/F-11-exD.pdf

By order dated October 15, 1991, the Court of Appeals likewise gave short shrift to the previously filed, still pending Castracan appeal as of right, Chief Judge Sol Wachtler presiding, by dismissing it on the same boiler-plate: "upon the ground that no substantial constitutional question was directly involved." http://judgewatch.org/judicial-selection/castracan-v-colavita/FolderG-ct-of-appeals/G-17-order-10-15-91.pdf

Suspension of Sassower's Law License

In an act of unprecedented judicial cruelty and transparent retaliation for my ongoing *pro bono* Election Law litigation, challenging the political machinations of both major parties that the Three Year Deal exemplified, the Draconian June 14, 1991 2nd Department Order, Guy Mangano, P.J., suspending my law license "immediately, unconditionally and indefinitely" effectively required me, within 24 hours, to close up my practice and notify all clients of my suspension, with no time allowed for any appeal thereof and, in fact, no mechanism for *any* appeal thereof, expedited or otherwise.

Albeit said order was without a factual or legal predicate, failing even to comply with the two explicit requirements for invocation of the 22 NYCRR 691.4{1] interim suspension rule: (1) a *finding* that the attorney subject to suspension be "an immediate threat to the public interest," and (2) a *finding* that is *evidentiarily* supported. In my case, no such finding was ever made. Neither was there any hearing ever held pre or post-suspension, without which there could be no *finding*. Nor could such finding ever possibly be made, since, in fact, I was no "threat to the public interest." *Au contraire*, in my more than 35 year legal career, I was well-known as a *protector* of the public interest, a practitioner in the specialty of human rights and matrimonial law, who spent much of her professional time championing law reform in the legislative and judicial arena, as reflected in my last published listing in Martindale Hubbell Law Directory, (1989 ed.) http://www.judgewatch.org/published/12-7-06-citizen-net-reporter.pdf

The 2nd Department's true purpose of my transparently retaliatory suspension was politically-driven to divert my time, energy and financial resources from my *pro bono* public advocacy in pending Election Law-related litigation I had initiated to defending myself against the sudden unjustified loss of my professional license and livelihood., including in April 1993, an Article 78 proceeding against Appellate Division, 2nd Dept. P.J. Guy Mangano and his Associate Judges, as well as Chief Counsel and Chairman of the 9th Judicial District which failed because the P.J.,

disregarding the flagrant "appearance of impropriety," resulting from that ethical violation when my motion for the Court to recuse itself from a case in which he and his brethren on the bench were being sued directly by me or transfer the case to another judicial department.

Controlling law showed that the invoked rule failed to provide interimly suspended attorneys an automatic right of appeal or grant of leave to file same, as written or as applied, which not only denied me due process, but also equal protection of the law. I showed that other 2nd Department attorneys interimly suspended under the same court rule as I, as well as attorneys in other judicial departments were, in fact, granted pre-and post-suspension evidentiary hearings. Nonetheless, the Appellate Division, 2nd Department struck out my requested stay of enforcement, pending decision on the remedial relief my Order to Show Cause requested, wherein I sought *vacatur* of its unprecedented interim suspension order, reargument, renewal, recusal and leave to appeal to the Court of Appeals. Indisputably, the suspension order was timed to intercept my going forward with the publicized intended appeal to the Court of Appeals on behalf of the *Castracan* petitioners (p.8, *supra*): the jurisdictionally void alleged service upon me being made on *June 19, 1991*, the day before *the last day* to file Appellants' Notice of Appeal to the Court of Appeals.

Undisputed was my contention that the 2nd Department had targeted me to prevent my ongoing challenge of the Deal, involving their political bosses and judicial friends in the 2nd Department. To impugn the Deal was to put their own judgeships at risk, if either the judicial cross-endorsements or the implementing judicial nominating conventions were found invalid. Of course, the quickest way to avoid those issues from being reviewed by the Court of Appeals was to suspend my law license so that my Castracan appeal would be untimely and to discredit me by falsely making it appear that I was lacking in mental capacity while such litigation was in progress.

Service of the suspension order upon me meant, *eo instante*, that I lost my status as attorney of record in *Castracan* and any papers thereafter filed in my name as attorney of record would be punishable as a violation of the suspension order. In fact, such was actually later added as a disciplinary charge against me because the petitioners' Notice of Appeal was filed the following day. That was because by prearrangement prior thereto when we were both unaware of the suspension order, another attorney likewise working *pro bono* with the Ninth Judicial Committee that he would file same on my behalf as attorney of record.

Fortunately, the June 20, 1991 Notice of Appeal was accepted as valid, albeit I had to fight that unwarranted disciplinary charge thereafter. Nonetheless, and despite my rightful jurisdictional and other legal objections, the suspension order, literally overnight, caused me not only to lose my law license, but my hard-earned reputation, career, professional livelihood and shut me out of business as a practitioner. I was left with no state remedy, unless the Court of Appeals reversed, when I ultimately sought their review. As shown below, they did not.

