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A Section

Judicial deal survives last-minute shuffle

It was with a sigh of relief that Westchester Republican Chairman Anthony J. Colavita was able to introduce Democratic County Judge Francis A. Nicolai on Monday night as the "Republican candidate for state Supreme Court justice."

Most of the guests at the annual Republican Chairman's Dinner at the Lake Isle Country Club in Eastchester didn't think it unusual for Colavita to be announcing support for the Democrat because the cross-endorsement of Nicolai was part of a deal between leaders of the two major parties.

What most of the guests didn't know was that the arrangement almost fell apart over the weekend when Republican Albert Emanuelli, who is running for surrogate, balked at resigning as Supreme Court justice.

Emanuelli will be the Republican and Democratic candidate for Westchester surrogate. His resignation as Supreme Court justice was required to create a vacancy to which both parties would nominate Nicolai. Unless the unexpected occurs, that nomination will take place next month in the judicial district that covers Westchester, Putnam, Rockland, Orange and Dutchess counties.

If Emanuelli had not resigned by Monday, 90 days before the election, there would have been no election for his Supreme Court seat until November 1991.

Emanuelli did resign but not before giving leaders of both political parties a bad case of heartburn. Real political leaders revere and adhere to a code that says their word is their bond. Never did they guess that Emanuelli, a product of the political system, would even hint at allowing a deal, a publicly proclaimed one at that, to be broken.

The judicial cross-endorsement agreement was put together a year ago. Republicans wanted to keep the surrogate post from which Republican Evans Brewster must retire because of age. Democrats were eager to place several of their own on the Supreme Court bench in the 9th Judicial District, where at the time only one Democrat, Sondra Miller, and 23 Republicans were sitting.

The deal included elements of good gov-



MILTON HOFFMAN

ernment. Judicial candidates would be freed of the atrocious practice of having to raise campaign money from the very lawyers who practice in their courts. Additionally, veteran judges could remain free of partisan politics and limit campaign time if they ran without major opposition.

The arrangement approved by the executive committees of both parties was this: In 1989, Republicans would cross-endorse Democrat Samuel Fredman, serving by appointment of the governor, for election to Supreme Court. In exchange, Democrats would cross-endorse two Republicans for Supreme Court, incumbent Joseph Giudice and Emanuelli, then in private practice.

All that took place, and they were elected.

This year, under the pact, Democrats were to cross-endorse Republican Family Judge Adrienne Hofmann Scancarelli for re-election and also endorse Emanuelli for surrogate. Once Emanuelli got the nominations of the Democrats and Republicans, he would resign from Supreme Court to create the vacancy that would be filled by Democrat Nicolai. The last part of the deal would require both parties to endorse Yonkers City Judge Emmett Murphy, a Democrat, next year for Nicolai's vacated seat on the County Court bench.

Some people in the law profession predicted the arrangement would not hold. Some, they thought, either a Republican or a Democrat, would challenge Emanuelli for surrogate.

The unexpected did occur. A new state Supreme Court judgeship was created this year by the Legislature. Some people suggested that Nicolai be nominated for that new post by both parties rather than for Emanuel-

li's seat. In that way, Emanuelli could remain on the bench for the rest of this year and complete his case load. Emanuelli saw the new judgeship as manna from heaven, which could allow him to hold his seat, collect the rest of his \$95,000 annual salary and not interrupt the building of a pension.

There was talk about extending the court deal to other judicial nominations, but nothing came close to fruition. Republicans feared that if Nicolai was given the new Supreme Court post, the Emanuelli seat would be filled next January by a Democrat named by Gov. Mario Cuomo. Even though Republicans boast publicly that they will beat Cuomo in November, their private, more practical side tells them Democrat Cuomo will be governor again in January.

About a week ago, Emanuelli gave hints he might not resign. Republicans like Colavita and Guy Parisi, a lawyer for his party who helped fashion the deal, became very concerned. If Emanuelli carried out his threat, no longer would their promises be worth much in politics. Democrats, who had contributed liberally to Emanuelli's campaign, were said to be so angry that they began looking for a surrogate candidate to run on an independent line against Emanuelli.

This election for surrogate would have become a *cause celebre* overshadowing all other contests. The effort to lessen partisanship in the courts would have been set back for years.

Finally, as the deadline approached, hard negotiations by Colavita and Parisi and probably others got Emanuelli back on course.

When it was all over, Colavita appeared to be overly magnanimous when he said it must have been a "misunderstanding" on Emanuelli's part.

Somebody jokingly asked Colavita if it were true he and Parisi were seen on the Tappan Zee Bridge preparing to jump. Colavita laughed. He knew he had been in a precarious position.

Milton Hoffman is editorial page editor.