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BEFORE THE NEW YORK STATE SENATE STANDING  
COMMITTEE ON JUDICIARY

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In the Matter

-of-

a Public Hearing to Consider the Nomination  
of Hon. Howard A. Levine as a Judge of the  
Court of Appeals.

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Hearing Room B  
Legislative Office Building  
Empire State Plaza  
Albany, New York

September 7, 1993  
2:00 p.m.

PRESIDING:

SENATOR JOHN J. MARCHI, Acting Chairman,  
Senate Committee on Judiciary

PRESENT:

SENATOR RICHARD A. DOLLINGER

SENATOR HUGH T. FARLEY

SENATOR JOSEPH L. GALIBER

SENATOR EMANUEL R. GOLD

SENATOR FRANZ S. LEICHTER

SENATOR STEPHEN M. SALAND

SENATOR JOHN B. SHEFFER II

SENATOR RONALD B. STAFFORD

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SENATOR MICHAEL J. TULLY, JR.  
SENATOR GUY J. VELELLA  
SENATOR DALE M. VOLKER  
EDWARD H. COLE, Counsel to the Committee  
DAVID JAFFE, Counsel to Senator Marchi

1 face the very sensitive human issues which come  
2 before the Court of Appeals each day.

3 I consider myself very fortunate  
4 to have had Justice Levine as a mentor during  
5 the formative years of my legal career, and I am  
6 especially pleased to have been given the  
7 opportunity today to enthusiastically support  
8 his confirmation and, while so doing, to convey  
9 my gratitude for the kindness shown a young law  
10 student almost 20 years ago.

11 Thank you.

12 SENATOR MARCHI: Yes. I think  
13 it's a very fine note for you to express it here  
14 today, and it certainly speaks volumes. Very  
15 good.

16 MS. KRETZER: Thank you, Senator.

17 SENATOR MARCHI: Yes. Thank you  
18 very much.

19 The next witness is Doris L.  
20 Sassower, Director of the Ninth Judicial  
21 Committee.

22 MS. SASSOWER: Good afternoon,  
23 Senators.

1                    SENATOR MARCHI: Ms. Sassower, I  
2                    just want to point out that the length of the --  
3                    the meter isn't running -- but the length of  
4                    this presentation, 19 -- 18 or 19 pages, you may  
5                    want to, in the interest of maintain...  
6                    observing the ten-minute speaking time, you may  
7                    want to take some liberties in your narration.

8                    MS. SASSOWER: I appreciate your  
9                    comment, Senator, but inasmuch as I am the only  
10                    opposition representing the public-at-large, I  
11                    hope, with your indulgence, that you will hear  
12                    what I have to say. I would also ask your in-  
13                    dulgence in having my daughter, Elena Ruth  
14                    Sassower, by my side. She is the coordinator of  
15                    the Ninth Judicial Committee, of which I am the  
16                    director.

17                    SENATOR MARCHI: Perhaps if you  
18                    pull the mike a little closer to you.

19                    MS. SASSOWER: Yes. Can you hear  
20                    me now? Thank you.

21                    SENATOR GALIBER: Mr. Chairman.

22                    SENATOR MARCHI: Yes, Senator  
23                    Galiber.

1                   SENATOR GALIBER: If I could, you  
2                   made a good observation on the length of this  
3                   report, but you left it somewhat hanging by the  
4                   person who prepared the testimony, so I'm hoping  
5                   that we will hear her out. Is there still a  
6                   time limit on this, or --

7                   SENATOR FARLEY: We have to go in  
8                   at 4:00, so --

9                   SENATOR MARCHI: Well, we have --  
10                  we have required that all the speakers express  
11                  themselves within the limits of ten minutes.

12                  SENATOR GALIBER: O.K. Thank you.

13                  SENATOR MARCHI: And so far we  
14                  have not been -- they've all honored that  
15                  requirement, but if you want an extra 60  
16                  seconds, now the meter is on you.

17                  MS. SASSOWER: May I say, Senat-  
18                  or, that I did speak to your -- the counsel, Ned  
19                  Cole, concerning the fact that other members of  
20                  our committee wished to come up and add to the  
21                  testimony, and it was agreed that, rather than  
22                  having them each speak for ten minutes, I --  
23                  that they would yield their time to me and I

1 would present the point of view that we wish to  
2 impart to the Committee.

3 MR. COLE: Mr. Chairman.

4 MS. SASSOWER: (Talking over) In  
5 any event, I will do my best to be through as  
6 soon as I can.

7 MR. COLE: If I may --

8 SENATOR MARCHI: Yes, Counsel.

9 MR. COLE: -- if I could take a  
10 couple minutes, if I may respond to that. You  
11 were never given any assurances. I told you I  
12 did not have the authorization to extend it over  
13 ten minutes but, if there were questions asked,  
14 it would probably go over ten minutes, and your  
15 other witness was going to come to talk about  
16 the Ninth Judicial Committee which did not seem  
17 to have -- to be pertinent to this hearing on  
18 Judge Levine, so there was no such agreement, in  
19 my opinion.

20 MS. SASSOWER: I differ from you,  
21 but in any event --

22 SENATOR MARCHI: If there are  
23 questions, it's not on your time.

1 MS. SASSOWER: (Talking over) --  
2 may I say that I have anticipated in my remarks  
3 some of the questions that I know you would want  
4 to ask and, of course, I would be available at  
5 the conclusion to answer any that you may have  
6 in addition.

7 I am here today as director of  
8 the Ninth Judicial Committee, a non-partisan  
9 "grass roots" citizens' group formed in 1989 to  
10 improve the quality of the judiciary in the  
11 Ninth Judicial District, comprising the five  
12 counties of Westchester, Putnam, Dutchess,  
13 Rockland and Orange.