The High Court's September 10, 1991 Order one-page likewise relied on the "no substantial constitutional question" boilerplate to deny my motion for leave to appeal from the Second Department's June 14, 1991 interim suspension order. Wholly ignored and disregarded were my jurisdictional, due process/equal protection objections, *inter alia*, that it was entered without notice of formal charges, without a finding of "probable cause" or any other finding, administrative or judicial, that I was "an immediate threat to the public interest" or that same was

a politically-driven, patently retaliatory "legal nullity," all of which I fully detailed and documented. There was no basis whatever for "emergency action," as shown by the factual record before the Court, and none alleged by Gary Casella, Chief Counsel of the 9th Judicial District Grievance Committee. Notwithstanding my unrefuted, irrefutable objections, I was consistently denied redress for their unethical and frivolous conduct, all Appellate Division, 2nd Dept. attorneys appointed by and under its control.

By its one-page Order dated November 18, 1992, the Court of Appeals again flouted the Rule of Law when it ignored and disregarded my serious objections by adhering to its dismissal of my appeal as of right. This, despite my requested.review predicated specifically on its intervening recent decision of *In re Russakoff*, 79 N.Y.2d 520, 583 N.Y.S.2d 949, 593 N.E.2d 1357 (May 5, 1992), where Chief Judge Wachtler, with Associate Judge Kaye and four other Associate Judges reversed the Appellate Division, 2nd Dept. and vacated attorney Russakoff's interim suspension order, invoked under the same rule relied on in my case because it did not provide for a post-suspension hearing.. He too complained such suspension was without notice or reasons and without a hearing. In contrast to mine, however, his suspension had been ordered "pending investigation of disciplinary charges" against him, involving conversion of a client's escrowed funds. In my case, there was no professional misconduct or moral turpitude claimed and the suspension order was unconditional, not "pending" anything.

Nonetheless, on the very same equal protection grounds I had asserted in my papers before the Court of Appeals six-months earlier, the Court granted *vacatur* of the Second Department's suspension order for failure to direct a post-suspension hearing and to make factual findings on the record. of equal protection. Moreover, the Court specifically stated that the 2nd Department interim suspension rule warranted correction, thus *sub silentio*, adopted my previous arguments.

The Court's adverse disposition of my suspension order followed its similarly adverse disposition of *Castracan v. Colavita, et al.* . The pending petitioners' motion for leave to appeal in *Castracan v. Colavita, et al.* was denied by its one-page October 14, 1991 order and their appeal of right dismissed by its one-page October 15, 1991 order, granting the Board of Elections' dismissal motion on the stated ground that "no substantial constitutional question was directly involved."

Sady v Murphy, Colavita, et al. met the same fate by the Court of Appeals' earlier denial of petitioners' motion for leave to appeal to the Court of Appeals by its one-page order denial on August 28, 1991 and dismissal of their appeal as of right to the Court of Appeals on September 10, 1991. See http://www.judgewatch.org/judicial-selection/castracan-v-colavita/FolderG-ct-of-appeals/G-17-order-10-15-91.pdf

Both 2nd and 3rd Department appellate panels affirmed the lower courts decisions, accepting their blatantly false judicial statements as to the supposed "insufficient proof" (2nd Dept) or "no proof" (3rd Dept.) that the judicial nominating conventions were illegally conducted." They thereby simply closed their eyes to the indisputable record proof that those lower courts had denied petitioners' their right to evidentiary hearings, to which they were entitled *as a matter of law.*

The 2nd Department panel's judicial error as to that dispositive fact was at odds with comments from the bench on Mr. Vigliano's oral argument, at which I was present. Such were made by

both Presiding Justice Guy Mangano and Associate Judge William Thompson, revealing that they were fully cognizant of petitioners' record showing that the lower court (per Judge Gurahian) had, in fact, denied petitioners a hearing. They further expressed the view that the judges involved in the Three-Year Deal were subject to discipline by the Commission on Judicial Conduct and Grievance Committee. Those comments were quoted in my October 24, 1991 letter to Governor Cuomo. See http://www.judgewatch.org/nys-commission-judicial-conduct/1991/10-24-91-ltr-cuomo.pdf http://www.judgewatch.org/documents/10-24-91-CJC.pdf

After years of futile effort to vacate my due process-less suspension order, in June 1994, I filed a civil rights action in the federal district court (SDNY) under 42 U.S.C. Civil Rights §1983 to protect judicial whistle-blowing attorneys like myself from governmental retaliation and indirectly to vindicate the sacrosanct voting rights of New York voters that had been unconstitutionally violated by the underlying Three-Year Deal that led to my suspension. For the excruciating documented details, see my verified complaint at http://judgewatch.org/test-cases-fed-mangano/district-ct/complaint/complaint.pdf

In October 1994, I filed a petition in the U.S. Supreme Court for *certiorari* to review the June 1991 suspension order, which it denied on May 15, 1995. Despite the long-shot odds against getting review from our High Court (out of over 7,000 petitions applied for, only 83 writs were granted in 1994), like so many of our rightfully aggrieved citizenry, I turned to that Court in hope of overturning the unjust decisions of our state courts.

My *cert* petition raised the transcending public interest question as to what happens to our constitutional First Amendment free speech rights when the speaker is an attorney, "whistle-blowing" about rampant and systemic judicial corruption and the judges deciding the case of the attorney's clients, as well as the attorney's own professional future, are themselves the corrupters and those complicit with them. As my case, brought for myself and similarly unfortunate attorneys, showed only too well, the answer to that question was "professional suicide."

