CENTER for
JUDICIAL
ACCOUNTABILITY

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Notes of Decisions

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1. Separation of powers

See, also, Notes of Decisions set out under Art. 3, § 1 and Art. 4, § 1.

It is fundamental principle of the organic law that each department of government should be free from interference, in lawful discharge of duties expressly conferred, by either of the other branches. New York State Inspection, Sec. and Law Enforcement Employees, Dist. Council 82, AFSME, AFL-CIO v. Cuomo, 1984, 64 N.Y.2d 233, 485 N.Y.S.2d 719, 475 N.E.2d 90.

Each branch of the government is to be free from interference by either of the other two branches. Methodist Hosp. of Brooklyn v. State Ins. Fund, 1983, 117 Misc.2d 178, 459 N.Y.S.2d 521, affirmed 102 A.D.2d 367, 479 N.Y.S.2d 11, affirmed 64 N.Y.2d 365, 486 N.Y.S.2d 905, 476 N.E.2d 304, appeal dismissed 106 S.Ct. 32, 88 L.Ed.2d 26.

2. Purpose

The theory of the judiciary article of the constitution is to simplify the judicial system by reducing the number of high courts and to embed those retained so thoroughly in the fundamental law that they cannot be changed or abolished without an amendment to the constitution. People v. Luce, 1912, 204 N.Y. 478, 97 N.E. 850. See, also, Koch v. Mayor, 1897, 152 N.Y. 72, 46 N.E. 170.

3. Unified court system

County probation department is not constitutionally part of the unified court system as defined in this section. Bowne v. Nassau County, 1975, 37 N.Y.2d 75, 371 N.Y.S.2d 449, 332 N.E.2d 323.

4. Courts of record

Traffic court, which conducted its proceedings without a stenographer, was not a "court of record" within this section and therefore its proceedings were voidable in the discretion of the presiding judge. People v. McClusky, 1966, 49 Misc.2d 782, 268 N.Y.S.2d 209.

5. Process, warrants and other mandates

Authority of court to direct execution of its process and to issue process involving matters within its constitutional jurisdictional limitations is entirely separate from courts' trial jurisdiction which is otherwise limited. People v. Fishman, 1975, 48 A.D.2d 726, 367 N.Y.S.2d 608, affirmed 40 N.Y.2d 858, 387 N.Y.S.2d 1003, 356 N.E.2d 475.

The Supreme Court of the State of New York sitting in any particular county in New York is a state court and its process reaches throughout the state. Chase v. Boisvert, 1974, 78 Misc.2d 1064, 359 N.Y.S.2d 400.

§ 2. [Court of appeals and judges thereof; designation of supreme court justices to serve temporarily; judicial nominating commission; filling of vacancies by appointment; confirmation of appointments]

a. The court of appeals is continued. It shall consist of the chief judge and the six elected associate judges now in office, who shall

hold their offices until the expiration of their respective terms, and their successors, and such justices of the supreme court as may be designated for service in said court as hereinafter provided. The official terms of the chief judge and the six associate judges shall be fourteen years.

Five members of the court shall constitute a quorum, and the concurrence of four shall be necessary to a decision; but no more than seven judges shall sit in any case. In case of the temporary absence or inability to act of any judge of the court of appeals, the court may designate any justice of the supreme court to serve as associate judge of the court during such absence or inability to act. The court shall have power to appoint and to remove its clerk. The powers and jurisdiction of the court shall not be suspended for want of appointment when the number of judges is sufficient to constitute a quorum.

b. Whenever and as often as the court of appeals shall certify to the governor that the court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the governor shall designate such number of justices of the supreme court as may be so certified to be necessary, but not more than four, to serve as associate judges of the court of appeals. The justices so designated shall be relieved, while so serving, from their duties as justices of the supreme court, and shall serve as associate judges of the court of appeals until the court shall certify that the need for the services of any such justices no longer exists, whereupon they shall return to the supreme court. The governor may fill vacancies among such designated judges. No such justices shall serve as associate judge of the court of appeals except while holding the office of justice of the supreme court. The designation of a justice of the supreme court as an associate judge of the court of appeals shall not be deemed to affect his existing office any longer than until the expiration of his designation as such associate judge, nor to create a vacancy.

c. There shall be a commission on judicial nomination to evaluate the qualifications of candidates for appointment to the court of appeals and to prepare a written report and recommend to the governor those persons who by their character, temperament, professional aptitude and experience are well qualified to hold such judicial office. The legislature shall provide by law for the organization and procedure of the judicial nominating commission.

d. (1) The commission on judicial nomination shall consist of twelve members of whom four shall be appointed by the governor, four by the chief judge of the court of appeals, and one each by the speaker of the assembly, the temporary president of the senate, the

minority leader of the senate, and the minority leader of the assembly. Of the four members appointed by the governor, no more than two shall be enrolled in the same political party, two shall be members of the bar of the state, and two shall not be members of the bar of the state. Of the four members appointed by the chief judge of the court of appeals, no more than two shall be enrolled in the same political party, two shall be members of the bar of the state, and two shall not be members of the bar of the state. No member of the commission shall hold or have held any judicial office or hold any elected public office for which he receives compensation during his period of service, except that the governor and the chief judge may each appoint no more than one former judge or justice of the unified court system to such commission. No member of the commission shall hold any office in any political party. No member of the judicial nominating commission shall be eligible for appointment to judicial office in any court of the state during the member's period of service or within one year thereafter.

(2) The members first appointed by the governor shall have respectively one, two, three and four year terms as he shall designate. The members first appointed by the chief judge of the court of appeals shall have respectively one, two, three and four year terms as he shall designate. The member first appointed by the temporary president of the senate shall have a one-year term. The member first appointed by the minority leader of the senate shall have a two-year term. The member first appointed by the speaker of the assembly shall have a four-year term. The member first appointed by the minority leader of the assembly shall have a three-year term. Each subsequent appointment shall be for a term of four years.

(3) The commission shall designate one of their number to serve as chairman.

(4) The commission shall consider the qualifications of candidates for appointment to the offices of judge and chief judge of the court of appeals and, whenever a vacancy in those offices occurs, shall prepare a written report and recommend to the governor persons who are well qualified for those judicial offices.

e. The governor shall appoint, with the advice and consent of the senate, from among those recommended by the judicial nominating commission, a person to fill the office of chief judge or associate judge, as the case may be, whenever a vacancy occurs in the court of appeals; provided, however, that no person may be appointed a judge of the court of appeals unless such person is a resident of the state and has been admitted to the practice of law in

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this state for at least ten years. The governor shall transmit to the senate the written report of the commission on judicial nomination relating to the nominee.

f. When a vacancy occurs in the office of chief judge or associate judge of the court of appeals and the senate is not in session to give its advice and consent to an appointment to fill the vacancy, the governor shall fill the vacancy by interim appointment upon the recommendation of a commission on judicial nomination as provided in this section. An interim appointment shall continue until the senate shall pass upon the governor's selection. If the senate confirms an appointment, the judge shall serve a term as provided in subdivision a of this section commencing from the date of his interim appointment. If the senate rejects an appointment, a vacancy in the office shall occur sixty days after such rejection. If an interim appointment to the court of appeals be made from among the justices of the supreme court or the appellate divisions thereof, that appointment shall not affect the justice's existing office, nor create a vacancy in the supreme court, or the appellate division thereof, unless such appointment is confirmed by the senate and the appointee shall assume such office. If an interim appointment of chief judge of the court of appeals be made from among the associate judges, an interim appointment of associate judge shall be made in like manner; in such case, the appointment as chief judge shall not affect the existing office of associate judge, unless such appointment as chief judge is confirmed by the senate and the appointee shall assume such office.

g. The provisions of subdivisions c, d, e and f of this section shall not apply to temporary designations or assignments of judges or justices.

(Adopted Nov. 7, 1961; amended Nov. 8, 1977.)

Historical Note

1977 Amendment. Amendment Nov. 8, 1977, added subds. c to g.

Effective Date of 1977 Amendment. See text of section 36–a of this article.

Derivation. Const. of 1894, Art. 6, §§ 7 and 8. Said Art. 6, § 7, amended 1899; renumbered Art. 6, § 5 in 1925; and repealed eff. Sept. 1, 1962, was from Const. of 1846, Art. 6, § 2; amended 1869. Said Art. 6, § 8; renumbered Art. 6, § 6 in 1925; repealed eff. Sept. 1, 1962, was from Const. of 1846, Art. 6, § 13; amended 1869.

Former Art. 6, § 2. Section, adopted Const. of 1894; amended Nov. 3, 1953, related to judicial departments, and was repealed eff. Sept. 1, 1962. See now sections 4 and 26 of this article.

Cross References

Clerks, assistant clerks, messenger and attendants, appointment of, see Judiciary Law §§ 57, 58, 257.

Nomination for appointment to the office of chief judge or associate judge, see Judiciary Law §§ 61 to 67.

5. Communicate with the governor concerning the qualifications of any person whom it has recommended to the governor, and communicate with the senate concerning the qualifications of the person appointed by the governor.

6. The commission may appoint, and at pleasure remove, a counsel and such other staff as it may require from time to time, and prescribe their powers and duties. The commission shall fix the compensation of its staff and provide for reimbursement of their expenses within the amounts appropriated by law.

7. Do all other things necessary and convenient to carry out its functions pursuant to this article.

Added L.1978, c. 156, § 5.

Historical Note

Effective Date. Section effective May 19, 1978, pursuant to L.1978, c. 156, § 15.

Separability of Provisions. See section 14 of L.1978, c. 156, set out as a note under section 40.

Cross References

Functions of commission, see McKinney's Const. Art. 6, § 2.

New York Codes, Rules and Regulations

Solicitation of candidates for judicial nomination, investigations, consideration, etc., see 22 NYCRR 7100.5 et seq.

Library References

Judges ⇐3.
States ⇐67.

C.J.S. Judges §§ 12, 13.
C.J.S. States §§ 120, 121, 136 to 138, 140.

§ 65. Rules of the commission

1. The commission shall adopt, and may amend, written rules of procedure not inconsistent with law.

2. Rules of the commission shall be filed with the secretary of state and the clerk of the court of appeals and shall be published in the official compilation of codes, rules and regulations of the state. Upon request of any person, the secretary of state shall furnish a copy of the commission's rules without charge.

3. Rules of the commission may prescribe forms and questionnaires to be completed and, if required by the commission, verified by candidates.

4. Rules of the commission shall provide that upon the completion by the commission of its consideration and evaluation of

the qualifications of a candidate, there shall be no reconsideration of such candidate for the vacancy for which he was considered, except with the concurrence of nine members of the commission.

Added L.1978, c. 156, § 5.

Historical Note

Effective Date. Section effective May 19, 1978, pursuant to L.1978, c. 156, § 15.

Separability of Provisions. See section 14 of L.1978, c. 156, set out as a note under section 40.

New York Codes, Rules and Regulations

Rules of the judicial nomination commission, see 22 NYCRR Part 7100.

Library References

Judges ⇐3.

C.J.S. Judges §§ 12, 13.

§ 66. Confidentiality of proceedings and records

1. All communications to the commission, and its proceedings, and all applications, correspondence, interviews, transcripts, reports and all other papers, files and records of the commission shall be confidential and privileged and, except for the purposes of article two hundred ten of the penal law, shall not be made available to any person except as otherwise provided in this article.

2. The governor shall have access to all papers and information relating to persons recommended to him by the commission. The senate shall have access to all papers and information relating to the person appointed by the governor to fill a vacancy. All information that is not publicly disclosed in accordance with subdivisions three and four of section sixty-three of this article, or disclosed in connection with the senate's confirmation of the appointment, shall remain confidential and privileged, except for the purposes of article two hundred ten of the penal law.

3. The commission staff shall not publicly divulge the names of, or any information concerning, any candidate except as otherwise provided in this article.

Added L.1978, c. 156, § 5.

Historical Note

Effective Date. Section effective May 19, 1978, pursuant to L.1978, c. 156, § 15.

Separability of Provisions. See section 14 of L.1978, c. 156, set out as a note under section 40.

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Library References

Judges ⚿3.

C.J.S. Judges §§ 12, 13.

Notes of Decisions

1. Information from Commission on Judicial Conduct

The Commission on Judicial Conduct may, subject to certain caveats, comply with a request by the Commission on Judicial Nomination for all information that the Commission on Judicial Conduct has with respect to named judges, who are being considered by the Commission on Judicial Nomination for a judicial position on the Court of Appeals unless the same is subject to absolute judicial or executive privilege. 1979, Op.Atty.Gen. Mar. 15.

§ 67. Breach of confidentiality of commission information

1. Any staff member, employee or agent of the state commission on judicial nomination who violates any of the provisions of section sixty-six of this article shall be subject to a reprimand, a fine, suspension or removal by the commission.

2. Within ten days after the commission has acquired knowledge that a staff member, employee or agent of the commission has or may have breached the provisions of section sixty-six of this article, written charges against such staff member, employee or agent shall be prepared and signed by the chairman of the commission and filed with the commission. Within five days after receipt of charges, the commission shall determine, by a vote of the majority of all the members of the commission, whether probable cause for such charges exists. If such determination is affirmative, within five days thereafter a written statement specifying the charges in detail and outlining his rights under this section shall be forwarded to the accused staff member, employee or agent by certified mail. The commission may suspend the staff member, employee or agent, with or without pay, pending the final determination of the charges. Within ten days after receipt of the statement of charges, the staff member, employee or agent shall notify the commission in writing whether he desires a hearing on the charges. The failure of the staff member, employee or agent to notify the commission of his desire to have a hearing within such period of time shall be deemed a waiver of the right to a hearing. If the hearing has been waived, the commission shall proceed, within ten days after such waiver, by a vote of a majority of all the members of such commission, to determine the charges and fix the penalty or punishment, if any, to be imposed as hereinafter provided.

3. Upon receipt of a request for a hearing, the commission shall schedule a hearing, to be held at the commission offices, within twenty days after receipt of the request therefor, and shall immediately notify in writing the staff member, employee or agent of the time and place thereof.

4. The commission shall have the power to establish necessary rules and procedures for the conduct of hearings under this section. Such rules shall not require compliance with technical rules of evidence. All such hearings shall be held before a hearing panel composed of three members of the commission selected by the commission. Each hearing shall be conducted by the chairman of the panel who shall be selected by the panel. The staff member, employee or agent shall have a reasonable opportunity to defend himself and to testify on his own behalf. He shall also have the right to be represented by counsel, to subpoena witnesses and to cross-examine witnesses. All testimony taken shall be under oath which the chairman of the panel is hereby authorized to administer. A record of the proceedings shall be made and a copy of the transcript of the hearing shall, upon written request, be furnished without charge to the staff member, employee or agent involved.

5. Within five days after the conclusion of a hearing, the panel shall forward a report of the hearing, including its findings and recommendations, including its recommendations as to penalty or punishment, if one is warranted, to the commission and to the accused staff member, employee or agent. Within ten days after receipt of such report the commission shall determine whether it shall implement the recommendations of the panel. If the commission shall determine to implement such recommendations, which shall include the penalty or punishment, if any, of a reprimand, a fine, suspension for a fixed time without pay or dismissal, it shall do so within five days after such determination. If the charges against the staff member, employee or agent are dismissed, he shall be restored to his position with full pay for any period of suspension without pay and the charges shall be expunged from his record.

6. The accused staff member, employee or agent may seek review of the determination of the commission by way of a special proceeding pursuant to article seventy-eight of the civil practice law and rules.

Added L.1978, c. 156, § 5.

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NINTH JUDICIAL COMMITTEE

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October 27, 1993

Edward H. Cole, Counsel
Senate Judiciary Committee
Room 509, Legislative Office Building
Albany, New York 12247

RE: September 7, 1993 "Public Hearing" on the Confirmation of Howard Levine to the Court of Appeals

Dear Mr. Cole:

This is to record the fact that nearly two months ago--immediately following our aborted September 7, 1993 presentation in opposition to Justice Howard Levine's confirmation to the Court of Appeals--we discussed with Joan Fontana, your Assistant in Albany, the shocking travesty that had taken place at the "public hearing". At that time, we requested an opportunity to speak with you directly concerning your false and defamatory remarks relative to the ten-minute limit that was imposed on my presentation.

Although Ms. Fontana confirmed, as recently as three weeks ago, that she communicates all messages to you, you have still not returned our call. As we apprised Ms. Fontana in two separate phone conversations, we take issue with your misleading statement at the "public hearing" that the Ninth Judicial Committee was "never given any assurances" that it would have more than ten minutes for its presentation.

That statement was simply outrageous because there were unquestionably implied "assurances" resulting from our telephone conversations with you and your Albany office. On Thursday, September 2nd, we telephoned you at your office in Schenectady, after having been given your direct number by Ms. Fontana. By then, we had already furnished the Senate Judiciary Committee the complete files of the case of Castracan v. Colavita, as well as

the "Compendium" of essential documents to be referred to in our statement. As you were aware from our August 24, 1993 letter to you, my credentials in the field of judicial selection qualified me to give expert testimony in opposition to Justice Levine's confirmation to the Court of Appeals.

May I remind you that in the course of our telephone conversation together, I specifically sought to ascertain whether we would be able to have an extension of the ten-minute limit so as to make an appropriate presentation. Your response plainly led me to believe that such ten-minute limit would not be rigorously enforced. Indeed, you jokingly said "we don't have any red light, but just remember that after ten minutes, the Senators' eyes start glazing over". You will recall my commenting, "what I have to say will hold their interest", after which you told me that you would discuss our request with the Acting Chairman, stating that you would get back to me if there were any problem. You yourself agreed that it would be more expeditious for me, as Director of the Ninth Judicial Committee, to take the extra time needed than, as I alternatively requested, for you to grant other members of our Committee their own ten-minute time slots to make their own presentations in opposition.

The following morning, Friday, September 3rd, my daughter, Elena, our Committee Coordinator, telephoned Ms. Fontana and informed her that our written statement--then being prepared--was well in excess of ten minutes. My daughter explicitly stated that if time restrictions were to be imposed, her name be added to the printed list of speakers so she could continue the reading of my written statement. At no time during the remainder of that day did Ms. Fontana or yourself notify either me or my daughter that our presentation would be limited to ten minutes. Nor was my daughter's name added to the list. The clear inference therefrom was that no ten-minute time limit was being imposed--a conclusion all the more reasonable in that I was the only speaker in opposition following three speakers presenting statements that cumulatively ran a half-hour's time on behalf of the nominee, not counting the nominee's statement on his own behalf, as well as the effusively laudatory remarks in support of Justice Levine's nomination by members of the Senate Judiciary Committee.

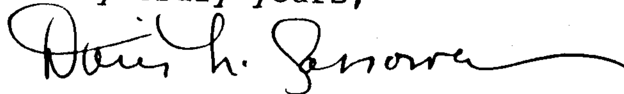
Any objective review would confirm that Justice Levine's misconduct in the Castracan case, outlined by my statement, was fully established by the documents we provided to the Senate Judiciary Committee. That misconduct was of a gravity disqualifying Justice Levine for any judicial office--and certainly for a seat on our State's highest court. Under such circumstances, the obligation of the Senate Judiciary Committee, and you as its counsel, was to permit the public to hear the specific details of Justice Levine's misconduct and understand the extent of the documentary proof of the allegations.

Instead, you permitted the members of the Senate Judiciary Committee to preclude my testimony by making comments about Justice Levine's participation in Castracan v. Colavita, which--as you should know--were not only unsupported by the facts and law in that case, as reflected by the files and "Compendium", but which grossly misrepresented its true significance so as to white-wash Justice Levine's conduct therein.

Your failure to telephone or otherwise communicate with us in all this time warrants the inference that you cannot defend the brazen perversion of the confirmation process that took place with your participation and acquiescence.

Please let us hear from you without further delay in response to the foregoing, since we subscribe to the principle of "hearing the other side" to the fullest extent before taking action.

Very truly yours,



DORIS L. SASSOWER

DLS/er

cc: John J. Marchi, Acting Chairman
Senate Judiciary Committee
G. Oliver Koppell, Chairman
Assembly Judiciary Committee
Elizabeth B. Hubbard, Executive Director
Fund for Modern Courts

NEW YORK
STATE
SENATE
ALBANY, NEW YORK 12247

November 4, 1993

Ms. Doris L. Sassower
Box 69, Gednoy Station
White Plains, NY 10605-0069

Dear Ms. Sassower:

I have received your letter dated October 27, 1993.

There is no doubt that you and I have had difficulty communicating. I have read your version of that difficulty and I will respond with my version, which is either you did not listen to my answers to your questions because you were busy interrupting me or you only heard what you wanted to hear.

I will state again what I told you regarding testimony at the September 7, 1993 public hearing:

1. I am not authorized to extend the 10 minute limitation to any witness.

2. You can bring other witnesses to the hearing, however, they must keep to the subject of the hearing.

3. A witness whose only purpose is to explain the history of your organization will most likely be ruled out of order.

4. The Committee Chairman may give you more time to make up for time taken by committee members who ask questions.

I believe that you were given accurate information and that you received all the time to speak to which you were entitled.

