CENTER for JUDICIAL ACCOUNTABILITY

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OPPOSITION STATEMENT OF DORIS L. SASSOWER
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PRESENTED JOINTLY WITH ELENA RUTH SASSOWER
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In Opposition to the Confirmation of Justice Carmen Beauchamp Ciparick to the New York State Court of Appeals. Presented at the Public Hearing of the Senate Judiciary Committee, Wednesday, December 15, 1993, Albany, New York.

It is extremely difficult for me to appear here today in opposition to the confirmation of Justice Ciparick to the Court of Appeals. I know Justice Ciparick on a personal level, favorably and fondly. When I was President of the New York Women's Bar Association in 1968, I led the effort to increase the representation of women and minorities on the bench. I was, therefore, particularly gratified that the Governor recognized such need on this State's highest Court. One of the explicit goals of Castracan v. Colavita, the case I brought in the public interest in 1990 as pro bono counsel for the petitioners and about which I testified before you in September, was to advance the goal of diversifying the judiciary. For that reason, the case had the support of the NAACP Legal Defense and Educational Fund, which was granted amicus status on appeal.

Nonetheless, just as a judge must put personal feelings

aside--or step aside, if unable to do so when those feelings interfere with official duty--so must I put aside my personal feelings in presenting the public interest on this issue.

As you know, at the September "public hearing" on Judge Levine's confirmation, I testified in opposition based on my direct personal knowledge of his "on-the-job" performance in Castracan v. Colavita--which challenged the legality of a written seven-judge major-party cross-endorsement Deal (153-4)[1] and the judicial nominating conventions held in violation of the Election Law (173-193) which implemented it.

My extensive professional credentials, particularly on the subject of the judicial nominating process, were presented to this Committee at that time. Since opposition statements have once again been limited to ten minutes, I will mention only a few of my more pertinent credentials (158): I served on the first judicial screening panel set up by the Committee to Reform Judicial Selection in 1971 to pick the most qualified Supreme Court candidates in New York County[2]. In 1972, I was the first

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[1] The bracketed numbers refer to pages in the accompanying Compendium of documents. Such Compendium begins at page 118 since it continues the sequence of the Compendium that accompanied our September 7th testimony. For the convenience of the Senate, two documents that appeared in the first Compendium have been repeated herein. They are my 10/24/91 letter to the Governor, which was also sent to the Commission on Judicial Conduct (143-158) and the three eye-witness affidavits (173-193), which were annexed to my third letter to the Governor, dated 12/19/91 (165-167), sent to the Commission on Judicial Conduct under my coverletter dated 1/2/92 (160-163).

[2] My article on that experience was published on the front-page of the 10/22/71 issue of The New York Law Journal (157). It is as timely now as it was then.

woman practitioner ever to be nominated at a judicial nominating convention of a major political party as a candidate for the Court of Appeals. And for eight years, from 1972 to 1980, I served on the committee of the New York State Bar Association that rates all judicial candidates for the Court of Appeals, the Appellate Division, and the Court of Claims--the first woman to do so.

The Center for Judicial Accountability--a non-partisan citizens' group born of my experience before this Committee in September--initially opposes, as a matter of principle, Justice Ciparick's confirmation--and all other judicial confirmations--until the Senate Judiciary Committee is reconstituted with members who take seriously their duty to appraise the qualifications of judicial nominees, and until there is an end to the secrecy presently shrouding the judicial selection process.

The Center opposes Justice Ciparick's nomination because it is the product of a closed process which is unconstitutional. When the People voted in 1977 to give up their constitutional right to elect Court of Appeals judges, there was nothing in the Amendment warning them that they would be shut out of the screening process and prevented from verifying that only "well qualified" persons, as mandated by the Amendment, would be recommended to the Governor by the judicial nominating commission the Amendment created (118). It was the State Legislature that, in 1978, decided, without legitimate state purpose, to exclude the People from the screening process

(120) by withholding from public access the completed applications of: (1) the pool of candidates applying to the commission; (2) the candidates thereafter recommended by the commission to the Governor; and (3) even the application of the very nominee ultimately selected by the Governor.

The end result of such veil of secrecy is that there is no way for the People to gauge whether the Governor's nominee is, in fact, "well qualified" on either an absolute or relative basis.

The Senate Judiciary Committee compounds the exclusion of the People from the screening process by, thereafter, denying them the right to participate meaningfully in the confirmation process. It does this by holding sham "public hearings" at which it arbitrarily limits adverse testimony to ten minutes--irrespective of the nature and extent of the negative information--and by degrading and humiliating public-spirited citizens willing to come forward to testify in opposition (124-5). The Committee then mischaracterizes their adverse testimony as inconsequential--when it clearly is not--and, by such deceit and pretense, justifies its failure to demand a response from the nominee.