When I cried out for review by the highest court of our land, I pointed out what I had pointed out to the New York Court of Appeals, that review, if granted, would be my *first and only* review of the constitutionality and statutory legality of my suspension order. Under New York law, the Appellate Division of the four judicial departments, with intermediate appellate jurisdiction, have exclusive statutory original disciplinary jurisdiction over the attorneys who practice before them, leaving litigators who speak out against politically-motivated judicial corruption at the mercy of the very judges who they have dared to expose. The lack of any provision for appellate review of interim suspension orders against attorneys rendered the interim suspension court rules fatally flawed. Nonetheless, such review was consistently denied me, under color of state law, by New York state courts, contravening the traditional constitutional right and public policy of at least one appellate review. See Cert Petition Points of Law http://www.judgewatch.org/test-cases-fed-mangano/supreme-ct/cert-petition/cert-petition-no- app.pdf

Tragically for me and for all New Yorkers, unavailing to me, as well, was any redress by the highest court of last resort in our land, to which bar I myself was admitted nearly 50 years ago and still remain a lawyer in good standing, despite my wrongful suspension by the Appellate Division, 2nd Dept..

The tortuous history of the foregoing three cases *Castracan v. Colavita. Sady v. Murphy*, and my various legal challenges to my unlawful suspension should be considered against the backdrop of certain facts leaving no doubt as to the corroded condition of our state court system. Such only came to light, after all three cases, had come up to, and disposed of, by our Court of Appeals -- on October 15, 1991, as to *Castracan*, on August 21, 1991, as to *Sady,* and on September 10, 1991, as to my motion to the Court of Appeals for leave to appeal my suspension, all in the time period that our highest state court was presided over by Hon. Sol Wachtler, Chief Judge. As "chief executive of a $1 billion statewide unified court system [and] chief magistrate of the state's appellate court of last resort." Wachtler was considered the most powerful state judge in the nation, with a monumental political future, including the governorship of New York State. He was already planning to announce, in 1992, his candidacy for a face-off with Governor Mario Cuomo in 1994.

Chief Judge Sol Wachtler

Quite apart from his driving political ambition, Chief Judge Sol Wachtler was preoccupied with an ongoing extra-marital seven-year affair that began sometime in 1984 and its breakup in September 1991. Shortly afterward, he engaged in myriad criminal activities, involving stalking, sending lewd mail, and other bizarre harassment tactics, in a perverse effort aimed at getting his married (as he was) ex-lover back. He disguised his voice and pretended to be someone else, in the perverse expectation that she would look to him for advice. The woman involved, Joy Silverman was his wife's niece, 17 years his junior, whom he had known for many years, and became intimate with shortly after when Wachtler became co-executor and trustee of the $24 million dollar trust estate her step-uncle left behind for her. Under Wachtler's tutelage, she became a major Republican Party fundraiser who introduced him and "talked him up" at various fundraising events as New York's future Governor. See http://en.wikipedia.org/wiki/Sol_Wachtler .

At the time of his November 7, 1992 arrest, Wachtler was in a fee dispute with Silverman, arising out of his fiduciary services in that estate. He had already collected more than *$800,000* in fees, to which she had objected, raising questions of unethical conduct in breach of fiduciary obligations.

It is inconceivable that Judge Wachtler's immoral double life, unethical and bizarre behavior, as well as his severe personality disorder and gubernatorial aspirations, were unknown to his Associate Judge brethren on the bench, who, by their prolonged silence and acquiescence, solicitously protected and covered up for him. Those horrific activities were unknown by the general public, including myself and my colleague, Eli Vigliano, until after Wachtler's arrest, when front page newspaper stories about him provided the sordid details, identifying that federal felony charges would be filed against him, including extortion, racketeering, and blackmail. Not until early April, 1993 was he finally allowed to plead guilty to, a misdemeanor, i.e. aggravated harassment of Silverman by threatening to kidnap her young daughter, of which he was convicted, followed by his resignation as a judge, disbarment, and sentence to 15 months in federal, penal and mental health facilities, from which he was not released until late 1994. See http://en.wikipedia.org/wiki/Sol_Wachtler.

There was no "full disclosure" of these shocking facts or self-recusal by "Chief Judge Sol Wachtler, Presiding" or any other judicial member of the Court of Appeals, as their ethical duty mandated when our two public interest Election Law cases, *Castracan v. Colavita*, *Sady v.*

Murphy, Colavita, et al., challenging the Three-Year Deal and my own law license suspension case against Presiding Justice Guy Mangano, *et al.*, came up before his Court. That included his disqualifying conflict of interest, arising from the fact that his good friend, Republican party boss, Tony Colavita, the lead respondent in both those Election Law cases, as well as Wachtler's ranking position at the top of the New York Republican Party political machine that made him its putative standard bearer nominee in the 1994 gubernatorial race.

In retrospect, it is crystal-clear that the *Sady* and *Castracan* public interest petitioners that Mr. Vigliano and I represented, as well as I in my challenge of my wrongful suspension, were denied the federally and state-guaranteed constitutional right to have the fate of our three separate appeals decided by our highest Court, presided over by an impartial, independent and mentally sound judge. Surely proscribed from adjudication of those three matters was a court, whose Presiding Chief Judge was not only conflicted by his own political and personal self-interest, but also afflicted by insanity, not to mention a court whose Associate judges were party to a "cover-up."