Very truly yours,

Edward H. Cole

EDWARD H. COLE
Chief Counsel
Senate Judiciary Committee

EHC/kb

COPY

1 BEFORE THE NEW YORK STATE SENATE STANDING
COMMITTEE ON THE JUDICIARY

2 ***

3 In the Matter

4 -of-

5 a Public Hearing on the Confirmation of
6 JUDITH S. KAYE as Chief Judge of the New
York State Court of Appeals

7 ***

8 Hearing Room A
9 Legislative Office Building
Empire State Plaza
10 Albany, New York

11 March 17, 1993
10:00 a.m.

12

13 PRESIDING:

14 SENATOR CHRISTOPHER J. MEGA, Chairman,
Senate Committee on Judiciary

15 PRESENT:

16 SENATOR CHARLES D. COOK

17 SENATOR RICHARD A. DOLLINGER

18 SENATOR PEDRO ESPADA, JR.

19 SENATOR JOSEPH L. GALIBER

20 SENATOR EMANUEL R. GOLD

21 SENATOR JAMES J. LACK

22 SENATOR FRANZ LEICHTER

23 SENATOR JOHN J. MARCHI

1 SENATOR GEORGE ONORATO
2 SENATOR STEPHEN M. SALAND
3 SENATOR JOHN B. SHEFFER II
4 SENATOR MICHAEL J. TULLY, JR.
5 SENATOR GUY J. VELELLA
6 SENATOR DALE M. VOLKER
7 EDWARD H. COLE, Chief Counsel
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23 SENATOR MEGA: John H. Babigian,

1 Esq.

2 MR. BABIGIAN: Thank you for

3 allowing me the opportunity to speak here today

4 particularly in view of the fact that I'm here

5 in a role of a devil's advocate and in

6 opposition somewhat to the appointment of Judge

7 Kaye as chief judge.

8 I'm a lawyer in the Law

9 Department of the Civil Court of the city of New

10 York.

11 In 1987, the Appellate Division,

12 First Department, certified to the Court of

13 Appeals a constitutional issue which has never

14 been presented to any court in the United

15 States. The issue involved a pure issue -- a

16 pure issue of separation of powers. Can a judge

17 appoint a person to office as a judge?

18 The issue involves the Housing

19 Court judges in the city of New York. If the

20 Housing Court judges are actually referees,

21 obviously, they can be appointed by the judge or

22 any other judge.

23 SENATOR MEGA: Excuse me, Mr.

1 Babigian. Is that how you pronounce your name?
2 MR. BABIGIAN: Babigian.
3 SENATOR MEGA: Babigian. I'm
4 sorry. This hearing is in reference to
5 determining the qualifications of the judge to
6 be the chief judge of the Court of Appeals of
7 the state of New York. If you have any
8 testimony in reference to her qualifications,
9 would you please testify in that area and
10 determine whether she's qualified.
11 MR. BABIGIAN: Well, sir, to the
12 extent that I testify that she has engaged in
13 judicial misconduct in rendering a decision, it
14 certainly goes to the issue of her
15 qualifications.
16 SENATOR MEGA: You have the
17 mike.
18 MR. BABIGIAN: O.K. When this
19 case came up before the Court of Appeals, I had
20 aimed my arguments at Judge Kaye as the
21 acknowledged expert on the New York State
22 Constitution. She approached me and asked me
23 couldn't a judge delegate the authority to

1 another person, a referee? Yes.
2 She then asked me that whether
3 what has happened indicates Housing Court judges
4 and my answer was no, there is no delegation
5 whatsoever of authority from a Civil Court judge
6 to a Housing Court judge to handle the cases.
7 The Housing Court judges are independent
8 judges. They always have been. Their cases go
9 on appeal in the same manner that any other
10 judge.
11 Prior to 1976, while they were de
12 facto judges, they lacked many critical powers
13 that prevented them from being called first
14 class judges. Number one, they never had the
15 title of judge. They were dubbed court
16 officers. The title was given to them in 1978.
17 They lacked the critical power to enforce
18 housing codes. They lacked the power to sign
19 and decide orders to show cause and finally and
20 most importantly, they lacked the power to
21 impose civil and criminal contempt, which is
22 what makes -- what makes a judge. You can't be
23 a full-fledged judge without those powers.

1 In 1984, the Legislature passed
2 an amendment stating that the Housing Court
3 judges were now duly constituted judicial
4 officers. The following year they raised the
5 pay of the Housing Court judges to almost the
6 same level as that of Civil Court judges. They
7 gave them full-time law clerks paid in the same
8 way as the other law clerks of the civil courts,
9 and the decision of the Court of Appeals stated
10 as follows:
11 None of the changes which I have
12 just discussed, quote, "materially enlarged the
13 authority of Housing Court judges," which is
14 completely preposterous.
15 SENATOR MEGA: Sir, may I remind
16 you that this is a legislative hearing.
17 MR. BABIGIAN: I know that.
18 SENATOR MEGA: It is not a court
19 of law.
20 MR. BABIGIAN: I know that.
21 SENATOR MEGA: You have been in a
22 court of law. Your case apparently has been
23 decided, and some things have occurred which you

1 are not happy with. We cannot re-argue or
2 re-hear a case and make a further decision, so I
3 would appreciate it if you would get to the
4 purpose of this hearing, the qualifications of
5 Judith -- Judge Judith S. Kaye as chief judge of
6 the Court of Appeals of New York State.
7 Please.
8 MR. BABIGIAN: All right, fine.
9 I would like to have Judge Judith Kaye comment
10 on issuing per curiam unsigned opinions and the
11 justification thereof in view of the criticism
12 which has been made by the next speaker, who is
13 an acknowledged expert on the Court of Appeals,
14 Professor Vincent Bonventre. Thank you.
15 Any questions?
16 SENATOR MEGA: No, sir. Thank
17 you for coming.
18 MR. BABIGIAN: All right. Thank
19 you.
20 SENATOR MEGA: Thank you very
21 much.
22 Vincent M. Bonventre, Assistant
23 Professor of Law, Albany Law School, Albany Law

NEW YORK, THURSDAY, DECEMBER 2, 1993 ©1993 New York Law Publishing Co. PRICE $2.50

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Ciparick Named to Court of Appeals

Supreme Court Justice Is First Hispanic Nominee

BY GARY SPENCER

ALBANY — Governor Cuomo nominated Manhattan Supreme Court Justice Carmen Beauchamp Ciparick to the Court of Appeals yesterday, moving to place the first Hispanic and second woman on the state's highest court.

Justice Ciparick's trial court rulings, particularly her landmark abortion rights decision in *Hope v. Perales*, have earned her a reputation among attorneys for courage and independence. She also was praised for "solid" legal reasoning and fair demeanor. And Court watchers predicted she could be as sympathetic toward individual rights as the man she would replace, Judge Stewart F. Hancock Jr., who must retire for age at the end of the year.

But the symbolic significance of her selection appeared to overshadow these concerns when the nomination was announced, even for the judge herself. "It's very heartrending to me to think that as a youngster growing up in Manhattan, as a female child of a Puerto Rican family in Washington Heights, that I could ever be in this position," she said, standing next to the Governor at a press conference in the capitol.

Governor Cuomo stepped in, unasked, to emphasize the point. "Now, after 200 years, we know at least the following: that you will not be

Continued on page 2, column 6

WIDE WORLD PHOTOS

Justice Carmen Ciparick walks with Governor Cuomo to a press conference yesterday, where she was nominated the Court of Appeals' first Hispanic judge. Behind Judge Ciparick are her father, Edward Beauchamp (left) and husband, Joseph Ciparick.

Described as Personable, Principled

BY DANIEL WISE

GOVERNOR CUOMO, in selecting Carmen Beauchamp Ciparick to become the first Hispanic judge to sit on the New York Court of Appeals, has chosen a fearless and personable jurist, according to lawyers and judges who know her well.

Perhaps her greatest test came in 1989 in the America's Cup case when then-Mayor Koch and politicians across the land were waving the flag in favor of the American defender of the cup. Despite the outburst of patriotism, she ruled that the cup belonged to the challengers from New Zealand because the deed of trust that governed the competition barred the American team from using a twin-hulled boat that was inherently faster.

She ultimately was reversed in that case, but that has not stopped her from going out on a limb on an issue in which she strongly

QUOTES FROM OPINIONS - PAGE 2

believes. Two years ago in *Hope v. Perales*, she broke new legal ground finding for the first time under the State Constitution that a woman's right to have an abortion is protected and that the state must fund abortions when it makes prenatal care available to needy women.

Continued on page 2, column 3

Posners Barred From Corporate Boards

BY DEBORAH PINES

A FEDERAL JUDGE in Manhattan yesterday became the first in the ... they violated a raft of securities laws during a corporate takeover scheme in the 1980s involving Michael Milken ... more worthy candidates to be barred from serving as officers and directors than the Posners," he wrote, noting

IN BRIEF

Decisions of Interest

The following decisions of special

Ciparick Nominated

Continued from page 1, column 4

disqualified from the Court of Appeals because you're a woman..., you won't be disqualified from the Court because you're black, you won't be disqualified from the Court because you're Hispanic," he said. "...[W]hat makes you a judge of the Court of Appeals is your competence."

Chief Judge Judith S. Kaye later described Justice Ciparick as "a marvelous judge and a terrific human being," qualities that she said are of paramount concern. "But I cannot ignore the real deep-down pleasure I feel in having another woman on the Court of Appeals." she said. "Having at least two does take out the gender issue, doesn't it."

Judge Kaye has been the first and only woman on the Court since she was sworn in as an associate judge in September 1983. Despite the nomination of Justice Ciparick, New York is not the trend-setter in this area. Four of seven judges on the Minnesota Supreme Court are women, including the chief judge.

The nomination is subject to confirmation by the State Senate, which has 30 days to act. The Senate Judiciary Committee will begin its investigation today, according to counsel Edward Cole, but he said it is too early to tell whether it will be ready to act when the Legislature returns for a scheduled special session on Dec. 16.

Independent Voice

Although the Republican-controlled Senate has never seriously challenged, let alone rejected a nominee for the Court, Justice Ciparick's 1991 abortion rights decision in *Hope v. Perales* could provide an unusual test of that tradition.

The Senate set the stage for that case in 1989, when it insisted that a new prenatal care program for poor women must exclude funding for abortions. Justice Ciparick found the restriction unconstitutional, ruling in part that a right to privacy under the State Constitution guarantees women "a fundamental right to abortion." The decision was affirmed by the Appellate Division, First Department, and the case will be heard by the Court of Appeals next month.

Several attorneys mentioned the *Hope* decision as evidence of the judge's independence and courage in the face of controversy. Others mentioned her decision in the America's Cup dispute four years ago, when she ruled for New Zealand over the American entry in *Mercury Bay Boating Club v. San Diego Yacht Club*. The Court of Appeals reversed in 1990, preserving the American boat's victory. But Judge Hancock, whose seat she will take, dissented and voted to uphold Justice Ciparick's decision.

Governor Cuomo said he expects Justice Ciparick to fit the mold of a Court "which has developed a reputation not only for judicial excellence, but for stirring and occasionally disconcerting independence." Just last month, the Court of Appeals ruled in *McDermott v. Regan* that the Governor and Legislature violated the State Constitution when they changed the method of funding public retirement systems, a decision that could cost the state as much as $3 billion.

His nomination of the first Hispanic judge to the Court drew praise from minority groups. The Hispanic National Bar Association said, "Justice Ciparick's cultural ties to our community will bring to New York's highest court a perspective and sensitivity not present there today."

The nomination of Justice Ciparick is the 11th the Governor has made to the Court of Appeals, and the fourth he has made in the past year and a half. The next scheduled vacancy on the Court will occur in December 1997, when Judge Richard J. Simons must retire.

Judge Described as Personable, Principled

Continued from page 1, column 4

Unlike the America's Cup case, she was affirmed in *Hope* by the Appellate Division, First Department. If confirmed by the Senate, she will have to step aside when the Court of Appeals hears the case in January.

Grace Under Pressure

There was no doubt that the America's Cup litigation was a pressure cooker, said George N. Tompkins of Condon & Forsyth who represented the challengers from New Zealand, and that pressure was intensified by the presence in the first row of the courtroom the mayor of San Diego, homeport for the American club.

But in a gesture that many would describe as completely in character, Justice Ciparick extended every courtesy to her West Coast visitor, including inviting her into chambers to exchange pleasantries.

Presiding Justice Francis T. Murphy of the Appellate Division, First Department, along with many other judges and lawyers had high praise for Justice Ciparick yesterday. Justice Murphy, saying that he had hoped she would be appointed to the First Department, described her as having the "right temperament required for a collegial appellate court; (she's an) intelligent and excellent writer."

Allen G. Schwartz, a former New York City Corporation Counsel who recently was confirmed as a U.S. district judge, described Justice Ciparick as doing "an excellent job" in handling a complicated case stemming from the breakup of the investment banking firm that arranged financing for the buildup of Olympia & York's real estate empire in the U.S. As evidence of that fine work, Mr. Schwartz pointed to the fact that no appeal was taken despite the large amount of money at stake.

Other lawyers, however, expressed some reservations, pointing to the ranking given her by the New York State Bar Association and the difficulty she had winning approval by the Governor's screening panel for the First Department. After being rejected by the screening panel several times, she was approved earlier this month. The State Bar had ranked her "qualified," while rating five other contenders for the Court of Appeals "highly qualified."

Henry T. Berger, a long-time friend who has served with her for the past six years on the Judicial Conduct Commission, said her detractors underestimate her, and that she is likely to emerge as a strong liberal voice who will "stretch the Court's debate on the issues."

Justice Ciparick, age 51, was raised in Washington Heights, the daughter of immigrants from Puerto Rico. Her father was a clerk with the U.S. Corps of Army Engineers and her mother a housewife.

A graduate of George Washington High School, she received her undergraduate degree from Hunter College. She worked as a teacher in Harlem to finance her legal education at St. John's University School of Law, where she was in the evening division.

Following her graduation in 1967, she took a job as a staff attorney with The Legal Aid Society in the Bronx. Starting in 1969, she held a series of posts in judicial administration, ending as counsel in the office of New York City Administrative Judge David Ross in 1974. She was appointed by Mayor Koch to the Criminal Court in 1978 and elected to the Supreme Court in 1982.

She is married to Joseph Ciparick, who teaches chemistry at Martin Luther King High School in the Lincoln Center area. Their daughter, Roseann, majors in voice at Northwestern University.

Justice Ciparick herself is an accomplished singer, and has performed on numerous occasions — in recent years together with her daughter — in productions staged by the Village Light Opera Group.

*

THURSDAY, DECEMBER 2, 1993

INSIDE

Cuomo Picks Hispanic Judge

Governor Cuomo said he would nominate a State Supreme Court justice to be the first Hispanic judge on New York State's highest court. Page B1.

Cuomo Choice For Top Court Is Woman, 51

Child of Puerto Ricans Sets Ethnic Precedent

By JAMES DAO

Special to The New York Times

ALBANY, Dec. 1 — Gov. Mario M. Cuomo said today that he would nominate Carmen Beauchamp Ciparick, a state Supreme Court justice in Manhattan who grew up in Washington Heights, to be the first Hispanic judge on the state's highest court, the Court of Appeals.

If approved by the State Senate, Justice Ciparick, 51 years old, will replace Associate Judge Stewart H. Hancock Jr., a Republican from the Syracuse area, who is required to step down at the end of the year because he has reached the mandatory retirement age of 70.

Justice Ciparick, a Democrat who lives on the Upper East Side of Manhattan, is considered a liberal jurist who will be replacing one of the court's more conservative members. But court watchers said they do not expect her to shift the court significantly from its centrist position on most issues.

A Variety of Concerns

Her selection was not considered a surprise, particularly after Mr. Cuomo narrowly passed over a Hispanic candidate, Justice John Carro of the Appellate Division, when making his last selection to the court in August. Since then, Hispanic legal and elected officials have quickened the drumbeat urging Mr. Cuomo to select a Hispanic nominee.

"This was a long time in coming," said Juan A. Figueroa, president and general counsel to the Puerto Rican Legal Defense and Education Fund, a civil rights group. "Latinos only represent 1.7 percent of all the state's judiciary even though we represent 12 percent of the population."

But in making his choice, Mr. Cuomo had to balance geographic concerns against the politics of ethnicity and sex. After Jan. 1, the court will have no members from western New York, and legal officials from that

Continued on Page B4

Hispanic Woman Is Named To Highest Court by Cuomo

Continued From Page B1

region have pressed Mr. Cuomo to nominate one of their own.

"The decision suggests that the Governor has one eye on the upcoming election," said Sidney Stein, a Manhattan lawyer who writes a column on the Court of Appeals for the New York Law Journal. "It adds another group to the court. And it certainly assists the Governor in his stated aim of making the court a more diverse institution."

Mr. Cuomo has not said whether he will run for re-election next year.

The court currently has one woman, Chief Judge Judith S. Kaye, and one black member, Associate Judge George Bundy Smith, both appointed by Mr. Cuomo.

In a news conference, Mr. Cuomo said his decision was complicated by the high quality of recommendations provided by a state commission. Of those seven names, five had been recommended before, including Justice Ciparick, and five had been rated as highly qualified by the New York State Bar Association, the group's highest rating.

Justice Ciparick was rated qualified, the middle ranking.

Mr. Cuomo said he was impressed by Justice Ciparick's collegiality and the clarity of her writing. And while he cited the goal of diversity, he said competence was his first concern in selecting her.

"If you made someone a judge or elected them a governor because of their ethnicity, you'd be doing the wrong thing," Mr. Cuomo said. "If you are able at one and the same time to select a superb talent, a truly competent person, and make the point that sex, culture and ethnicity will not stand in the way of a competent person, then that is a glorious opportunity, and I'm glad we had it with Judge Ciparick."

Court of Appeals judges, who serve 14-year terms, are paid $120,000 a year.

Vote Expected in December

The State Senate, which has never rejected one of Mr. Cuomo's nominees to the Court of Appeals, has until Dec. 31 to decide on Justice Ciparick, and they are expected to vote on her in a special legislative session on Dec. 16.

Justice Ciparick, who has served on the State Supreme Court since 1983, is probably best known for a landmark 1990 decision in which she ruled that a state program to provide prenatal care for the working poor was unconstitutional because it did not pay for abortions.

Legal experts said that the decision, which has been upheld by the Appellate Division, established a constitutional right to abortion in New York State at a time when anti-abortion groups were challenging Federal protections for abortion rights before the United States Supreme Court.

The state has appealed the ruling, Hope v. Perales, to the Court of Appeals. Justice Ciparick said she would recuse herself from the case, which is scheduled to be argued in early 1994.

David Jennings for The New York Times

Carmen Beauchamp Ciparick after she was nominated yesterday to the state's Court of Appeals.

Justice Ciparick also played a role in the 1988 court battle between yachting teams from New Zealand and the United States over the America's Cup.

After the American team won the cup, the New Zealand team filed suit challenging the legality of the Americans' double-hulled catamaran. Justice Ciparick ruled in the New Zealanders' favor. But her decision was overturned by the Court of Appeals, and the cup was returned to the San Diego club.

The second of two daughters of Puerto Rican New Yorkers, Justice Ciparick grew up in Washington Heights and attended public schools in Manhattan. She received a bachelor of arts degree from Hunter College and her law degree from St. John's University Law School, Mr. Cuomo's alma mater.

Justice Ciparick was notified of Mr. Cuomo's decision late last night and was flown by state helicopter to Albany this morning, where she seemed still giddy at the turn of events.

"It was very heart-rending to me to think that as a youngster growing up in Manhattan, as the female child of a Puerto Rican family from Washington Heights, that I could ever be in this position," she said, speaking before an audience that included her husband, father and 10 Hispanic members of the Legislature. "I just hope that I live up to the expectations all these wonderful people have of me."

...ued on Page B4

THE NEW YORK TIMES METRO SUNDAY, FEBRUARY 16, 1992

Inquiries Unearth Pieces Of Biegen's Secret Life

By RALPH BLUMENTHAL

Pieces of a buried life are coming to light as investigators work to trace the stolen money that flowed through the bank accounts of a former trusted mayoral fund-raiser and admitted embezzler, Arnold I. Biegen.

Known to intimates at City Hall, the Governor's office and law firm boardrooms as a sedate, ingratiating, facile and sometimes dictatorial financial adviser, the 58-year-old lawyer is emerging in unfamiliar guises.

The "Arnie" Biegen that Gov. Mario M. Cuomo says he knew was "honorable and forthright," a loyal backer with an ailing wife and lovely children who merited appointment to the commission picking the state's top judges.

The Arnold Biegen that a law partner introduced for the first time to the future Mayor David N. Dinkins in 1981 seemed the same, a stolid, generous, hardworking family man, the lawyer, Edward J. Babb, recalled.

But in recent weeks another Arnold Biegen has emerged, whom few intimates say they recognize: a man law enforcement officials say seemed out of control, who appears to have spent money almost as fast as he stole it, with no easily explainable motive.

> A friend of the Mayor's who stole from his campaign.

This Arnold Biegen was also entangled with a failed bank with organized crime connections, which granted him a large loan that has left him the target of a Federal lawsuit seeking repayment of about $350,000, on top of unpaid Federal tax claims totaling another $300,000.

Despite the consternation that has greeted Mr. Biegen's admissions, there were grounds more than three years ago for questioning some of his associations and actions.

Last week, after pleading guilty to plundering an elderly widow's estate of $850,000 and Mayor Dinkins's re-election fund of another $158,000, Mr. Biegen is said to have told investigators with the Manhattan District Attorney's office that his embezzlement went to support an extravagant way of life, information investigators are checking against bank records.

