NINTH JUDICIAL COMMITTEE

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FAX COVER SHEET

10/6/93 — DATE
10:00 a.m. — TIME

TO: JOHN CAHER, ALBANY TIMES UNION

FAX NUMBER: 518-462-5997 (tele: 518-434-2403)

This fax consists of a total of 14 pages, including this cover sheet. If you do not receive the indicated number of pages, or if there is a question as to the transmittal, please call (914) 997-8105

FROM: Elena Ruth Sassower, Coordinator
Ninth Judicial Committee

MESSAGE:

Dear John:

As discussed, I am faxing the Times Union's September 26th editorial, "The Parties Do The Voting", as well as the Legislative Gazette's September 13th article about the "public hearing" and its September 20th publication of my mother's letter.

In view of the Times Union's powerful editorial position condemning judicial cross-endorsements as "an integral part of the spoils system", we believe the paper would be eager to have you undertake an investigation of precisely how bad the situation is--using the cross-endorsement of Justice Kahn as a "case study".

As you know, Castracan v. Colavita is the most important recent case challenging the legality and constitutionality of judicial cross-endorsements and was decided by Justice Kahn at the Supreme Court level. Since you were at oral argument of the case in October 1990--and wrote several stories for the Times Union--you are in a unique position to pursue what Justice Kahn did in his

decision and to raise the question as to whether--had he rendered his decision in accordance with proper legal standards--he would have been favored with cross-endorsement by the two parties he protected in that case.

Objective review of what Justice Kahn did in the Castracan v. Colavita would readily establish that his dismissal of the Castracan Petition is indefensible: disregarding elementary legal standards, as well as the factual record that was before him. The pertinent pages of my mother's testimony before the Senate Judiciary Committee on September 7th are enclosed for your convenience (pp. 2, 10, 15). I am sure that professors at area law schools would be pleased to assist you in reviewing the Castracan decision.

I again draw your attention to pages 3-4 of my mother's testimony against the confirmation of Justice Levine, based on Castracan v. Colavita, which is equally applicable to Justice Kahn:

> "The 1988 Report of the New York State Commission on Government Integrity, "Becoming a Judge: Report on the Failings of Judicial Elections in New York State", reflects the fact that sitting judges, facing re-election or looking for advancement on the bench, are subject to political pressures in conflict with their judicial obligations. It is quite plain that...[Justice Kahn]...would not have wished to jeopardize the support of his political patrons. thre is no doubt that a decision in favor of the Castracan Petitioners by...[Justice Kahn] would have had severe repercussions on his career."

Please let us know if you would like to see the compendium of exhibits that accompanied my mother's testimony. For present purposes, I enclose the two-page contents reflecting the documents it contained.

We have no doubt but that development of stories on judicial cross-endorsement, Justice Kahn, and the Castracan v. Colavita case would earn an award for you and the Times Union at next year's American Bar Association's Gavel Awards Competition. In the event you are unaware of such prestigious award and its most recent recipients, I enclose pages from the program of this year's "Gavel Awards Assembly Luncheon".

We look forward to hearing from you soon. Regards.

Yours for a quality judiciary!

Elena

COMMITTEE FOR
Modern Courts
36 West 44th Street Room 310 New York, New York 10036 (212) 575-1578

Albany Times Union
September 26, 1993

The parties do the voting

THE ISSUE

Three area judicial contests have already been decided by party leaders.

OUR OPINION

The cross-endorsement is an integral part of the spoils system.

The area Democratic and Republican parties have galantly decided to lift the burden of decision from the shoulders of the voters in three Supreme Court races in the 3rd Judicial District.

Leaders from both parties have agreed to cross-endorse the incumbent Republican justice, Lawrence Kahn, who is running for another 14-year term. The second candidate to be cross-endorsed was a Rensselaer County Democrat, Surrogate George Ceresia. He would fill the seat left vacant by the early retirement of Justice F. Warren Travers, a Troy Democrat. The third candidate was Joseph Teresi, an Albany Democrat.