In his own prison diary, excerpted and published in book form when he got out of jail, "*After the Madness: A Judge's Own Prison Memoir,*" Wachtler described his state of mind in the summer of 1990: "my capacity was diminished but I knew what I was doing was wrong"... "my life began to disintegrate" He "was having constant and severe headaches ... was depressed ... avoided consulting a psychiatrist out of vanity and ambition ...he wanted to be governor, and more." See http://articles.baltimoresun.com/1997-04-06/news/1997096012_1_sol-wachtler-federal-prison

But for his capture and exposure of his criminality by FBI agents, as he drove down the LI Expressway on his way home after making arrangements to pick up $20,000 in extortion money he had demanded from Joy Silverman by blackmailing her that he would otherwise publish pornographic photos he had taken of her 14-year old daughter, is there any doubt he would "have been governor and more?"

There also would be no doubt as to the ethically proscribed public perception of impropriety and injustice, had mainstream media properly reported the Court of Appeals' dismissals of our three transcendingly important intended appeals and the true facts behind such dismissals. With good friend, Republican party boss of the State and Westchester County Republican Party, Tony Colavita and new Republican Westchester Surrogate Emanuelli, by then in place to ensure a revenue stream to the party loyal, as "kickbacks" from the party loyal, cashing in on their pledged patronage, Chief Judge Wachtler plainly had their interests to protect, as well as his own. Ongoing press suppression protected them too, as hereinbelow further discussed.

With one fell swoop, then Chief Judge Wachtler, killed three birds with one stone by the Court of Appeals' calculated dismissal of our appeals in *Castracan v. Colavita. Sady v. Murphy, Colavita, et al.*, as well as my appeal from the 2nd Department's June 14, 1991 Order suspending my law license.

Of course, because the dispositve facts about Wachtler were kept secret until the news broke, neither Mr. Vigliano nor I knew of them when I wrote my October 24, 1991 10-page letter to Governor Mario Cuomo, urging appointment of a Special Prosecutor to investigate corruption in the 9th Judicial District in fraud of the electorate's voting rights, concerning which Eli Vigliano had reported to him in his November 1, 1989 letter, and to which the Governor had never responded.

http://www.judgewatch.org/nys-commission-judicial-conduct/1991/10-24-91-ltr-cuomo.pdf. A copy thereof was sent to more than a dozen recipients, topped off by New York Court of Appeals Chief Judge Sol Wachtler, including also the NYSBA, as were our other letters soliciting NYSBA help. See http://www.judgewatch.org/web-pages/searching-bar-associations/corresp-bar-nysba.htm

I also observed that the consequent litigation related thereto by many victims of corrupt and otherwise unfit judges was seriously impacting on our state treasury, which was highly relevant to the then hot topic issue as to proposed increase in judicial salaries. See p. 7, *et seq.* of said letter, specifically discussing my proposed solution to the state's fiscal crisis, for which it had been urged then, as now, that there was a need for judicial pay increases.

Such fiscal concerns about New York's "budget crisis" arising in the late 80's, precluding judicial increases and identifying the courts' case overload, with trials awaiting years, and motion decisions waiting many months, if not years, were loudly voiced throughout the period of our litigation. Those concerns became a "constitutional crisis," when Chief Judge Wachtler made them the subject of unprecedented, taxpayer-costly legal action in September 1991 by suing the Governor in *Wachtler v. Cuomo*, http://www.nytimes.com/1991/09/27/opinion/wachtler-v-cuomo-two-losers.html, to which Governor Cuomo responded with more taxpayer-costly litigation in *Cuomo v. Wachtler*. Despite those tax-draining lawsuits, judicial salaries were not increased and similar lawsuits continued to be brought on behalf of judges seeking pay raises, still of concern as an issue to be addressed by our Legislature.

Even apart from his disqualifying political and personal conflicting interests, Chief Judge Wachtler's later diagnosed mental incapacity, which had resulted in his impaired judgment during that period was expressed in his own later admissions, freely made, that could, and should, have been a basis for the Court of Appeals *sua sponte* review of my suspension order, as well as of our two Election Law cases. Had such Court performed its continuing ethical obligations, we would have been entitled to nullification of all orders and decisions made therein, each and every time those cases thereafter came up for review in that Court or, along the way, while it was pending before the U.S. Supreme Court on my petition for *certiorari* and for the many years thereafter when I was seeking such relief by various other challenges before federal and state public agencies, charged with the duty of protecting our citizenry from governmental corruption. See, our website at www.judgewatch.org.

Notably, Chief Judge Wachtler's conviction of heinous, immoral, unethical, and criminal activity, resulting in his eventual incarceration and disbarment, causing incalculable and permanent injury not only to him and his family, but to our whole society, were not impediments to his reinstatement to the bar in 2007 or his professional comeback, since his release from jail, as a lecturer, law teacher, writer, and mediator.

Only seven years after his release, Court of Appeals Chief Judge Judith Kaye was quoted as saying that, with no prompting from a rehabilitated Wachtler, all seven members of the Court made the decision on their own, to have his portrait hung on the wall, along with the other past Chief Judges of the Court and that the Court would pay $20,000 for it to be commissioned (of course, out of its taxpayer-supported judicial budget, because they felt "it was time)."