Riverdale and East Hampton

Mr. Biegen has two residences, a Riverdale penthouse co-op worth perhaps $350,000 and a luxury seaside house in East Hampton, L.I., valued at more than $400,000. He is also supporting a second wife who has battled cancer, and four grown children, two from an earlier marriage. Mr. Biegen has acknowledged spending small sums on a longtime female companion, according to investigators who say they have confirmed the spending.

Still, they say, the money is far from entirely accounted for. Other possible explanations for large cash outlays are also being checked, they say. What seems clear, they say, is that most of the money is gone and that Mr. Biegen could not pay it back if he wanted to.

Mr. Biegen, who resigned as acting treasurer of the Dinkins re-election campaign on Jan. 17 after his thefts came to light in the form of 29 fraudulent checks to himself, has not responded to numerous telephone and written messages left at his homes. Mr. Biegen's lawyer, Paul Rooney, has also not returned calls.

Yesterday, Mr. and Mrs. Biegen drove up to the East Hampton house at 3:30 P.M. in a dark blue Mercedes sedan. Mr. Biegen broke into tears and ducked behind some bushes. His wife, waving her hands, shouted, "Go away, leave us alone. We've had enough." She, too, started to cry.

The Manhattan District Attorney, Robert M. Morgenthau, who took Mr. Biegen's guilty pleas in closed court on Feb. 10, in hopes of quietly using him as an informant before his cooperation became public, has said the former aide faces two consecutive 5-to-15-year terms and that no promises of leniency were made. But prosecutors could petition the sentencing judge to go easy if Mr. Biegen cooperates in the investigations. Officials familiar with the plea discussions said Mr. Biegen's fear of incarceration in a tough state prison played a part in his admissions.

Investigators say that Mr. Biegen is being methodically debriefed on a range of matters, including his claims that the Dinkins campaign in 1989 accepted illegal contributions. On Friday, Mayor Dinkins and other aides angrily denied knowledge of any improprieties.

The United States Attorney in Manhattan, Otto G. Obermeier, who charged Mr. Biegen in a separate complaint on Jan. 29 of violating mail fraud statutes to steal campaign funds, acknowledged on Friday that discussions toward a plea were under way. But Federal investigators have not interviewed Mr. Biegen.

Separated in 1967

Mr. Biegen was born in New York on April 9, 1933. He attended Brooklyn College, graduating in 1954, and obtained his law degree from New York University Law School in 1959.

In 1960 he married his first wife, Elaine, a psychotherapist who lives in Queens. The couple had two sons and separated in 1967. They later divorced. Mrs. Biegen subsequently sued him in 1974, claiming unpaid child support. Court records do not show how that suit was resolved. He later remarried and he and his present wife, Anne, have two grown children. Anne Biegen, friends say, has suffered from cancer. She is a trustee of the Chemotherapy Foundation in Manhattan.

Friends say a landmark in Mr. Biegen's rise in political circles was his association, around 1973 or 1974, with Mr. Cuomo, then a lawyer with an office on Court Street in Brooklyn. Governor Cuomo, in a telephone interview on Friday, said he did not recall how he met Mr. Biegen but said it was "entirely possible" it was around that time.

Mr. Cuomo said he got to know the Biegen family and that Mr. Biegen became one of his supporters and fund raisers when he ran for Governor in 1982. In 1983, Mr. Cuomo named him as one of his four appointees to a prestigious panel, the 12-member Commitee on Judicial Nomination, which selects judges for the Court of Appeals, the state's highest. Mr. Cuomo replaced Mr. Biegen last week, a month after the theft charges surfaced.

"I have nothing bad to say about Mr. Biegen," Mr. Cuomo said Friday. "I never had any reason to think he was anything but honorable and forthright. Why would I have put him on the commission? "

He said he was "shocked" last week when an aide said, " 'What do you think, Governor? Arnold Biegen has just taken a plea.'"

The law partner who introduced Mr. Biegen to the future Mayor, Mr. Dinkins, also voiced amazement.

Dinkins's Old Friend

Mr. Babb said he had met Mr. Biegen in August 1981 after joining the Manhattan law firm of Booth, Lipton & Lipton, where Mr. Biegen was a senior partner. Mr. Babb said he was a longtime friend of Mr. Dinkins, who was then the City Clerk and that when Mr. Dinkins once dropped by the law firm Mr. Babb introduced the two men, who struck up a friendship.

Mr. Babb, 60, who was named by the Mayor last week to take over some of Mr. Biegen's fund-raising duties, said he and the Mayor had been guests at Mr. Biegen's East Hampton house and tennis club, the Dunes Racquet Club. Mr. Babb, who joined Mr. Biegen and other members of Booth, Lipton in moving to another law firm, Parker Chapin Flattau & Klimpl in 1987 after Booth Lipton closed, said that despite close contact with Mr. Biegen over the years he was at a loss to explain any of his troubles.

The Mayor, distancing himself strongly from his former campaign finance manager for the first time since the theft disclosures, told a news conference Friday that he had been caught totally unaware. He said he now saw that Mr. Biegen's character all along was that of a "common thief," but that no one had realized it until now. He noted that the Governor too seemed to have been taken in.

Charles J. Hynes, the Brooklyn District Attorney, said he knew Mr. Biegen from when they both worked at Booth Lipton from 1983 to 1985 and that he had asked Mr. Biegen later to raise

Court records hold signs of questionable actions and associations.

some money for his District Attorney's race in 1989. He said that Mr. Biegen raised $2,750 for him and that he had not been in touch with Mr. Biegen in the two years since. He declined to discuss their last contact.

Mark Abramowitz, managing partner of Parker, Chapin, said Mr. Biegen's work for the firm had been exemplary and that he had not been the subject of any disciplinary complaints. He said Mr. Biegen resigned from the law firm on Jan. 19.

Bank Was Later Closed

Well before that, according to court records that have now also come to the attention of prosecutors, while at Booth, Lipton, Mr. Biegen took out a $265,000 loan for a client, a small brokerage firm called Gallant Securities. The loan in November 1986 was from the First Inter-County Bank of New York, a one-branch commercial bank in Manhattan that was to be closed for insufficient funds by state regulators in 1988 and taken over by the Federal Government after revelations of involvement in money-laundering, fraud and bribery.

One of the bank's board members was Irwin Schiff, a reputed organized crime money-launderer whose contract killing in an East Side restaurant in 1987 led to exposure of the bank scandal. Mr. Biegen, though not a criminal lawyer, also represented two criminal targets connected to the bank investigation, Dominic Rabuffo, who later became a Government witness, and Edward Garofalo, a demolition executive and toxic-waste dumper who was later gunned down in a murder that prosecutors now charge to John Gotti.

Since 1987, Mr. Biegen has been involved in a maze of claims and counterclaims that began when the bank sued him over the Gallant loan. Under its unusual terms, Mr. Biegen borrowed the money himself, then passed it to the company. As collateral, he presented a mortgage note signed by one of Gallant's principals, Perri Kanterman, which pledged her house.

The note was in the sum of $350,000, but, according to a lawsuit filed by the bank against Mr. Biegen before it was taken over by the Government, the note "had been altered at Mr. Biegen's direction with 'whiteout' " to value the property at $265,000.

When the loan was not repaid, the bank sued him and he told the bank to seize Mrs. Kanterman's house in repayment. But the bank was unable to do so because Mrs. Kanterman had filed for bankruptcy. In the lawsuit, now being pursued by the Federal Deposit Insurance Corporation, which took over the bank, Mrs. Kanterman contended that the difference between the $350,000 property she pledged and the $265,000 loan amounted to a usurious $85,000 fee to Mr. Biegen.

NINTH JUDICIAL COMMITTEE

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Express Mail

LAW DAY, U.S.A.
May 1, 1992

Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Nomination of ANDREW P. O'ROURKE

Dear Committee Members:

Transmitted herewith is our contribution to Law Day: our critique of Andrew O'Rourke's qualifications for a federal judgeship.

This submission is based on investigation and analysis of Mr. O'Rourke's answers to the public portion of the Senate Judiciary Committee's questionnaire (Ex. "A")[1], review of relevant documentary evidence, and interviews with individuals having first-hand personal knowledge of the facts[2].

It is our intention to appear at the public confirmation hearings to be held on Mr. O'Rourke's nomination so that we can oppose it with live testimony.

---

[1] Mr. O'Rourke's public questionnaire was provided to us by the Senate Judiciary Committee, pursuant to our letter requests, dated November 20, 1991 (Ex. "B") and January 10, 1992 (Ex. "C").

[2] Further materials may be forthcoming to us from additional sources and will be passed on to you with our comments at a later date.

OVERVIEW:

We believe the within critique decisively supports the following findings:

(1) that no reasonable, objective evaluation of Mr. O'Rourke's competence, character and temperament could come to any conclusion but that he is thoroughly unfit for judicial office; and

(2) that a serious and dangerous situation exists at every level of the judicial nomination and confirmation process--from the inception of the senatorial recommendation up to and including nomination by the President and confirmation by the Senate--resulting from the dereliction of all involved, including the professional organizations of the bar.

The latter finding results directly from the first, which the Ninth Judicial Committee--a small unfunded citizens' group--has been able to establish in a relatively short time and without great difficulty.

THE RESULTS OF OUR INVESTIGATION AND ANALYSIS:

Legal Competence and Integrity

Even the most cursory examination of Mr. O'Rourke's responses to the Senate Judiciary Committee questionnaire reveals their patent inadequacy. This submission will document that Mr. O'Rourke's responses disclose not only his lack of professional competence, but--as reflected by his multitudinous evasions and misrepresentations of material facts--his fundamental lack of integrity as well.

We believe that Mr. O'Rourke's responses to I-Q18 (Ex. "A", pp. 7-9) and II-Q2 (Ex. "A", p. 11) should be the Committee's starting point in evaluating this nominee since they particularly highlight his deficiencies in those two areas. Based upon Mr. O'Rourke's answers to I-Q18 and II-Q2, there can be no doubt that Mr. O'Rourke's nomination to the U.S. District Court for the Southern District must be rejected.

I-Q18 (Ex. "A", pp. 7-9):

Question I-Q18 makes the following request:

> "Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in

DORIS L. SASSOWER

283 SOUNDVIEW AVENUE • WHITE PLAINS, N.Y. 10606 • 914/997-1677 • FAX: 914/684-6554

By Fax and Mail
518-474-1513

October 24, 1991

Hon. Mario M. Cuomo
Executive Chamber
Albany, New York 12224

Dear Governor Cuomo:

I read with interest the story in The New York Times of October 22, 1991 indicating you may be making a decision to run for the presidency of the United States. As one of your fans from way back, such an announcement would have brought me great pleasure--were it not for my present firm belief that you need to put your New York house in order before you start looking after the national scene.

Just about this time two years ago, a letter written by an attorney, Eli Vigliano, Esq., was hand-delivered to your Executive Offices in New York City. As an eyewitness to the 1989 Judicial Nominating Convention of the Democratic Party in the Ninth Judicial District, Mr. Vigliano detailed serious Election Law violations--that there had been no quorum, no roll call to determine a quorum (because it was readily apparent to all that there were too few delegates there to constitute a quorum), and that the number of seats in the convention room was inadequate to accommodate the required number of delegates and alternate delegates (to make it less obvious that there was no quorum)--all fatal procedural flaws, requiring annulment of the nominations and a reconvening of the convention.

Mr. Vigliano further reported that the Minutes and Certificate of Nomination, signed and sworn to by the Chairman and Secretary of the Democratic Judicial Nominating Convention, both lawyers, perjuriously attested to due compliance with Election Law requirements. The felonious nature of the violations complained of was cited in support of a request for you to appoint a Special Prosecutor to investigate.

Mr. Vigliano's letter enclosed many documents, including the Resolution adopted by the party bosses of the Democratic and Republican parties of Westchester County and their counterparts in Putnam, Dutchess, Rockland and Orange, the other four counties of the District--and ratified at the 1989 judicial nominating conventions of both parties. Set forth in the Resolution were

the precise terms and conditions of a Deal: a cross-bartering of seven judgeships in 1989, 1990, and 1991 between the two major parties, including contracted-for resignations to create new vacancies, which Mr. Vigliano contended violated Election Law prohibitions against making or accepting a nomination to public office in exchange for "valuable consideration". The Deal also included a pledge by the nominees that, once elected, they would divide judicial patronage in accordance with party leaders' recommendations.

What happened to this citizen's complaint implicating prominent lawyers and sitting judges in what, if proven, would have amounted to a "judicial Watergate"? NOTHING--not even an investigation by the public agency charged with the duty of enforcing the Election Law, the New York State Board of Elections, all four of whose commissioners are appointed by you.

Indeed, after the 1989 elections, your legal counsel transmitted Mr. Vigliano's complaint to the New York State Board of Elections. Other than a pro forma acknowledgment of receipt of his complaint from the Board's "Enforcement" Counsel, Mr. Vigliano received no further communication--although he let that "Enforcement" Counsel know that he had a tape recording of the Democratic convention. Seven months later, on May 25, 1990, Mr. Vigliano's complaint was dismissed on the stated ground that there was "no substantial reason to believe a violation of the Election Law had occurred"--although, as subsequently acknowledged by the Board, it had conducted no hearing or investigation into the matter.

Mr. Vigliano did not learn of the dismissal of his citizen's complaint until October 15, 1990, at the oral argument of the case of Castracan v. Colavita, before the Albany Supreme Court. At that time, the State Board's May 25th letter notifying Mr. Vigliano of the dismissal inexplicably turned up in the hands of counsel for the Westchester Republican Party, named as a party respondent in that case[1].

As you know, the Castracan case, spearheaded by the Ninth Judicial Committee, was brought in September 1990 by two citizen objectors, acting in the public interest, to obtain judicial

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[1] The "Enforcement" Counsel of the State Board has been unable to offer any explanation as to how such dismissal letter was obtained by counsel for the Republican Party and has informed us that the State Board has no record of any request for such document having been made. Since the May 25th dismissal letter indicated a copy was sent to your counsel, Pat Brown, we would ask to know what his file reflects concerning any transmittal of same.

review of the failure of the State Board of Elections to invalidate the nominations resulting from the 1990 Democratic judicial nominating conventions. Election Law violations affecting that year's judicial nominations--similar to those reported the previous year concerning the 1989 conventions--were this time reported directly to the State Board in the form of Objections and Specifications, in strict compliance with the Election Law. The State Board again failed to undertake any investigation or hearing and, notwithstanding that the Republican Certificate of Nomination was invalid on its face, claimed in its Determination of Dismissal that the State Board does not address Objections that "go behind the documents and records on file".

As a result, the citizen objectors, Dr. Mario Castracan and Professor Vincent Bonelli, were obliged to seek judicial intervention because the public agency charged with enforcement of the Election Law refused to perform even its most minimal duty.

The Record in the Castracan case--on all court levels--demonstrates conclusively that the State Board actively obstructed judicial review of its inaction, and, in a bitterly partisan manner, aided and abetted the political leaders and public officials charged with corrupting the democratic and judicial process--even going so far as to seek sanctions against the pro bono petitioners and their counsel for bringing the lawsuit.

Consequently, there was never any adjudication as to whether the State Board acted properly in dismissing Petitioners' Objections to the 1990 nominations. Nor did the courts rule on the illegality of the Three Year Deal. This, as well as the otherwise inexplicable court decisions in the Castracan case[2] have led many people to believe that behind-the-scenes political influences successfully effected a "cover-up" to protect the politically well-connected lawyers and judges who were parties to the Deal.

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[2] Such decisions included the sudden denial by the Appellate Division, Third Department, of the automatic preference accorded by law to Election Law proceedings. The cancellation of the scheduled October 19, 1990 date set for oral argument prevented the case from being heard before the November elections, as urged by The League of Women Voters of New York State. Thereafter, the Appellate Division denied the request of the NAACP Legal Defense & Educational Fund for one additional week to file an amicus curiae brief before the re-scheduled post-election date for oral argument.

That conclusion is borne out by what transpired in the related case of Sady v. Murphy, brought earlier this year by Mr. Vigliano, counsel to the pro bono petitioners, to contest the 1991 judicial nominations under the third phase of the Deal. At the oral argument this past August before the Appellate Division, Second Department, forthright comments about the Deal emanated from the bench consisting of Justices Mangano, P.J., Thompson, Sullivan and Lawrence. The following are illustrative:

(a) When Alan Scheinkman, Esq., arguing on behalf of both Democratic and Republican Respondents therein, who filed a joint brief, said that the parties to the Three-Year Deal were "proud of it", Justice William Thompson stated:

> "If those people involved in this deal were proud of it, they should have their heads examined".

(b) Referring to the contracted-for resignations that the Three Year Deal required of Respondents Emanuelli and Nicolai, Justice Thompson further stated:

> "these resignations are violations of ethical rules and would not be approved by the Commission on Judicial Conduct"

and additionally said:

> "a judge can be censured for that".

(c) When Mr. Scheinkman sought to argue that the Three Year Deal embodied in the Resolution was merely a "statement of intent", Presiding Justice Guy Mangano ripped the copy of the Resolution embodying the Deal out of Appellants' Brief, held it up in his hand and said:

> "this is more than a statement of intent, it's a deal"

and that:

> "Judge Emanuelli and the others will have a lot more to worry about than this lawsuit when this case is over".

(d) In response to Mr. Scheinkman's attempt to claim that the Decisions rendered by in the Castracan case in the lower court and Appellate Division, Third Department were on the merits of the cross-endorsement

Deal and that the Appellants in the Sady case were collaterally estopped, Justice Thomas R. Sullivan pointed out the difference in the parties and the causes of action, and further stated:

> "what the Third Department does is not controlling in the Second Department, we do what we believe is right, irrespective of whether the Third Department agrees with us".

Yet, overnight these candid views of the Appellate Division, Second Department were submerged into a one-line decision that there was "insufficient proof", to invalidate the nominations. This ruling was made by an appellate court which knew that there had been no hearing afforded by the lower court at which to present "proof", and notwithstanding that, as a matter of elementary law, "proof" is irrelevant on a motion to dismiss, which assumes the truth of the allegations and all reasonable inferences therefrom.

When leave was sought to take the Sady case to the Court of Appeals, Judge Richard Simon stated at the oral argument of that application: "it's a disgusting deal". When Mr. Scheinkman contended that since no money passed as part of the Deal, there was no "valuable consideration", Judge Simon replied:

> "A promise for a promise is consideration under basic law of contracts. Why, then, wouldn't a promise by the Democrats to nominate a Republican for a judgeship in exchange for a promise by the Republicans to nominate a Democrat for a judgeship constitute 'valuable consideration' under the Election Law?"

Nonetheless, the Court of Appeals denied leave to appeal Sady v. Murphy, and dismissed the appeal as of right.

After the Sady v. Murphy decisions came down, the familiar aphorism "one call does it all" was heard a lot around town in the Westchester legal community.

The man generally credited as the architect of the Deal was Samuel G. Fredman, former Chairman of the Westchester Democratic Party, well known as one of your earliest backers who "delivered" a record vote for you in your 1982 run. In return, you rewarded Mr. Fredman with an interim appointment to the Supreme Court in early 1989--although he had no judicial experience and was approaching 65 years of age. It is believed that Mr. Fredman laid the groundwork for his appointment via an "arranged" vacancy for you to fill. In 1988, with the help of Anthony

Colavita, Chairman of the Westchester Republican Party, an incumbent Republican judge agreed to resign so as to create a vacancy for Mr. Fredman to be named to by you. The bargained-for exchange was the cross-endorsement by the Democrats of the nomination of another incumbent Republican judge, then 69 years old, for a further 14 year term. That manipulation of the judiciary, involving a single judgeship in 1988, enabled Mr. Fredman to become an incumbent in 1989 via your interim appointment--and laid the foundation for the Three-Year Deal, emerging later that year.

It was the Westchester County Surrogate judgeship which formed the cornerstone of the Deal--the most "valuable consideration" traded by the party bosses. Historically, Republican hands held that important office--controlling the richest patronage in the county. However, Westchester's changing political demographics made it apparent that the Democrats would capture that position in 1990 when the seat became vacant. This then was the bargaining chip for the Democratic party leaders. Because the party bosses did not trust each other sufficiently, they employed contracted-for resignations to ensure performance of the Deal. Thus, Albert J. Emanuelli was cross-endorsed in 1989 for a 14-year term on the Supreme Court, subject to his commitment to resign after seven months in office to create a vacancy for another cross-endorsed candidate to fill. Under the Deal, Mr. Emanuelli would then be cross-endorsed in 1990 as the nominee of both parties for Westchester County Surrogate.

Neither the party leaders nor their would-be judicial nominees were troubled by the destructive impact such resignations and the consequent protracted vacancies would have upon litigants and the back-logged court calendars. As was eminently foreseeable, the impact of such musical-chairs has been devastating. Indeed, the reason why the courts are now in crisis is precisely because politicians have put their favorites on the court--without regard to merit--no matter how lacking in experience or other judicial qualifications. Illustrative is that neither Samuel Fredman nor Albert Emanuelli had <u>any</u> judicial experience for the exalted judicial offices they obtained through political connections. Mr. Emanuelli never even tried--let alone judged--a contested case in Westchester Surrogate Court. And yet, he was <u>cross-endorsed</u> as the nominee for Surrogate.