14 In September 1990, our group  
15 spearheaded the case of Castracan against  
16 Colavita, an historic case challenging a  
17 political deal involving cross-endorsements of  
18 seven judgeships, implemented at judicial  
19 nominating conventions conducted in violation of  
20 the election law.

21 Justice Howard Levine sat on the  
22 Appellate Division, Third Department panel that  
23 decided Castracan on appeal. Its May 2, 1992

1 decision affirming the lower court's dismissal  
2 on other grounds, and its subsequent  
3 two-sentence October 17, 1991 decision denying  
4 petitioners' motion for re-argument, renewal,  
5 recusal and, alternatively, for leave to appeal  
6 to the Court of Appeals, show convincingly that  
7 Justice Levine's elevation to this state's  
8 highest court not only disservices the public  
9 interest, but jeopardizes it.

10                   Copies of both those decisions,  
11 as well as petitioners' reargument motion and  
12 supporting memorandum are included in the  
13 compendium of documents assembled to assist you  
14 in evaluating the substantial nature of this  
15 opposition to Justice Levine and the need for  
16 full review of the files in this case.

17                   Before I proceed further, may I  
18 inquire as to whether you all have received  
19 copies of the compendium? I would assume.

20                   SENATOR GOLD: We received  
21 copies, and I can say in my case I've read them  
22 all and read your remarks in advance, which may  
23 make you want to understand what Senator Marchi



1 was saying about condensing your remarks because  
2 we have already studied them.

3 MS. SASSOWER: I appreciate that,  
4 but this is intended to be a public hearing,  
5 Senator, and I would hope that the public has an  
6 equal right of access to the remarks that I have  
7 to make here today.

8 SENATOR GOLD: You want it  
9 public; why don't you see what I have here.

10 MS. SASSOWER: I don't know how  
11 you Senators make your personnel decisions, but  
12 I would suspect that you would normally want to  
13 know more about how a person performs a job and  
14 what they have done lately than how they might  
15 perform abstractly in the future or how they  
16 performed many years before in different areas.

17 The job of a judge is judging,  
18 and by way of overview, I would say, and based  
19 on my own direct personal knowledge and not  
20 hearsay, Justice Levine's on-the-job performance  
21 as demonstrated by his participation in  
22 Castracan, shows.

23 (1) disregard for ethical

1 conflict of interest rules applicable to judges  
2 who are required to disqualify themselves where  
3 their impartiality might reasonably be  
4 questioned;

5 (2) disregard for controlling law  
6 and the public interest which requires  
7 adjudication of the case on the merits rather  
8 than dismissal based on factually and legally  
9 inappropriate procedural technicalities, applied  
10 in a one-sided manner;

11 (3) indifference to the profound  
12 constitutional, legal and public policy issues  
13 raised by the case, requiring at the very least  
14 the granting of leave to appeal to the Court of  
15 Appeals, which was denied;

16 (4) failure to perform his duty  
17 to correct the lower court's deliberate  
18 disregard for elementary legal standards and  
19 willful misrepresentation of the factual record;  
20 and

21 (5) disregard for ethical rules  
22 requiring initiation of appropriate disciplinary  
23 measures against lawyers and judges for

1 unprofessional conduct, about which this case  
2 made him aware.

3 No confirmation of this most  
4 important nomination should properly proceed  
5 unless and until there is a full review of the  
6 Castracan against Colavita files by the members  
7 of this Committee. Such review would support  
8 the public perception that what was done by the  
9 Appellate Division, Third Department, with  
10 Justice Levine's knowledge and consent, was a  
11 cover-up of the lower court's misconduct as well  
12 as a deliberate perpetuation of the manipulation  
13 of judgeships by the two major political  
14 parties, directly being challenged by the  
15 Castracan case.

16 Indeed, the question the public  
17 has a right to have answered, and which this  
18 Committee is in an unique position to explore,  
19 is whether Justice Levine would be here today  
20 for confirmation had he properly performed his  
21 adjudicative duties in Castracan against  
22 Colavita.

23 The 1988 report of the New York

1 State Commission on Government Integrity  
2 entitled, "BECOMING A JUDGE: Report on the  
3 Failings of Judicial Elections in New York  
4 State," reflects the fact that sitting judges  
5 facing reelection or looking for advancement on  
6 the bench are subject to political pressures in  
7 conflict with their judicial obligations. It is  
8 quite plain that Justice Levine, a top contender  
9 for appointment to the Court of Appeals for many  
10 years, whose elective term expires next year,  
11 would not have wished to jeopardize the support  
12 of his political patrons.

13 There can be no doubt that a  
14 decision in favor of the Castracan petitioners  
15 by Justice Levine would have had severe  
16 repercussions on his career. Consequently, an  
17 already cynical public might well perceive that  
18 Governor Cuomo's nomination of Justice Levine to  
19 the Court of Appeals is a payback for his having  
20 protected not the public but the political  
21 powers that control "judge-making".

22 Justice Levine's performance in  
23 the Castracan case gives unmistakable evidence

1 that he lacks the independence of mind and moral  
2 courage to chart a course consistent with  
3 applicable ethical standards, notwithstanding  
4 the comments of Presiding Justice Leonard Weiss  
5 as to his moral and ethical strength, where to  
6 do so would cause him to diverge from his  
7 colleagues. Such path might have precluded his  
8 consideration for this exalted appointment.

9 Before presenting further  
10 specifics, I believe it appropriate to state my  
11 relevant credentials. Since graduation cum  
12 laude from New York University Law School in  
13 1955, I have devoted most of my professional  
14 life to the cause of legal and judicial reform.  
15 In 1956, I worked as an assistant to Arthur T.  
16 Vanderbilt, then chief justice of New Jersey's  
17 highest court, credited with having led the  
18 reform of New Jersey's archaic judicial system,  
19 turning it into one of the most modest -- modern  
20 justice systems in the country.

