



NINTH JUDICIAL COMMITTEE

Box 69, Gedney Station  
White Plains, New York 10605-0069  
Tel: (914) 997-8105 / Fax: (914) 684-6554

FAX COVER SHEET

12/13/93

1:10 p.m.

DATE \_\_\_\_\_ TIME \_\_\_\_\_

TO: JOHN CAHER, ALBANY TIMES UNION

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

This fax consists of a total of 3 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, enclosed is Saturday's New York Times article reporting my question of Governor Cuomo (please compare with my mother's 10/24/91 ltr to the Governor at pp. 104-117 of our Compendium in opposition to Justice Levine's confirmation).

Also enclosed is the quote by Professor D'Amato I told you about.

Again, please contact Professor David Siegel.

Regards,

*Elena*

P.S. The hearing is scheduled for 1:00 p.m. Wednesday in Room 124 of the Capitol

# A Meeting With Cuomo Brings Out the Critics

By JAMES DAO

Special to The New York Times

ALBANY, Dec. 10 — For years Gov. Mario M. Cuomo has waxed poetic about the importance of participatory democracy. But today he got a tart taste of what can happen when there is a New England-style town hall meeting at the Capitol.

Mr. Cuomo had been asked to address a conference organized by Terry Anderson, the former hostage, and his group, the Alliance for a New York Renaissance. In the room were two dozen advocates for a wide range of government reforms, including term limits, stronger ethics codes and campaign finance restrictions.

It was a daunting prospect for any politician, much less a three-term incumbent who is undecided about seeking re-election next year and has seen several incumbent governors dumped by voters in recent elections.

But Mr. Cuomo opened gamely, pushing a pet project of his own: a constitutional convention to pass election reforms the Legislature won't touch. As he criticized the performance of elected officials everywhere, Mr. Cuomo might have thought he was winning them over. He was wrong.

For the next 45 minutes, the group engaged in a bruising assault on Mr. Cuomo's record, mixing harangues with civics lectures and displaying a disdain for incumbents in general and Mr. Cuomo in particular.

The grilling started with Elena Sassower, a member of the Center for Judicial Accountability, which argues that the cross-endorsement of judges by the Republican and Democratic parties in the lower Hudson Valley robs the voters of choice.

Three times, Ms. Sassower told the Governor, she wrote to him asking for the appointment of a special prosecutor to investigate what she called election irregularities. Three times his aides demurred. Ms. Sassower suggested something was amiss in the Governor's office.

"Please don't be disappointed if in this world of reasonable people there are several who unanimously disagree with you," the Governor said, diplomacy in his voice.

"The only thing I'm disappointed in is the Governor's office," Ms. Sassower retorted.

"Boy, you guys must be tough at dinner," Mr. Cuomo said.

Next up was Dick Martens, an employee of the State Assembly who stood up 10 feet from the Governor and bellowed, "When is your Budget Department going to shape up?"

Mr. Martens, as it turned out, has been a member of a long-standing commission on eliminating government waste. Clearly, Mr. Martens said, Mr. Cuomo had not taken the commission's suggestions to heart.

"Just read the report and respond.

Don't stand mute," Mr. Martens said, doing his best to prevent the Governor from responding.

When Mr. Martens stopped talking, possibly for lack of air, Mr. Cuomo looked at Mr. Anderson, who seemed to be checking his watch, and said, "Good luck, Terry."

## Getting Grumpy

The Governor seemed so put upon that when Travis Plunkett, a lobbyist for the New York Public Interest Research Group, lobbed him a relatively softball question about legislation to increase voter registration, Mr. Cuomo gave him the verbal equivalent of a rabbit punch.

"Well, will you help me with the constitutional convention?" Mr. Cuomo said, cutting Mr. Plunkett off. Mr. Plunkett said the group was

considering it. "Forget about your consideration," Mr. Cuomo said curtly. "I want your energy."

The advocates weren't done. Taking a swipe at the Governor's call for greater participatory democracy, Robert L. Schulz asked Mr. Cuomo why state lawyers have tried to block his legal challenges to state borrowing practices.

"Don't exhort us to get involved and when we do, do everything in your power to force us down," the normally soft-spoken Mr. Schulz said angrily after a rather sharp exchange with Mr. Cuomo.

Moments later, Mr. Anderson, who has said that he will support the Governor if he runs next year, announced that Mr. Cuomo had to depart. "I'm not trying to rescue him from your wrath," he said.



NINTH JUDICIAL COMMITTEE

Box 69, Gedney Station  
White Plains, New York 10605-0069  
Tel: (914) 997-8105 / Fax: (914) 684-6554

Professor Anthony D'Amato, Northwestern Law School  
"The Ultimate Injustice: When A Court Misstates The Facts"  
11 Cardozo Law Review, 1313-1347

"Do Judges routinely display a casual attitude toward the facts of the case? I suggest that practicing attorneys be asked whether they have had cases where the judge's statement of the facts were false. Every practicing attorney to whom I have asked this question has responded in the affirmative; some have told me that the practice is, unfortunately, quite common, and that judicial misrepresentation of the facts of cases has produced a crisis in their professional lives. They feel that their work is subject to the whim of judges who play God with the facts of a case, changing them to make the case come out the way the judge desires. Some say that if they had known that the practice of law would be like this, they would have gone into a different profession...

Apart from these professional concerns, we should also ask ourselves what kind of a judiciary system this society has produced where judges can misstate the facts of a case and then proceed to apply the law to those fictitious facts. Can any person be safe in court if this practice is allowed to continue? If judges can listen to the evidence and then tell a contrary story, what remains of justice? The vaunted system turns to quicksand. Our case may be factually proven, legally required, and morally compelled, but we can still lose if the judge changes the facts. And if we complain--no matter how loudly--higher courts will not be interested in reviewing a 'factual' controversy, and the legal community, as well as the general public, will assume that the facts were those stated by the judges." (11 Cardozo Law Review, 1345-1346)