Ironically, to the everlasting shame of the Appellate Division, 2nd Department and our Court of Appeals, my June 14, 1991 "interim" suspension order, a palpable "legal nullity," even after its aforesaid *Russakoff* decision in May 1992 and my reargument application based thereon in November of that year, devoid, as it was, of any finding whatsoever of moral turpitude or professional wrongdoing, is still extant after nearly *20 years*. Doesn't it make any fair-minded person wonder whether those very compassionate Court of Appeals Judges will ever, *sua sponte*, deem it "time" to restore my law license?

Wouldn't that be a matter of simple justice? A long-forgotten personal memory comes to mind. I cannot help thinking that I myself might have been sitting on that Court, but for the blatant sexism of my time. In 1972, I became the first woman practitioner nominated as a candidate for the New York Court of Appeals. This happened at the New York State Democratic State Committee Nominating Convention that year. Both parties had put up all male-slates for the three vacancies on the Court, despite my and others, including Governor Rockefeller, calling for inclusion of a woman on the slate. Unsolicited, political leaders of the Democratic Party, reached out to me, then age 39, New York Women's Bar president five years earlier and renowned feminist advocate, to have my name placed in nomination for one of three vacancies on the Court. The nomination was more symbolic than real. Both major party bosses had a cross-endorsement deal already in place that guaranteed nomination to two pre-agreed upon Republican nominees and one agreed-upon Democratic nominee for the three Court of Appeals seats up for election in November 1972.

Appreciative as I was of the great honor, after my nomination was made by Betty Friedan and seconded by our state's first woman Lieutenant-Governor, Mary Anne Krupsak, I yielded in favor of an older woman Family Court Judge, Nanette Dembitz, whom I respected, once I learned she had been prompted to throw her bonnet in the ring by an item in the New York Times mentioning the clamor for women on our High Court (I had been among those doing the clamoring), and saw my name included as a possible candidate.

The result changed the political history of our state. Running, unendorsed by the Democratic Party, but with Reform Democrats' endorsement, she got enough votes to upset the balance of power that had been "resolved" by the judicial cross-endorsement deal in place. Because of the unprecedented split in the Democratic vote, all three Republicans won. That unforeseen event struck the chord that convinced the bosses to favor a legislative change from elective to appointive judges for the Court of Appeals that came to a *crescendo* in the November 1976 judicial elections. But that's another story for another day.

A Solution for the Current Judicial Fiscal Crisis

My solution back then was, and still is, massive overhaul of the judicial selection and judicial discipline processes to give us the best qualified lower court judges on all levels. That would inevitably reduce the ever higher number of appeals generated by the incompetent, dishonest and politically beholden lawyers, be they appointed or elected, who become, or remain judges, re-nominated even after their on-the-job failings are revealed, as our www.judgewatch.org website demonstrates over and again. A sham screening process that *screens out the public* by secret behind-the-scenes deal-making, with the appointive lips immediately after announcing the nominations, followed by sham confirmations, rather than a transparent and accountable process

that screens out unqualified judicial nominees, is an intolerable corrupt process. Such are the cause of profound repercussions to our New York society that have resulted in severe distrust and loss of public confidence. So long as the justice system remains unchanged, the increasingly distrusting, cynical view of lawyers and judges as "lower than low" will not make palatable *any* pay raise for judges.

Our Unified Court System, a bloated *$2.5 billion* dollar state-wide operation, as of 2009, projected at 2.7 billion for 2010-11 (which OCA calls "austere," www.courts.state.ny) could likely save millions of dollars in skyrocketing taxpayer monies spent each year for litigation costs attached to running the courthouses all over the state each day, maintaining excessive court personnel payrolls and financing concomitant expenses. At very least, our proposed major legislative reform would cut out the deficit spending for trials, motions, and appeals in cases that would never have been necessary, but for the metasticized judicial corruption, malpractice, bias, and other judicial abuses polluting our courts.

This logical view (perhaps all too logical) was the recurrent theme of my October 31, 1991 letter, as Ninth Judicial Committee Director, identifying the systemic problem of "incompetent and corrupt judges who sit on the bench by virtue of their political ties," financially ruinous to New York's economy. My letter requested an opportunity to make a "testimonial and documentary contribution to assist [in implementing] "new strategies to better utilize constrained resources more effectively."

My December 19, 1991 letter, as Ninth Judicial Committee's Director, urged implementation of the Report and Recommendations of the Commission on Governmental Integrity (chaired by John Feerick, Dean of Fordham Law School),"costing NYS taxpayers *$10,000,000* to find out that 'the lack of judicial competence and integrity has exacerbated, if not created, the financial crisis in our courts.'"http://www.judgewatch.org/web-pages/searching-nys/correspondence-nys-govcuomo.htm

Sassower Post-Suspension Contributions to Society

Already described is my *pro bono* work as counsel to the Ninth Judicial Committee in 1990 until my June 14, 1991 purported "interim" suspension. The immediate consequence was that such necessarily diverted much of my attention from my public service in the abstract to the particular need for intense, arduous and costly effort on a personal level, to vacate the suspension order, which never should have been issued against me in the first place.

Along with other *pro bono* public service I performed after my suspension (by which is meant entirely uncompensated by any third party, individual or institutional), as well as my personal cases, wherein I was defending myself against retaliatory and other lawless judicial decisions on an ongoing basis, was my work for the Ninth Judicial Committee, along with my judicial activist daughter .Elena Ruth Sassower, who served as its Coordinator, we decided to undertake a pilot study on the federal judicial appointive system, based on our own first-hand experience as litigants in federal court.

