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By Fax and Mail
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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.

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 longstanding. 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

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 2, 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.