



NINTH JUDICIAL COMMITTEE

Box 69, Gedney Station
White Plains, New York 10605-0069
Tel: (914) 997-8105 / Fax: (914) 684-6554

FAX COVER SHEET

10/28/93

1:30 p.m.

DATE _____ TIME _____
TO: JOHN CAHER, ALBANY TIMES UNION

FAX NUMBER: _____
518-462-5997 (TELE: 518-434-2403)

13
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

FROM: Elena Ruth Sassower, Coordinator
Ninth Judicial Committee

Dear John:

If you do your part of investigating--and drawing conclusions based thereon--we'll provide you with a wealth of documents and leads.

Enclosed are:

- (1) Marc Humbert's 10/24/90 release over the A.P. wire--which never saw the light of day--at least not in the New York City Metro Area (including Westchester, etc.);
- (2) Marc Humbert's 9/13/93 column, as published in The Legislative Gazette;
- (3) Our 3/20/92 letter to the Task force on Judicial Diversity--
NOTE: the State Alert of 10/26/90 of the New York State League of Women Voters, attached thereto.

Please let me know if you would like any other documents--including the reargument/renewal motion to the Appellate Division, 3rd Dept. or our Memorandum to the Court of Appeals in support of our appeal as of right.

Elena

NOTE: The original AP wire feed is attached.
For ease of reading, it has been reproduced
below in type-face:

A.P.-CAPITOL: BY MARC HUMBERT
October 24, 1990 for release October 29, 1990 and thereafter

Albany, N.Y. (A.P.) While most of New York State's judges are elected, voters often find they really have no choice when it comes to selecting those who pronounce the sentences meant to protect society from evil.

Under "cross-endorsement" agreements, local political leaders often decide who will be the judges. Each party's judicial convention endorses the other's candidates and voters see just one name on the ballot for each opening.

The process is under challenge by a group of Westchester County residents calling themselves the Ninth Judicial Committee. The committee's attorney is Doris Sassower, a self-described 'tenacious' White Plains lawyer. The lawsuit, which has attracted little public notice, has reached a state appeals court in Albany. While the dispute over how judges get to be judges has been going on for years, the lawsuit may be the first to challenge the process in court, according to M.L. Henry, executive director of the Committee for Modern Courts.

Calling the state's process of electing judges 'shameful,' Henry's lobbying group has called for the merit selection of judges.

There are other voices complaining about the elective system. "Judicial elections are so captive to the interests of

political party organizations that they clash with the ideal of an independent and non-partisan judiciary," the state Commission on Government Integrity concluded in a 1988 report.

That ethics panel, appointed by Gov. Mario Cuomo, called for New York's system of electing judges to be replaced by an appointive process.

Since 1978, following voter approval of a state constitutional amendment, the seven judges of New York's top tribunal, the Court of Appeals, have been appointed by the governor, subject to approval by the state Senate. Until then, the judges had been elected. Some other judges are also appointed.

Excluding 2,242 elected town and village judges, there are 1,067 judges who make up the city, county and state judicial system in New York. Of that, 342 judges are elected and 225 are appointed.

While most cross-endorsement deals are arranged with handshakes or verbal agreements, the political leaders in the Ninth Judicial District put a three-year pact in writing last year. It provided for who would be elected to certain judgeships.

"This was done totally openly. There was nothing hidden or secretive," Westchester's GOP Chairman Anthony Colavita, a former state Republican chairman, said of the agreement. "I don't believe it's improper."

"These are the deals that used to be made behind closed

doors in smoke-filled rooms," Sassower said. "They bartered away these judgeships."

The written agreement, according to court papers, called for judges elected under the agreement to "provide equal access and consideration, if any, to the recommendations of the leaders of each major political party in conjunction with proposed judicial appointments".

The agreement appears to even extend to the hiring of staff personnel," state Supreme Court Justice Lawrence Kahn said recently in ruling on the case.

Nonetheless, Kahn ruled against Sassower.

A political maverick who challenged Albany County's powerful Democratic Party machine to win his first judgeship, Kahn said party leaders had properly held judicial conventions that ratified their process. That, said Kahn, made the deal legal.

"The practice of cross-endorsement of judicial candidates is not presently prohibited by the (state) Election Law," Kahn wrote.

Noting that the three-year written pact was certain "to fuel the debate," Kahn said "the proper forum must be the (state) Legislature...which has the sole power to amend the process by which judicial candidates are chosen."

"They masked their scheme with some window-dressing," Sassower said of the judicial conventions that ratified the deals negotiated by the party leaders.