This two-party-appointment manner of selecting judges has much to recommend it. It not only saves voters the inconvenience of casting a ballot, it reinvigorates the party spoils system. Instead of risking the possibility of losing all in an election, cross-endorsing guarantees that the loyalists of both major parties will be able to participate in the division of the spoils of office.

It might be objected that the purpose of elective political office is to have the voters choose their own officials and, thereby, make them somewhat accountable to popular sentiment.

That would be to take the narrow, if not naive, view of things. That view assumes elections are held for the purpose of bringing average citizens, those without a direct stake in the spoils of office, into the process. It is predicated on the belief that the greater the number of ordinary voters casting ballots, the greater will be the chance that the best candidate will be elected.

The joint-party-appointment process, by contrast, will have none of that. It recognizes that the primary duty of the party is to the party workers. It recognizes that the fuel of the party machine is the rewards it is able to dispense. It understands that without these plums of office, the parties' very lives would be at stake. And without them, how would judges be selected?

By an independent panel appointed by the governor? By a group of disinterested legal practitioners and scholars who would fill judicial offices on the basis of merit (experience plus talent) alone?

No, that alternative is unthinkable.

Levine sworn in as associate judge

By DAVID C. BESSEL
Gazette staff writer

After being sworn in as the newest judge on the state's highest court last week, 61-year-old Howard A. Levine, who had been passed over for the seat six times, said there was no reason he should have been picked earlier.

He said that the competition for such a prestigious position is intense and always draws the highest quality candidates.

Gov. Mario Cuomo, who nominated him and spoke at the brief swearing in ceremony, commented that he was waiting for the right moment to appoint him.

The 61-year-old governor joked that "It occurred to me that 61 was exactly the right age."

The day before he was sworn in, the state Senate returned for a special session to hear testimony for and against and then to confirm him. Despite a single cry of discontent at the Senate Judiciary Committee's hearing headed by acting chair John J. Marchi, Levine was quickly confirmed to the Court of Appeals by a unanimous vote of the Senate immediately following the hearing.

The Senate had 30 days to decide on Levine who was nominated on Aug. 12.

He fills the seat vacated when Judith S. Kaye was elevated to chief judge last year after the resignation of Sol Wachtler. Kaye, who swore in Levine, noted that the seat being filled was technically known as the "Kaye seat," and she said she was "grateful" to the governor for filing the position "so magnificently."

During the Senate Judiciary Committee's public hearing, the Schenectady Republican was described as a man of principle, depth, fairness, kindness and sensitivity by Justice John T. Casey of the Appellate Divsion of State Supreme Court.

Rachel Kretser, an assistant state attorney general and vice president of the State Women's Bar Association, said in her testimony that Levine epitomizes the virtues of "independence, dignity combined with a sense of humor, impartiality, patient courtesy, a quick mind and an understanding heart."

His efforts to alleviate gender bias from his court were also noted as well as several landmark decisions on child and welfare rights cases.

Sen. Hugh T. Farley, a member of the Judiciary Committee, said that "no one has ever been more eminently qualified" for the positon and Sen. Stephen M. Saland summarized the hearing as containing the "most uniform comments he has ever seen."

In addition, the State Bar Association has established the "Howard A. Levine Award for Excellence in Juvenile Justice and Child Welfare."

Chief Judge Judith Kaye swears in Associate Judge Howard A. Levine as Gov. Mario Cuomo looks on..

Gazette photo by Courtney Caggian

Despite the accolades, Doris Sassower, a Westchester County lawyer representing a small citizens action group known as the Ninth Judicial Committee, was distressed with the possibility of Levine sitting on the state's highest court.

Sassower, who was assisted by her daughter Elena, claims that Levine, who sat on a panel that dismissed Sassower's 1991 case against political cross-endorsing, showed signs of a pattern of politically motivated decisions which eventually got him nominated to the Court of Appeals as a "payback from the govornor."

The committee dismissed the Sassower arguments against Levine and Democratic Sen. Emanuel R. Gold assured them that their case had been taken seriously, but the committee could grant them no more time to speak. Gold noted that it would be "foolish not to read the bad comments slower than the good."

