

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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BY FAX and BY HAND  
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October 31, 1995

Patricia M. Hynes, Esq.  
ABA Standing Committee on Federal Judiciary  
c/o Milberg, Weiss, Bershad, Hynes & Lerach  
110 Plaza, 49th Floor  
New York, New York 10119-0165

Re: Proposed District Court Nomination of Lawrence E. Kahn

Dear Ms. Hynes:

Transmitted herewith for consideration by the ABA Standing Committee on Federal Judiciary in connection with its evaluation of the qualifications of Justice Lawrence E. Kahn for a federal judgeship are the legal files in Castracan v. Colavita [Folders B-G], an Election Law proceeding over which Justice Kahn presided in October 1990 in the Supreme Court, Albany County.

The Castracan case, which I handled as pro bono counsel to petitioners<sup>1</sup>, who were also acting pro bono publico, was no ordinary, run-of-the-mill matter. Rather, it was an extraordinary and historic constitutional challenge to the political manipulation of judicial nominations in New York by the practice of major party cross-endorsements and illegally-conducted judicial nominating conventions. As review of the files demonstrates, what Justice Kahn did in Castracan was to pervert elementary legal standards and falsify the factual record

<sup>1</sup> On June 19, 1991, the day before the last day to file a Notice of Appeal in Castracan to the Court of Appeals, I was served with a retaliatory order of the Appellate Division, Second Department interimly suspending my license to practice law, immediately, indefinitely, and unconditionally. Such order was completely unlawful: it was not based on written charges, was not preceded by a hearing, made no findings, and stated no reasons. In the nearly four and a half years that have since elapsed, I have been denied any hearing as to the basis of my suspension and denied any appellate review. The story of this vicious retaliation to which I was subjected for bringing the Castracan challenge was summarized in an Op-Ed advertisement in the October 26, 1994 New York Times, entitled "Where Do You Go When Judges Break the Law?". A copy is annexed hereto. See, also, Folder A, Doc. 1, pp. 9-10; Folder F, Doc. 1, ¶¶1-3.

so as to "dump" the case<sup>2</sup>.

Justice Kahn's betrayal of the public trust and of his oath of office was for the purpose of protecting the powerful political leaders implicated in Castracan. It was so identified by me in a December 19, 1991 letter to then Governor Mario Cuomo. A copy of that letter, reciting the specifics of Justice Kahn's politically-motivated decision-making in Castracan, is enclosed [Folder A, Doc. 3]--as are my two previous letters to the Governor on the subject [Folder A, Docs. 1, 2].

I believe my December 19, 1991 letter will be of particular interest to you inasmuch as it refers to the New York State Commission on Government Integrity's report about the corruptive political influences despoiling our judiciary and recommending complete overhaul of the process of judicial election. You may even recall that letter since it, together with my two previous letters to the Governor, were sent under a December 23, 1991 coverletter to the Commission's Chairman, John Feerick, with cc's to all Commissioners--including yourself. For your convenience, a copy of my coverletter is enclosed [Folder A, Doc. 4].

What poetic justice that you, having served as a Commissioner on the New York State Commission on Government Integrity, are now the Second Circuit representative of the ABA's Standing Committee on Federal Judiciary, assigned to review Justice Kahn's proposed nomination to the federal bench since it is Justice Kahn, by his legally and factually insupportable decision in Castracan, who is responsible for perpetuating the corrupted state judicial nominating process decried by the Commission's Report, "Becoming a Judge: Report on the Failings of Judicial Elections in New York State". How appropriate, too, that you should be reviewing the Castracan case--the Commission on Government Integrity having studied the power and influence of its first named Respondent, Anthony Colavita, Chairman of the Westchester Republican County Committee (1979-1995) and former State Republican Party Chairman, as reflected by its report "The Blurred Line: Party Politics and

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See, in particular:

- Folder B: Doc. B-1, pp.3-7 (Justice Kahn's Decision);  
Doc. B-1, pp.8-76 (Petitioners' OSC/Petition/Exhibits: B-1);  
Doc. B-3, pp.1-9; 20-2.  
Folder C: Doc. C-3, ¶¶7-14; Doc. C-11, ¶¶6, 25, Ex. "A".  
Folder D: Doc. D-8, pp.1-4, 27-9.  
Folder E: Doc. E-6 (Oral Argument).  
Folder F: Doc. F-2, pp.5; Doc. F-11, ¶¶34-5.  
Folder G: Doc. G-8, pp.4-5; Doc. G-15, ¶¶10-11.

