



NINTH JUDICIAL COMMITTEE

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October 27, 1993

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

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

Dear Mr. Cole:

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

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

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

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

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

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

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

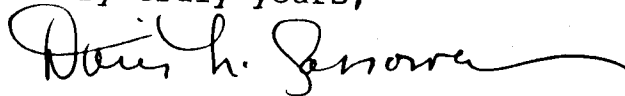
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Instead, you permitted the members of the Senate Judiciary Committee to preclude my testimony by making comments about Justice Levine's participation in Castracan v. Colavita, which-- as you should know--were not only unsupported by the facts and law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

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

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

Very truly yours,



DORIS L. SASSOWER

DLS/er

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