As was proven at the September "public hearing" on the Levine confirmation, this Committee has unquestionably been compromised by collusive deal-making with the Governor. That collusion caused this Committee to perpetrate an outright and deliberate fraud upon the Senate and upon the People of this

State when it knowingly suppressed, falsified, and distorted the true facts as to the serious and substantial nature of my opposition to the Levine confirmation[3].

The Center for Judicial Accountability, therefore, requests that the transcripts of the September "public hearing" and the Senate confirmation proceedings on that date be made part of the official record of these proceedings. Those transcripts, which I incorporate herein by reference, demonstrate that the People of this State can no longer trust this body to protect their rights and interest in a quality judiciary. The Center also specifically asks that my aborted 19-page opposing statement and the compendium of exhibits thereto--both of which were supplied to every Senator on this Committee in advance of my September 7th appearance--also be made a part of these proceedings today.

The People of this State have a right to expect that the press will verify and report the story of this Committee's fraudulent conduct at the September confirmation--thoroughly discrediting it as a credible, deliberative body and disqualifying it from any further role in the confirmation process. To that end, copies of all the documents referred to herein will be made available to the press to assist it in discharging its duty.

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[3] Compare this Committee's report to the Senate, appearing at pp. 8705-6 of the stenographic record of the September 7th Senate session, with my testimony and the 117-page Compendium of supporting documents accompanying it.

The Center has reviewed the stenographic transcript of the immediately preceding confirmation hearing on the nomination of Judge Kaye as Chief Judge to the Court of Appeals and has found the same pattern of behavior exhibited by the Senate Judiciary Committee. As shown by the March 17, 1993 confirmation hearing transcript (126-133), a citizen, with expertise, as well as direct personal knowledge of the facts, attempted to present opposition to Judge Kaye's confirmation based upon a profoundly important constitutional issue involving the fundamental separation of powers--particularly as they relate to the judiciary. The Committee, however, denigrated his testimony, with the result that he abruptly terminated his presentation.

I have met with John Babigian, who was that citizen-witness, and have personally reviewed with him the documentation and law relative to his attempted presentation. I am convinced that Mr. Babigian had powerful testimony to offer, which the People not only had a right to hear, but to which Judge Kaye, a constitutional scholar, should have been called upon to respond.

As reflected by the 1977 Amendment to the Constitution (118), an appointment to our preeminent Court constitutionally requires the nominee to be "well-qualified". It is troubling, therefore, to note that Justice Ciparick was rejected several times by the Governor's screening panel for the Appellate Division, First Department, before it recently approved her as only "qualified" (136). The New York State Bar Association also gave Justice Ciparick a "qualified" rating, at the same time

rating as "well qualified" five other judicial candidates recommended by the Judicial Nominating Commission, who the Governor nonetheless passed over in favor of Justice Ciparick (138). Such facts are inconsistent with the Governor's touting of the appointment process as synonymous with "merit selection", which, obviously, it is not.

Indeed, the People are rightfully cynical about the Governor's so-called "merit selection", since, in his unrestricted power to appoint members to the Commission on Judicial Nomination, the Governor clearly does not adhere to that principle. Instead, his appointments have a political taint. Thus, in 1983, the Governor appointed one of his fundraisers and supporters, Arnold Biegin, as a member of the Commission. It will be recalled that Mr. Biegin served on the Commission until he was replaced by the Governor last year, after he admitted to criminal charges of embezzlement and grand larceny (139).

It must be emphasized that there are no objective standards for appointment by the Governor to the Commission on Judicial Nomination. Nor are there any objective standards guiding the Commission members in their work of evaluating the pool of candidates and making their recommendations to the Governor. Since the public is denied access to <u>all</u> applications of judicial candidates and the Senate is denied access to <u>all</u> applications of judicial candidates <u>other than</u> the nominee, it is impossible to determine whether the Commission is basing its

recommendations upon adequate investigation.

The crucial importance of public access to candidates' applications and the proof that screening panels do not necessarily undertake appropriate investigation are highlighted by a report submitted by the Ninth Judicial Committee to the Senate Judiciary Committee in Washington last year[4]. That report, based upon a six-month investigation, documented that the various panels purporting to screen nominees for lifetime federal court appointments--that is, senatorial screening panels and the panels of the American Bar Association and the Association of the Bar of the City of New York--render ratings which are not the product of meaningful investigation. Indeed, we were able to uncover this frightening fact--and prove it dispositively--only because the Senate Judiciary Committee in Washington--unlike this Committee--makes publicly available the questionnaire which nominees for federal judicial office are required to complete before a confirmation hearing is scheduled.