Government in Westchester County"<sup>3</sup>.

It is our position that but for Justice Kahn's protection of the political power structure by his misconduct in Castracan, he would not now be rewarded with a proposed nomination to a federal judgeship--any more than he would have been favored, as he was in 1993 with a major party cross-endorsement for re-election to the New York Supreme Court.

On the subject of the 1993 major party cross-endorsement of Justice Kahn and two other state Supreme Court justices in New York's Third Judicial District, I enclose an editorial from the September 26, 1993 Albany Times Union [Folder A, Doc. 6]. Although opining that "cross-endorsement is an integral part of the spoils system", it fails to note Justice Kahn's role in keeping such spoils system intact by his decision in the Castracan challenge.

That the political parties should have rewarded Justice Kahn for his politically-motivated decision-making in Castracan bears out the Commission on Government Integrity's finding that:

"political parties are geared to reward loyalty, not merit; to discourage, not encourage, independence and diversity; and to obtain power rather than promote justice. Such goals, however valuable to the operation of the party system in general, have no place in the election of our judges." ("Becoming a Judge", p. 293<sup>4</sup>)

We believe that the aforesaid political goals should also have no place in the appointment of our federal judges. Yet, the reality is that political considerations also control in federal judicial nominations--a fact we documented three years ago in a six-month investigative study of the federal judicial screening process in relation to the nomination of Westchester County Executive Andrew O'Rourke<sup>5</sup>.

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<sup>3</sup> The Introduction to that report was quoted in our January 2, 1992 complaint against Judge Kahn, filed with the New York State Commission on Judicial Conduct. A copy of that complaint is enclosed [Folder A, Doc. 5].

<sup>4</sup> The page reference is to the report as printed in Government Ethics Reform for the 1990's: The Collected Reports of the New York State Commission on Government Integrity, edited by Bruce Green, Fordham University Press, New York, 1991, 734 pp.

<sup>5</sup> See, pp. 22-24, 43 of our critique.

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As the critique we submitted to the U.S. Senate Judiciary Committee empirically established, Mr. O'Rourke was absolutely unfit for judicial office, his nomination being a political "pay-back" for his having agreed to be the "sacrificial lamb" for the Republican party in running for Governor in 1986 against the then sure-to-win Democratic incumbent, Mario Cuomo. Our critique highlighted that not only was Mr. O'Rourke rewarded with a judicial nomination by his political patron, Anthony Colavita, but his running-mate for Lieutenant Governor, Michael Kavanaugh, was also rewarded with a federal judicial nomination<sup>6</sup>.

Ironically, Justice Kahn has been recommended to fill the very federal judgeship that was to go to Mr. Kavanaugh--at least according to an August 13, 1995 Albany Times Union editorial. A copy of that editorial, which makes the salutary suggestion that the judicial nomination process--federal and state--not "treat the citizenry as an unnecessary appendage", is enclosed [Folder A, Doc. 7].

I understand from my daughter Elena that until your recent conversation with her, you were unaware of our critique of Mr. O'Rourke's nomination for a federal judgeship. This is undoubtedly because our May 1992 critique exposed the inadequacy of the investigation of Mr. O'Rourke's credentials by the then Second Circuit representative, William Willis, who, in August 1992, was elevated to the chairmanship of the Standing Committee.

Since Elena tells me that you expressed great interest in seeing our critique, I enclose a copy--which you will note refers to the reports of the New York State Commission on Government integrity. I also enclose a copy of our May 18, 1992 and June 2, 1992 letters to then Senate Majority Leader Mitchell and a Compendium of our correspondence with the ABA [Correspondence Compendium II].