What has been the result of this "quantum leap" in the politicization of the judiciary in the Ninth Judicial District? Judges who do not honor their oaths of office and who all too often do not decide cases on the facts and the law, but on political considerations or other ulterior motives.

As an active practitioner for more than 35 years--nearly 25 of which have been spent in Westchester--I and other practitioners can document for you over and again the egregious decisions of judges in this District for whom applicable law, the rules of evidence, and fundamental due process are dispensable commodities. In this connection, I believe my own personal experience can lend to the public discussion as to why our court system is in such crisis that you and Chief Justice Wachtler are litigating over budgetary cut-backs and why the Appellate Division, Second Department is currently seeking at least "five more judges".

Based upon my experience, the obvious solution is not more judges for the appellate courts, but better judges in the lower courts. This will sharply decrease the number of appeals being taken--by litigants who presently feel, with reason, that they got "a raw deal" in court. What is needed is a system of pre-nomination screening panels in which the best qualified lawyers are recommended for judicial office--based on merit, not political affiliation or party loyalty.

This conclusion is reinforced by a recent personal experience which should be of particular interest to you since it raises a substantial question as to the judicial fitness of your interim appointee to the Supreme Court, Samuel G. Fredman.

Shortly after his induction to office in April 1989, Justice Fredman used his office and diverted its vast resources to further his political ambitions and settle old scores. He accepted a jurisdictionally void proceeding brought against me by Harvey Landau, Esq., Chairman of the Scarsdale Democratic Club, then actively promoting Justice Fredman's candidacy for a full 14 year term in November. Justice Fredman used that factually and legally baseless proceeding to accomplish a three-fold purpose: (a) to reward his friend and political ally, Harvey Landau; (b) to punish and discredit me, his former adversary and professional competitor; and (c) to promote himself in his bid for full-term election. Consequently, Justice Fredman needlessly caused the expenditure of hundreds of hours of judicial and legal time on a minuscule matter which could have been disposed of in an hour's court time--if not summarily on papers.

I invite an examination by your office of the matter brought under the caption Breslaw v. Breslaw (#22587/86) so that you can confirm the full extent of Justice Fredman's profligate use of court time and facilities to wage a personal vendetta against me and to create for himself and Mr. Landau a media opportunity to benefit their mutual political ambitions. I would specifically request a review of the transcripts of the proceedings before Justice Fredman, as well as the numerous decisions written by him

in the matter, reflecting not only his intense bias, but his utter lack of judicial competence and outright disregard for elementary legal principles and rules of evidence.

Between Justice Fredman's misconduct on the bench, as illustrated by my own direct experience with him, and Justice Emanuelli's contracted-for resignation in August 1990, the matrimonial part of the Supreme Court, Westchester County--which Justice Fredman in the summer of 1989 had publicly proclaimed would become "a model for the state", was effectively destroyed. You can be certain that such destruction was replicated in the lives and fortunes of the non-politically connected litigants and lawyers appearing before them.

The necessity of your investigating the foregoing is underscored by the fact that, according to the local Gannett newspapers of May 22, 1991, you were intending to nominate Harvey Landau, Esq. to fill an interim vacancy on the Westchester Supreme Court this year. We can only speculate on the source of that appalling recommendation and trust that our submission documenting his unethical conduct in connection with the Breslaw matter enabled you to recognize his professional unfitness. However, with all due respect, the fact that his name could have been given any serious consideration at all makes it evident that you are out-of-touch with "the home front".

It should be evident that this State can no longer afford squandering of the resources of our courts by incompetent, unscrupulous politicians turned lower court judges--whose decisions are seen as a means of furthering their political ends and which are so outrageous as to leave litigants with no option, but to appeal.

Unfortunately, as shown by Petitioners' experience in Castracan v. Colavita and Sady v. Murphy, appellate court decisions may also reflect improper political motivations. Those two cases presented to the Court of Appeals a historic opportunity to reverse the political impingement on the essential independence and integrity of the judiciary, which would have promoted judicial selection on merit, not party labels. In so doing, the Court would have fulfilled the intent of the framers of our State Constitution--who meant what they said when they gave "the people" of New York the right to vote for their Supreme Court, Surrogate, and County Court judges. Instead, the Court of Appeals abandoned "the people" of this State to the manipulations of politicians who see the voters' sole function as "to be a rubber stamp". These politicans have now gotten the "go-ahead" from our highest court that they can freely commmit the "crimes against the franchise" which the Election Law was designed to prevent.

The Court of Appeals' refusal to hear those cases--affecting as they did the lives, liberty and fortunes of millions of people in this State--says more about that Court's commitment to a quality judiciary and the true administration of justice--than all its public posturing in justification of Chief Judge Wachtler's current law suit against you.

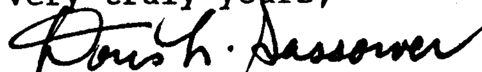
We respectfully urge that the court records of both Castracan v. Colavita (AD, 3rd Dept. #62134) and Sady v. Murphy (AD, 2nd Dept. #91-07706) be requisitioned by your counsel for your consideration.

Because of the refusal of our state courts--including the Court of Appeals--to adjudicate the illegality of the Three Year Deal and the fraud at the judicial nominating conventions that implemented it--the party leaders of the Ninth Judicial District have again this year taken it upon themselves to by-pass the mandatory requirements of the Election Law and engaged in open bartering of judgeships. And once again, the State Board of Election has become an active participant in the fraud upon the voting public.

Now more than ever before, a Special Prosecutor is needed to investigate and halt the corruption in the courts which has already tainted your administration--and which is leading steadily to the collapse which has brought our Chief Judge into legal confrontation with you.

Unless and until that is done, public confidence in the Governor of this State--not to mention his political appointees on the bench and at the New York State Board of Elections--will be at a very low level--hardly inspiring of support for a presidential race.

Very truly yours,



DORIS L. SASSOWER
Director, Ninth Judicial Committee

P.S. I should note that I was privileged to act as pro bono counsel to the Petitioners in the case of Castracan v. Colavita from its inception until June 14, 1991, the date on which the Appellate Division, Second Department, issued an Order suspending me from the practice of law--immediately, indefinitely, and unconditionally--without any evidentiary hearing ever having been had, and notwithstanding the proceeding was jurisdictionally void for failure to comply with due process and other procedural requirements. The Order

was issued less than a week after I announced in a New York Times "Letter to the Editor" that I was taking Castracan to the Court of Appeals, and, likewise, only days after I transmitted to you my sworn and documented affidavit concerning the political relationship between Justice Fredman and Harvey Landau, Esq. and their other unethical conduct in the Breslaw case.

The Court of Appeals denied my application to have my suspension Order reviewed--particularly shocking in view of the fact that my counsel raised the serious issue that my suspension was retaliatory in nature. Review of the underlying papers would show there was no other legitimate explanation for the suspension by the Court. I would waive my privilege of confidentiality in connection with that application so that you can determine for yourself the complete corrosion of the rule of law where issues raised touch upon vested interests able to draw upon the power and protection of the courts.

cc: Chief Judge Sol Wachtler, Court of Appeals
Hon. Guy Mangano
Presiding Judge, Appellate Division, 2nd Dept.
Hon. A. Franklin Mahoney
Presiding Judge, Appellate Division, 3rd Dept.
Hon. Angelo J. Ingrassia
Administrative Justice, 9th Judicial District
Hon. Christopher J. Mega
Chairman, N.Y. State Senate Judiciary Committee
Hon. G. Oliver Koppell
Chairman, N.Y. State Assembly Judiciary Committee
Commission on Judicial Conduct
Hon. Samuel J. Silverman
Chairman, Advisory Committee on Judicial Ethics
Fund for Modern Courts
New York State Bar Association
Association of the Bar of the City of New York
Westchester/Dutchess/Putnam/Rockland/Orange Bar Associations
Elliot Samuelson, President, Academy of Matrimonial Lawyers

Enclosures: Three Year Deal Resolution
The New York Times, June 9, 1991
New York Law Journal, October 22, 1971
Martindale-Hubbell listing

DLS/er

In furtherance of a mutual interest to promote a non-partisan judiciary populated by lawyers with universally acclaimed litigation skills, unblemished reputations for character and judicial temperament and distinguished civic careers, and to enable sitting judges of universally acclaimed merit to attain re-election to their judicial office without the need to participate in a partisan contest, the Westchester County (Republican) (Democratic) Committee joins with the Westchester County (Republican) (Democratic) Committee to Resolve:

That for the General Election of 1989, we hereby pledge our support, endorse and nominate Supreme Court Justice Joseph Jiudice, Supreme Court Justice Samuel G. Fredman and Albert J. Emanuelli, Esq. of White Plains, New York for election to the Supreme Court of the State of New York, Ninth Judicial District, and to call upon and obtain from our counterparts in Rockland, Orange, Dutchess and Putnam Counties similar resolutions; and

For the general election of 1990, assuming that the then Justice Albert J. Emanuelli will resign from the Supreme Court Bench to run for Surrogate of Westchester County and thereby create a vacancy in the Supreme Court, Ninth Judicial District to be filled in the 1990 general election, we hereby pledge our support, endorse and nominate County Court Judge Francis A. Nicolai as our candidate for the Supreme Court vacancy created by Judge Emanuelli's resignation, and to call upon and obtain

EXHIBIT G

from our counterparts in Rockland, Orange, Dutchess and Putnam counties resolutions and commitments to support Judge Francis A. Nicolai as their candidate to fill the vacancy created by the resignation of Judge Emanuelli; and we hereby pledge our support, endorse and nominate Albert J. Emanuelli as our candidate for Westchester County Surrogate in the 1990 general election.

For the general election of 1991, we hereby pledge our support, endorse and nominate Judge J. Emmet Murphy, Administrative Judge of the City Court of Yonkers, for election to the County Court of Westchester County to fill the vacancy anticipated to be created by the election of Judge Francis A. Nicolai to the Supreme Court and Judge Adrienne Hofmann Scancarelli, Administrative Judge of the Family Court, Westchester County, for re-election to the Family Court, Westchester County; and

To require each of the above-named persons to pledge that, once nominated for the stated judicial office by both of the major political parties, he or she will refrain from partisan political endorsements during the ensuing election campaign and, thereafter, will provide equal access and consideration, if any, to the recommendations of the leaders of each major political party in connection with proposed judicial appointments.

We are resolved and agreed that the foregoing Resolution and pledges are intended to and shall be binding upon the respective Committees of the two major political parties during the years 1989, 1990 and 1991 and shall not be affected by any action or proposed action or court merger or court unification.

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WESTCHESTER WEEKLY

The New York Times

SUNDAY, JUNE 9, 1991

LETTERS TO THE EDITOR

Cross-Endorsement: Questions of Protection

The story on the highly controversial cross-endorsements case ["Lawyer to Pursue Suit on Cross-Endorsement," May 19] gives rise to serious questions: who is being protected, by whom and why? There are significant errors and omissions, even omission of the name of the case, Castracan v. Colavita, now headed for the Court of Appeals based on issues including constitutionally protected voting rights.

No information was given as to the genesis of the Ninth Judicial Committee, its purpose, the credentials of its chairman, Eli Vigliano, a lawyer of 40 years standing, or to my own extensive credentials in law reform. No reference was made to the ethical mandates of the Code of Judicial Conduct, requiring a judge to disqualify himself "in a proceeding where his impartiality might reasonably be questioned" — clearly the situation where three of the five judges who decided the appeal failed to disclose their own cross-endorsements.

The Ninth Judicial Committee is a nonpartisan group of lawyers and other civic-minded citizens, concerned with improving the quality of the judiciary in Westchester and the four other counties of the Ninth Judicial District. The committee came into being in 1989 as a response to the "Three-Year Deal" between the Westchester Republican and Democratic party leaders and their judicial nominees, which effectively disenfranchised voters in all five counties and furthered political control of the judiciary. Your reporter failed to discuss the essential terms and criminal ramifications of the deal: the trading of seven judgeships over three years; the requirement that judicial candidates agree to early resignations to create and maintain protracted vacancies; divvying up judicial patronage along political lines.

There was no mention that the lower court's dismissal was without any hearing and ignored the uncontradicted documentary evidence of Election Law violations at both Republican and Democratic judicial nominating conventions. Nor was there any reference to the content or effect of the long-delayed appellate decision. By not ruling on the cross-endorsement issue but instead affirming the dismissal on technical objections by the public officials sued, the Appellate Division did not consider the public interest and the horrendous impact the deal has had on already backlogged court calendars.

Your reporter skewed the article by personalizing this major legal proceeding as if it were "Mrs. Sassower's case." Overlooked were the petitioners: Dr. Mario Castracan, a registered Republican in New Castle, and Prof. Vincent Bonelli, a registered Democrat in New Rochelle who teaches government.

The New York Times has done its best to bury the story. In October 1990 it did not see fit to print that the New York State League of Women Voters had issued a statewide alert to voters, urging the Appellate court to review the case before Election Day; or that the statutory preference to which Election Law proceedings are entitled was denied after being vigorously opposed by the judicial nominees defending the case. The Times failed to report that in February the N.A.A.C.P. Legal Defense and Educational Fund was granted permission to file an amicus brief. Also ignored was an extensive Associated Press story by a prize-winning journalist released nationally two weeks before last year's election, but which The Times did not see fit to print.

The article's reference to "a personal court case" in which I was involved before Justice Samuel G. Fredman two years ago suggested that my concern for the transcendent issues of Castracan v. Colavita was personally motivated and of recent origin. In fact, my concern with the method of selecting judges is long-standing. I began my legal career 35 years ago by working for New Jersey Chief Justice Arthur T. Vanderbilt, a leader in court reform. More than 20 years ago the New York Law Journal published my article about my experience on one of the first pre-nomination judicial screening panels. From 1972-1980 I served as the first woman appointed to the Judicial Selection Committee of the New York State Bar Association.

Justice Fredman — a former Democratic Party chairman — was identified only as having been cross-endorsed as part of the 1989 deal, without stating that he was *not* named as a party to the Castracan v. Colavita cross-endorsement challenge. The reporter's garbled version of the proceeding before Justice Fredman (still undecided more than one year after final submission to him) failed to reflect a true or accurate story. The reporter did not check her "facts" with me. Indeed, a proper report would depict what occurs when party bosses become judges.

The inaccurate, slanted, inadequate coverage shows that The Times has not met its journalistic responsibility to fully and fairly report the facts — or to make any independent investigation of its own.

It is shocking that your newspaper repeats the self-serving statements of politicians like Richard Weingarten and Anthony Colavita that political parties "do a better job of picking candidates" than merit-selection panels and that their handpicked candidates are a "major step toward nonpartisan election of judges," without giving the committee an opportunity to put the lie to these claims. The reporter, who had the relevant appellate records, should have exposed the hypocrisy of politicians who professed disappointment that "the substantial issues in the case were not reached," when they and the cross-endorsed sitting judges involved in the deal fought vigorously to prevent them from being addressed.

Unless the public is immediately apprised of what is taking place, the cross-endorsed judicial nominations representing the third phase of the deal will proceed as scheduled in the 1991 elections.

DORIS L. SASSOWER
Pro Bono Counsel
Ninth Judicial Committee
White Plains

New York Law Journal

OFFICIAL DAILY LAW NEWSPAPER DESIGNATED PURSUANT TO THE JUDICIARY LAW

NEW YORK, FRIDAY, OCTOBER 22, 1971

Front Page

Notes and Views

Judicial-Selection Panels: An Exercise in Futility?

By Doris L. Sassower

Hopes were raised recently for improvement in the process of choosing our judges. In early September, readers of the NEW YORK LAW JOURNAL learned that a nine-member impartial panel had been formed by the Committee to Reform Judicial Selection to recommend the eight most qualified candidates for State Supreme Court in Manhattan and the Bronx. From these it was thought that three would emerge as the nominees at th Democratic Judicial Nominating Convention.

In retrospect, disappointment in the ultimate effect of the recommendations of this panel might have been anticipated. A prenomination screening panel under the chairmanship of Judge Bernard Botein was set up in 1968 in connection with the unprecedented number of new judgeships created by the New York State Legislature. Advance assurances were secured from the party leaders that nominations would be limited to those approved by the panel. This was not the case, however. As subsequent events proved, the party leaders failed to honor their bipartisan commitments.

Despite the sour experience of the Botein Committee, we agreed to serve believing that such panels perform a genuine service to the public and the Bar.

The candidates came to us, one by one, each the embodiment of the popular belief that "every lawyer wants to be a judge."

Doris L. Sassower is a former president of the New York Women's Bar Association and served on the nine-member judicial selection committee discussed in this article.

Meeting almost every night over a fifteen-day period, interviewing several dozen candidates, intensively reviewing and investigating their credentials, the panel faced the difficult decision of choosing among them eight who would carry the banner of "preferred." The Reform Democrats had pledged to endorse from that number those who would fill the three positions. Hours of evaluation, discussion and then, eureka—agreement!

The task done, we went our respective ways, satisfied we had done our conscientious best, gratified that those chosen reflected their own merit, not their party service; their outstanding qualifications, not their "connections."

Minorities Considered

There was some consideration given the idea of judicial representation for our disadvantaged—the blacks, Puerto Ricans and other minorities, as well as for a woefully under-represented majority—women. The panel after all, not unintentionally, reflected these divergent groups. True, too, that the social philosophy of the various applicants who came before us preoccupied us in some measure in our deliberations.

But competence pure and simple, sheer worth undiluted by political involvement remained our unalterable guideposts.

It must be said to their credit (*Continued on page 3, column 5*)

Judicial-Selection Panels

(Continued)

that the Reform Democrats kept their commitment to the panel to endorse only those candidates the panel approved. As it became clear, no such commitment had been secured from the regulars. It would therefore be less than fair to condemn them for not following a similar course.

Yet, can they not be faulted for not having initiated a panel of their own or joined in the commitment to the one formed under the wing of the Reformers? The commonly understood purpose of such panels being to take the judiciary out of political hands, the inference is that the Regular Democrats had no wish to do so. The fact is that deals for the judicial plums were made before the Democratic Judicial Nominating Convention which only ratified a foregone conclusion among those in the political know, as far as the contested vacancies were concerned.

The numerical division of votes among the delegates to the Democratic Judicial Nominating Convention strictly on intra-party political lines, Regulars v. Reformers, made it obvious that the Reformers' effort to change the course of judicial power politics on the state Supreme Court level was hopeless, at least this time around.

Is there a lesson to be learned from this experience? Does the judicial pre-selection panel offer a viable means of achieving a better judiciary?

Discourage the Hack

On the plus side is the fact that those who came before our panel were almost uniformly of the highest calibre, many of the most brilliant scholars of the profession, our respected judges, our more successful lawyers. If, then, our screening panel did no more than offer recognition and new status to those candidates it recommended, that would be enough to justify it, for, in time, this might lead to their ultimate elevation to the Bench. The inherent virtue of a well-constituted panel is its tendency to discourage the political hack, the mediocrity, or the lawyer whose sole asset is "friends in the right places."

The question is how those genuinely concerned with the improvement of our judicial process can assure the selection of the former over the latter. One might also query whether the device of a screening panel can be made functional. This assumes that one does not wish to do away with party-dominated judicial conventions altogether. There are those who contend that the federal system of appointment is the superior one and produces judges of higher quality.

This is a reasonable expectation where appointments are made by a public official accountable to the people. Yet the appointive hand may also be vulnerable to political pressure and not necessarily point to qualifications alone. Still it is better than a system which pretends that the public elects our judges when, in fact, the choice is preordained so that what we have is appointment by a clique of party leaders not directly responsible to the public.

Certainly, a better judiciary would result from wider use of screening panels and, concomitantly, adoption of their recommendations by those making the appointments.

Vital Factors

The experience of this panel indicates that the workability of a pre-selection panel depends on two basic factors:

(1) The composition of the panel should be as broad-based as possible, including representatives from major county Bar associations as well as community organizations;

(2) Advance public assurance by party leaders (read appointing authorities) that they will choose only from among the panel's recommendations.

In essence, this entails a relinquishment of power by those in power. Some people may feel it is unrealistic to expect this to take place. Perhaps the day when the judiciary is wholly divorced from political influence can be seen only in the eyes of visionaries. But unrelenting public interest and the glare of publicity focused on every judicial vacancy can make that day come sooner.

Martindale-Hubbell Law Directory

NEW YORK

One Hundred and Twentieth Annual Edition

DORIS L. SASSOWER, P.C.

White Plains Office: 283 Soundview Avenue. Telephone: 914-997-1677.

Matrimonial, Real Estate, Commercial, Corporate, Trusts and Estates, Civil Rights.