21 SENATOR MARCHI: Yes. I just want  
22 to point out that you still have two minutes, if  
23 you can summarize.

1 MS. SASSOWER: I --

2 SENATOR MARCHI: -- most  
3 expeditiously.

4 MS. SASSOWER: I have tried as  
5 hard as I could to condense the presentation  
6 into the minimum amount of time. However, with  
7 all due respect, due to the extent of the  
8 judicial misconduct involved on the part of  
9 Justice Levine and others in the Castracan  
10 against Colavita case, I could not consolidate  
11 my presentation any -- any further than I  
12 already have. I hope you will bear with me for  
13 the sake of the public interest involved.

14 SENATOR MARCHI: I'm sorry, I  
15 have to -- I have to --

16 MS. SASSOWER: As president of  
17 the New York Women's Bar Association --

18 SENATOR MARCHI: -- limit you to  
19 the two minutes. We have here, through your  
20 prescience, a copy of your remarks and --

21 MS. SASSOWER: I beg pardon?

22 SENATOR MARCHI: I said, if you  
23 will go ahead and do your best--

1 MS. SASSOWER: I'll do my best.

2 SENATOR MARCHI: -- to condense  
3 your statement within the two minutes.

4 MS. SASSOWER: As president of  
5 the New York Women's Bar Association from 1968  
6 to 1969 -- and that's 25 years ago, Senators --  
7 I likewise sought to improve the quality of  
8 justice and the judiciary.

9 In 1971, I served on one of the  
10 first pre-nomination judicial screening panels  
11 set up to improve selection of Supreme Court  
12 judges in the First Department. My article  
13 recounting that experience, published on the  
14 front page of the New York Law Journal led to  
15 the renaming of the Judiciary Committee of the  
16 New York State Bar Association as the Judicial  
17 Selection Committee and to my appointment as the  
18 first woman ever to serve on such a committee.

19 In that capacity from 1972 to  
20 1980, I interviewed and evaluated the  
21 qualifications of every judicial candidate  
22 during that eight-year period for the Court of  
23 Appeals, as well as for the Appellate Division

1 and the Court of Claims. Indeed, my acquaint-  
2 ance with Archibald Murray, now president of the  
3 New York State Bar Association and here today on  
4 behalf of Justice Levine, goes back to the days  
5 when he joined me as a member of the State Bar's  
6 Judicial Selection Committee.

7 I, myself, was nominated as a  
8 candidate for the Court of Appeals in 1972 and  
9 also served as an elected delegate to several  
10 judicial nominating conventions.

11 Throughout my years in my own  
12 private practice, I had the highest rating of  
13 A V given by Martindale Hubbell's Law Directory,  
14 and in June 1989 I was honored by election to  
15 the Fellows of the American Bar Foundation, an  
16 honor reserved for less than one percent of the  
17 practicing bar in each state.

18 In September 1990, I became  
19 counsel to the Ninth Judicial Committee and to  
20 the petitioners in the case of Castracan vs.  
21 Colavita. I acted as such counsel pro bono from  
22 the inception of the case in Supreme Court of  
23 Albany County through the decision on appeal to



1 Appellate Division, Third Department, rendered  
2 May 2, 1991.

3 In Castracan, Justice Levine was  
4 presented with a case of extraordinary public  
5 concern involving the sanctity of the franchise  
6 and the integrity and independence of the  
7 judiciary. The petition centered on Election  
8 Law violations occurring at the judicial  
9 nominating conventions of both major parties, so  
10 fundamental and fatal as to require that the  
11 certificates of nomination be voided. These  
12 included the lack of a quorum and the lack of a  
13 roll call at the Democratic judicial nominating  
14 convention, and the fact that at the Republican  
15 judicial nominating convention Anthony Colavita,  
16 the Westchester Republican County Chairman and  
17 former state Republican Party chairman, acted in  
18 a proscribed dual capacity as both convenor of  
19 that convention and as its permanent chairman.

20 SENATOR MARCHI: Yes. Mrs.  
21 Sassower, we have your statement. If there are  
22 questions.

23 SENATOR DOLLINGER: Mr. Chairman,

1 I just have a couple questions for the witness.  
2 I've read the materials that you provided, Mrs.  
3 Sassower, and my question is really pretty  
4 simple.

5 Other than the materials that you  
6 have presented here today, have you had any  
7 judicial experience with Judge Levine in his  
8 capacity as a member of the Appellate Division,  
9 Third Department?

10 MS. SASSOWER: Yes.

11 SENATOR DOLLINGER: Other than in  
12 Castracan?

13 MS. SASSOWER: No.

14 SENATOR DOLLINGER: O.K.

15 MS. SASSOWER: That experience is  
16 sufficient for me to base my views and opinions  
17 on.

18 SENATOR DOLLINGER: All right.  
19 O.K.

20 MS. SASSOWER: I do submit --

21 SENATOR DOLLINGER: And that is  
22 based --

23 MS. SASSOWER: Most

1 respectfully.

2 SENATOR DOLLINGER: And that is  
3 based on your statement and the materials that  
4 were submitted is the full discussion of  
5 Castracan.

6 MS. SASSOWER: No, not by a long  
7 shot, Senator.

8 SENATOR DOLLINGER: O.K., if you  
9 could just --

10 MS. SASSOWER: I have brought  
11 with me the entire files --

12 SENATOR DOLLINGER: O.K.

13 MS. SASSOWER: -- in Castracan  
14 against Colavita, in fact, two separate sets of  
15 those files were duplicated and sent over to  
16 your office at my request.

17 SENATOR DOLLINGER: O.K. O.K.  
18 So we've got your material here. My question  
19 is, do you have any other personal experiences  
20 on which you could make a judgment about Judge  
21 Levine's character, his fitness for this  
22 position, his past record and both as a Family  
23 Court judge and Appellate Division judge, as a

1 prosecutor and his experience with families and  
2 children, which are some of the issues that have  
3 been discussed today; do you have any experience  
4 with Judge Levine on those issues, yes or no?