As the Sassowers refused to yield and began yelling "cover up," "suppressed testimony," and "rubber stamp" at the committee, Gold responded: "I am not rubber stamping anyone."

Judge Levine, who didn't comment at the time, later said that it would be inappropriate for him to comment. He did say that the policy of cross endorsing, when members of both parties nominate one candidate eliminating voter choice, should be addressed by the people of the state and their Legislators.

Sen. Richard A. Dollinger, who questioned Sassower about any other evidence she had against Levine, later commented that although he finds cross-endorsing distasteful, there is no law against the practice.

Levine story, Senate action criticized

Your coverage of Howard Levine's confirmation as judge of our highest state court did not report the full and fair story behind the Senate's vote and the "public hearing" immediately preceding it. The real story was the Senate Judiciary Committee's breach of the public trust by silencing the opposition to Judge Levine's confirmation. It is disappointing that your story likewise failed to provide the public with the important information our committee sought to present.

Glaringly omitted was any reference to my credentials which qualified me as an expert witness in the field of judicial selection. As made known to the Senate Judiciary Committee at the outset of my testimony, I was the first woman member of the Judicial Selection Committee of the New York State Bar Association and from 1972-1980 evaluated the qualifications of every judicial candidate for the Court of Appeals, the Appellate Divisions, and the Court of Claims. My testimony against Judge Levine's confirmation rested on such expertise, as well as my direct personal knowledge as pro bono counsel to the petitioners in Castracan v. Colavita, a highly sensitive political case decided, on appeal, by a panel of the Appellate Division, Third Department in which Judge Levine participated.

Your article did not identify Castracan v. Colavita by name, describing it as "Sassower's case." In fact, the case, which named as respondents Anthony Colavita, the former state chairman of the Republican Party, as well as other powerful leaders in Republican and Democratic politics, was brought in the public interest by two citizen objectors. It received support from the New York State League of Women Voters and the NAACP Legal Defense and Educational Fund and represented a historic challenge to the manipulation of elective judgeships by party leaders.

At the heart of the case were judicial nominating conventions of both parties, conducted in violation of the Election Law, implementing a written deal between the party leaders to trade seven judgeships through cross-endorsement. That deal included contracted-for judicial resignations to create vacancies for further cross-endorsed nominees and a pledge, required of all nominees, to split judicial patronage in accordance with the recommendations of party leaders.

My testimony made profoundly serious charges against Judge Levine: violation of ethical conflict-of-interest rules specifically applicable to judges and complicity in a "cover-up," reflected in aberrant decisions, which abandoned controlling law, the factual record, and the public interest. Those charges were fully substantiated by the documents and court files provided to the Senate Judiciary Committee to support our request for an investigation prior to confirmation.

Any objective review of such documentation would establish that the Senate Judiciary Committee's duty was not to halt my testimony, but to halt Judge Levine's "rubber-stamp" confirmation. Indeed, the fact that Judge Levine was not even required to deny or refute my specific documented charges reflects the Senate Judiciary Committee's awareness that no response by him could have kept his nomination alive.

Judge Levine, seated in the audience, neither came forward to deny the charges being made against him, nor to protest the curtailment of my right to present — and the public's right to know — the nature and extent of the disqualifying evidence against him.

As was well known to the members of the Senate Judiciary Committee and to Judge Levine — and as should be made known to your readers — my testimony against Judge Levine did not rest on the legality of judicial cross-endorsements, but on the ethical duty of the panel on which he sat to have disqualified itself from sitting on the case where three members of the five-judge panel were themselves the product of cross-endorsements.

The evidence showed that Judge Levine's failure to act in accordance with clear ethical and legal mandates could be perceived as motivated by his own self-interest in protecting the political power structure being challenged by Castracan. In that context, I brought to the "public hearing" a copy of the 1988 report of the New York State Commission on Government Integrity, describing the enormous pressures faced by sitting judges, such as Judge Levine, whose re-election and judicial advancement depend on the support of political patrons.

As I stated at the hearing, "... the question the public has a right to have answered — and which this committee is in a unique position to explore — is whether Justice Levine would be here today for confirmation had he properly performed his adjudicative duties in Castracan v. Colavita."