DORIS L. SASSOWER, born New York, N.Y., September 25, 1932; admitted to bar, 1955, New York; 1961, U.S. Supreme Court, U.S. Claims Court, U.S. Court of Military Appeals and U.S. Court of International Trade. *Education:* Brooklyn College (B.A., summa cum laude, 1954); New York University (J.D., cum laude, 1955). Phi Beta Kappa. Florence Allen Scholar. Law Assistant; U.S. Attorney's Office, Southern District of New York, 1954-1955; Chief Justice Arthur T. Vanderbilt, Supreme Court of New Jersey, 1956-1957. President, Phi Beta Kappa Alumnae in New York, 1970-71. President, New York Women's Bar Association, 1968-69. President, Lawyers' Group of Brooklyn College Alumni Association, 1963-65. Recipient: Distinguished Woman Award, Northwood Institute, Midland, Michigan, 1976. Special Award "for outstanding achievements on behalf of women and children," National Organization for Women—NYS, 1981; New York Women's Sports Association Award "as champion of equal rights," 1981. Distinguished Alumna Award, Brooklyn College, 1973. Named Outstanding Young Woman of America, State of New York, 1969. Nominated as candidate for New York Court of Appeals, 1972. Columnist: ("Feminism and the Law") and Member, Editorial Board, Woman's Life Magazine, 1981. Author: Book Review, *Separation Agreements and Marital Contracts*, Trial Magazine, October, 1987; *Support Handbook*, *ABA Journal*, October, 1986; Anatomy of a Settlement Agreement Divorce Law Eduction Institute 1982 "Climax of a Custody Case," *Litigation*, Summer, 1982; "Finding a Divorce Lawyer you can Trust," *Scarsdale Inquirer*, May 20, 1982. "Is This Any Way To Run An Election?" *American Bar Association Journal*, August, 1980; "The Disposable Parent: The Case for Joint Custody," Trial Magazine, April, 1980. "Marriages in Turmoil: The Lawyer as Doctor," Journal of Psychiatry and Law, Fall, 1979. "Custody's Last Stand," Trial Magazine, September, 1979; "Sex Discrimination-How to Know It When You See It," *American Bar Association Section of Individual Rights and Responsibilities Newsletter*, Summer, 1976; "Sex Discrimination and The Law," *NY Women's Week*, November 8, 1976; "Women, Power and the Law," *American Bar Association Journal*, May, 1976; "The Chief Justice Wore a Red Dress," *Woman In the Year 2000*, Arbor House, 1974; "Women and the Judiciary: Undoing the Law of the Creator," *Judicature*, February, 1974; "Prostitution Review," *Juris Doctor*, February, 1974; "'No-Fault' Divorce and Women's Property Rights," *New York State Bar Journal*, November, 1973; "Marital Bliss: Till Divorce Do Us Part," *Juris Doctor*, April, 1973; "Women's Rights in Higher Education," *Current*, November, 1972; "Women and the Law: The Unfinished Revolution," *Human Rights*, Fall, 1972; "Matrimonial Law Reform: Equal Property Rights for Women," *New York State Bar Journal*, October, 1972, "Judicial Selection Panels: An Exercise in Futility?", *New York Law Journal*, October 22, 1971; "Women in the Law: The Second Hundred Years," *American Bar Association Journal*, April, 1971; "The Role of Lawyers in Women's Liberation," *New York Law Journal*, December 30, 1970; "The Legal Rights of Professional Women," *Contemporary Education*, February, 1972; "Women and the Legal Profession," *Student Lawyer Journal*, November, 1970; "Women in the Professions," *Women's Role in Contemporary Society*, 1972; "The Legal Profession and Women's Rights," *Rutgers Law Review*, Fall, 1970; "What's Wrong With Women Lawyers?", Trial Magazine, October-November, 1968. Address to: The National Conference of Bar Presidents, Congressional Record, Vol. 115, No. 24 E 815-6, February 5, 1969; The New York Womens Bar Association, Congressional Record, Vol. 114, No. E5267-8, June 11, 1968. Director: New York University Law Alumni Association, 1974; International Institute of Women Studies, 1971; Institute on Women's Wrongs, 1973; Executive Woman, 1973. Co-organizer, National Conference of Professional and Academic Women, 1970. Founder and Special Consultant, Professional Women's Caucus, 1970. Trustee, Supreme Court Library, White Plains, New York, by appointment of Governor Carey, 1977-1986 (Chair, 1982-1986). Elected Delegate, White House Conference on Small Business, 1986. Member, Panel of Arbitrators, American Arbitration Association. *Member:* The Association of Trial Lawyers of America; The Association of the Bar of the City of New York; Westchester County, New York State (Member: Judicial Selection Committee; Legislative Committee, Family Law Section), Federal and American (ABA Chair; National Conference of Lawyers and Social Workers, 1973-1974; Member, Sections on: Family Law; Individual Rights and Responsibilities Committee on Rights of Women; 1982; Litigation) Bar Associations; New York State Trial Lawyers Association; American Judicature Society; National Association of Women Lawyers (Official Observer to the U.N., 1969-1970); Consular Law Society; Roscoe Pound-American Trial Lawyers' Foundation; American Association for the International Commission of Jurists; Association of Feminist Consultants; Westchester Association of Women Business Owners; American Womens' Economic Development Corp.; Womens' Forum. Fellow: American Academy of Matrimonial Lawyers; New York Bar Foundation.

1989 edition

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
801 SECOND AVENUE
NEW YORK, NY 10017
(212) 949-8860

MEMBERS
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October 31, 1991

Ms. Doris L. Sassower
283 Soundview Avenue
White Plains, New York 10606

Dear Ms. Sassower:

This is to acknowledge receipt by the State Commission on Judicial Conduct of your complaint dated October 24, 1991.

Your complaint will be presented to the Commission, which will decide whether or not to inquire into it. We will be in touch with you after the Commission has had the opportunity to review the matter.

Very truly yours,

Lee Kiklier
Administrative Assistant

LK:fb

NINTH JUDICIAL COMMITTEE

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

January 2, 1992

Lee Kiklier, Administrative Assistant
Commission on Judicial Conduct
801 Second Avenue
New York, New York 10017

Dear Mr. Kiklier:

Following up our telephone conversation earlier today, I am enclosing a copy of my most recent correspondence with Governor Cuomo, dated December 19, 1991, which you may consider as a new and separate complaint against Justice Lawrence E. Kahn.

Frankly, the Ninth Judicial Committee was most disappointed that your form letter acknowledging receipt of my October 24, 1991 letter to the Governor stated that my complaint "would be presented to the Commission, which will decide whether or not to inquire into it". This is precisely what you said in your form letter, dated November 10, 1989, in response to the November 3, 1989 complaint letter written to the Commission by our founder and first Chairman, Eli Vigliano, Esq., on the same subject.

We are at a loss to understand why the Commission has to "decide whether or not to inquire" when the evidence clearly shows unlawful and unethical conduct by sitting judges and judicial candidates. The failure of the Commission to promptly investigate the 1989 Three-Year Deal trading seven judgeships in the Ninth Judicial District and its implementation at fraudulently held Judicial Nominating Conventions means that these individuals have not only profited from their wrong-doing, but are now supposed role models sitting in judgment of others.

Many of the facts set forth in my October 24, 1991 letter have been previously made known to the Commission--which already possesses many of the documents referred to therein. Indeed, the second paragraph of my October 24, 1991 letter to the Governor refers to Mr. Vigliano's letter of more than two years ago. As noted, that letter, with exhibits, was sent to the Commission on November 3, 1989--and acknowledged by you.

Moreover, extensive materials concerning the Deal and the 1990 case challenging it, Castracan v. Colavita, were filed with your Deputy Administrator, Robert H. Tembeckjian. At his invitation, Mr. Vigliano and I travelled down from White Plains to the Commission's offices in New York City on May 7, 1991, where we spent several hours discussing those materials in person.

Since then, we have not heard from the Commission as to any action taken or any investigation by your office into the palpably unethical aspects of the Deal agreed to by judges within your jurisdiction--conduct, which your own Commission member, Justice William Thompson stated "would not be approved by the Commission on Judicial Conduct"[1].

Every objective lawyer hearing about the 1989 Deal unanimously agrees it is contrary to law, the Code of Judicial Conduct, and the Rules of the Chief Administrator of the Courts. They are incredulous that its participants and beneficiaries have been allowed to "get away with it" by state judges who have chosen to shut their eyes to patently unlawful and unethical, if not criminal, acts by those who were part of this "judicial Watergate".

Lawyers and judges are both bound by an ethical duty to maintain the integrity of the legal profession. So long as no action is taken relative to the Three-Year Deal or the serious violations of the Election Law at the Judicial Nominating Conventions which implemented it[2], respect for our legal system and the Commission is necessarily diminished. The public has already concluded from the cases of Castracan v. Colavita and Sady v. Murphy that the integrity of the judiciary is not being protected by our courts and that judges are unwilling to discipline their brethren--where the issues to be adjudicated affect or might reflect upon them personally[3].

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[1] Justice Thompson's candid comments on the Deal--and those of Presiding Justice Guy Mangano and Justice Sullivan were made this past summer during oral argument before the Appellate Division, Second Department in the case of Sady v. Murphy. Their remarks are discussed at pages 4-5 of my October 24, 1991 letter to Governor Cuomo.

[2] As highlighted by my December 19, 1991 letter to Governor Cuomo and its enclosures, the affidavits submitted in the case Castracan v. Colavita showed, inter alia, that the 1990 Democratic Judicial Nominating Convention, like that of 1989, was conducted without a quorum.

[3] It must be noted that three out of the five members of the Appellate Division, Third Department, deciding the appeal involving the legality of the 1989 Cross-Endorsements Deal at

This cynicism extends to the Commission on Judicial Conduct. As shown from the enclosed "Letter to the Editor" printed in the December 30, 1991 issue of the Gannett Newspapers, the Commission is perceived as sweeping judicial misconduct "under the rug" precisely because it is "comprised of former judges and people of the like." The clear implication is that judges, rather than adjudicating according to the law and facts, are bound by their own partisan interests.

Plainly, immediate action against the now sitting judges who participated in the fraud at the Judicial Nominating Conventions and the Three-Year Deal would go far to change this perception of the Commission.

As the aforesaid "Letter to the Editor" points out, we are presently confronted with a "tidal wave of corruption and misconduct within our government and judicial system here in Westchester". This view is a reflection of the findings of the Commission on Governmental Integrity after a 2-1/2 year investigation, costing the taxpayers some $10,000,000[4].

---

issue in the Castracan v. Colavita case had themselves received major-party cross-endorsements--a fact they did not disclose.

[4] As part thereof, an 18-month investigation in Westchester County was conducted by the Commission--culminating in a Report entitled "The Blurred Line: Party Politics and Government in Westchester County". The Introduction to that Report made the following statement:

> "The Commission's investigation revealed a case study of the relationship between party politics and government in a county dominated by a powerful local political party and its leader. The investigation disclosed that the local Republican party and its leader, Anthony Colavita, wield considerable power and influence in county personnel and budgetary matters and that Colavita is perceived by people both in and out of government as able to influence the processes of Westchester County government. The investigation revealed that Colavita has worked himself into the processes of both the legislative and executive branches of county government to an extent that makes him a de facto official of that government."

It should be noted that the mandate of the Commission on Government Integrity did not permit it to investigate the judiciary directly. However, the Ninth Judicial Committee can detail Mr. Colavita's controlling influence on judicial nominations, well documented in the case of Castracan v. Colavita.

Nonetheless, while the people most directly affected by such corruption and misconduct by public officials are suffering, the courts have done nothing about it, the Governor has done nothing about it--and, likewise, the Commission on Judicial Conduct, as far as we know, has not even undertaken an investigation--let alone taken disciplinary action.

We would greatly appreciate hearing from you with some encouraging progress report--rather than just another form letter signifying no awareness of any relationship with prior communications relative to the Three-Year Deal, the judges involved in it, and the profound impact the Deal--and the unfit judges it generated--have had on the lives of people who live and work in the Ninth Judicial District, as set forth in my October 24, 1991 letter to the Governor. For your further information, I am enclosing a copy of my October 31, 1991 letter to Governor Cuomo highlighting its role in contributing to the present financial crisis in the courts.

Needless to say, I am prepared to offer live testimony under oath relative to any of the serious allegations I have made so that you and the Commission can be fully satisfied as to the accuracy, truthfulness and reliability thereof. In that connection, I wish to state that in 1989 I was elected a Fellow of the American Bar Foundation, an honor reserved for "less than one-third of one per cent of the practicing bar". At such time as you desire, I have additional documentary materials to supplement your files bearing on the fitness of individual judges in this District and the biased and/or incompetent manner in which they perform their judicial duties--a most shameful reflection of the political "facts of (courthouse) life" here--well known to long-time practitioners in these parts.

Very truly yours,

DORIS L. SASSOWER
Director, Ninth Judicial Committee

DLS/er

Enclosures: (1) 12/19/91 ltr to Governor Cuomo
(2) 10/31/91 ltr to Governor Cuomo
(3) "Letter to the Editor":
12/30/91, Gannett Newspapers

cc: Hon. Mario Cuomo, Governor State of New York
Chief Judge Sol Wachtler, Court of Appeals
John D. Feerick, Chairman
Commission on Government Integrity

LETTERS

Impartial body must oversee courts

I would like to commend Cameron McWhirter for his Dec. 17 article on Family Judge Adrienne Scancarelli. Likewise, I would also like to commend the attorney, Anthony Picciolo, for filing the complaint against Judge Scancarelli. I had similar experiences with the same judge and the Family Court here in Westchester. As we all know, the Family Court's jurisdiction is primarily with matters of family offense, child support, paternity matters, juvenile delinquency and child neglect cases. It's about time that allegations of misconduct in the Family Court and the Supreme Court be exposed in the media. A Family Court judge, or any judge for that matter, should not be exempt from this type of exposure. One of the problems to begin with is that the term of a Family Court judge lasts for 10 years. They start to feel very secure in their position, and start to think they are God, and that is when the trouble begins.

The time has come for some type of impartial governing body to preside over the courts here in Westchester, and I do not include the Commission on Judicial Conduct either. How can the commission be impartial, when it itself is comprised of former judges and people of the like? If rape cases can be televised in prime time with children at home watching, there there is no reason why Family Court misconduct, or allegations of, should not be regularly exposed in the papers and investigated as well. And by the way, it shouldn't take an attorney to file a complaint about a judge's conduct to get the right attention. You see, I know a little bit about the Commission on Judicial Conduct. I've filed numerous complaints about two judges here in Westchester, and in both cases, the commission refused to investigate them. Ten months after my complaints on the first judge, he was suspended from the bench (with pay); in another case, 15 months after my complaints on the second judge, she is now the very subject of the Dec. 17 article.

We need people with guts to turn back the tidal wave of corruption and misconduct within our government and judicial system here in Westchester.

PAUL V. PONTORNO
Yorktown Heights

DORIS L. SASSOWER

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By Fax and Mail
518-474-1513

October 31, 1991

Hon. Mario Cuomo
Executive Chamber
Albany, New York 12224

Dear Governor Cuomo:

Your October 28, 1991 letter to the legislative leadership of both houses stated:

> "During the past month, we have heard from judges, court personnel, lawyers and outside observers about the rampant waste in our judicial system. These reports, although troubling, are not surprising, because we have all believed for a long time that the courts are inefficient." (emphasis added)

Frankly, we are surprised that your letter fails to identify what our letter--faxed to you four days earlier--specifically pointed out as a major source of that inefficiency: incompetent and corrupt judges, who sit on the bench by virtue of their political ties. Our letter was detailed and specific, and spoke of a situation so serious as to warrant your appointment of a Special Prosecutor. Yet, no reference was made by you to this fundamental problem which often results in sloppy, patently biased and wrong decisions requiring appeals by litigants hoping to find justice in the appellate courts.

We strongly disagree with the statements of the Chief Administrator of the Courts, Matthew T. Crosson, quoted on the front page of the October 29, 1991 New York Law Journal, describing your letter as "asinine" and accusing you of "trying to threaten and intimidate the Legislature into not resolving this matter". We do not see it that way at all. We see no reason why the judiciary should be exempt from the obligation to account for wasteful mismanagement. It is bad enough that judicial immunity protects judges individually from the horrendous damage their erroneous decisions inflict upon litigants--without denying the public the right to know the cost-impact of such incompetence and/or misconduct on the system as a whole.

When I served as the first woman appointed to the Judicial Selection Committee of the New York State Bar Association from 1972-1980, we observed high standards before giving our approval to any judicial aspirant. Those standards were designed not only to ensure a quality judiciary, but with an eye to cost-efficiency as well. It was our view, for example, that approval should not be given to a candidate who, due to age, was unable to serve out more than half his elected term of office. The reason for this was precisely because it represented too high a cost to the State when such individual stepped down. Just as in the private sector, it is more economical not to have frequent turnover. Indeed, what we are talking about here is not just the replacement and retraining of the judge involved--but his support staff as well--all of whom the judge himself hires. In addition, the cost of pension, health, and other benefits to older judicial candidates can only be absorbed economically if it can be amortized over the full term--or, at least, a major portion thereof.

It might be well for Mr. Crosson to develop some statistical data on the cost to the system of judges serving only a fractional part of their term or of being of advanced age when they commence a term. When I attempted to gain such information from the Office of Court Administration this morning, the principal analyst I spoke with thought it was "a very interesting perspective", but said they had "no studies on the subject". It would seem obvious that fundamental cost-effective principles can, and should, be applied to running the State court system.

It should also be obvious that a judiciary whose judges are not chosen on merit is necessarily wasteful and inefficient. The collapse of the system is directly attributable to the failure to require nominations of judges to conform to reasonable standards of pre-nominating screening selection. It is no longer the litigants alone who are suffering from unfit judges--which has been ignored year after year--but the system itself which is now faltering because it can no longer keep up with the caseloads that these judges have generated.

In too many parts of this State merit selection of judges remains an alien concept. This is exemplified in the Ninth Judicial District where Democratic and Republican party leaders brazenly traded seven judgships in the infamous 1989 Three-Year Deal: nominating candidates to Supreme Court office who could not, by virtue of their age, serve even half their terms, or who, by virtue of contracted-for resignations, were obligated to resign from their fourteen year posts--after eight months in office.

Where judges quit the bench because they have contracted to resign to create judicial vacancies for other candidates to fill, the cost of such politically-dictated turnover is clearly being borne by the public to serve private ends. The cost becomes even higher where the nominee has no judicial experience before taking the bench.

We applaud the statement in your October 28, 1991 letter to legislative leaders:

> "I am prepared to work with you to conduct an exhaustive study of waste in the judiciary--calling on anyone who has direct knowledge of areas of waste and investigate their claims." (emphasis added)

We intend to hold you to that commitment--and will support your effort in the legislature to the fullest extent. In the interest of an independent, non-political, and affordable judiciary, we eagerly await the opportunity to make our testimonial and documentary contribution to assist you in implementing "new strategies to better utilize constrained resources more effectively".

Most respectfully

DORIS L. SASSOWER
Director, NINTH JUDICIAL COMMITTEE

cc: Chief Judge Sol Wachtler, Court of Appeals
Matthew T. Crosson, Chief Administrator of the Courts
Hon. Ralph Marino, President Pro Tem and Majority Leader
Hon. Mel Miller, Speaker, N.Y. State Assembly
Hon. Christopher J. Mega
Chairman, N.Y. State Senate Judiciary Committee
Hon. G. Oliver Koppell
Chairman, N.Y. State Assembly Judiciary Committee
Hon. Manfred Orenstein, N.Y. State Senate Minority Leader
Hon. Clarence Rappleyea, N.Y. State Assembly Minority Leader
Hon. Saul Weprin, Chairman, Ways and Means Committee
Hon. Sheldon Silver, Assembly Codes Committee
Dr. M. L. Henry, Director, Fund for Modern Courts

NINTH JUDICIAL COMMITTEE

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By Fax and Mail
518-474-1513

December 19, 1991

Honorable Mario Cuomo
Governor, State of New York
Executive Chamber
Albany, New York 12224

Dear Governor Cuomo:

Almost two months have elapsed since we transmitted to you our letter, dated October 24, 1991, reiterating our request for a Special Prosecutor. We have received no response whatever from you to that communication.

We understand that you have been very busy trying to decide whether to run for President, but that letter, as well as our letter of October 31, 1991, presented vital information as to two further issues which have been absorbing your attention--and which are focal to your current litigation with Chief Judge Wachtler: (1) the budget crisis; and (2) the inefficiency and waste in the judiciary.

Your public statement that you cannot get a fair trial in the state courts--where your adversary is the Chief Judge of the Court of Appeals and the lawsuit involves whether more money should be budgeted for the courts--is an extraordinary acknowledgment of precisely what our October 24th letter complained about: judges who do not decide according to the law and the facts, but rather for political considerations.

Indeed, you have even more reason for concern now that Wachtler v. Cuomo has been assigned to State Supreme Court Justice Lawrence E. Kahn--the very same judge who decided Castracan v. Colavita. As you know, the Castracan case involved a patently illegal and unethical deal in which the two major political parties traded seven judgeships over a three year period, as well as blatant violations of the Election Law at the judicial nominating conventions which implemented the deal.

Justice Kahn's decision dismissing that politically sensitive case, without any fact-finding hearing, was inexplicable--except that it served to protect the lawyers and judges involved in the deal. On its face, Justice Kahn's decision ignored the elementary legal standard for granting a motion "to dismiss for failure to state a cause of action"--requiring that the pleaded allegations, and all reasonable inferences therefrom, be accepted as true. Moreover, as shown, inter alia, by the three eyewitness' affidavits submitted in support of the Petition, Justice Kahn made a factual finding which flew in the face of the record before him. So that you can immediately determine this for yourself, a copy of Justice Kahn's October 16, 1990 decision and the three affidavits are enclosed.