In 1992, my daughter Elena Ruth Sassower and I did a six-month empiric study on the federal judicial appointive system as reflected in President George H.W. Bush's nomination of

Westchester County (New York) Executive Andrew O'Rourke to the District Court for the Southern District of New York. On May 1 that year, we presented the Ninth Judicial Committee's exhaustive **Law Day Critique,** together with a voluminous, carefully compiled **Compendium of Substantiating Exhibits,** in support of the conclusion that the nominee was absolutely unqualified for that exalted lifetime honor and that his nomination glaringly exemplified the "built-in" politicization of our federal judiciary. http://www.judgewatch.org/web-pages/judicial-selection/federal/judicial-selection-fed-1992-3.htm;

We disseminated our scholarly study to Democratic Senate Majority Leader George Mitchell and to Chairman Biden of the Senate Judiciary Committee and every member thereof, as well as New York's two Home State Senators, corresponded extensively on the subject with a wide array of bar leaders, including then City Bar President John Feerick, Bernard Nussbaum, President of the Federal Bar Council and to ABA President Talbot D'Alemberte. To our amazement, we met with complete disinterest in the comprehensive, invaluable information we had proffered. Nonetheless, we were led to understand from the Committee that our report had helped put the O'Rourke nomination on ice until after the Elections, when it was no longer viable to the new Democratic administration.

When the Court of Appeals, *sua sponte*, dismissed my appeal as of right from the Second Department's June 14, 1991 suspension order, in its one-page order dated May 12, 1994, on its stock boilerplate ground that "no substantial constitutional question is directly involved," it was unfathomable to me that any deliberative judicial body could render such a disposition, with no discussion or analysis of the serious constitutional objections and public interest issues I raised.

To vindicate those rights, in June 1994, I felt compelled to bring a federal civil rights action against the Appellate Division, 2nd Dept. Presiding Justice, Guy Mangano and his Associate Justices, *et al.*, a public interest lawsuit to protect judicial-whistle-blowing attorneys from judicial retaliation. http://www.judgewatch.org/test-cases-fed-mangano/district-ct/complaint/complaint.pdf

My years spent in my futile search for redress from the illegal suspension of my law license on up to the US Supreme Court, convinced me that the problem of judicial corruption was a national one because I found the same kind of politicization of our federal judiciary, with similar contamination of the judicial work product and a definite need for a new, nonprofit, nonpartisan organization to study and document the problem of judicial corruption nationwide. This is all more fully detailed in a $16,770 paid ad, **"WHERE DO YOU GO WHEN JUDGES BREAK THE LAW?"** on the New York Times Op-Ed page, October 26, 1994, the official launch date of the incorporation of the Center for Judicial Accountability, Inc. (CJA).

When my daughter and I co-founded and incorporated CJA on October 26, 1994, to the best of my knowledge, we were the first non-profit national organization to use the word "accountability" in conjunction with the word "judicial," then a brand-new, essentially unheard-of concept – and the first to document by actual legal cases, with true facts and details the cause, extent of, and what we must do to get rid of, the pernicious problem of judicial corruption. I became its first President and my daughter, Elena Ruth Sassower, its Coordinator, and since 2008, its Director. In that capacity, I have continued my *pro bono* work all these years since

then, as well as my role as the major donor of CJA's funding that has allowed its continued operation and survival from inception right up through these financially challenging times.

In 1995, I brought a lawsuit against the Commission on Judicial Conduct, testing its efficacy as a public body intended to redress complaints of judicial misconduct. See, http://www.judgewatch.org/web-pages/judicial-discipline/nys/dls-v-commission.htm. In 1999, my daughter Elena Ruth Sassower brought another lawsuit against the Commission. http://www.judgewatch.org/web-pages/test-cases/test-cases-state-commission.htm

Our efforts over these past nearly 20 years to protect the integrity and independence of our judiciary have included numerous groundbreaking scholarly studies and writings on judicial selection, as well as judicial discipline, additional to the O'Rourke Critique, all meticulously documented on our www.judgewatchwebsite, See also, http://www.judgewatch.org/web-pages/judicial-discipline/federal/judicial-discipline-federal.htm For additional case studies by CJA Director of federal judicial nominees done in 1996 (Lawrence Kahn, NDNY) 1998 (Alvin Hellerstein (SDNY), 2001 (Review of CJA-s Decade-Long Interaaction with Federal Judicial Selection) and 2003-4 (Richard C. Wesley (CCA 2nd Cir.), see http://www.judgewatch.org/web-pages/judicial-selection/federal/judicial-selection-federal.htm,

For a further comprehensive critique of the federal appointive system, including its 2008 Critique of the Breyer Report, its public advocacy pertaining thereto, correspondence with our three government branches, and outreach to Academia, Organizations and Press, as well as our Archive of Federal Judicial Misconduct Complaints, see http://www.judgewatch.org/web-pages/judicial-discipline/federal/judicial-discipline-federal.htm

The trail-blazing groundbreaking Election Law and other public interest cases CJA, my cofounder Director-daughter and I have initiated over the last two decades provide indisputable proof that the politically-connected judges rendering adverse adjudications were not impartial or independent. Their decisions invariably contaminated by political and/or personal conflicts of interest.