5 MS. SASSOWER: Senator, my  
6 testimony is set forth in the statement that you  
7 have.

8 SENATOR DOLLINGER: And I don't  
9 see anything --

10 MS. SASSOWER: And I have  
11 extensively tried to highlight the most  
12 significant aspects of his performance in a case  
13 that was before him --

14 SENATOR DOLLINGER: I -- Mrs.  
15 Sassower, if you'll excuse me, I don't mean to  
16 interrupt.

17 MS. SASSOWER: -- less than two  
18 years ago.

19 SENATOR DOLLINGER: -- but I -- I  
20 really -- I'm really going to take that as a no,  
21 the answer to my question of whether you have  
22 further personal experience.

23 MS. SASSOWER: If you're asking,

1 I have no other personal experience with him in  
2 Family Court of 30 years ago or when he was a  
3 D.A. 25 years ago or any other time. I am  
4 giving you information which I have taken the  
5 time and effort on behalf of the Ninth Judicial  
6 Committee and the public-at-large as well as the  
7 -- the million and a half or two million  
8 residents of the Ninth Judicial District.

9 SENATOR DOLLINGER: O.K., but  
10 just so it's clear to me as a member of this  
11 Committee, you have no other personal experience  
12 or no other light to shed on the character of  
13 this nominee or his judicial fitness or legal  
14 fitness to be a member of the New York Court of  
15 Appeals other than the material that you've  
16 cited with respect to that one case, in which  
17 you were a litigant in that case?

18 MS. SASSOWER: No, I was not a  
19 litigant.

20 SENATOR DOLLINGER: Excuse me,  
21 you were representing the litigant.

22 MS. SASSOWER: No, I was the  
23 counsel, and I was acting as stated pro bono in

1 the public interest in order to protect the  
2 rights which were violated.

3 SENATOR DOLLINGER: O.K., but you  
4 have no other personal experience.

5 MS. SASSOWER: I have the  
6 experience of this case.

7 SENATOR DOLLINGER: The answer to  
8 my question then is no.

9 MS. SASSOWER: And I don't refer  
10 to any other cases that Judge Levine had except  
11 that there was -- I do not quite follow your  
12 drift. If a person has committed a murder, the  
13 fact that he has been an honorable person all  
14 his life, or as in the case of Chief Judge  
15 Wachtler has been an honorable chief judge until  
16 he committed a crime, he is then brought to  
17 account, and we, as persons concerned with our  
18 legal and ethical responsibilities as lawyers,  
19 must make known the facts that shed light on  
20 that misconduct.

21 It seems to me you would want, as  
22 holders of the public trust, to know more about  
23 what I came to talk about, which is what was

1 done specifically by Justice Levine in that  
2 case, not -- not to discuss abstractly what he  
3 might do when he's -- if he is going to be  
4 crowned -- confirmed today by the Senate and the  
5 Court of Appeals.

6 SENATOR GOLD: Ms. Sassower.

7 SENATOR DOLLINGER: I'll yield to  
8 my colleague, Senator Gold.

9 MS. SASSOWER: I'll answer those  
10 questions but as a judge who was elected, as  
11 long as we have elections, the public has a  
12 right to ask that elected official to account  
13 for what he has done in the past --

14 SENATOR GOLD: Mrs. Sassower.

15 MS. SASSOWER: And that's what we  
16 are asking specifically with respect to how did  
17 he -- how did he handle his --

18 SENATOR MARCHI: Senator Gold.

19 MS. SASSOWER: How did he handle  
20 his judicial duties on this case?

21 SENATOR GOLD: Mrs. Sassower --

22 MS. SASSOWER: He said he would  
23 answer questions, according to the news report

1 that appeared in the Gannett paper on Saturday  
2 today.

3 SENATOR GOLD: Mrs. Sassower.

4 MS. SASSOWER: Or at the request  
5 of the Senate Judiciary Committee, and I --

6 SENATOR GOLD: Mrs. Sassower --

7 MS. SASSOWER: -- have a great  
8 many questions to suggest to you.

9 SENATOR GOLD: Yeah. Mrs.

10 Sassower, I take my responsibility very  
11 seriously and to tell you the truth I'm very  
12 glad that, if you have a point of view, that you  
13 came forward and giving us the time.

14 One thing, let me just say this  
15 though, I want the record to be clear about one  
16 thing: I think it's important that you came  
17 forward with your information, but I think that  
18 when --

19 MS. SASSOWER: Thank you,  
20 Senator.

21 SENATOR GOLD: I think that when  
22 you say that there were some people here who  
23 spoke in favor of the judge but that you're



1 speaking for the public, I think that's untrue.  
2 I think everybody here, Judge Casey and  
3 everyone, is doing a public service when they  
4 come forward and give their opinion, whether it  
5 agrees with you or it doesn't.

6 In terms of making our judgments,  
7 I think the record should indicate, since you  
8 made reference to it, that there is a document;  
9 it says Ninth Judicial Committee, Table of  
10 Contents, and it's got a number of pages all  
11 clearly marked, which you have submitted and  
12 I've read, and I will tell you that, based upon  
13 my experience with this Judiciary Committee, we  
14 have a tendency, Mrs. Sassower, to read more  
15 slowly those comments made that are negative  
16 than positive, so I can assure you that, when I  
17 cast my vote today, it will be after having very  
18 carefully considered the documents that you have  
19 submitted.