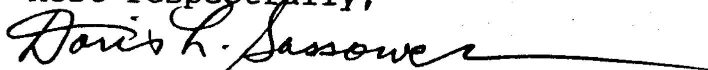
As our October 24, 1991 letter discussed, the politically-suspect decisions in Castracan v. Colavita and its 1991 progeny Sady v. Murphy--from the Supreme Court on up to the Court of Appeals, sustaining dismissals in both cases without any hearing on the merits--demonstrate why the court system is falling apart. It is not because there is insufficient funding, but because the system has been contaminated by judges willing to subordinate "the rule of law" to the demands of party politics. Our October 24, 1991 letter fully detailed the relevant facts and referred you to appropriate court records and legal documents.

The aforesaid corruptive political influences demand your immediate attention. The Report of the New York State Commission on Government Integrity--a Commission you created in response to corruption scandals involving government officials--described the gross political dependence of our state judiciary and recommended the complete overhaul of the process of judicial election.

Chief Judge Wachtler himself candidly testified before the Commission on Government Integrity as to the powerful political forces influencing and compromising the judiciary's independence.

In light of Judge Wachtler's aforesaid testimony--contributing to a Report that cost the citizens of this State close to $10,000,000--we respectfully submit that the time is overdue to implement the Commission's recommendations and to investigate the extent to which the lack of judicial competence and integrity has exacerbated, if not created, the financial crisis in our courts.

Most respectfully,



DORIS L. SASSOWER
Director, Ninth Judicial Committee

DLS/er
Enclosures

cc: Chief Judge Sol Wachtler, Court of Appeals
Dean John D. Feerick, Fordham University School of Law
Matthew T. Crosson, Chief Administrator of the Courts
Hon. Ralph Marino, President Pro Tem and Majority Leader
Hon. Saul Weprin, Speaker N.Y. State Assembly
Hon. Christopher J. Mega
Chairman, N.Y. State Senate Judiciary Committee
Hon. G. Oliver Koppell
Chairman, N.Y. State Assembly Judiciary Committee
Hon. Gerald Stern, Commission on Judicial Conduct
Dr. M. L. Henry, Fund for Modern Courts

914 ~~997-1677~~
684-6554

STATE OF NEW YORK COUNTY OF ALBANY

SUPREME COURT

In the Matter of the Application of MARIO M. CASTRACAN and VINCENT F. BONELLI, acting Pro Bono Publico,

Petitioners,

for an order pursuant to Sections 16-100, 16-102, 16-104, 16-106 and 16-116 of the Election Law,

-against-

ANTHONY M. COLAVITA, Esq., Chairman, WESTCHESTER REPUBLICAN COUNTY COMMITTEE; GUY T. PARISI, Esq., DENNIS MEHIEL, Esq., Chairman, WESTCHESTER DEMOCRATIC COUNTY COMMITTEE; RICHARD L. WEINGARTEN, Esq., LOUIS A. BREVETTI, Esq., HON. FRANCIS A. NICOLAI, HOWARD MILLER, Esq., ALBERT J. EMANUELLI, Esq., R. WELLS STOUT, HELENA DONAHUE, EVELYN AQUILA, Commissioners constituting the NEW YORK STATE BOARD OF ELECTIONS, ANTONIA R. D'APICE, MARION B. OLDI, Commissioners constituting the WESTCHESTER COUNTY BOARD OF ELECTIONS,

Respondents,

for an order declaring invalid the Certificates purporting to designate Respondents HON. FRANCIS A. NICOLAI and HOWARD MILLER, Esq., as candidates for the office of Justice of the Supreme Court of the State of New York, Ninth Judicial District, and the Petitioners purporting to designate ALBERT J. EMANUELLI, Esq. a candidate for the office of Surrogate of Westchester County to be held in the general election of November 6, 1990.

Supreme Court - Request for Judicial Intervention

October 12, 1990-Special Term RJI 0190 ST2747 Index No. 6056-90

JUSTICE LAWRENCE E. KAHN, Presiding

APPEARANCES:

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KAHN, J.

This proceeding seeks to review the nomination of three candidates for election to the office of Justice of the Supreme Court for the Ninth Judicial District of the State of New York. Specific reference is made to the September 18, 1990 Republican Judicial Convention and the September 24, 1990 Democratic Judicial Convention. The actions taken at the aforesaid conventions purport to be in furtherance of a written resolution of the Westchester County Republican and Democratic Committees, which adopted a three-year plan for the cross-endorsement of various judges for County Court, Family Court, Surrogate Court and Supreme Court. In this regard, there is no dispute that the resolution exists or that it even goes so far as to provide that once nominated, each individual will pledge 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." Thus, the agreement appears to even extend to the hiring of staff personnel.

Various defendants have moved to dismiss upon considerations of jurisdiction, failure to state cause of action, latches, statute of limitations, etc. Petitioners have also sought a directive from the court that certain respondents are in default for having failed to timely serve pleadings or defectively verified pleadings. However, in the

interests of judicial economy and with an acknowledgment that this decision must be rendered in an exceedingly expeditious manner, the court shall directly address the merits of the petition itself, in order that the inevitable appeal process may be commenced in a timely fashion.

Cross-endorsement of judicial candidates by the major political parties has long been the subject of substantial concern among various segments of the voting public. It has been the focus of study by the Commission on Government Integrity, The Fund for Modern Courts, and even the Chief Judge of the Court of Appeals. However, and most importantly in the context of this judicial proceeding, the practice of cross-endorsement of judicial candidates is not presently prohibited by the Election Law. Further, while the enforceability of the purported resolution would appear to be exceedingly questionable, the reality is that it does not result in the nomination or designation of a candidate for Supreme Court Justice. Only the delegates to a properly convened Judicial District convention can take such action (Election Law, section 6-106).

The Court of Appeals has reiterated that the Legislature of this State has "manifested an intent of general non-interference with the internal affairs of political parties." (**Bloom v Nataro**, 67 NY2d 1048, 1049). "[J]udicial intervention should only be undertaken as a last resort." (**Matter of Bachmann v Coyne**, 99 AD2d 742.) Certainly, any

rule of the Westchester County Republican or Demcratic Committee which purports to select candidates for the office of Supreme Court Justice must be considered inconsistent with the Election Law, which leaves that selection to the delegates to a judicial convention. However, once having convened a proper convention, and having followed the mandates of the Election Law, any relief premised upon the invalidity of the so-called "Three Year Plan" is precluded. In the case at bar, there is no proof that the judicial conventions at issue were not legally organized, with a quorum present, and that a majority of that quorum duly voted for the candidates named as respondents hereto. As such, the petition does not state grounds upon which relief may be granted (**Matter of Hobson v Lomenzo**, 30 AD2d 981).

The scenario, as presented by the submissions presently before the court, no doubt will continue to fuel the debate concerning the manner in which candidates for judicial office are selected. However, the proper forum must be the Legislature of the State of New York, which has the sole power to amend the process by which judicial candidates are chosen.

The motion of respondent Parisi for a judgment dismissing the proceeding upon the ground that the petition fails to state a cause of action shall be granted. As aforesaid, dismissal of the petition on the merits, renders moot questions of service, timely submission of pleadings and other procedural issues.

So Ordered! 172

DATED: October 16, 1990

Albany, New York

Entered 10/17/90

10/17/90

SUPREME COURT STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of the Application of
MARIO M. CASTRACAN and VINCENT F. BONELLI,
acting Pro Bono Publico,

Petitioners,

Index No. 6056/90

for an Order, pursuant to Sections
16-100, 16-102, 16-104, 16-106 and
16-116 of the Election Law,

Affidavit

-vs-

ANTHONY J. COLAVITA, Esq., Chairman,
WESTCHESTER REPUBLICAN COUNTY COMMITTEE,
GUY T. PARISI, Esq., DENNIS MEHIEL, Esq.,
Chairman, WESTCHESTER DEMOCRATIC COUNTY
COMMITTEE, RICHARD L. WEINGARTEN, Esq.,
LOUIS A. BREVETTI, Esq., Hon. FRANCIS A.
NICOLAI, HOWARD MILLER, Esq., ALBERT J.
EMANUELLI, Esq., R. WELLS STOUT,
HELENA DONAHUE, EVELYN AQUILA, Commissioners
constituting the NEW YORK STATE BOARD
OF ELECTIONS, ANTONIA R. D'APICE,
MARION B. OLDI, Commissioners constituting
the WESTCHESTER COUNTY BOARD OF ELECTIONS,

Respondents,

for an Order declaring invalid the Certificates
purporting to designate Respondents Hon. FRANCIS A.
NICOLAI and HOWARD MILLER, Esq. as candidates for
the office of Justice of the Supreme Court of the
State of New York, Ninth Judicial District, and
the Petitions purporting to designate ALBERT J.
EMANUELLI, Esq. a candidate for the office of
Surrogate of Westchester County to be held in
the general election of November 6, 1990.

---x

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

VINCENT F. BONELLI, being duly sworn, deposes and says:

1. I am one of the Petitioners in the above-entitled matter and submit this Affidavit in support of the relief requested in my Petition and Order to Show Cause instituting the above-entitled special proceeding, dated September 26, 1990.

2. I am a full-time professor of history at Bronx Community College of the City University of New York and an adjunct professor of history and government at the Westchester Community College in Valhalla, New York, with a doctorate in history and political science. I have been so employed for twenty (20) years.

3. On Monday evening, September 24, 1990, I, together with Eli Vigliano, Esq., Doris L. Sassower, Esq., and Filomena Vigliano, went to the Days' Inn located on White Plains Road in Greenburgh, New York, where the Democratic Judicial Nominating Convention was scheduled to take place at 7:00 p.m. We arrived at the Days' Inn at that hour.

4. When we went into the lobby, we were directed to Meeting Rooms A and B, where we were told the Convention would take place. We proceeded to the entrance of said Meeting Rooms, where an attendance sheet on a table was available to sign. A woman seated at the table stated that one did not have to be a Delegate or an Alternate Delegate in order to sign the attendance sheet. Mr. Vigliano signed the sheet, the rest of us did not.

5. We then entered the meeting room, which had a movable partition, separating rooms A and B, which was recessed into a slot in the wall. There were approximately 25-30 people seated at the time. The chairs were arranged in rows of five on one side, with a middle aisle separating four chairs on the other side. There were a total of eight rows on each side. A count showed 32 chairs on one side, 37 on the other, totaling 69 seats. We occupied four of the 69 seats. There was also a dais with four chairs and side tables set up with refreshments.

6. At about 7:40 p.m., a man identified himself as DENNIS MEHIEL, Chairman of the Westchester Democratic County Committee. He called the meeting to order. He said he was reading a letter sent to him by Hon. JOHN MARINO, Chairman of the Democratic State Committee, which stated that he had been designated as the person to convene the Convention and to call the Convention to order.

7. Not all the seat were occupied at that time. There were about 10-15 people milling about in the rear of the room, and 8-10 people milling about at the side of the room where a table had been set up with sodas, coffee, and pastries.

8. When Mr. MEHIEL concluded reading the aforesaid letter from Mr. MARINO, he stated he would call the Roll. A

motion was thereupon made that the calling of the Roll be dispensed with. Mr. MEHIEL then turned to a man later identified as J. HASHMALL, Esq. and requested a ruling as to the legality of dispensing with the Roll Call. Mr. HASHMALL responded that, in the opinion of counsel to the County Committee, if a resolution dispensing with the calling of the Roll was adopted unanimously, the Convention could legally be organized and proceed with conducting its business.

9. Mr. MEHIEL thereupon accepted the motion, which was seconded. He called for a vote. A number of people raised their hands and said "Aye". Mr. MEHIEL asked if there were any "Nays"; none were expressed. The Chairman made no inquiry as to the identity or credentials of the persons voting, nor did he attempt to establish the presence of a quorum. Nevertheless, he announced that by the unanimous adoption of the motion to dispense with the Roll, it was legal and valid for the Convention to proceed with its business.

10. Mr. MEHIEL thereupon accepted a motion to elect a Temporary Chairman to the Convention. An individual nominated Jay B. HASHMALL, Esq. The motion was seconded. A voice vote was taken and Mr. HASHMALL was unanimously elected Temporary Chairman. Thereupon, Mr. MEHIEL turned the meeting over to Mr. HASHMALL.

11. Thereupon, Mr. HASHMALL called for a nomination for the election of a Temporary Secretary, and a MARC OXMAN was nominated. The nomination was seconded. Nominations were closed. A voice vote was taken and Mr. OXMAN was elected Temporary Secretary.

12. Mr. HASHMALL then said that the business of the Convention was to nominate three (3) candidates to fill the three (3) vacancies in the office of Justice of the Supreme Court of the State of New York for the Ninth Judicial District and that nominations would be in order. He then recognized THOMAS ABINANTI, Esq., who nominated JOAN LEFKOWITZ as a candidate for one of the three vacancies. The nomination was seconded. Thereupon Mr. KENNETH P. ZEBROSKI was recognized, who nominated FRANCIS A. NICOLAI for the second vacancy, and the nomination was seconded. Mr. HASHMALL then recognized Mr. WILLIAM FRANK, who nominated HOWARD MILLER, Esq., for the third vacancy. The nomination was, likewise, seconded. Mr. HASHMALL then asked whether there were any other nominations. There being none, a motion to close nominations was made, seconded, and carried by a voice vote.

13. Thereupon Mr. HASHMALL asked for a motion that the Secretary cast one ballot for the adoption of the resolution nominating JOAN LEFKOWITZ, FRANCIS A. NICOLAI, and HOWARD MILLER as the candidates of the Democratic Party to fill the three vacancies for Supreme Court Justices. Such motion was made,

seconded, and a voice vote taken. All "Ayes" were heard, and there being no "Nays", the one ballot was cast for said nominations.

14. Mr. HASHMALL then recognized DIANA JUETTNER, Esq., who made a motion naming certain individuals to constitute the Committee on Vacancies, which motion was seconded and adopted by voice vote.

15. Acceptance speeches by each of the Candidates were then given.

16. Thereupon, Mr. HASHMALL entertained a motion to adjourn the meeting, which was seconded, a vote taken thereon, and the resolution was adopted at approximately 8:10 p.m. The Convention then adjourned.

17. At that point, Mr. Vigliano and I left the room and went into the lobby. Mr. Vigliano spoke to some man I did not know. Ms. Sassower, who had previously left the meeting room, was speaking to various individuals milling about in the lobby.

18. I can state unequivocally that no Roll Call was ever taken during the proceedings I attended, which purported to be a Democratic Judicial Nominating Convention. Moreover, I have

since learned that there were 129 Judicial Delegates and 129 Alternate Delegates elected in 1990. However, I am informed that Meeting Rooms A and B could not physically provide seating capacity for 258 Delegates and Alternates. The rooms were only set up with a total seating to accommodate no more than 75 persons.

19. It is clear that a quorum of the Delegates was not present, which would have required at least 65 Delegates and/or Alternates to be in attendance. In addition to the four of us, who were not Delegates or Alternate Delegates, it appeared that there were many other people in the room, who were likewise not Delegates or Alternates. This became apparent when acceptance speeches were made by the three nominees, at which time their various relatives and friends were identified.

20. There was no way provided to verify how many people sitting in the chairs in the Meeting Room on that night were, in fact, duly-elected Delegates or Alternates, to the Convention. Delegates and Alternates were not provided with any badge or other indicia of their status. There was no inquiry or interest by those in charge into the status of anyone sitting in the room--or their right to be counted in a quorum or their right to vote. Indeed, on several occasions, Mr. Vigliano's mother, Filomena Vigliano, in the spirit of cooperation, said "Aye", without challenge, to a number of motions being voted upon.

21. Based on what I saw and heard that night, there is not a shred of doubt (and it should be undisputed) that the judicial nominees for the Supreme Court of the Ninth Judicial District, named on the Certificate filed with the New York State Board of Elections, were not duly nominated at a duly constituted Convention, at which a majority of Delegates or Alternates entitled to vote were present to constitute a legal quorum, as required by applicable provisions of the Election Law. The most elemental requirement of duly-electing nominees and adopting resolutions at a Convention is the fundamental determination as to whether a quorum of the duly-elected Delegates and Alternates are present and voting. The vote to dispense with calling the Roll, without first ascertaining that there was a legal quorum present and entitled to vote thereon, plainly rendered all resulting votes meaningless. It should be declared void by this Court.

WHEREFORE, it is respectfully prayed that the aforesaid judicial nominations of Hon. FRANCIS A. NICOLAI and HOWARD MILLER, Esq. be invalidated, and that the additional relief requested in my Petition and Order to Show Cause be granted in its entirety.

S/
VINCENT F. BONELLI

Sworn to before me this
14 day of October, 1990

DORIS L. SASSOWER
Notary Public, State of New York
No. 60-3457772
Qualified in Westchester County
Term Expires March 30, 1991

SUPREME COURT STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of the Application of
MARIO M. CASTRACAN and VINCENT F. BONELLI,
acting Pro Bono Publico,

Petitioners,

for an Order, pursuant to Sections 16-100, 16-102, 16-104, 16-106 and 16-116 of the Election Law,

Index No. 6056/90

Affidavit

-vs-

ANTHONY J. COLAVITA, Esq., Chairman, WESTCHESTER REPUBLICAN COUNTY COMMITTEE, GUY T. PARISI, Esq., DENNIS MEHIEL, Esq., Chairman, WESTCHESTER DEMOCRATIC COUNTY COMMITTEE, RICHARD L. WEINGARTEN, Esq., LOUIS A. BREVETTI, Esq., Hon. FRANCIS A. NICOLAI, HOWARD MILLER, Esq., ALBERT J. EMANUELLI, Esq., R. WELLS STOUT, HELENA DONAHUE, EVELYN AQUILA, Commissioners constituting the NEW YORK STATE BOARD OF ELECTIONS, ANTONIA R. D'APICE, MARION B. OLDI, Commissioners constituting the WESTCHESTER COUNTY BOARD OF ELECTIONS,

Respondents,

for an Order declaring invalid the Certificates purporting to designate Respondents Hon. FRANCIS A. NICOLAI and HOWARD MILLER, Esq. as candidates for the office of Justice of the Supreme Court of the State of New York, Ninth Judicial District, and the Petitions purporting to designate ALBERT J. EMANUELLI, Esq. a candidate for the office of Surrogate of Westchester County to be held in the general election of November 6, 1990.

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STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELI VIGLIANO, being duly sworn, deposes and says:

1. I am an attorney licensed to practise law in the State of New York since 1950. I am currently Chairman of the Ninth Judicial Committee, a group organized in Westchester County in 1989, comprised of lawyers and non-lawyers working to assure that the most qualified judges are chosen, that politics and politicians are removed as far as possible from the judicial arena and, in particular, to assure that the election of Judges in the Ninth Judicial District is accomplished in accordance with the legal requirements of the Election Law and Constitution of the State of New York.

2. The origin of this group came out of my observation of the manner in which the Judicial Nominating Conventions in the Ninth Judicial District are run and their failure to conform to the most fundamental procedural requirements of the Election Law of the State of New York.

3. On August 23, 1989, I attended a meeting of the Executive Committee of the Westchester County Democratic Party, at its former offices at 203 Main Street, White Plains, New York. I arrived at the meeting at about 8:00 p.m. There were approximately 30 individuals in attendance, who were, I was told, members of the Westchester Democratic County Executive Committee. RICHARD L. WEINGARTEN, Esq., the then Chairman of the WESTCHESTER DEMOCRATIC COUNTY COMMITTEE was presiding. Mr. WEINGARTEN called the meeting to order and explained in detail

the terms of an agreement that had been arrived at with the WESTCHESTER REPUBLICAN COUNTY COMMITTEE, providing for the election of Supreme Court Judges in Westchester County for the next three years, i.e., 1989, 1990, and 1991 (the "Three Year Plan").

4. Mr. WEINGARTEN outlined the benefits accruing by WESTCHESTER DEMOCRATIC COUNTY COMMITTEE becoming a party to this agreement--that by cross-endorsing the two Republican nominees, ALBERT J. EMANUELLI, Esq. and Hon. JOSEPH JIUDICE for two of the three Supreme Court vacancies in 1989, the election of SAMUEL G. FREDMAN, a Democrat, to the third vacancy would be assured. Mr. WEINGARTEN further stated that Mr. EMANUELLI would resign in 1990, eight months after his induction into office, so that he could become the cross-endorsed candidate for the office of Surrogate of Westchester County. This was necessary to satisfy Mr. COLAVITA that the Republicans would keep the Surrogate office. The Supreme Court vacancy created by Mr. EMANUELLI's resignation would then be filled by a Democratic County Court Judge, FRANCIS A. NICOLAI. In 1991, the vacancy created in the County Court by the elevation of FRANCIS A. NICOLAI to the Supreme Court would be filled by T. EMMET MURPHY, a Democratic City Court Judge, with ADRIENNE H. SCANCARELLI, a Republican, cross-endorsed for re-election to the office of Family Court Judge, Westchester County. All judicial nominees, including Mr. EMANUELLI, would pledge that after their election, they would

give out their patronage on an equal basis, according to the recommendations of the two party leaders.

5. Some discussion ensued, primarily by Mr. M. PAUL REDD, who I believe was a member of the Executive Committee, complaining beause the agreement did not include a Democratic African American Judge. It was explained to him that, although there had been some consideration given to including an African American, it was not feasible or practical to do so at that point in time.