As reflected by that correspondence, the ABA Standing Committee on Federal Judiciary, in addition to failing and refusing to meet its ethical duty to retract its demonstrably insupportable approval rating of Mr. O'Rourke, was totally uninterested in our offer to detail how its screening procedures might be improved.

I would point out--much as Elena did in her January 22, 1993 letter to Mr. Willis [Correspondence Compendium, Exhibit "M"]--that I have unique credentials in the field of judicial selection. My biographic profile appears at the end of the critique, together with my 1989 Martindale-Hubbell Law Directory listing. I would only highlight that I was the first woman to

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<sup>6</sup> See, our critique, footnotes 35 and 61, p. 43.

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serve on the New York State Bar Association's Judiciary Committee and served for eight years, interviewing the candidates for New York State Court of Appeals, the Appellate Divisions of the New York Supreme Court, and the New York State Court of Claims.

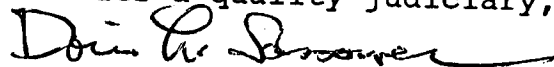
Finally, I enclose an informational brochure about the Center for Judicial Accountability, Inc, the citizens' action organization I have built from the ruins of the Castracan debacle, together with a copy of Elena's Letter to the Editor, published in the August 14, 1995 New York Law Journal about our Article 78 proceeding against the New York State Commission on Judicial Conduct. Included in the eight complaints of judicial misconduct referred to in her letter as part of the proceeding is my January 2, 1992 complaint against Justice Lawrence Kahn [Folder A, Doc. 5].

As Second Circuit representative to the ABA Standing Committee on Federal Judiciary, you have a direct interest in the proper functioning of the New York State Commission on Judicial Conduct. Plainly, had the Commission undertaken to investigate my complaint against Justice Kahn--which it was required to do under §44.1 of New York's Judiciary Law--and taken appropriate disciplinary action against him for official misconduct, you would not now be burdened by reviewing this unworthy recommendee--who must be resoundingly rejected for his demonstrated lack of integrity.

I would note that investigation by the Commission on Judicial Conduct would have uncovered additional facts bearing adversely upon Justice Kahn's lack of impartiality to adjudicate a case, such as Castracan, challenging a political deal involving contracted-for resignations, pivoting around a Surrogate Court judgeship. This included the fact that, prior to his election in 1979 to the Supreme Court in the Third Judicial District, Justice Kahn had himself resigned--five years early--from his office as Surrogate of Albany County.

I look forward to speaking with you directly about the foregoing. I expect you will have many questions.

Yours for a quality judiciary,



DORIS L. SASSOWER, Director  
Center for Judicial Accountability, Inc.

cc: Chairwoman Carolyn B. Lamm  
ABA Standing Committee on Federal Judiciary  
Irene R. Emsellem, ABA Staff Liaison  
Robert Evans, Director, ABA Governmental Affairs Group

Enclosures: See attached Inventory

CONTENTS OF TRANSMITTAL

1. Folders A-G: Itemization attached
2. New York Times' Op-Ed advertisement, "Where Do You Go When Judges Break the Law?", 10/26/94
3. May 1992 critique and compendium of exhibits; 5/18/92 and 6/2/92 ltrs to Senate Majority Leader Mitchell; ABA correspondence compendium
4. New York Law Journal, Letter to Editor, "Commission Abandons Investigative Mandate", by Elena Sassower, 8/15/95
5. CJA informational brochure

# Where Do You Go When Judges Break the Law?

FROM THE WAY the current electoral races are shaping up, you'd think judicial corruption isn't an issue in New York. Oh, really?

On June 14, 1991, a New York State court suspended an attorney's license to practice law—immediately, indefinitely and unconditionally. The attorney was suspended with no notice of charges, no hearing, no findings of professional misconduct and no reasons. All this violates the law and the court's own explicit rules.

Today, more than three years later, the suspension remains in effect, and the court refuses even to provide a hearing as to the basis of the suspension. No appellate review has been allowed.

Can this really happen here in America? It not only can, it did.

The attorney is Doris L. Sassower, renowned nationally as a pioneer of equal rights and family law reform, with a distinguished 35-year career at the bar. When the court suspended her, Sassower was *pro bono* counsel in a landmark voting rights case. The case challenged a political deal involving the "cross-endorsement" of judicial candidates that was implemented at illegally conducted nominating conventions.