Calling the three-year pact "a judicial Watergate," Sassower, a former President of the New York Women's Bar Association, appealed Kahn's ruling to the Appellate Division of state Supreme Court. She asked for an immediate hearing.

A lawyer for 35 years, Sassower said she expected her request to be routinely granted because the appeals court was about to begin a recess that would last beyond Election Day. Several judicial offices being challenged by Sassower's lawsuit are scheduled to be filled in the Ninth Judicial District by the November 6 election.

The appeals court, however, refused to give Sassower an immediate hearing and went into recess a week ago Friday.

In a letter to Sassower, Chief Clerk Michael Novack said Presiding Justice Mahoney had decided against an immediate hearing because "it would be wholly inappropriate to attempt to render a reasoned decision in this case under such circumstances and time constraints."

Sassower has appealed Mahoney's decision and still hopes to have a hearing before Election Day. Either way, she said she'll take the case as far as she can in the court system.

Sassower maintains that "it should be obvious to anyone who is aware of the political realities" why she is having trouble obtaining a quick hearing on her case.

"We are bucking the most powerful forces in society...Certainly there's a great value to those who are the beneficiaries of this system to perpetuate it," she said.

Court Clerk Novack said that while most election cases are "usually given a preference...there's no absolute guarantee that every case will be heard and decided before Election Day."

Novack also said Sassower "has a lot of ideas, about why her preference 'request' was denied, which are not accurate."

Sassower's lawsuit seeks to have the three-year pact, negotiated in 1989 by Colavita and then-Westchester Democratic Chairman Richard Weingarten, declared "illegal".

The lawsuit asks that the nominations of Democratic Francis Nicolai and Republican Howard Miller for state Supreme Court and Republican Albert Emanuelli for Westchester County Surrogate be overturned and their names removed from the Nov. 6 ballot.

The Ninth Judicial District includes Westchester, Putnam, Dutchess, Rockland and Orange Counties.

Colavita said that if the members of the Ninth Judicial Committee were so upset about the three-year agreement, they should have taken their fight to the ballot box and presented their own judicial candidates.

"None of us have any political aspirations," Eli Vigliano, chairman of the committee and a lawyer for 40 years, countered. "This is not a case that we are the outs and want to become the ins."

Colavita said the group's lawsuit was "totally without merit."

"This agreement provided excellent people from both

⑤

parties. It was good government," Colavita said. "It was also good politics."

Judge Levine knows 'lots' of lawyers

When it comes to lawyers and the law, the newest member of the state's top court ought to know what he's talking about.

You could say that Court of Appeals Judge Howard Levine has it in his genes.

Levine, a Schenectady Republican, is the son of the late Henry Levine. The elder Levine served as counsel to the late state Assembly Speaker Oswald D. Heck for 17 years. Heck was also a Republican



Capitol corridors

By MARC HUMBERT
Associated Press writer

from Schenectady.

The counsel to the Assembly speaker can be the second most powerful person in the chamber, depending on how much power his boss gives him. It is a position in which a lawyer learns not only about passing laws, but about surviving in politics.

But it wasn't just Levine's father who kindled the legal flame. In fact, the father wanted the son to be a doctor. His mother, 88-year-old Celia Levine, is a retired lawyer. She was in Albany last month as Gov. Mario Cuomo nominated her son for the seat on the seven-member Court of Appeals.

And, all three of Levine's children are lawyers.

"I think it's a great profession and I'm delighted my children have followed me," Levine said at his swearing in last week.

Levine is a graduate of Yale Law School. He practiced on Wall Street briefly and then in his hometown of Schenectady. He has been Schenectady County's district attorney, its Family Court judge and a justice of state Supreme Court. Since 1982, Levine had served as a member of the Supreme Court's Appellate Division.

Levine is highly regarded in the state's

legal community.

In New York, nominees for the state's highest court must be selected by the governor from a list of seven or fewer candidates chosen by the state's Commission on Judicial Nomination. Levine has routinely been on the commission's lists for openings on the Court of Appeals since 1985. He was on seven lists, more than any other candidate. Twice he was put on the list when the chief judge's job opened up.

In fact, Levine finally ended his run as "always a bridesmaid, never a bride" after Court of Appeals Associate Judge Judith Kaye was elevated earlier this year to become chief judge. Kaye was selected by Cuomo over Levine and several others. When the new list came out to replace Kaye as an associate judge, Levine's name was again on the sheet. This time he got the nod.

Cuomo's selection of Levine surprised many. The governor had a chance to name the first Hispanic to the Court of Appeals, former New York City policeman John Carro. But Carro withdrew from consideration at the last minute. Carro said he might apply again and a new opening on the court will come at the end of the year.