20 I also --

21 MS. SASSOWER: I think --

22 SENATOR GOLD: I also -- excuse  
23 me, Ma'am. I also, and I hope that the former

1 witnesses will not be insulted by my saying this  
2 but while some of the more favorable comments  
3 were being made about Judge Levine, I took the  
4 liberty of taking a sneak at your comments so  
5 that I could give them a fair deliberation; so I  
6 want you to understand that whether or not you  
7 have an opportunity to read every single word  
8 you prepared, I want you to know from my point  
9 of view -- and I think this may go for others  
10 too -- we have read every word.

11 I'm curious about one thing  
12 though. On page 4, you say something and, of  
13 course, you know, when you get into procedures  
14 like this where people are in some degree  
15 secured from libel and slander, people make in-  
16 nuendos and make remarks, and it should be a  
17 freedom, I agree with that particular concept,  
18 but you suggest that a cynical public might  
19 perceive Governor Cuomo's nomination to be a  
20 payback for those who are dealing with judge-  
21 making in a certain way.

22 Are you aware of the fact that  
23 Governor Cuomo has, for years, stated he wants

1 appointed judges and doesn't believe in elected  
2 judges? Isn't it kind of wild that he would give  
3 a preference to a judge who you say went out of  
4 his way to vote for the status quo when one of  
5 the major planks of Governor Cuomo's judicial  
6 reform ideas is to change that process?

7 MS. SASSOWER: Senator, if you  
8 will refer in your compendium to my letter dated  
9 October 24, 1991 addressed to Governor Cuomo --

10 SENATOR GOLD: I read it.

11 MS. SASSOWER: And that's at page  
12 104 -- you will, if you read it carefully --

13 SENATOR GOLD: I read the  
14 letter.

15 MS. SASSOWER: -- recognize that  
16 the deal that occurred in 1989 which was the  
17 subject of the Castracan against Colavita  
18 challenge, was a deal that was put together by  
19 the party leadership of Westchester County and  
20 the --

21 SENATOR GOLD: No, I don't think  
22 -- I don't think you heard my question, all  
23 right?

1 MS. SASSOWER: I heard -- I heard  
2 your question.

3 SENATOR GOLD: I don't think you  
4 heard my question.

5 MS. SASSOWER: Your question --

6 SENATOR GOLD: I read your  
7 letter. I read the references to Mr. Fredman; I  
8 read the material. What I'm saying to you,  
9 though, is that in my opinion, in my opinion,  
10 your sentence at the top of page 4 dealing with  
11 Governor Cuomo is a cheap shot because the  
12 Governor -- you're implying that the Governor  
13 would reward somebody who is dedicated to a  
14 system which you say is outrageous without --  
15 and without making that judgment, the fact is  
16 that Governor Cuomo supports appointed judges.  
17 He does not support a system that you say this  
18 judge went out of his way to secure in an  
19 illegal decision.

20 MS. SASSOWER: Senator, I would  
21 be happy to discuss that subject at great  
22 length, and I have the answers, but I have the  
23 proof as to what I say all laid out in very

1           concise form, and rather than spending the time  
2           that it would take me to give you a full and  
3           complete response to that subject, it seems to  
4           me it would be more expeditious if you would  
5           hear me out on the specifics, the specifics that  
6           are documented and subject to proof, not the  
7           hearsay on which you say you relied when you say  
8           everything you have heard about Justice Levine  
9           does -- gives you reason to confirm his  
10          nomination.

11                               Now, I will give you --

12                               SENATOR GOLD: Madam, I don't  
13           know where you got that last comment from, but I  
14           haven't made any such statement along that  
15           line.

16                               MS. SASSOWER: I took it down.

17                               SENATOR GOLD: I haven't made any  
18           such statement along those lines. I was just --  
19           I felt it's my obligation, you see in a  
20           courtroom you have litigants there, one can  
21           speak the other can speak. Right now, while  
22           Mario Cuomo does not need my help and I don't  
23           mean to suggest he does, I think it's a cheap

1 shot to say that the Governor --

2 MS. SASSOWER: Well, I'm sorry you  
3 feel that way.

4 SENATOR GOLD: I think it's a  
5 cheap shot to say that a governor who does not  
6 agree with a certain system would give a  
7 political pay-off to someone in that system if  
8 all you said is true. It just -- there's no  
9 logic to it, and it's a cheap shot.

10 MS. SASSOWER: I'm sorry that you  
11 feel that way, sir. It is not an accurate  
12 analysis of the question because no one ever  
13 suggested that simply by virtue of appointing a  
14 judge, you are thereby eliminating politics from  
15 the judiciary. That is far from reality.

16 It is a reality, a political  
17 reality, that appointment offers control of the  
18 judiciary, just as much as elect -- as the  
19 elective process, unless it is carefully and  
20 strictly regulated. Those safeguards have to be  
21 there. Otherwise, you have appointed judges who  
22 are just as corrupt politically, just as  
23 dishonest, just as incompetent as elected

1 judges.

2 SENATOR GOLD: Mrs. Sassower, I  
3 happen to agree with that, believe it or not.

4 MS. SASSOWER: I'm glad you agree  
5 with something.

6 SENATOR GOLD: I don't happen to  
7 agree with the Governor's philosophy.

8 MS. SASSOWER: I'm glad you agree  
9 with something.

10 SENATOR GOLD: But we are -- now,  
11 let's talk about what we have here.

12 MS. SASSOWER: Yes. I'd like  
13 to.

14 SENATOR GOLD: Right now, we have  
15 a system that is not involved with county  
16 leaders in politics. We have a system whereby  
17 there are screening panels, et cetera, et  
18 cetera, and they came forth with names, and that  
19 panel of distinguished people, after making  
20 their investigation, gave the Governor a list of  
21 names and, by the way -- and by the way, this  
22 appointee today, the nominee today, has been on  
23 that panel before, so this wasn't someone --

1 MS. SASSOWER: I know that.

2 SENATOR GOLD: So this wasn't  
3 someone, as I understand it, who was grabbed out  
4 of nowhere in order to reward that individual  
5 for a 1989 case. As I understand it, the  
6 individual has been on this list.

