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.

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

DORIS L. SASSOWER, Director
Ninth Judicial Committee

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

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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.

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
Assistant Counsel
SAI/gj

cc: All Counsel of Record

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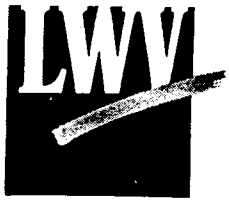

THE LEAGUE
OF WOMEN VOTERS
OF NEW YORK STATE

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."

35 Maiden Lane Albany, NY 12207-2712 (518) 465-4162 FAX (518) 465-0812