

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Susan Edgerley
Assistant Metro Editor
The New York Times
Via Fax to (212) 556-7615

Dear Susan:

Per our conversation earlier this afternoon, I am forwarding to you materials regarding the issue of judicial cross-endorsement, one of two ways cited by the Justice Department that voters are cheated out of their right to choose state Supreme Court judges.

As I mentioned, Westchester attorney Doris Sassower brought the first-ever lawsuit challenging as unconstitutional the practice of judicial cross endorsement. She did this after documenting a written cross-endorsement deal that distributed seven judgeships among party bosses in the Ninth Judicial District.

Most cross-endorsement deals are cut behind the scenes. But incredibly, the 1989 cross-endorsement deal was put in writing. In its written form, The Deal is quite a transparent thing — it's basically election rigging. The parties to The Deal admit it when they say in the preamble that it will "***enable sitting judges...to attain re-election to their judicial office without the need to participate in a partisan contest***" [emphasis added].

The first of two lawsuits challenging The Deal, called *Castracan v. Colavita*, was filed in 1990 and aimed at blocking the second year's phase of The Deal from going through (the second, *Sady v Murphy*, was aimed at the third year). Mr. Anthony Colativa, one of the defendants, was one-time chairman of the state Republican party and for 15 years has been head of the Westchester Republican County Committee. He was sued along with his Democratic counterpart and other defendants. The basis of the suit was two-pronged: (1) That The Deal was illegal, unethical, and further, that it was unconstitutional in disenfranchising the voters from their right to elect judges; and (2) That the judicial nominating conventions where The Deal was ratified were conducted in violation of the election law.

The record in *Castracan* reflects the determination of the courts to get rid of the case by any and all means. State Supreme Court Justice Lawrence Kahn took the position that he could not address the propriety of The Deal because it was part of the internal workings of the party conventions; he said the only way he could reach it was if the conventions had been illegally conducted. But *without ever granting a hearing to the petitioners*, he ignored the evidence that there was proof that the conventions were illegal. ***It deserves mentioning that last year, when Kahn sought re-election to***

a 14-year term, he accepted a cross-endorsement from the major parties.

The case was supposed to go up for appeal of the trial court's factually and legally erroneous decision before Election Day 1990. It was calendered for argument before the Appellate Division, Third Department, for Oct. 19. However, Oct. 18, the day before arguments, the Appellate Division, Third Department, dropped the case from its calendar and pushed it over until after the elections — notwithstanding the explicit requirement in the Election Law that such cases must be heard before the elections. ***When the Third Department panel finally decided on the case, it was thrown out by a panel the majority of the judges on which had received cross-endorsements.***

I am also enclosing copies of three letters sent by Elena Sassower, coordinator of the Center, to Chris Herren Esq, counsel to the Civil Rights Division, Voting Section, of the Justice Department. Evidently, Ms. Sassower's correspondence, which included a carton of documents sent to the DOJ, sparked their interest in the issue of cross-endorsement as a minority voting rights issue.

Please contact us if you need copies of any of the documents referenced. Ms. Sassower is testifying in Washington Friday, but will be available to get you any documents you need after that time. I am available by phone tomorrow; the number is below.

If you feel you might go with this, please give me a heads-up as soon as possible and I'll get moving assembling your documents.

Good luck with the story.

Very truly yours,



ERIC F. COPPOLINO
Communications Director

Encl.

NOTE:

My number Friday, Saturday and Sunday is
(914) 255-2525. Page me and I'll call back.