7 MS. SASSOWER: '91.

8 SENATOR GOLD: Pardon me?

9 MS. SASSOWER: The decision was  
10 in '91.

11 SENATOR GOLD: '91; excuse me.  
12 Better yet. Better yet. It wasn't somebody who  
13 was picked out of nowhere for a '91 case but  
14 someone who was thought highly of for years  
15 before, and what I am suggesting to you is that  
16 isn't it a fact that we have this process and  
17 the process is allowing you to say negative,  
18 others to say positives, and then we will vote  
19 and we may or may not agree with you.

20 MS. SASSOWER: The problem is --

21 SENATOR MARCHI: Mrs. Sassower.

22 MS. SASSOWER: The problem is,  
23 you haven't allowed me to complete my



1 presentation.

2 SENATOR MARCHI: Senator Gold --  
3 Senator Gold has made a -- really deserves the  
4 gratitude of the Committee because he has stated  
5 very eloquently, I think, the procedures that we  
6 have been following.

7 MRS. SASSOWER: Well, it's quite  
8 obvious you don't want to hear the presentation.

9 SENATOR MARCHI: Now, I'm not  
10 going to indulge -- the Committee has been very,  
11 very indulgent, and so I'm excusing you from  
12 further testimony. Thank you.

13 MS. SASSOWER: May I say only  
14 that if the --

15 SENATOR MARCHI: Unless I hear to  
16 the contrary -- (Mrs. Sassower talking over).

17 SENATOR GALIBER: There are no  
18 further questions.

19 SENATOR MARCHI: There are no  
20 other questions.

21 MS. SASSOWER: You, Senator Gold,  
22 on behalf of the judicial nominating panel that  
23 nominated Justice Levine --

1                   SENATOR MARCHI: Mrs. Sassower,  
2                   you are excused.

3                   MS. SASSOWER: -- knew that --

4                   SENATOR MARCHI: And I instruct  
5                   the Sergeant-at-Arms to escort you to the door.

6                   MS. SASSOWER: -- to testify  
7                   concerning the persons that made that  
8                   nomination.

9                   MS. ELENA SASSOWER: We will  
10                  continue our remarks for the press and for any  
11                  public who wishes to hear. Obviously, the  
12                  Senators are not interested in you knowing the  
13                  facts of the case and the facts documented by  
14                  Castracan versus Colavita. They raise serious  
15                  questions.

16                  SENATOR GALIBER: Mr. Chairman, we  
17                  don't have to take this stuff.

18                  SENATOR MARCHI: We have been very  
19                  indulgent, Mrs. Sassower, thank you for  
20                  appearing but --

21                  MS. SASSOWER: Thank you very  
22                  much for your hospitality.

23                  SENATOR MARCHI: -- we must get on

1 with our work.

2 MS. ELENA SASSOWER: What is your  
3 work, rubber stamping or getting evidence? We  
4 have brought the file. The files are  
5 documentary proof of what went on in that case.  
6 They're not platitudes; they're not euphemisms,  
7 and they're not speculations and they're not  
8 opinions.

9 SENATOR SALAND: Mr. Chairman,  
10 Mr. Chairman.

11 SENATOR MARCHI: Senator Saland.

12 SENATOR SALAND: I appreciate the  
13 fervor and passion of Mrs. Sassower and her  
14 assistant. I think you've been indulgent.  
15 Senator Gold certainly has been appropriate in  
16 his comments. I've seen here today, the kind of  
17 painting with the broadest kind of brush for a  
18 candidate of the Court of Appeals who ruled in a  
19 case as one of five. We obviously are in the  
20 midst of a quest of some kind. Your fervor  
21 again, your comments are certainly yours, but  
22 this forum has been more than indulgent; it's  
23 not here for you to attempt to make a mockery of

1 the process.

2 It's not here for you to attempt  
3 to demean an individual who has served well and  
4 served admirably. This is a process which you  
5 sought to take advantage of by way of grand-  
6 standing because all other avenues were shut off  
7 to you. This was more than gracious to you.

8 MS. SASSOWER: This is a forum  
9 for the public to know the true facts  
10 behind this nomination and to make an  
11 evaluation.

12 MS. ELENA SASSOWER: The record  
13 speaks for itself.

14 SENATOR SALAND: The true facts  
15 were heard; the true facts were heard at  
16 length. You can pursue your windmills in any  
17 fashion you'd like.

18 SENATOR MARCHI: You are  
19 excused.

20 MS. SASSOWER: May I just say on  
21 a point of personal privilege, in response to  
22 the remarks.

23 SENATOR SALAND: I have no status

1 to grant you a point of personal privilege.

2 MS. SASSOWER: May I ask your  
3 indulgence?

4 SENATOR SALAND: You may ask my  
5 indulgence if you'd like when this hearing is  
6 over?

7 SENATOR VELELLA: Are there any  
8 other witnesses?

9 SENATOR MARCHI: Pardon?

10 SENATOR VELELLA: Are there  
11 further witnesses?

12 SENATOR MARCHI: No, there are no  
13 further witnesses.

14 MS. ELENA SASSOWER: Perhaps  
15 Justice Levine would like to speak up on this  
16 subject of the right of the people to hear the  
17 facts in a particular case. You should have no  
18 fear, if he thinks he has nothing to fear.

19 SENATOR GOLD: Mr. Chairman.

20 SENATOR VELELLA: I would like to  
21 have the Sergeant-at-Arms take the name of this  
22 witness and perhaps the Committee might consider  
23 some action later. She hasn't been sworn in;

1 she's not a witness. We don't know who she is.  
2 She's an unidentified person and she's trying to  
3 make a mockery of this procedure.

