

NOTE: Since the original AP wire feed was not printed by either Gannett newspapers or The New York Times, we have reproduced it, for ease of reading, in the type-written form that appears below. Indeed, we do not believe this story was printed in any metropolitan New York newspaper--or where it was printed--if it was printed at all.

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

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For: Doris Sassower
From: Marc Lambert

Marc Lambert

^00-NV--Albany Monday-Judges, ADV29,1285
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^For Release Monday PMs Oct 29 and thereafter
^New York's "Cross Endorsement" Judge Selection Challenged
^By MARC HUMBERT=

^AP Political Writer=

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