True, to others less committed to fighting for principle, those cases may, indeed, have been "doomed to failure from the start" by the political realities of state and federal court judges, predictably dispensing "topsy turvy" justice, with decisions that were not just or fair, but, in fact, gross miscarriages of justice, *rewarding* the guilty and *punishing* the innocent. But, they often broke ground and inspired others. As well, they fulfilled CJA's mission to educate and raise consciousness of the exigency of .fundamental legislative reform of our three branches of government, as they relate particularly to our third branch, the judiciary, as well as to document the corruption that those cases exposed.

Doubtless, fear of litigation doubtless has kept the party bosses in check so that no new cross-endorsement deals were made of the *in futuro*, wholesale variety epitomized by the Three Year Deal, in writing, albeit the time-honored "paid loser" still remains the route, verbally.

As of now, at very least, what was the 1989 Three Year Deal did NOT, as the bosses intimated it would, become the exemplar for "the Deal of the decade" or "the Deal for the next century." It was the first, only, and, because of our efforts, hopefully the *last* time so brazenly corrupt a

judicial cross-endorsement deal was ever set down in a written document and implemented at politically party boss-controlled judicial nominating conventions! Nonetheless, unpublicized, unpunished behind-the scenes, cozy, corrosive manipulative arrangements have continued to encourage lawyer and judicial corrupters of our state judiciary to gain higher and higher public office and eat away at the foundation of our justice system, to the irreparable, incalculable and continuing loss and detriment of the aggrieved public http://www.judgewatch.org/lake-street/correspondence/press/ex-H.pdf

Year after year, we have strived to sensitize the public and the profession to understand that our judges have to be held accountable not only for their own affirmative acts of misconduct, but also for their acts of nonfeasance. When they look idly by and allow fraudulent judicial decisions to be issued out of their courts by their judicial brethren, they must be held liable as complicit accessories after the fact, deserving of investigation, indictment and prosecution, just as culpable as the judge initially responsible. For that reason, our CJA's website is a repository *extraordinaire*, freely providing a veritable "goldmine" of documents telling the public what it needs to know, as a basis for making positive change happen for the benefit of all posterity. See, e.g., the November 23, 2003 28-page letter from our Director, Elena Ruth Sassower, "Re: Investigation of CJA's 1994 FULLY DOCUMENTED criminal complaint against the justices of the Second Department" to Brooklyn District Attorney Charles J. Hynes, http://www.judgewatch.org/correspondence-nys/2003/11-6-03-ltr-hynes.pdf meticulously detailed look-back summary of more than a decade, focusing attention on the rampant corruption of our judiciary and judicial abuses caused by the collusive Republican-Democratic political manipulation of judgeships, violating civil rights.

Highlighted is our litigation history going back to *Castracan v. Colavita, et al.* and *Sady* v. *Murphy, Colavita, et al.*, as well as the lawless, retaliatory suspension of my law license, to thwart my challenge of such abominations by legal methods and the severe retaliation I was subjected to in other litigation in any way involving me. Also reviewed was our ongoing outreach to bar associations and other public officers and bodies, as well as academia and leading public interest individual reformers organizations and re "Searching for Champions." http://www.judgewatch.org/web-pages/correspondence.htm The Hynes letter followed years and years of futile correspondence with Chief Judge Kaye, as well as a judicial misconduct complaint against her and other tax-payer supported public officers and bodies, including then Chief Administrative Judge Jonathan Lippman, and the Office of Court Administration, charged with the duty of safeguarding the purity of our justice system. http://www.judgewatch.org/web-pages/searching-nys/corresp-nys-oca.htm

Copies of the Hynes letter went to all involved judges, as well as to Chief Judge Kaye's Commission to Restore Public Confidence in Judicial Elections, chaired by John Feerick, created by her in 2003, after the Brooklyn judicial patronage scandal got extensive press coverage, resulting in investigation into fiduciary appointments. Pointed out was the fact that they also should have been investigated for their failure and "refusal to discharge their monitoring responsibilities" that permitted such judicial abuses and the corruption of other key governmental monitors – the Commission on Judicial Conduct, the attorney disciplinary committees and the attorney general office." See, 12/7/2001. Daily News, Letter to the Editor by Elena Sassower, headlined "Judicial reforms."

http://www.judgewatch.org/published/dailynews-ltr-12-7-01-reforms.pdf A copy of that letter also went to John Feerick, Commission Chairman, as well as to then NYSBA President A. Thomas Levin and others. http://www.judgewatch.org/correspondence-nys/1998/8-17-00-lippman-colodner-spatz.pdf

Shockingly, even to this day, there has still been no investigation or official report by any public body or officer to address the many complaints of "cover up" CJA's Director and I have made. Such investigation and official report is long overdue and we urge NYSBA support of this righteous cause.

More Rank Judicial Cross-Endorsement Deals

Unfortunately, judicial cross-endorsement deals in our state and local courts are still alive, albeit none so flagrantly criminal as the "Three-Year Deal." Their continuation to the present day in one form or another has motivated CJA to keep on documenting them and their corruptive influence. It was, and still is, our mission to educate the public to empower itself and help us work for legislative, if not, constitutional change to end the entrenched practice, because the power structure of our judiciary is unwilling to cede that power to anyone who will take it away from the party bosses. I further urge your support of CJA's vital legislative recommendations, per Special Counsel Eli Vigliano's December 14, 2010 letter to you.