4 SENATOR MARCHI: Well, we won't  
5 leap to any conclusions, but you are excused,  
6 and any further outbursts on your part, I'm  
7 going to request the Sergeant-at-Arms to escort  
8 you out of the chamber.

9 Are there any other witnesses?

10 SENATOR FARLEY: Mr. Chairman.

11 MS. ELENA SASSOWER: This was  
12 done in the presence of the press. There is no  
13 shame on the part of this body that they are  
14 suppressing testimony.

15 SENATOR MARCHI: Are there any  
16 other --

17 MS. ELENA SASSOWER: Testimony  
18 that is documented so that you have a proper  
19 understanding of this nominee for appointment to  
20 the high court of this state.

21 MR. COLE: Mr. Chairman, there is  
22 a statement submitted to the Senate Judiciary  
23 Committee. It is by Eli Vigliano. He asked

1 that it be submitted and put in the record and  
2 if you will so permit, I will give it to the  
3 reporter to put in the record.

4 SENATOR GOLD: No objection.

5 SENATOR MARCHI: No objections?  
6 Very well.

7 All right. We have had -- I want  
8 to thank the --

9 MS. SASSOWER: Why don't you read  
10 it?

11 SENATOR MARCHI: -- those who  
12 have testified here today. I regret the  
13 circumstances of the last appearance.  
14 Nevertheless, the Committee has heard from those  
15 who have been willing to place their -- their  
16 objective consideration and judgment on an  
17 awesome responsibility. The Court of Appeals  
18 holds very envious position nationally. It has  
19 been a central generator of established law in  
20 this country for -- for many decades, and we  
21 take this responsibility very seriously and  
22 believe that we should consider the nominee and  
23 take -- take action with the committee.

1 Senator Farley.

2 SENATOR FARLEY: Thank you, Mr.  
3 Chairman.

4 Let me just say that, in all the  
5 years that I have known Howard Levine, I don't  
6 know anybody that has a finer judicial tempera-  
7 ment, that is a finer human being and father,  
8 but all of this years that he has served the  
9 public as an outstanding lawyer, district  
10 attorney, and as a Family Court judge, it is  
11 renowned throughout the United States, his  
12 tenure as a Family Court judge and his concern  
13 for children.

14 It is with enthusiasm that I move  
15 his confirmation, Mr. Chairman.

16 SENATOR GALIBER: Second.

17 SENATOR MARCHI: Senator  
18 Galiber.

19 SENATOR GALIBER: I would  
20 second.

21 SENATOR MARCHI: Moved and  
22 seconded.

23 SENATOR GOLD: Mr. Chairman.



1                    SENATOR MARCHI: Yes, Senator  
2 Gold.

3                    SENATOR GOLD: Yeah. I want to  
4 second also, but I wanted to just indicate the  
5 basis upon which I am going to vote.

6                    As I said, and I'll make it  
7 brief, I think that it would be a very foolish  
8 concept if members of this Committee did not  
9 take very seriously negative comments made as  
10 regards nominees. We had at least one  
11 experience this year where I think everyone,  
12 Democrat and Republican alike was very much  
13 appreciative of the work of now Judge Chris Mega  
14 in making sure that a particular judge had a  
15 hearing, and I think, Senator Marchi, you are  
16 carrying out that same obligation.

17                    I am not rubber stamping  
18 anything. I think the record will indicate that  
19 I have voted no on judges, very vocally, and on  
20 more than one occasion, and I certainly would  
21 not appreciate being called a rubber stamp.

22                    I have already made my comments  
23 about the way the Governor is handled in the

1 statement of Mrs. Sassower. I think unfortun-  
2 ately, Judge Levine was treated in similar  
3 fashion in that there is innuendo, there is a  
4 statement of conclusion that is set forth as if  
5 it was factual.

6 The only facts I've gotten from  
7 reading a lot of documents submitted by Mrs.  
8 Sassower is that apparently she did not agree  
9 with what happened in this case, does not agree  
10 with certain concepts which are lawful within  
11 the state of New York. I think this legislative  
12 body and the Governor have rights to change some  
13 of those concepts. On the other hand, I think  
14 that every candidate for public office has a  
15 right to live within those concepts while they  
16 are law.

17 I heard about Judge Levine prior  
18 to meeting him today. I have read the documents  
19 that were submitted by other people. I take as  
20 seriously as I take the testimony of Mrs.  
21 Sassower, the testimony of Judge Casey and Mr.  
22 Murray and Rachel Kretser, and I think that I  
23 would be doing a grave, grave injustice to the

1 people of this state and the people that I  
2 represent if I didn't very, very wholeheartedly  
3 support Judge Levine, and I so vote.

4 SENATOR MARCHI: Senator  
5 Dollinger.

6 SENATOR DOLLINGER: Mr. Chairman,  
7 I'll also be brief since I was one of those who  
8 questioned Mrs. Sassower.

9 I have read the materials. I  
10 guess I strongly disagree with the conclusion  
11 Mrs. Sassower draws from these facts. I,  
12 frankly, draw a very heartening conclusion from  
13 the fact the judge was willing to apply the  
14 rules of law, some procedural. Obviously the  
15 Third Department in its opinion applied  
16 procedure rules that deal with joinder of  
17 parties, which is an important aspect endorsed  
18 by this Legislature, a part of our Civil  
19 Practice Law and Rules, one of the laws that we  
20 created to govern the rights of the people of  
21 this state. Also the issues of whether proper  
22 -- parties had been properly served, whether  
23 they had been given notice and an opportunity to

1 defend themselves, another very significant part  
2 of the legislative action of this body in  
3 creating a rule that said we're not going to  
4 allow people to sue a party, affect their  
5 interest and not give them notice of that  
6 interest when the papers are served.