Cross-endorsement is a bartering scheme by which opposing political parties nominate the same candidates for public office, virtually guaranteeing their election. These "no contest" deals frequently involve powerful judgeships and turn voters into a rubber stamp, subverting the democratic process. In New York and other states, judicial cross endorsement is a way of life.

One such deal was actually put into writing in 1989. Democratic and Republican party bosses dealt out seven judgeships over a three-year period. "The Deal" also included a provision that one cross-endorsed candidate would be "elected" to a 14-year judicial term, then resign eight months after taking the bench in order to be "elected" to a different, more patronage-rich judgeship. The result was a musical-chairs succession of new judicial vacancies for other cross-endorsed candidates to fill.

Doris Sassower filed a suit to stop this scam, but paid a heavy price for her role as a judicial whistle-blower. Judges who were themselves the products of cross-endorsement dumped the case.

Other cross-endorsed brethren on the bench then viciously retaliated against her by suspending her law license, putting her out of business overnight.

Our state law provides citizens a remedy to ensure independent review of governmental misconduct. Sassower pursued this remedy by a separate lawsuit against the judges who suspended her license.

That remedy was destroyed by those judges who, once again, disobeyed the law — this time, the law prohibiting a judge from deciding a case to which he is a party and in which he has an interest. Predictably, the judges dismissed the case against themselves.

New York's Attorney General, whose job includes defending state judges sued for wrongdoing, argued to our state's highest court that there should be no appellate review of the judges' self-interested decision in their own favor.

Last month, our state's highest court — on which cross-endorsed judges sit — denied Sassower any right of appeal, turning its back on the most basic legal principle that "no man shall be the judge of his own cause." In the process, that court gave its latest demonstration that judges and high-ranking state officials are above the law.

Three years ago this week, Doris Sassower wrote to Governor Cuomo asking him to appoint a special prosecutor to investigate the documented evidence of lawless conduct by judges and the retaliatory suspension of her license. He refused. Now, all state remedies have been exhausted.

There is still time in the closing days before the election to demand that candidates for Governor and Attorney General address the issue of judicial corruption, which is real and rampant in this state.

Where do you go when judges break the law? You go public.

Contact us with horror stories of your own.

**C**ENTER *for*  
**J**UDICIAL  
**A**CCOUNTABILITY



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*The Center for Judicial Accountability, Inc. is a national, non-partisan, not-for-profit citizens' organization raising public consciousness about how judges break the law and get away with it.*

The New York Times

ITEMIZATION

Folder A: LETTERS AND EDITORIALS

- (A-1) 10/24/91 LTR TO GOVENOR MARIO CUOMO
- (A-2) 10/31/91 LTR TO GOVERNOR MARIO CUOMO
- (A-3) 12/19/91 LTR TO GOVERNOR MARIO CUOMO
- (A-4) 12/23/91 LTR TO JOHN FEERICK, CHAIRMAN OF NEW YORK STATE COMMISSION ON GOVERNMENT INTEGRITY, with copies to Commissioners
- (A-5) 1/2/92 LTR TO NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT
- (A-6) "THE PARTIES DO THE VOTING", editorial, ALBANY TIMES UNION, 9/26/93
- (A-7) "WHAT A WAY TO PICK JUDGES", editorial, ALBANY TIMES UNION, 8/13/95



CASTRACAN v. COLAVITA

Folder B: SUPREME COURT, COUNTY OF ALBANY, Index # 6056/90

(B-1)\*<sup>1</sup> APPELLANTS' RECORD ON APPEAL, filed 10/17/90

(B-2)\* APPELLANTS' APPELLATE BRIEF, filed 10/17/90

(B-3)\* APPELLANTS' SUPPLEMENTAL RECORD ON APPEAL,  
filed 11/16/90

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<sup>1</sup> Documents on behalf of the Castracan Petitioners-  
Appellants are indicated by an asterick.