In 2005, the Lippman-Alessandro Democratic and Republican judicial cross-endorsement deal that put these two politically-beholden, unqualified nominees on the road to more exalted judicial heights, is symptomatic of the problem. Our www.judgewatch.org website has an entire webpage on Judge Lippman's nomination to the Court of Appeals. See, my unanswered letters to Judges Lippman and Alessandro, as well as to Chief Judge Kaye, in CJA's sustained effort to thwart that shameless deal and keep it from going forward..http://www.judgewatch.org/web-pages/judicial-selection/nys/judicial-selection-ny-elections-2005.htm . For my detailed written statement to the NYS Senate Judiciary Committee, in opposition to Chief Judge Kaye's reappointment as Chief Judge of the Court of Appeals by then Governor Spitzer, confirmed by the Committee on March 6, 2007, identifying with specific details, documentary references, and legal authorities, Judge Kaye's politically-influenced, corrupt and fraudulent decision-making and other official misconduct, exemplified in particular acts of commission and omission, see also http://www.judgewatch.org/judicial-selection/kaye-2007/dls-testimony.pdf, as well as our Director Elena Sassower's detailed, fully documented Opposition Statement, http://www.judgewatch.org/judicial-selection/kaye-2007/cja-testimony.pdf, including other corroborating evidence as to Chief Judge Kaye's corruption of the "merit selection" to the Court of Appeals: http://www.judgewatch.org/web-pages/judicial-selection/nys/kaye-2007.htm

For the many bitter comments of lawyers and other litigation victims complaining about the corruption and judicial misconduct of Chief Judge Kaye and successor Lippman as well as other judicial misconduct in New York, see also, videos of the numerous witnesses who gave testimony at the never completed Public Hearings on Judicial Corruption in New York State called by Senator John Sampson in 2009, held in diverse parts of the State, http://exposecorruptcourts.blogspot.com/2009/05/senator-john-sampson-announces-public.html,

See also, the "eye-opening" exposure of the whole political scheme, the subject of Wayne Barrett's 2009 Village Voice dynamite story "How Shelly Silver Made His Pal Chief Judge," at http://blogs.villagevoice.com/runninscared/2009/02/wayne_barrett_h.phps. That article was withheld from publication for more than four years and not released until after Lippman's confirmation. To see posted comments thereto from Elena Sassower, Eli Vigliano and Doris L. Sassower, scroll down at http://newyorkcourtcorruption.blogspot.com/2009_08_01_archive.html

With no trial experience whatever, as either judge or practitioner, the major party cross-endorsement deal Lippman himself *insisted* on, with the approval and support of Chief Judge Kaye, as well as the endorsements of three minor parties (Working Families, Conservative, and Independence) assured him of *guaranteed* election to a Supreme Court judgeship especially created for him in Westchester by his boyhood friend, New York State Assembly Majority Leader Sheldon Silver. Underlying that step was the plan to jockey him into a fast track to implement

Chief Judge Kaye's long-range plan to have her protégé Lippman succeed her as Chief Judge of our Court of Appeals, when she reached her 70-year mandatory retirement age in 2008,. This was premised on her being reappointed by the then Governor Eliot Spitzer, who announced his candidacy in 2004. Just like clockwork, the pre-scripted scenario came to pass. Surprise, surprise.

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Lippman's Republican cross-endorsed counterpart nominee, Joseph Alessandro, insisted on by Dr. Giulio Cavallo, party boss of the Independence Party, although found *"not qualified"* by NYSBA and other bar associations, has since been removed, in disgrace, from his Supreme Court post by the Court of Appeals following the Commission on Judicial Conduct's vote for Alessandro's removal, on a finding that he was guilty of judicial misconduct. Of course, then Chief Judge Lippman had to, and did, recuse himself,

In the 2010 Election year, the pernicious judicial cross-endorsement practice again reared its ugly head to "re-elect" Supreme Court Justice J. Emmett Murphy, the very same Murphy sued by Eli Vigliano, *pro bono* counsel to the petitioners in the *Sady v. Murphy, Colavita, et al.* Election Law case of nearly 20 years ago. Of course, Murphy was not "elected" when he became party to, and beneficiary of, the corrupt 1989 Three-Year Deal that gave him guaranteed upward mobility from his Yonkers City Court judgeship to his contracted-for 10-year County Court judgeship in 1991. That gave him an edge when he ran and was elected in 1996 to a full 14-year term as Supreme Court Justice with only the Democratic and one minor party (Ind.) endorsement.

No question but that his Supreme Court judgeship in 2010, for which Murphy got four-party endorsements, including both major party endorsements, in and of themselves, enough to elect him, was "conceived in original sin." Voters needed to know *before* they voted in 1991 for then Yonkers City Court Judge to become Westchester County Court Judge Murphy and again when he ran for Supreme Court in the 1996 and 2010 elections, that he never should have been permitted to profit from his own wrong *via* elevation to a Supreme Court judgeship in 1996.

Unfortunately, press suppression and journalistic fraud by mainstream media prevented them from being fully and truthfully informed before they cast their votes in the judicial races from the

Respectfully submitted,

Doris L. Sassower

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