6. Mr. WEINGARTEN stated that the agreement had been put in written form as a Resolution. Thereupon, Mr. WEINGARTEN asked for a vote to adopt the Resolution, annexed hereto (which is also Exhibit "G" to the Petition filed herein). Mr. WEINGARTEN stated that the Resolution was expressly conditioned on its being similiarly adopted by the WESTCHESTER REPUBLICAN COUNTY COMMITTEE at its Executive Committee meeting the next night. It was adopted by a voice vote, with two abstentions. Thereupon, a member moved that adoption of the Resolution be made unanimous. The motion was seconded. Upon an overwhelming affirmative vote, one of the members who had abstained, withdrew the abstention. The other individual who had abstained, refused to withdraw it. Hence, the motion to adopt the Resolution unanimously failed to carry.

7. I then asked to say a few words and recounted my having been active many years ago in an effort to reform the Bronx Democratic Party. I noted my surprise that "deals" for judicial office, formerly made in the "smoke-filled backroom", behind closed doors by political leaders were now being discussed out in the open, and most incredibly, that a writing memorializing such "deals" was even put in resolution form at a public meeting. Mr. WEINGARTEN interrupted to ask me if I was a member of the Executive Committee. When I replied that I was not, he said that I was out of order that although Democrats were permitted to attend Executive Committee meetings, they could not participate therein. I thereupon remained silent for the rest of the meeting, which adjourned shortly after.

8. The next day, I planned to attend the scheduled meeting of the Executive Committee of the WESTCHESTER REPUBLICAN COUNTY COMMITTEE, but was informed that it was not open to the public, nor for that matter to enrolled Republicans. Executive Committee meetings were open only to its members, party officials, and invited guests. Hence, I did not attend said meeting and do not know what occurred at that meeting.

9. On September 19, 1989, I attended the Democratic Judicial Nominating Convention called for the Ninth Judicial District at the Tarrytown Hilton on the Albany Post Road, Tarrytown, New York. The meeting was held in a small meeting

room in the lower level. A cash bar was set up in the rear. I arrived at about 7:00 p.m. Some people were milling about in the hall. There was a photographer from the local newspaper, The Reporter Dispatch. At about 7:30 p.m., DORIS L. SASSOWER, Esq. arrived with a companion.

10. At about 8:00 p.m., the Convenor, LOUIS BREVETTI, Esq., called the Convention to order, and announced that he had been designated as the person to convene the Convention. Without any Roll Call of the Delegates present, he announced that since he could observe that a quorum was present, the Convention would proceed to transact its business. Whereupon, he asked for a motion that he be elected Temporary Chairman, which motion was adopted. He proceeded to ask for a motion to have two Temporary Secretaries elected, which was adopted. He asked for a motion to have himself elected as Permanent Chairman, which was adopted. He then asked for a motion to have GWENDOLYN B. LYNCH and MIMI P. SCHNALL elected as the Permanent Secretaries, which was likewise adopted. None of these motions electing the individuals to said respective offices were adopted by any Roll Call vote.

11. Indeed, at no time was a Roll Call vote ever taken, not even to ascertain the presence of a quorum. There were no badges or other identification as to who were, in fact, duly elected Delegates and Alternate Delegates to the Convention. At no point was there any count taken to ascertain that a

sufficient number of Delegates and Alternates were present so that it could, in fact, be determined that there was a quorum of legally elected Delegates and/or Alternate Delegates present. There was no demarcation in the seating arrangements of any area reserved for Delegates and/or Alternates. There were clearly a number of people seated in the room who were not Delegates or Alternates, and there were many empty chairs.

12. I learned thereafter that although 125 Delegates and 125 Alternate Delegates were elected, only about 100 chairs were provided in the room. Thus, clearly, there was not sufficient seating provided to accommodate the 250 Delegates and Alternate Delegates, as required. In fact, the total number of people in the room was no more than 65, of whom many were not Delegates and/or Alternates. It would appear that because Mr. Weingarten realized there definitely was no quorum, he decided to dispense with any roll call which would have plainly established the absence thereof.

13. Among those who were seated who were not Delegates or Alternates were myself, Doris L. Sassower, Esq., and her companion. Others included MILTON HOFFMAN, the Political Editor for the Westchester-Rockland Newspapers, who was covering the Convention. In addition, all of the judicial candidates were seated, with friends and relatives. These included Hon. SAMUEL G. FREDMAN, then a sitting Supreme Court Justice, with a companion,

ALBERT J. EMANUELLI, a practicing lawyer who had been named in the Resolution adopted by both the WESTCHESTER DEMOCRATIC EXECUTIVE COMMITTEE and the WESTCHESTER REPUBLICAN EXECUTIVE COMMITTEE, and Hon. JOSEPH JIUDICE, Justice of the Supreme Court. Also present was GUY T. PARISI, Esq., counsel to the WESTCHESTER REPUBLICAN COUNTY COMMITTEE.

14. Mr. WEINGARTEN was then given the floor by Mr. BREVETTI, who stated that the purpose of the Convention was to nominate three Democratic candidates for the three vacancies that would be voted for at the 1989 General Election for office of Justice of the Supreme Court, State of New York, Ninth Judicial District. He then talked proudly about the "historic" agreement that had been made between him and Mr. COLAVITA, and described in detail the Resolution adopting it by the Executive Committees of the County Committees in all five counties comprising the Ninth Judicial District. Mr. WEINGARTEN recited his backgroung as an enrolled Democrat and his involvement in politics spanning 35 years. He remarked sardonically that he never thought he would see the day that he would be a party to an agreement to nominate Republican candidates, or that he would ever see two Republican candidates on the Democratic line, without opposition, for Justice of the Supreme Court in the Ninth Judicial District.

15. Mr. WEINGARTEN then nominated Mr. ALBERT J. EMANUELLI as the first nominee. Mr. STANLEY GOODMAN was then

given the floor. He nominated Mr. SAMUEL G. FREDMAN. Mr. BERNARD KESSLER took the floor and nominated JOSEPH JIUDICE. All of the nominations were seconded, and voice votes were taken separately adopting each nomination unanimously. The three candidates then were asked to address the Convention in acceptance of their nominations and to sign the acceptance Certificates, and the meeting was then adjourned.

16. At the conclusion of the meeting Mr. EMANUELLI went to Mr. BREVETTI and complimented him on the fine way he had conducted the meeting. They joked about the fact that in the course of conducting the meeting, Mr. BREVETTI had lapsed and referred to conducting the meeting in accordance with a "script". Mr. EMANUELLI suggested that since he did such a fine job in running the Democratic Convention, he should conduct the Republican Convention scheduled for later that week. GUY T. PARISI interjected that Mr. COLAVITA ran the nominating judicial conventions himself personally, and would not permit anyone else to conduct such important business. Everyone understood that the work of the Republican Judicial Convention was to rubber stamp the deal which Mr. COLAVITA had made with Mr. WEINGARTEN.

17. The next day, Wednesday, I telephoned the WESTCHESTER COUNTY REPUBLICAN headquarters to inquire whether an enrolled Republican would be permitted to attend and observe the Republican Convention for the Ninth Judicial District scheduled

for the coming Friday, September 22. I was told unequivocally, that the Republican nominating judicial Convention was open only to Delegates, Alternate Delegates, and party officials, and no others were permitted to attend.

18. I have read the accompanying Affidavit of Professor VINCENT F. BONELLI describing his observations concerning attendance at and his observations of the proceedings conducted at the Democratic Judicial Convention held on September 14, 1990. I confirm, adopt, and ratify, as true correct and accurate, his recital of the facts therein stated, most especially his statements relative to the failure to call the Roll at any time, even to establish the presence of a quorum, the fact that there was no quorum, and the clear inadequacy of the room size and seating accommodations, in violation of Election Law requirements.

S/ ______________________
ELI VIGLIANO

Sworn to before me this
14th day of October, 1990

S/ ______________________
Notary Public

CCC 72

SUPREME COURT STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of the Application of
MARIO M. CASTRACAN and VINCENT F. BONELLI,
acting Pro Bono Publico,

Petitioners,

Index No.

for an Order, pursuant to Sections
16-100, 16-102, 16-104, 16-106 and
16-116 of the Election Law,

-vs-

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WESTCHESTER REPUBLICAN COUNTY COMMITTEE,
GUY T. PARISI, Esq., DENNIS MEHIEL, Esq.,
Chairman, WESTCHESTER DEMOCRATIC COUNTY
COMMITTEE, RICHARD L. WEINGARTEN, Esq.,
LOUIS A. BREVETTI, Esq., Hon. FRANCIS A.
NICOLAI, HOWARD MILLER, Esq., ALBERT J.
EMANUELLI, Esq., R. WELLS STOUT,
HELENA DONAHUE, EVELYN AQUILA, Commissioners
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Respondents,

for an Order declaring invalid the Certificates
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the Petitions purporting to designate ALBERT J.
EMANUELLI, Esq. a candidate for the office of
Surrogate of Westchester County to be held in
the general election of November 6, 1990.

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DAVID B. COHEN, an attorney duly licensed to practice law in the Courts of the State of New York, affirms the following to be true under penalty of perjury:

1. On September 18, 1990, I accompanied Eli Vigliano,

Esq. to the Westchester Marriott Hotel in Tarrytown, New York. We arrived there at approximately 1:00 P.M. We inquired at the front desk as to the location of the Republican Party's Ninth District Judicial Convention, and were referred to Ballroom "D".

2. When Mr. Vigliano and I arrived at Ballroom "D", we observed a number of people milling around, including Judge Nicolai, Richard Ross, Sanford Dranoff and Lawrence Glynn.

3. At approximately 1:20 P.M., we went into the Ballroom and found our seats. At approximately 1:30 P.M., Anthony Colavita called the meeting to order, and asked Peter Manos to call the roll. Mr. Manos thereupon called the names of all Delegates and Alternates. Those in attendance indicated their presence after their respective names were called. At the conclusion of the roll call, Mr. Manos announced that eighty-one (81) Delegates and/or Alternates were present, and that they constituted a quorum.

4. At the conclusion of the calling of the roll, Mr. Colavita accepted the nomination of Temporary Chairman of the Convention. His nomination was seconded. There were no other nominations. A voice vote was then taken and Mr. Colavita was unanimously elected as Temporary Chairman.

5. Mr. Colavita thereupon requested a nomination for the office of Temporary Secretary of the Convention. Mr. Manos was then nominated as Temporary Secretary, the nomination was seconded in the absence of other nominations and, after a voice vote, the motion was unanimously adopted.

6. Mr. Colavita then asked for a motion that the Temporary Chairman and the Temporary Secretary be elected as Permanent Chairman and Permanent Secretary, respectively, of the Convention. A motion was made to that effect, it was seconded and unanimously adopted. Thereupon, Messrs. Colavito and Manos were sworn in to those respective offices.

7. Mr. Colavita then announced that the purpose of the Convention was to nominate three candidates for the office of Justice of the Supreme Court. He recommended that certain rules be adopted respecting these nominations, such as, for instance, that each office be voted upon separately, that the length of nominating and seconding speeches be limited to five minutes and to one minute, respectively, etc. Thereupon a motion was made that such rules be adopted. The motion was seconded and then unanimously adopted.

8. After adoption of the aforesaid rules, Mr. Colavita designated Guy Parisi as Parliamentarian of the Convention, and two tellers from each of the five counties comprising the Ninth Judicial District.

9. Mr. Colavita then announced that nominations were in order for the first position of Justice of the Supreme Court. George Roberts was nominated for this position, and the nomination was seconded. There were no further nominations. A motion to close the nomination was then made, seconded, voted upon by voice vote and passed. A voice vote was then held on the nomination itself, and Mr. Roberts' nomination was unanimously

passed.

10. At this juncture, Mr. Colavita stated that he had overlooked the recital of the Pledge of Allegiance, which he said should have taken place immediately after the call of the roll. He asked everyone to join him in making the Pledge.

11. Soon after the Pledge of Allegiance had been recited, Mr. Vigliano and I left the Ballroom. It was approximately 2:15 P.M.

Dated: White Plains, New York
October 5, 1990

DAVID B. COHEN

25

000 76

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
AGENCY BUILDING I
11TH FLOOR
THE NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223
(518) 474-5617

MEMBERS
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GERALD STERN
ADMINISTRATOR
ROBERT H. TEMBECKJIAN
DEPUTY ADMINISTRATOR
STEPHEN F. DOWNS
CHIEF ATTORNEY

FACSIMILE
(518) 486-1850

January 7, 1992

CONFIDENTIAL

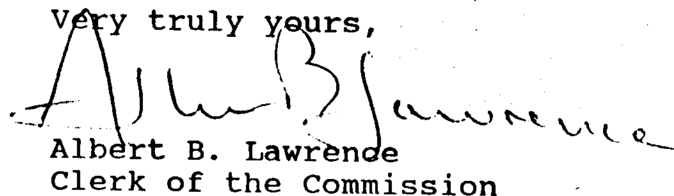
Ms. Doris L. Sassower
283 Soundview Avenue
White Plains, New York 10606

Dear Ms. Sassower:

The State Commission on Judicial Conduct has reviewed your letter of complaint dated October 24, 1991. The Commission has asked me to advise you that it has dismissed the complaint.

Judge Thompson did not participate in the consideration of your complaint.

Very truly yours,



Albert B. Lawrence
Clerk of the Commission

ABL:slc

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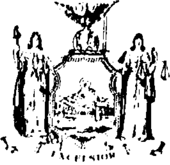

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
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ADMINISTRATOR
ROBERT H. TEMBECKJIAN
DEPUTY ADMINISTRATOR
STEPHEN F. DOWNS
CHIEF ATTORNEY
FACSIMILE
(518) 486-1850

January 13, 1992

CONFIDENTIAL

Doris L. Sassower, Esq.
Ninth Judicial Committee
Box 70 Gedney Station
White Plains, New York 10605-0070

Dear Ms. Sassower:

This is to acknowledge receipt by the State Commission on Judicial Conduct of your letter of complaint dated January 2, 1992.

Your complaint will be presented to the Commission, which will decide whether or not to inquire into it. We will be in touch with you after the Commission has had the opportunity to review the matter.

For your information, we have enclosed some background material about the Commission, its jurisdiction and its limitations.

Very truly yours,

Diane B. Eckert
Diane B. Eckert
Administrative Officer

DBE:slc
Enclosure

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
AGENCY BUILDING I
11TH FLOOR
THE NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223
(518) 474-5617

MEMBERS
HENRY T. BERGER, CHAIR
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HELAINE M. BARNETT
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ADMINISTRATOR
ROBERT H. TEMBECKJIAN
DEPUTY ADMINISTRATOR
STEPHEN F. DOWNS
CHIEF ATTORNEY
FACSIMILE
(518) 486-1850

April 22, 1992

CONFIDENTIAL

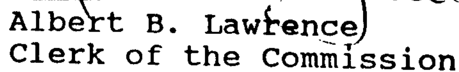
Ms. Doris L. Sassower
Box 70, Gedney Station
White Plains, New York 10605-0070

Dear Ms. Sassower:

The State Commission on Judicial Conduct has reviewed your letter of complaint dated January 2, 1992. The Commission has asked me to advise you that it has dismissed the complaint.

Upon careful consideration, the Commission concluded that there was no indication of judicial misconduct upon which to base an investigation. The Commission is not a court of law and does not have appellate authority to review the merits of matters within a judge's discretion, such as the rulings and decision in a particular case.

Very truly yours,



Albert B. Lawrence
Clerk of the Commission

ABL:slc

DORIS L. SASSOWER

283 SOUNDVIEW AVENUE • WHITE PLAINS, N.Y. 10606 • 914/997-1677 • FAX: 914/684-6554

By Priority Mail

December 4, 1992

Commission on Judicial Conduct
801 Second Avenue
New York, New York 10017

RE: Samuel G. Fredman
Justice of the Supreme Court
Westchester County

Dear Commission Members:

Transmitted herewith are copies of my Brief and Appendix filed with the Appellate Division, Second Department, in the matter of Breslaw v. Breslaw. These documents are in further support of my complaint against the above-named judge filed with your office more than three years ago.

My Brief and Appendix document that Judge Fredman is a menace on the bench. As detailed therein, on July 10, 1989, the case of Breslaw v. Breslaw was not even on the court's calendar, no appearances were made, and no default was noted on the record (Br. 9, 25-6, 61). Nonetheless, in what can only be viewed as a deliberate and malicious fraud, Judge Fredman wrote a July 13, 1989 defamatory decision (A-32), which he released to the press (A-281, A-342), castigating and smearing me for my non-appearance on that July 10th date (see also Br. 8-9, 60-2).

All of Judge Fredman's decisions are set forth in the Appendix (A-9-56). Without more, they constitute prima facie evidence of his emotional instability, as well as his unabashed ignorance and disrespect for the law. This is highlighted by Judge Fredman's final June 24, 1990 decision (A-9)--which is the focus of my Brief.

The transcripts of all of the proceedings are available for the Commission to confirm the enormity of Judge Fredman's perversion of the judicial process and obliteration of my rights. As stated in my Brief (at p. 69), "the transcripts have to be read to be believed--and even they fall short of the reality."

> "The transcripts of the proceedings, like the [June 24, 1990] Decision, show the Judge constantly alternating roles as judge, advocate, and witness, injecting himself on a

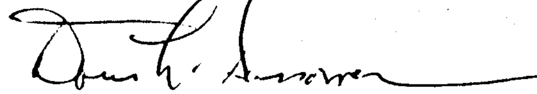
> personal level throughout the proceedings in a steady stream of personal opinions, prejudgments, and vicious ad hominem characterizations." (Br. 56)

Even the most cursory review of the decisions (A-9-56) and the transcript excerpts contained in my Brief (Br. 44-58) make evident that disciplinary investigation is long overdue and urgently needed.

As noted by my Brief (at pp. 3, 67-9), Judge Fredman's lack of respect for the "appearance of propriety" is further reflected by the fact that even after I made a formal recusal motion based on his prior hostility to me--Judge Fredman failed to reveal his on-going political relationship with adverse counsel, Harvey Landau, Esq., who, in the summer of 1989, was Chairman of the Scarsdale Democratic Club, actively endorsing and promoting Judge Fredman's campaign for election to the Supreme Court bench (A-312; A-318-323; A-326).

Needless to say, I am prepared to give personal testimony as required to support my factual and legal positions. By way of my credentials, I enclose a copy of a letter confirming my status as a Fellow of the American Bar Foundation "an honor reserved for less than one third of one percent of the practicing bar of each state". I would also state that before Judge Fredman saw fit to destroy my career and reputation with his politically-motivated and pathological vendetta against me, I was always accorded the highest rating of "AV" by Martindale-Hubbell's Law Directory for all the years I was in my own private practice and was nationally recognized and respected as an eminent matrimonial and human rights attorney.

Very truly yours,



DORIS L. SASSOWER

DLS/er
Enclosures

DANIEL L. GOLDEN, *Chair*
141 Main Street
P.O. Box 419
South River, New Jersey 08882

RICHARD L. THIES, *Vice-Chair*
202 Lincoln Square
P.O. Box 189
Urbana, Illinois 61801

JAMES W. HEWITT, *Secretary*
1815 Y Street
P.O. Box 80268
Lincoln, Nebraska 68501

The Fellows
of the
American Bar Foundation

750 North Lake Shore Drive
Chicago, Illinois 60611-4403
(312) 988-6606

November 13, 1992

TO WHOM IT MAY CONCERN:

This is to certify that Doris L. Sassower of White Plains, New York, was elected a Fellow of the American Bar Foundation in 1989 and is in good standing. This honor is limited to one-third of one percent of lawyers licensed to practice in each jurisdiction.

The Fellows is an honorary organization of practicing attorneys, judges and law teachers whose professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. Established in 1955, The Fellows encourage and support the research program of the American Bar Foundation.

The objective of the Foundation is the improvement of the legal system through research concerning the law, the administration of justice and the legal profession.

Martindale-Hubbell
Law Directory

NEW YORK

One Hundred and Twentieth Annual Edition

DORIS L. SASSOWER, P.C.

White Plains Office: 283 Soundview Avenue. Telephone: 914-997-1677.

Matrimonial, Real Estate, Commercial, Corporate, Trusts and Estates, Civil Rights.

