CENTER for
JUDICIAL
ACCOUNTABILITY

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By Priority Mail

May 10, 1994

Chris Herren Esq.
Civil Rights Division: Voting Section
Department of Justice
P.O. Box 66128
Washington, D.C. 20035-6128

RE: Justice Department Investigation

Dear Mr. Herren:

Pursuant to our two telephone conversations last week, I enclose the following:

(a) The September 26, 1993 Albany Times Union editorial, "The Parties Do the Voting", opining that "cross-endorsement is an integral part of the spoils system". As you know, Lawrence Kahn--one of the three cross-endorsed Supreme Court candidates mentioned therein--was the lower court judge who dismissed Castracan v. Colavita, where directly at issue was the legality and constitutionality of judicial cross-endorsements. We believe it fair to say that had Justice Kahn decided Castracan in accordance with elementary legal standards and the factual record before him, his "pay back" would not have been a Democratic and Republican cross-endorsement. Indeed, he might well have forfeited the nomination of his own Republican party[1];

(b) Two recent New York Times editorials:

(1) September 11, 1993, "Civil Court Choices: Merit and Mediocrity" ("of 17 Civil Court seats in contention in November, only 7 are being contested in next Tuesday's all-but-decisive Democratic primary elections"; and

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1 See, Government Ethics Reform for the 1990's, "Becoming A Judge", p. 293 "...political parties are geared to reward loyalty, not merit; to discourage, not encourage, independence and diversity; and to obtain power rather than promote justice."

(2) October 31, 1993 "Judicial Choices: The Best of a Crowd" ("Of the 30 races for Supreme and Civil Court...only a handful are seriously contested. Most of the meaningful choices were made months ago by political party leaders who control the complex convention and petition processes that put candidates on the ballot and strike deals for cross-party endorsements");

(c) Two stenographic transcripts demonstrating that the "advise and consent" function of the New York State Senate for the Governor's judicial appointments to the Court of Appeals has been perverted and corrupted by "collusive deal-making with the Governor"[2]:

(1) pp. 1-2, 55-102 of the transcript of the September 7, 1993 "public" hearing on the confirmation of Governor Cuomo's nomination of Howard Levine to the New York State Court of Appeals at which Senate Judiciary Committee members blocked our oral presentation--the only articulated opposition to that confirmation; and

(2) pp. 8699-8706 of the transcript of the September 7, 1993 Senate session at which our written statement in opposition to Justice Levine's confirmation was mischaracterized by a member of the Senate Judiciary Committee, immediately prior to the full Senate vote, as follows:

> "Unfortunately, there was a person in opposition who had no substance to their complaint and, in my judgment, was totally out of line, and the entire committee dismissed it as not--not relevant." (at pp. 8705-6)

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[2] That profoundly serious allegation (and the aforesaid stenographic transcripts) were part of our December 15, 1993 opposition to the confirmation of the Governor's nomination Carmen Ciparick to the Court of Appeals. See, pp. 4-5 of our statement.

(d) My mother's "Letter to the Editor" in the September 20, 1993 Legislative Gazette decrying the fraud and deceit perpetrated by the Senate Judiciary Committee upon the public and Senate. (Also enclosed is the article in the September 13, 1993 Legislative Gazette to which my mother's aforesaid Letter responded;

(e) The March 9, 1994 New York Times article, "Court Overturns Georgia Accord on New Judges", regarding an agreement reached by the U.S. Justice Department seeking "to replace the system of electing judges with one in which the governor, with the help of a broadly based nominating committee" would make appointments (Cf., pp. 3-8 of our December 15, 1993 testimony in opposition to the confirmation of Carmen Ciparick to the Court of Appeals[3]);

(f) The March 7, 1994 New York Newsday article, "Bench-Clearing Brawl in Works?", referring to the failure of "state officials" to secure approval from the U.S. Justice Department for changes affecting judicial elections. As discussed, we believe that your investigation should: (i) identify whose responsibility it was to secure such approval; and (ii) ascertain if, during the 25-year period in question, informational queries were made between state agencies and/or the Justice Department as to whether changes affecting judicial elections required pre-clearance by the Justice Department. To the extent that responsibility for pre-clearance rested with the New York State Board of Elections, the record presented by Castracan v. Colavita shows that where judicial elections are at stake, that agency is capable of behavior so grossly improper and partisan as to make suspect any so-called "failure" on its part to obtain pre-clearance;

(g) The Complaint in Maxey v. Schaeffer, et al., 91 Civ. 7328, brought in the Southern District of New York by Eli Vigliano, Esq. Said Complaint alleges (at ¶36), inter alia, that the New York State Board of Elections "does not administer and enforce and execute the

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3 Let us know if you wish to see our investigative report, described at p. 8 therein as demonstrating the "critical importance of public access to [judicial] candidates' qualifications and the proof that screening panels do not necessarily undertake appropriate investigation".

[Election Law of the State of New York] in accordance with the clear mandates thereof";

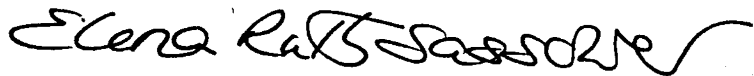
(h) The May 19, 1991 New York Times (Westchester Section) article "Lawyer to Pursue Suit on Cross-Endorsement"--which you specifically requested--to which my mother's June 9, 1991 "Letter to the Editor" responded;

(i) My mother's submissions in Sassower v. Hon. Guy Mangano, et al., now before the Court of Appeals: the January 24, 1994 Jurisdictional Statement and her attorney's March 14, 1994 letter in support of jurisdiction. The finding-less "interim" suspension Order of June 14, 1991--a copy of which you requested--is Exhibit "D-6" to the Jurisdictional Statement. For detailed discussion of that Order in the context of the controlling black-letter decisional law, as represented by Matter of Russakoff, 72 N.Y.2d 520, 583 N.Y.S.2d 949 (1992)--I refer you, specifically to Exhibit "G" thereto and additionally draw your attention to Exhibit "H".

As indicated, Mr. Vigliano is ready to discuss with you the Maxey v. Schaeffer case and is able to provide you specific information as to cross-endorsements in the Bronx[4]. Indeed, in response to your question to me as to why political parties enter into judicial cross-endorsements in areas where, demographically, they would be victorious without them, Mr. Vigliano confirmed the accuracy of what I told you--to wit, that those cross-endorsements are the exposed "tip of the iceberg", the iceberg being a larger political deal.

Again, should you wish additional materials--or have further questions--do not hesitate to call.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability

Enclosures: as indicated above

cc: Eli Vigliano, Esq.

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4 Mr. Vigliano now lives in Florida and can be reached at 407-464-1759.