Folder C:

APPELLATE DIVISION, 3rd DEPT., Index # 62134  
PREFERENCE APPLICATION

- (C-1)\* 10/19/90 DLS LTR FAXED TO APPELLATE DIVISION, 3rd DEPT.
- (C-2) Ltr of Appellate Division, 3rd Dept., dated 10/19/90, faxed to DLS
- (C-3)\* APPELLANTS' ORDER TO SHOW CAUSE FOR A PREFERENCE OF APPEAL pursuant to Supreme Court Rules, 3rd Dept., Sec. 800.16
- (C-4) Respondent NYS Board of Elections: Notice of Cross-Motion (Ciampoli)
- (C-5) Respondent Miller: Notice of Cross-Motion (Dranoff)
- (C-6) Respondent Westchester Co. Board of Elections: Opposing Affirmation (Casio)
- (C-7) Respondent Emanuelli: Opposing Affirmation (Hall, Dickler)
- (C-8) Respondent Nicolai: Opposing Affirmation (Abinanti)
- (C-9) Respondents Westchester Co. Democratic Committee, Mehiel, and Weingarten: Opposing Affirmation (Hashmall)
- (C-10)\* 10/26/90 state-wide release of The League of Women Voters of New York State: "Cross-Endorsement Case Should Be Heard"
- (C-11)\* APPELLANTS' AFFIRMATION IN REPLY AND IN OPPOSITION TO RESPONDENTS' CROSS-MOTIONS (With Exhibits and Supporting Affirmation)
- (C-12) 10/30/90 Decision of Appellate Division, 3rd Dept.
- (C-13) 10/31/90 Ltr of NYS Board of Elections to Counsel
- (C-14) 11/2/90 Ltr of NYS Board of Election enclosing proposed order
- (C-15)\* 11/2/90 DLS LTR TO APPELLATE DIVISION, 3rd DEPT.
- (C-16) 11/13/90 Ltr of Appellate Division, 3rd Dept.
- (C-17) 11/14/90 Ltr of Dranoff to Appellate Division
- (C-18) 11/23/90 Decision of Appellate Division, 3rd Dept.

**Folder D:**

**OPPOSING BRIEFS TO APPELLATE DIVISION / REPLY BRIEF**

- (D-1) Brief of Respondent NYS Board of Elections  
(Ciampoli)
- (D-2) Ltr of Respondent Westchester Co. Board of Elections (Cascio)
- (D-3) Brief of Respondent Emanuelli (Hall, Dickler)
- (D-4) Brief of Respondent Miller (Dranoff)
- (D-5) Brief of Respondent Nicolai (Abinanti)
- (D-6) Brief of Respondents Colavita and Parisi (Parisi)
- (D-7) Brief of Respondents Westchester Democratic County Committee, Mehiel, and Weingarten (Hashmall)
- (D-8)\* APPELLANTS' REPLY BRIEF
- (D-9)\* ERRATA SHEET TO APPELLANTS' REPLY BRIEF (1/28/91 coverltr)

**Folder E:**            **AMICUS APPLICATION/ORAL ARGUMENT/DECISION**

- (E-1)\*            2/8/91 Ltr of NAACP Legal and Educational Defense Fund
- (E-2)            2/11/91 ltr of Appellate Division, 3rd Dept.
- (E-3)            2/21/91 Decision of Appellate Division, 3rd Dept.
- (E-4)\*            3/1/91 Ltr of NAACP Legal and Educational Defense Fund
- (E-5)            Appellate Division, 3rd Dept. "Day Calendar", 3/25/91
- (E-6)\*            3/25/91 ORAL ARGUMENT OF DLS
- (E-7)\*            Gannett newspaper extracts handed up by Appellants, with the Court's permission, at oral argument
- (E-8)            5/2/91 Decision of Appellate Division, 3rd Dept.
- (E-9)            Order with Notice of Entry, 5/16/91, sent by Dranoff, 6/20/91