DORIS L. SASSOWER, born New York, N.Y., September 25, 1932; admitted to bar, 1955, New York; 1961, U.S. Supreme Court, U.S. Claims Court, U.S. Court of Military Appeals and U.S. Court of International Trade. *Education:* Brooklyn College (B.A., summa cum laude, 1954); New York University (J.D., cum laude, 1955). Phi Beta Kappa. Florence Allen Scholar. Law Assistant: U.S. Attorney's Office, Southern District of New York, 1954-1955; Chief Justice Arthur T. Vanderbilt, Supreme Court of New Jersey, 1956-1957. President, Phi Beta Kappa Alumnae in New York, 1970-71. President, New York Women's Bar Association, 1968-69. President, Lawyers' Group of Brooklyn College Alumni Association, 1963-65. Recipient: Distinguished Woman Award, Northwood Institute, Midland, Michigan, 1976. Special Award "for outstanding achievements on behalf of women and children," National Organization for Women—NYS, 1981; New York Women's Sports Association Award "as champion of equal rights," 1981. Distinguished Alumna Award, Brooklyn College, 1973. Named Outstanding Young Woman of America, State of New York, 1969. Nominated as candidate for New York Court of Appeals, 1972. Columnist: ("Feminism and the Law") and Member, Editorial Board, Woman's Life Magazine, 1981. Author: Book Review, *Separation Agreements and Marital Contracts,* Trial Magazine, October, 1987; *Support Handbook, ABA Journal,* October, 1986; Anatomy of a Settlement Agreement Divorce Law Eduction Institute 1982 "Climax of a Custody Case," *Litigation,* Summer, 1982; "Finding a Divorce Lawyer you can Trust," *Scarsdale Inquirer,* May 20, 1982. "Is This Any Way To Run An Election?" *American Bar Association Journal,* August, 1980; "The Disposable Parent: The Case for Joint Custody," Trial Magazine, April, 1980. "Marriages in Turmoil: The Lawyer as Doctor," Journal of Psychiatry and Law, Fall, 1979. "Custody's Last Stand," Trial Magazine, September, 1979; "Sex Discrimination-How to Know It When You See It," *American Bar Association Section of Individual Rights and Responsibilities Newsletter,* Summer, 1976; "Sex Discrimination and The Law," *NY Women's Week,* November 8, 1976; "Women, Power and the Law," *American Bar Association Journal,* May, 1976; "The Chief Justice Wore a Red Dress," *Woman In the Year 2000,* Arbor House, 1974; "Women and the Judiciary: Undoing the Law of the Creator," *Judicature,* February, 1974; "Prostitution Review," *Juris Doctor,* February, 1974; "'No-Fault' Divorce and Women's Property Rights," *New York State Bar Journal,* November, 1973; "Marital Bliss: Till Divorce Do Us Part," *Juris Doctor,* April, 1973; "Women's Rights in Higher Education," *Current,* November, 1972; "Women and the Law: The Unfinished Revolution," *Human Rights,* Fall, 1972; "Matrimonial Law Reform: Equal Property Rights for Women," *New York State Bar Journal,* October, 1972, "Judicial Selection Panels: An Exercise in Futility?", *New York Law Journal,* October 22, 1971; "Women in the Law: The Second Hundred Years," *American Bar Association Journal,* April, 1971; "The Role of Lawyers in Women's Liberation," *New York Law Journal,* December 30, 1970; "The Legal Rights of Professional Women," *Contemporary Education,* February, 1972; "Women and the Legal Profession," *Student Lawyer Journal,* November, 1970; "Women in the Professions," *Women's Role in Contemporary Society,* 1972; "The Legal Profession and Women's Rights," *Rutgers Law Review,* Fall, 1970; "What's Wrong With Women Lawyers?", Trial Magazine, October-November, 1968. Address to: The National Conference of Bar Presidents, Congressional Record, Vol. 115, No. 24 E 815-6, February 5, 1969; The New York Womens Bar Association, Congressional Record, Vol. 114, No. E5267-8, June 11, 1968. Director: New York University Law Alumni Association, 1974; International Institute of Women Studies, 1971; Institute on Women's Wrongs, 1973; Executive Woman, 1973. Co-organizer, National Conference of Professional and Academic Women, 1970. Founder and Special Consultant, Professional Women's Caucus, 1970. Trustee, Supreme Court Library, White Plains, New York, by appointment of Governor Carey, 1977-1986 (Chair, 1982-1986). Elected Delegate, White House Conference on Small Business, 1986. Member, Panel of Arbitrators, American Arbitration Association. *Member:* The Association of Trial Lawyers of America; The Association of the Bar of the City of New York; Westchester County, New York State (Member: Judicial Selection Committee; Legislative Committee, Family Law Section), Federal and American (ABA Chair, National Conference of Lawyers and Social Workers, 1973-1974; Member, Sections on: Family Law; Individual Rights and Responsibilities Committee on Rights of Women, 1982; Litigation) Bar Associations; New York State Trial Lawyers Association; American Judicature Society; National Association of Women Lawyers (Official Observer to the U.N., 1969-1970); Consular Law Society; Roscoe Pound-American Trial Lawyers' Foundation; American Association for the International Commission of Jurists; Association of Feminist Consultants; Westchester Association of Women Business Owners; American Womens' Economic Development Corp.; Womens' Forum. Fellow: American Academy of Matrimonial Lawyers; New York Bar Foundation.

1989 edition

To Be Argued by:
DORIS L. SASSOWER
30 Minutes

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISON: SECOND DEPARTMENT
---------------------------------------x

MILTON BRESLAW,

Plaintiff,

-against-

AD Docket# 92-00562
92-00564

EVELYN BRESLAW,

Defendant-Respondent.

---------------------------------------x
DORIS L. SASSOWER, P.C. and
DORIS L. SASSOWER, Non-Party Appellants
---------------------------------------x

APPELLANTS' BRIEF

Doris L. Sassower
Appellants *Pro Se*
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

Bender & Bodnar
Attorneys for Defendant-Respondent
Evelyn Breslaw
11 Martine Avenue
White Plains, New York 10606

Westchester County Clerk's No. 22587/86

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISON: SECOND DEPARTMENT
--x

MILTON BRESLAW,

Plaintiff,

-against-

AD Docket# 92-00562
92-00564

EVELYN BRESLAW,

Defendant-Respondent.

--x
DORIS L. SASSOWER, P.C. and
DORIS L. SASSOWER, Non-Party Appellants
--x

APPELLANTS' APPENDIX

Doris L. Sassower
Appellants Pro Se
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

Bender & Bodnar
Attorneys for Defendant-Respondent
Evelyn Breslaw
11 Martine Avenue
White Plains, New York 10606

Westchester County Clerk's No. 22587/86

APPELLATE DIVISION: SECOND DEPARTMENT
SUPREME COURT OF THE STATE OF NEW YORK
--x

MILTON BRESLAW,

Plaintiff,

County Clerk's
Index No. 22587/86

AFFIDAVIT

EVELYN BRESLAW,

Defendant.

--x

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

CARL ANDERSON, being duly sworn, deposes and says:

1. I am a Certified Court Reporter, employed by the State of New York for the past 24 years, and have personal knowledge of the facts hereinafter set forth.

2. In the month of July 1989, I was assigned to work for Justice Samuel Fredman at the courthouse of the Westchester Supreme Court.

3. Annexed hereto is a copy of the Court Calendar for July 10, 1989, maintained by me since that time and in my sole possession and control as part of my official court records.

4. As shown from such official record, the case of Breslaw v. Breslaw did not appear on the Court Calendar for July 10, 1989.

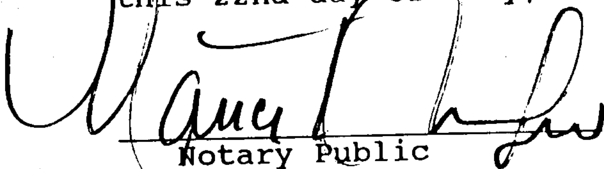
5. I have further confirmed from my stenographic notes of July 10, 1989, as well as my stenographic notes of July 7, 1989, that there is no fact or circumstance indicating an appearance by a party, counsel or other person connected with the

case of Breslaw v. Breslaw on July 10, 1989 or on July 7, 1989.

6. I have no independent recollection of any event or occurrence on either date indicating that anyone connected with said case appeared before the Court relative thereto.

CARL ANDERSON

Sworn to before me
this 22nd day of July, 1992.



Notary Public

NANCY K. MONTAGNINO
Qualified Westchester County
Commission expires 3/94(?)

REME COURT: WESTCHESTER COUNTY SAMUEL G. FREDMAN
JULY 10, 1989

SENT: HON. SAMUEL G. FREDMAN
CTRM. # 208 - L. COSTABILE - CLERK

- 1

CALLED IN 9:30 AM

NORMAN, ANNE MARIE

V.

DARREN NORMAN
002662/88

(1)

P-WALSH MARONEY & PONZINI, ESQ.
Regeno Kelly 14 N. B'y Tarrytown, NY
B41 Kelly

D-EUGENE T. MOLIN
20 S. B'way
Yonkers

N/I: 08/11/88 CONTESTED MATRIMONIAL
1ST: 02/22/89
S/G: 11/12/89

Also Present Eileen Norman Quitclaim

- 2

2.

PTC 9:30 AM

HURLBUT, CHERIE

V.

HANS TIPPMANN
000705/88

P-MARTIN J. ROSEN, ESQ.

D-CRIBARI & FLETCHER

N/I: 07/22/88 CONTESTED MATRIMONIAL
1ST: 05/19/88
S/G: 10/23/89

RESENT: HON. SAMUEL G. FREDMAN
CTRM. # 208 - L. COSTABILE - CLERK

3.   PTC 9:30 AM   - 3

GARDINER, ROBERT   P-RONALD HOLLANDER

V.

GARDINER, NANCY   D-ALBERT EMANUELLI ESQ.
010512/88

N/I: 07/26/88 CONTESTED MATRIMONIAL
1ST: 01/06/89
S/G: 10/27/89

4.   PTC 10:00 AM   - 4

HIGGINS, PATRICIA   P-ALBERT EMANUELLI ESQ.

V.

TIMOTHY L. HIGGINS   D-MARILYN S. FAUST
006498/87

N/I: 11/03/88 CONTESTED MATRIMONIAL
1ST: 08/11/87
S/G: 02/04/90

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #11 - 4/23/65 (11-64)

Topic: Endorsement of Judicial Candidates

Digest: Lawyers may endorse judicial candidates, and such candidates may announce the support of certain attorneys so long as there is no appearance of impropriety.

Canons: Former Canons 2, 3.
Judicial Canons 30, 32

QUESTION

You inquire as to the propriety of

1. lawyers endorsing judicial candidates;

2. a judicial candidate announcing that he has the support of a number of former presidents of bar associations or of a specified number of attorneys; and

3. a judicial candidate soliciting a lawyer for his support and endorsement.

OPINION

1. It would normally be proper for lawyers to endorse judicial candidates. Members of the bar bear a special responsibility for the selection of qualified candidates for judicial office. It is "the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selections of Judges. It should protest earnestly and actively against the appointment and election of those who are unsuitable for the Bench . . ." (Canon 2 of the Canons of Professional Ethics of the American Bar Association.)

Opinion 189 of the Committee on Professional Ethics of the American Bar Association, with which this Committee concurs, concluded that:

> "Lawyers are better able than laymen to appraise accurately the qualifications of candidates for judicial office. It is proper that they should make that appraisal known to the voters in a proper and dignified manner. A lawyer may with propriety endorse a candidate for judicial office and seek like endorsement from other lawyers."

Exhibit "C"
321

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

The Committee would also point out, however, that an attorney has the obligation to refrain from endorsing a judicial candidate where it would appear that such endorsement is a "device or attempt to gain from a Judge special personal consideration or favor." (Canon 3 of the Canons of Professional Ethics.) Thus, the endorsement of a judge for reelection would be improper where the attorney has a matter pending before the judge or has a matter which has a clear present probability of being submitted to the judge in the immediate foreseeable future (See Canon 32, Canons of Judicial Ethics).

2. The Committee sees nothing improper in a judicial candidate announcing that he has the support of a specified number of former presidents of bar associations or attorneys.

3. A judicial candidate, whether a sitting judge standing for reelection to his present position or for election to another judicial post, or a lawyer campaigning for but not presently holding judicial office, may not properly solicit an attorney's endorsement of his candidacy or solicit others to do so on his behalf. As a sitting judge, such solicitation would be improper "as conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy ***" (See Canon 30 of the Canons of Judicial Ethics). Nor should one who seeks to become a judge stand in any different position (See A.B.A. Opinion 226). Each should observe the same restraint and for the same reasons. Moreover, it would be unfair and impractical to place a sitting judge under a disability in this respect and to free a practicing lawyer for the waging of a more effective campaign in this regard.

Nothing in this opinion is meant to encumber the functions or activities of duly organized local bar associations with respect to the selection and endorsement of judicial officers.

....

MONETARY CONTRIBUTIONS — SCHEDULE 2A

DATE RECEIVED	Relative	Corp.	FULL NAME	MAILING ADDRESS	AMOUNT	PREVIOUS AMOUNTS -IF ANY
7/12/89			J.F. Shanklin	187 Havilands Lane White Plains, NY 10605	100.00	
7/12/89			Matthew L. Lifflander, Esq.	595 Madison Avenue New York, NY 10022	100.00	
7/21/89			Rosalind Riegelman	25 Platt Place White Plains, NY 10605	100.00	
7/13/89			Robert S. Starr, Esq.	21 E. 40th Street New York, NY	100.00	
7/13/89			Eugene Stern	319 Woodmere Blvd. Woodmere, NY 11598	100.00	
7/13/89			Lowell M. Schulman	925 Westchester Ave. White Plains, NY 10604	500.00	
7/14/89			Myron Marcus, Esq.	4 Cromwell Place White Plains, NY 10601	100.00	
7/17/89			Richard P. Neimark, Esq.	339 No. Main Street New City, NY 10956	1,000.00	
7/17/89		X	Bennett, Kielson and Co.	317 North Ave. New Rochelle, NY 10801	250.00	
7/17/89			Paula Walzer	344 S. Linden Dr. Beverly Hills, CA	100.00	
7/17/89			Kenneth D. Kemper, Esq.	45 E. 89th St. New York, NY 10128	100.00	
7/17/89			Robert S. Cohen	110 E. 59th St. New York, NY 10022	1,000.00	
7/18/89		X	Gubman Sitomer Gold- stein & Edlitz, PC	230 Park Ave. New York, NY 10169	200.00	
7/19/89			Dean G. Braslow	10 Antony Road White Plains, NY 10605	100.00	
7/19/89			Alan D. Scheinkman, Esq.	3 Barker Ave. White Plains, NY 10601	500.00	
7/20/89			Dennis Mehiel	Box 428 Pleasantville, NY 10570	500.00	
7/20/89			Bender & Bodner 50% Joel C. Bender 50% Peter O. Bodner	11 Martine Avenue White Plains, NY 10606	500.00	
7/20/89		x	Young, Stern & Tannenbaum, P.A.	P.O. Box600550 North Miami, FL 33160	100.00	
				TOTAL	5,450	

SUMMARY (To be completed on last page of schedule 2A)

Total unitemized contributions this period ______

Total itemized contributions this period — all pages ______

Total contributions received this period ______

DO NOT COMPLETE UNLESS THIS IS LAST CONTRIBUTION PAGE

Exhibit "D"

323

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
801 SECOND AVENUE
NEW YORK, NY 10017
(212) 949-8860

MEMBERS
HENRY T. BERGER, CHAIR
HON. MYRIAM J. ALTMAN
HELAINE M. BARNETT
HERBERT L. BELLAMY, SR.
HON. CARMEN BEAUCHAMP CIPARICK
E. GARRETT CLEARY
DOLORES DELBELLO
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JOHN J. SHEEHY
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CLERK
ALBERT B. LAWRENCE

GERALD STERN
ADMINISTRATOR
ROBERT H. TEMBECKJIAN
DEPUTY ADMINISTRATOR

FACSIMILE
(212) 949-8864

January 15, 1993

Ms. Doris L. Sassower
283 Soundview Avenue
White Plain, New York 10606

Dear Ms. Sassower:

This will acknowledge receipt on December 7, 1992 of your complaint dated December 4, 1992.

We will be in touch with you after a determination has been made concerning your complaint.

Very truly yours,

Lee Kiklier
Administrative Assistant

LK:sl

printed on recycled paper

R 1/22/93

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
AGENCY BUILDING I
11TH FLOOR
THE NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223
(518) 474-5617

MEMBERS
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STEPHEN F. DOWNS
CHIEF ATTORNEY
FACSIMILE
(518) 486-1850

January 20, 1993

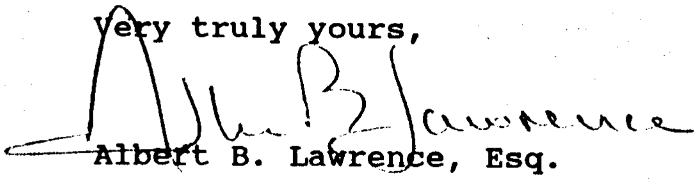
Ms. Doris L. Sassower
283 Soundview Avenue
White Plains, New York 10606

Dear Ms. Sassower:

This is in response to your letter of December 4, 1992.

Your letter contains no new allegations beyond those reviewed and disposed of by the Commission in 1991. The matter cannot be reconsidered.

Very truly yours,



Albert B. Lawrence, Esq.

ABL:slc

DORIS L. SASSOWER

283 SOUNDVIEW AVENUE • WHITE PLAINS, N.Y. 10606 • 914/997-1677 • FAX: 914/684-6554

January 22, 1993

Commission on Judicial Conduct
Agency Building 1, 11th Floor
The Nelson A. Rockefeller Empire State Plaza
Albany, New York 12223

Att: Albert B. Lawrence, Clerk

RE: Samuel G. Fredman
Justice of the Supreme Court
Westchester County

Dear Mr. Lawrence:

Your perfunctory, three-sentence January 20, 1993 letter, purporting to be a "response" to my letter of December 4, 1992, hardly befits an agency established to police the judiciary and protect the public. As shown by my December 4th letter, I made specific charges of fraud and other judicial misconduct by Judge Samuel Fredman--all of which I documented with references to pertinent portions of my Appellants' Brief and Appendix filed with the Appellate Division in the case of Breslaw v. Breslaw. Such documentary evidence is unassailable and requires the Commission to take disciplinary action, including removing Judge Fredman from the bench.

Immediately upon receipt of your inexplicable dismissal letter, I telephoned your Albany office to discuss it with you directly. I was told by your secretary, Sharon, that you "do not take calls". She would give me no information as to the specific reasons for the dismissal disposition and would not state whether Commission members had themselves reviewed my December 4th transmittal, whether they had considered or acted on it at any formal meeting, or the date thereof. She told me that the transmittal might have been reviewed by "either a lawyer or an investigator", but would not identify such person(s) or who actually made the dismissal disposition. I requested an opportunity to meet with a member of the Commission to discuss this matter personally and asked that she convey such request to you. After telling me, rather rudely, that I should put my requests in writing, Sharon unceremoniously hung up.

I, therefore, hereby request a response to all of my foregoing inquiries.

I do not believe that any objective lawyer could have reviewed my December 4th transmittal and deemed it dismissible, let alone on the clearly erroneous ground set forth in your letter, i.e., that it contained "no new allegations". If anything proves that my transmittal was never read by whoever made the dismissal decision, it is this statement--since the specific allegation of fraud, set forth in the second paragraph of my December 4th coverletter, was never previously asserted.

The fraud committed by Judge Fredman was his issuance of a knowingly false and defamatory July 13, 1989 decision concerning me (A-32-7), which he released to the media (A-342), including The New York Law Journal, which published it in full (A-281). Such July 13, 1989 decision was based upon my alleged non-appearance for a contempt proceeding on July 10, 1989. In fact, as the record shows, the case was not on the Court's calendar on that date (A-128-9) and the Court Reporter noted no appearances on either side (A-126-7).

As a result of this malicious fraud by Judge Fredman (Br. 8-9, 25-6, 61) and his refusal to follow black-letter law and the ethical mandates of the Code of Judicial Conduct, I suffered irreparable injury and was dragged through a factually and legally unfounded proceeding, costing me, as well as the taxpayers of this State, tens of thousands of dollars for countless hours of legal and judicial time.

To the extent your dismissal letter refers to my 1991 letter to the Governor--which was not a complaint directed specifically against Judge Fredman--the documentary proof presented by my December 4th transmittal shows that the Commission's dismissal of such letter was not only precipitous, but palpably erroneous.

Considering the irrebuttable proof you now have before you of a judge who, in addition to being intellectually dishonest and incompetent, may well be suffering from pathological disease, such as paranoia, or early senility, or both--your concluding sentence that "the matter cannot be reconsidered" is incomprehensible. May I remind you that the Commission's duty is to protect the public. The evidence I have presented is more than sufficient to establish "probable cause" for investigation.

The evidence transmitted under my December 4th coverletter includes:

(1) An affidavit by the Court Reporter (A-126-7) and his official court calendar for July 10, 1989 (A-128-9)--establishing the fraud by Judge Fredman.

(2) All of Judge Fredman's decisions in the case of Breslaw v. Breslaw (A-9-56)--constituting prima facie evidence of his emotional instability and unabashed ignorance and disrespect for the law.

(3) Trial transcript excerpts (Br. 44-9, 52-8), highlighting a pattern of intemperate and injudicious conduct, as well as ignorance of, and disregard for, basic and controlling legal and ethical principles.

(4) A filed statement of political contributors to Judge Fredman's campaign for election (A-323)--showing a $500 political contribution from my adverse counsel's law firm shortly before my first court appearance before Judge Fredman in the Breslaw matter.

The foregoing substantiating proof is in addition to the legal authority, set forth at length throughout my Appellants' Brief. As shown by the trial excerpts therein, Judge Fredman's view of controlling law is characterized by a pattern of ignorance, indifference, and open hostility--his stated position being that litigants should save their legal arguments for an appeal (Br. 31-2, 53, 57).

I request a telephone conference with either you or Gerald Stern to discuss the manner in which the Commission has approached this documented complaint. Its dismissal thereof is either evidence of the Commission's dereliction or of its "double standard" when a judge with the right political "connections" is the subject of complaint before it.

Very truly yours,

DORIS L. SASSOWER

DLS/er

cc: Gerald Stern, Administrator, Commission on Judicial Conduct
Lee Kiklier, Administrative Assistant,
Commission on Judicial Conduct
G. Oliver Koppell, Chairman, Assembly Judiciary Committee