

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 judi-

cial 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 reelection 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.

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THE LEGISLATIVE GAZETTE

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