No reading of my written statement and the supporting materials presented to the Senate Judiciary Committee could support the Judiciary Committee chairman's misrepresenting report to the Senate that there was "no substance" to the opposition to Judge Levine's confirmation. Since the Senate has in its possession unassailable proof that the integrity of its confirmation process has been grotesquely compromised by its own members, the public has a right to expect that the Senate will move swiftly to take appropriate corrective action.

DORIS L. SASSOWER, director,
Ninth Judicial Committee
White Plains

of Law (61-92) are included in the compendium of documents[1] assembled to assist you in evaluating the substantial nature of this opposition to Justice Levine and the need for full review of the file in this case.

By way of overview, and based on direct personal knowledge--not hearsay--Justice Levine's on-the-job performance in Castracan shows:

(1) disregard for ethical conflict of interest rules applicable to judges, who are required to disqualify themselves where their "impartiality might reasonably be questioned" (Canon 3C(1) of the Code of Judicial Conduct, 43-45, 53-56, 86-89, 95-97);

(2) disregard for controlling law and the public interest which required adjudication of the case on the merits, rather than dismissal based on factually and legally inappropriate procedural technicalities, applied in a one-sided manner (66-67; 69-86);

(3) indifference to the profound constitutional, legal, and public policy issues raised by the case, requiring at very least, the granting of leave to appeal to the Court of Appeals--which was denied (90-91);

(4) failure to perform his duty to correct the lower court's deliberate disregard for elementary legal standards and wilful misrepresentation of the factual record (66-67, 96-97);

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1 The numbers within parentheses annotating this statement indicate page references in the compendium.

unopposed by Respondents--a panel headed by Presiding Justice Mahoney denied it, again without reasons. The result was that NAACP/LDF could not file its amicus brief to explicate the national ramifications of Castracan and the impact of judicial cross-endorsements on ethnic minorities.

The decision of the lower court (28-32) was, likewise, aberrant and both legally and factually insupportable. The lower court dismissed the Petition for failure to state a cause of action on the ground that there had been no "proof" that the conventions had not been properly conducted (32). The lower court could be presumed to know what is learned by every first year law student: that the standard to be applied on a motion to dismiss rests on the legal sufficiency of the pleading--not proof. Moreover, review of the factual record showed an abundance of "proof": the Objections, Specifications, and the three eye-witness affidavits, attesting to the violations. Such documents were unrefuted by any proof from Respondents.

In light of the unexplained and inexplicable rulings by his colleagues of the Third Department and by the lower court and the sensitive political nature of this public interest case, Justice Levine was duty-bound to consider how it would look to the public for judges who were cross-endorsed in their own judicial races to rule on a case involving the legality of judicial cross-endorsements. Justice Levine is presumed to know that the "appearance of impropriety" is the standard by which is measured a judge's duty to disqualify himself. Yet three of the

the dismissal of Sady v. Murphy--using the same failure of proof ground as was used by the lower court in Castracan, although Petitioners in that case had similarly been denied a hearing by the lower court. At that point, Justice Levine should have readily recognized from what was then before him that something aberrant, legally indefensible, and pernicious was taking place on every court level.

Yet even on reargument, Justice Levine did not address the lower court's complete disregard of law and fact in dismissing Castracan, which was not discussed in the panel's decision. He thereby impliedly condoned and approved that court's deliberate abandonment of the proper standard of adjudication. The result was to reward and protect the lower court for dismissing Castracan without a hearing--rather than to correct and discipline it for its manifest and highly prejudicial error. Indeed, Justice Levine, by his inaction, participated in the pattern of politically-motivated decision-making.