7           It seems to me that those are  
8 vitally important parts of what we have done  
9 legislatively to balance the interests of  
10 litigants and to try to obtain justice. I draw  
11 the heartening conclusion from all of this,  
12 while there may be an underlying political  
13 dispute in Westchester County over this, quote,  
14 "deal," I am pleased that the courts of our  
15 state have properly applied the law as set forth  
16 by this Legislature in the rules and procedure  
17 for governing these cases.

18           I draw a distinctly different  
19 conclusion from this case, one that says that  
20 the rule of law is paramount and that those who  
21 come into our courts have to abide by it.

22           I commend Justice Levine and  
23 others, as Senator Gold has pointed out the

1 issue of the involvement in politics in the  
2 judiciary is one that I think has been a subject  
3 of great discussion in this state, of whether we  
4 ought to elect or appoint judges. At this stage  
5 in our history, we have not removed politics  
6 from our judiciary completely. I doubt we ever  
7 will.

8 The answer is, I draw a very  
9 heartening conclusion that the proper rules of  
10 law were applied, that the rules that we set in  
11 this Legislature were followed in this case. I  
12 draw no adverse inference from it. As I asked  
13 Mrs. Sassower, she has no other experience.

14 The overwhelming evidence in this  
15 case is that this is a man of compassion, a man  
16 of understanding, and a man who will be a very  
17 good judge in the New York Court of Appeals.

18 I'll be voting yes.

19 SENATOR MARCHI: Yes. Any further  
20 commentary?

21 Senator Saland.

22 SENATOR SALAND: If I may,  
23 Senator Marchi.

1                   The submissions we've received  
2                   from every association that has commented on  
3                   Judge Levine's nomination have been all  
4                   favorable. He's been approved as a nominee;  
5                   he's been rated very qualified as a nominee.  
6                   We've heard testimony across a broad spectrum of  
7                   the range of his experience, people who have  
8                   served with him as a colleague, people who have  
9                   had the opportunity to work with him, people who  
10                  knew him as far back as some 30 years ago. With  
11                  the exception of the somewhat bombastic and I  
12                  would think intemperate comments that we heard  
13                  by Ms. Sassower, they were uniformly the most  
14                  favorable of comments that I have heard during  
15                  my service in this house and on this  
16                  Committee.

17                         I have had the opportunity in  
18                         prior confirmation hearings to vote against a  
19                         proposed nominee, voted against a proposed  
20                         nominee for the judiciary on the floor as well.  
21                         I take this job seriously; I spent several hours  
22                         going over papers that were submitted to us in  
23                         advance, and I must tell you that I very

1 wholeheartedly without the slightest bit of  
2 equivocation, would support Judge Levine for the  
3 Court of Appeals or any other judicial position  
4 that he might aspire to. The man is worthy of  
5 our support and shouldn't be besmirched by the  
6 passions of a particular cause by a particular  
7 advocate.

8 SENATOR MARCHI: Well, it's very  
9 obvious --

10 MS. SASSOWER: Would you permit  
11 us --

12 SENATOR MARCHI: It's very obvious  
13 that the -- the thrust has been one of positive,  
14 a rich array of testimony that we have received  
15 from people that we respect who have the respect  
16 of people of this state, all supportive of Judge  
17 Levine's nomination and if the past is prologue,  
18 Judge, I think it will serve us all well.

19 I recognize Senator Farley.

20 SENATOR FARLEY: Thank you, Mr.  
21 Chairman.

22 Let me just say that I appreciate  
23 the support and the confidence of my colleagues

1 here on behalf of Judge Levine. In all the  
2 years that I've served in this Senate, I don't  
3 think that there's anybody who has come before  
4 us for appointment to the Court of Appeals or  
5 for any judgeship who is more eminently  
6 qualified than Howard Levine.

7 He's the pride of this whole  
8 area. He's served not only his family well,  
9 he's served this state well. Judge Levine, the  
10 legal background he has with all of his children  
11 and his daughter-in-law and son-in-law is all  
12 legal, and, Judge Levine, we're very, very proud  
13 of you, and I'm sure that when we go into  
14 session which we will do very shortly, that  
15 you're going to be unanimously confirmed by the  
16 New York State Senate. Congratulations.

17 JUDGE LEVINE: Thank you very,  
18 very much.

19 MS. SASSOWER: Mr. Chairman, Mr.  
20 Chairman, will you be --

21 SENATOR GOLD: Want to take a  
22 formal vote?

23 SENATOR FARLEY: Maybe we better



1 call the roll.

2 SENATOR MARCHI: Please call the  
3 roll.

4 MS. FONTANA: Senator Marchi.

5 SENATOR MARCHI: Aye.

6 MS. FONTANA: Senator Stafford.

7 SENATOR STAFFORD: Aye.

8 MS. FONTANA: Senator Volker in  
9 the affirmative.

10 Senator Farley.

11 SENATOR FARLEY: Aye.

12 MS. FONTANA: Senator Tully.

13 SENATOR TULLY: Aye.

14 MS. FONTANA: Senator Velella.

15 SENATOR VELELLA: Aye.

16 MS. FONTANA: Senator Saland.

17 SENATOR SALAND: Aye.

18 MS. FONTANA: Senator Leichter in  
19 the affirmative.

20 SENATOR MARCHI: Yes, he's  
21 indicated that he was in the affirmative.

22 MS. FONTANA: Senator Galiber.

23 SENATOR GALIBER: Yes.

1 MS. FONTANA: Senator Gold.

2 SENATOR GOLD: Yes.

3 MS. FONTANA: Senator Dollinger.

4 SENATOR DOLLINGER: Aye.

5 MS. FONTANA: Senator Espada in  
6 the affirmative. I'm awaiting votes from  
7 Senators Levy, Sheffer, Connor, Solomon.

8 SENATOR MARCHI: Well, we'll  
9 adjourn to another forum.

10 (Applause)

11 (Whereupon, at 4:03 p.m., the  
12 hearing was concluded.)

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