Levine's selection by Democrat

Cuomo did allow the governor to maintain a political balance on the court. While the governor has said he doesn't consider such factors when picking judges, he has maintained balance. That may not be a bad idea when nominations are subject to confirmation by the Republican-controlled state Senate. With Levine's swearing in by Kaye, the court again has three Democrats, three Republicans and one independent.

The court has been operating with two Republicans since former Chief Judge Sol Wachtler resigned in November after his arrest by the FBI on charges that he repeatedly harassed an ex-lover and her teen-age daughter. Wachtler, a Long Island Republican, had been considered a potential GOP candidate for governor in 1994.

Wachtler's downfall led to Kaye's ascendancy and eventually to Levine's as well. The court, one of the busiest in the nation, has been operating at reduced strength for almost 10 months.

While Levine has just begun work on his Court of Appeals legacy, his family's legal legacy seems assured. Not only are his two sons and daughter lawyers, but so are his son-in-law and daughter-in-law.

Levine's wife, Barbara, is not a lawyer. She is a social worker.

Cuomo made a point of highlighting non-lawyer Barbara Levine at her husband's swearing in.

"This astounding family . . . desperately needs a dose of common sense," Cuomo said.

While not a lawyer, Barbara Levine is a professional divorce mediator.



NINTH JUDICIAL COMMITTEE

Box 70, Gedney Station
White Plains, New York 10605-0070
Tele: (914) 997-8105 / Fax: (914) 684-6554

TO: Governor's Task Force on Judicial Diversity
From: Ninth Judicial Committee
Re: Transmittal of Files:
Castracan v. Colavita and Sady v. Murphy
Date: March 20, 1992

We are a citizens' group of lawyers and laypeople, formed in 1989, to counter the increasing politicization of the judiciary in the Ninth Judicial District. This politicization was reflected in the 1989 Deal trading seven judgeships over a three-year period. In response, our Committee--unfunded and acting entirely pro bono--spearheaded two major lawsuits, Castracan v. Colavita and Sady v. Murphy, to challenge the Deal--and, in the case of Castracan, to also address Election Law violations at the 1990 Republican and Democratic Judicial Nominating Conventions.

We have ascertained from Chairman Davis' office that the Task Force was not informed about these two seminal cases--pending before the Court of Appeals at the time of and immediately prior to the Governor's issuance of his September 23, 1991 Executive Order creating the Task Force on Judicial Diversity.

These two lawsuits offer unique case studies for the members of the Task Force--not only documenting the control by party bosses of the judicial nominations process--unrestrained by the State Board of Elections--but the complicity of the courts.

The files transmitted herewith give unassailable proof that the state courts--from the Supreme Court to the Court of Appeals--jettisoned elementary legal standards and the factual record so as to avoid the transcendent public interest issues those cases presented.

(S) (C)

The public interest objectives of Castracan and Sady included: (1) the preservation of the integrity of constitutional voting rights, intended to be safeguarded by the Election Law; (2) the curtailment of manipulation by party leaders of the judicial nominating process; and (3) the fostering of judicial selection based on merit, thus allowing for representation of minorities and women--traditionally excluded by the political power structure. In fact, these are the very issues you have incorporated in your Report to the Governor.

The significance and potential of Castracan was recognized by the NAACP Legal Defense and Educational Fund when it filed for amicus curiae status. The annexed copy of the February 8, 1991 letter of Sherrilyn A. Ifill, Esq., refers to LDF's involvement in Chisom v. Roemer and HLA v. Mattox, then pending before the Supreme Court, seeking to extend the Voting Rights Act to judicial elections. You will note that Ms. Ifill cited her participation in preparing the brief for the latter case as the reason for requesting one additional week to submit an amicus brief for Castracan v. Colavita. The requested extension was denied by the Appellate Division, Third Dept--unfairly depriving the people of this State the benefit of LDF's input on those far-reaching issues.

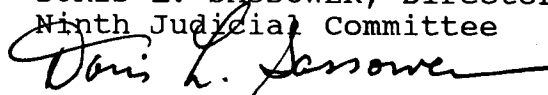
As shown by the annexed October 26, 1990 Alert of the New York State League of Women Voters, that organization also expressed itself at a pivotal juncture by calling upon the Appellate Division, Third Dept. to hear Castracan before Election Day. The Court not only ignored their concerns--but denied Castracan the mandatory preference to which it was entitled under the Election Law, as well as under the Court's own rules.