Justice Levine's tacit acceptance of political decision-making may also be seen from his failure to respond even when I reported on reargument (39-60) that following the Third Department's decision and my public announcement that I would be taking Castracan to the Court of Appeals, I was suspended from the practice of law by order of the Appellate Division, Second Department issued "without any statement of reasons or findings, as required by law and without any evidentiary hearing having been had". The opening paragraph of my affidavit in support of

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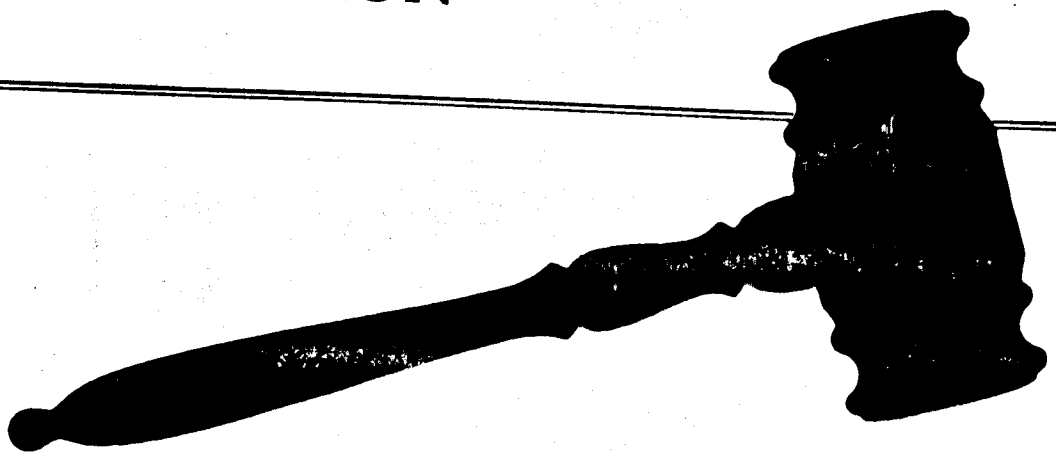
Focal Documents from the file of Castracan v. Colavita, Appellate Division, 3rd Dept., to be referred to in the testimony of Doris L. Sassower before the Senate Judiciary Committee on Tuesday, September 7, 1993, in opposition to the nomination of Hon. Howard Levine to the New York State Court of Appeals

ADDENDUM

THE GAVEL AWARDS COMPETITION



"To increase public understanding of the American legal system"

The objective of the Gavel Awards competition is to give national recognition to published articles, books, films, theatrical performances and radio and television broadcasts that:

1. foster greater public understanding of the inherent values of our American legal and judicial system;
2. inform and educate citizens as to roles in society of the law, the courts, law enforcement agencies, and the legal profession;
3. disclose practices or procedures needing correction or improvement so as to encourage and promote local, state and federal efforts to improve and modernize the nation's laws, courts and law enforcement agencies; and
4. aid the legal profession and judiciary in attaining the goals set by the Model Rules of Professional Conduct and the Code of Judicial Conduct.

The American Bar Association media awards program was authorized by the ABA Board of Governors in 1957, and the first awards were presented in 1958. The presentation of the Silver Gavels at today's Assembly Luncheon marks the thirty-sixth anniversary of this awards program.

By granting an award, The American Bar Association does not necessarily endorse the position(s) taken by the entrant.

PROGRAM OF EVENTS

Presiding	J. MICHAEL McWILLIAMS President The American Bar Association
Invocation	REVEREND MARY CUSHMAN Senior Associate Rector St. James Episcopal Church
Luncheon	
Audiovisual Presentation	Highlights of 1993 Gavel-winning entries
Announcement of the 1993 Gavel Award Recipients	EDUARDO ROBERTO RODRIGUEZ Chair Standing Committee on Gavel Awards
Presentation of Gavel Awards	J. MICHAEL McWILLIAMS
Guest Speaker	CONNIE CHUNG Co-Anchor CBS EVENING NEWS Anchor EYE TO EYE WITH CONNIE CHUNG

HEADTABLE GAVEL RECIPIENTS

Dan Vukelich
Senior Reporter
Albuquerque Tribune
Albuquerque, New Mexico

Mike Kurilovitch
Reporter
Niagara Gazette
Niagara Falls, New York

Jack Davis
Vice President and Editor
Daily Press
Newport News, Virginia

David Lawrence, Jr.
Chairman and Publisher
The Miami Herald
Miami, Florida

Steve McGonigle
Washington Correspondent
The Dallas Morning News
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Westword
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