Because the Ninth Judicial Committee's report on the failure of the federal appointive system bears so directly upon the unconstitutional and otherwise flawed procedures on which nominations to the Court of Appeals are based, we request that such report be made part of the record in further support of this opposition statement.

One final point must be made in opposition to Justice

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[4] The first two pages of the Ninth Judicial Committee's report are included in the Compendium hereto at pages 141-142.

Ciparick's nomination. The written cross-endorsement Deal (152-54) and Election Law violations at the judicial nominating conventions (143) were the subject of complaints to the Commission on Judicial Conduct as early as November 1989--a year before I brought the Castracan v. Colavita lawsuit (160).

Justice Ciparick has been a member of that Commission since 1985, when she was first appointed by the Governor. As a Commissioner, Justice Ciparick thereafter also received a copy of my October 24, 1991 letter to the Governor calling for the appointment of a Special Prosecutor (143-158). That letter outlined the unlawful aspects of the seven-judge cross-endorsements Deal (144, 146, 147) and the pattern of dishonest decision-making in Castracan v. Colavita and its companion case Sady v. Murphy (145, 147, 150). Such indefensible decisions, adversely affecting the constitutional rights of every voter in the state, flew in the face of controlling law and falsified the factual record. As such, they reflect improper ulterior motivations of a political nature.

Included in my October 24th letter were the quoted remarks of a fellow member of the Commission on Judicial Conduct, Associate Justice William Thompson, who sat on the Appellate Division, Second Department when it heard Sady v. Murphy. In his candid comments at oral argument, Justice Thompson stated that the people involved in the Deal "should have their heads examined" and that the contracted-for resignations of sitting judges called for thereunder were "violations of ethical rules"

which "would not be approved by the Commission on Judicial Conduct" and further stated "a judge can be censured for that" (146).

My December 19, 1991 letter to the Governor (165), also sent to the Commission on Judicial Conduct (160), included with it copies of the three affidavits of eye-witnesses at the judicial nominating conventions (173-193), attesting to the fundamental Election Law violations of a criminal nature, referred to by me in my October 24th letter (144-5). Indeed, my October 24th letter specifically called for review of the court records in Castracan v. Colavita and Sady v. Murphy to establish that gross judicial misconduct had occurred, not only on the part of the judges involved in the Deal and the unlawfully conducted judicial nominating conventions, but also on the part of judges writing dishonest decisions to "cover up" the judicial misconduct of their colleagues (151).

Additionally, that letter reported that I had been subjected to most vicious retaliation and that--without any written charges, hearing, or findings--the Appellate Division, Second Department, had suspended my license to practice law immediately, indefinitely, and unconditionally after I publicly announced I was taking Castracan v. Colavita to the Court of Appeals and following my sworn transmittal to the Governor reporting the grotesque misconduct of one of the Governor's appointees to the Supreme Court in Westchester County (151-2).

As my October 24th letter further reported, that

appointee, Samuel G. Fredman, was not only the architect of the seven-judge cross-endorsement Deal, of which he was a principal beneficiary, he was also a former Chairman of the Westchester County Democratic Party and an early backer and fundraiser of the Governor when he first ran in 1982 (147-8).

Justice Ciparick, as a Commissioner on the Commission on Judicial Conduct, also received my fully-documented complaints about Justice Fredman's malicious and depraved conduct toward me (197-209) (212-14), including fraud of the most astonishing nature (203-6), as well as his undisclosed political relationship with my adversary (208-9).

Yet, Justice Ciparick allowed the Commission to dismiss my serious and shocking complaints, without investigation, and has further tolerated the Commission's inaction in the face of unassailable documentary evidence of the most egregious judicial misconduct and retaliation.

Justice Ciparick's nomination--like that of Justice Levine--can be perceived as a "payback" for having protected--not the public--but her judicial colleagues with "the right political 'connections'" (214), who were either appointed by the Governor or elected as a result of Justice Fredman's cross-endorsement Deal and the illegal judicial conventions that implemented it.

The People have a right to know from Justice Ciparick why she did nothing as a member of the Commission to provide protection against the blatant politicization of the judiciary which has not only destroyed my professional career, but

wreaked havoc in the lives of litigants and other citizens of the Ninth Judicial District and created a "crisis" in our state court system.