The contrast between the Governor's response to the U.S. Supreme Court's decision in Chisom v. Roemer, and that of the New York State Court of Appeals is also noteworthy. The Governor's response was to establish the Task Force on Judicial Diversity; the Court of Appeals' response was to "dump" Castracan and Sady--discarding the ready-made opportunity those cases offered to protect the independence of the judiciary and open its doors to historically excluded minorities and women. In so doing, our highest state court not only rejected the chance to champion judicial reform, but showed its indifference to the need for enforcement of the minimal safeguards of the status quo.

Your review of the facts, papers, and proceedings in Castracan and Sady will powerfully aid your perspective in structuring legislative proposals--which may well have to be revised in light of the conclusions that must be drawn from those cases.

Castracan and Sady can--and should--become the catalyst and rallying standard for needed change.

DORIS L. SASSOWER, Director
Ninth Judicial Committee





THE LEAGUE
OF WOMEN VOTERS
OF NEW YORK STATE

C-10
S

President
Susan K. Schwardt

FOR RELEASE OCTOBER 26, 1990

CONTACT: Lenore Banks
(716) 836-5240
Susan Schwardt
(716) 671-6670

CROSS-ENDORSEMENT CASE SHOULD BE HEARD

The League of Women Voters of New York State alerts voters to an election law case, Castracan v. Colavita, pertaining to the upcoming November 6, 1990 election of justices for the Supreme Court in the 9th Judicial District and Surrogate Court of Westchester County.

Susan Schwardt, President of the League of Women Voters of New York State, states: "It should be determined in court whether the contract between party leaders and judicial nominees involving a series of judicial cross-endorsements over a three year period is legal or not legal and whether there were violations of the Election Law at the judicial nominating conventions. The case deserves to be heard and decided by the Appellate Division, 3rd Department, before the general election."



NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND, INC.

National Office

Suite 1600
99 Hudson Street

New York, N.Y. 10013 (212) 219-1900 Fax: (212) 226-759

E-1

February 8, 1991

Mr. Michael Novak
Clerk, Supreme Court,
Appellate Division, Third Department
Justice Building, Fifth Floor
Room 561
Empire State Plaza
Albany, N.Y. 12210

Re: Castracan v. Colavita - No. 62134

Dear Mr. Novak:

Following up on our conversation of Thursday, February 7th regarding the above referenced case, I am submitting this letter to request permission from the Court to file an amicus brief in Castracan v. Colavita.

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is a non-profit corporation formed to assist African-Americans to secure their constitutional and civil rights and liberties. For many years LDF has pursued litigation to secure the basic right of African-Americans to vote and to participate equally in the political process. In 1986 LDF successfully won the first and only case to interpret the 1982 amendments to the Voting Rights Act of 1965. Thornburg v. Gingles, 478 U.S. 30 (1986).

Since then LDF has continued to pursue litigation to include minorities in the electoral process. A great focus of our efforts has been to increase the opportunity for minorities to participate in the judicial selection process. Currently, LDF has two cases before the Supreme Court, Chisom v. Roemer and HLA v. Mattox which raise the issue of the application of Section 2 of the Voting Rights Act to judicial elections. In these cases we have vigorously argued that Congress intended for minority voters to have an equal opportunity to elect judges to the state court judiciary.

It is my understanding that the Castracan case is set for oral argument on Monday, March 25, 1991. I understand also that the Court must have all briefs filed prior to oral argument. I am in the process, however, of writing a brief to the United States Supreme Court in the HLA v. Mattox case which is due on March 4, 1991. I will not be able to work on the Castracan amicus brief until after the 4th. Therefore, I seek permission to file a brief from the NAACP Legal Defense Fund on Monday, March 11th. I believe that this date will give the defendants sufficient time before oral argument to respond to our amicus brief, should they wish to do so.

Contributions are
deductible for U.S.
income tax purposes

The NAACP Legal Defense & Educational Fund, Inc. (LDF) is not part of the National Association for the Advancement of Colored People (NAACP) although LDF was founded by the NAACP and shares its commitment to equal rights. LDF has had for over 30 years a separate Board, program, staff, office and budget.

Regional Offices

Suite 301
1275 K Street, NW
Washington, DC 20005
(202) 682-1300
Fax (202) 682-1312

Suite 304
315 West Ninth Street
Los Angeles, CA 90015
(213) 624-2406
Fax (213) 624-4105

Mr. Michael Novak
February 8, 1991
Page 2

Please let me know as soon as possible whether this letter motion has been granted and what the time schedule for filing an amicus brief will be.

Sincerely,

Sherrilyn A. Ifill
Sherrilyn A. Ifill
Assistant Counsel
SAI/gj

cc: All Counsel of Record