- Folder F:**      **MOTION FOR REARGUMENT, RECUSAL, OR, ALTERNATIVELY,  
FOR LEAVE TO APPEAL TO COURT OF APPEALS**
- (F-1)\*      NOTICE OF MOTION, SUPPORTING AFFIDAVIT, and  
EXHIBITS (7/25/91)
- (F-2)\*      MEMORANDUM OF LAW (7/25/91)
- (F-3)      Respondent NYS Board of Elections (Ciampoli):  
          (a) Notice of Cross-Motion, Affirmation (8/2/91)  
          (b) Compendium of Exhibits
- (F-4)      Respondent Emanuelli (Hall, Dickler):  
          (a) Notice of Cross-Motion, Affidavit (8/12/91)  
          (b) Memorandum of Law
- (F-5)      Respondent Miller (Dranoff):  
          (a) Affirmation (8/8/91)  
          (b) Memorandum of Law
- (F-6)      Respondent Nicolai (Abinanti): ltr of 8/15/91
- (F-7)      Respondent Colavita (Parisi):  
          Notice of Cross-Motion, Affirmation (8/12/91)
- (F-8)      Respondent Parisi (Vitagliano):  
          Notice of Cross-Motion, Affirmation (8/12/91)
- (F-9)\*      APPELLANTS' AFFIRMATION (Vigliano) IN REPLY AND IN  
OPPOSITION AND EXHIBITS (8/15/91)
- (F-10)      8/22/91 Ltr from Appellate Division, 3rd Dept.
- (F-11)\*      OMNIBUS AFFIDAVIT (Sassower) IN OPPOSITION TO  
RESPONDENTS' CROSS-MOTION FOR SANCTIONS AND  
EXHIBITS (9/6/91)
- (F-12)\*      APPELLANTS' AFFIRMATION (Vigliano) IN REPLY AND IN  
OPPOSITION TO LATER CROSS-MOTIONS BY RESPONDENTS  
OTHER THAN NYS BOARD OF ELECTIONS (9/6/91)
- (F-13)\*      APPELLANTS' REPLY MEMORANDUM OF LAW
- (F-14)      10/17/91 Decision of Appellate Division, 3rd Dept.

**FOLDER G:**            **COURT OF APPEALS**

- (G-1)\*        NOTICE OF ENTRY OF ORDER (6/21/91)
- (G-2)\*        NOTICE OF APPEAL (6/21/91) (Sassower, P.C.)
- (G-3) (a)     6/28/91 Ltr of Hashmall
- (G-3) (b)\*    7/5/91 LTR OF VIGLIANO
- (G-3) (c)     7/2/91 Ltr of Dranoff
- (G-4)\*        CONSENT TO CHANGE ATTORNEY (7/11/91)
- (G-5)\*        NOTICE OF APPEAL (7/11/91) (Vigliano)
- (G-6)\*        JURISDICTIONAL STATEMENT
- (G-7)         7/16/91 ltr from Court of Appeals
- (G-8)\*        8/1/91 VIGLIANO LTR TO COURT OF APPEALS WITH ENCLOSURES
  - (a)    MEMORANDUM IN SUPPORT OF SUBJECT MATTER JURISDICTION
  - (b)    APPENDIX TO CONSTITUTIONAL REFERENCES IN THE RECORD
  - (c)    CONTENTS OF DOCUMENT TRANSMITTAL
- (G-9)\*        New York Law Journal, 8/8/91 "Cases Filed with the Court of Appeals"
- (G-10)        Respondent NYS Board of Elections (Ciampoli):
  - (a)    Motion to Dismiss and for Sanctions (8/1/91)
  - (b)    Supporting Affirmation
  - (c)    Compendium of Exhibits
  - (d)    8/2/91 coverltr
  - (e)    8/6/91 errata sheet
- (G-11)        Respondent Miller (Dranoff): Affirmation (8/8/91)
- (G-12)        Respondent Nicolai (Abinanti): 8/15/91 ltr
- (G-13)        Respondent Emanuelli (Hall, Dickler): 8/20/91 ltr
- (G-14)        8/27/91 ltr of NYS Board of Elections
- (G-15)\*        APPELLANTS' AFFIRMATION (Vigliano) IN OPPOSITION (9/7/91)
- (G-16)        10/15/91 Decision of Court of Appeals

(G-17) 10/15/91 Order of Court of Appeals

(G-18) 10/22/91 ltr of NYS Board of Elections