



NINTH JUDICIAL COMMITTEE

Box 70, Gedney Station
White Plains, New York 10605-0070
Tele: (914) 997-8105 / Fax: (914) 684-6554

By Fax and Mail
518-474-1513

December 19, 1991

Honorable Mario Cuomo
Governor, State of New York
Executive Chamber
Albany, New York 12224

Dear Governor Cuomo:

Almost two months have elapsed since we transmitted to you our letter, dated October 24, 1991, reiterating our request for a Special Prosecutor. We have received no response whatever from you to that communication.

We understand that you have been very busy trying to decide whether to run for President, but that letter, as well as our letter of October 31, 1991, presented vital information as to two further issues which have been absorbing your attention--and which are focal to your current litigation with Chief Judge Wachtler: (1) the budget crisis; and (2) the inefficiency and waste in the judiciary.

Your public statement that you cannot get a fair trial in the state courts--where your adversary is the Chief Judge of the Court of Appeals and the lawsuit involves whether more money should be budgeted for the courts--is an extraordinary acknowledgment of precisely what our October 24th letter complained about: judges who do not decide according to the law and the facts, but rather for political considerations.

Indeed, you have even more reason for concern now that Wachtler v. Cuomo has been assigned to State Supreme Court Justice Lawrence E. Kahn--the very same judge who decided Castracan v. Colavita. As you know, the Castracan case involved a patently illegal and unethical deal in which the two major political parties traded seven judgeships over a three year period, as well as blatant violations of the Election Law at the judicial nominating conventions which implemented the deal.

December 19, 1991

Justice Kahn's decision dismissing that politically sensitive case, without any fact-finding hearing, was inexplicable--except that it served to protect the lawyers and judges involved in the deal. On its face, Justice Kahn's decision ignored the elementary legal standard for granting a motion "to dismiss for failure to state a cause of action"--requiring that the pleaded allegations, and all reasonable inferences therefrom, be accepted as true. Moreover, as shown, inter alia, by the three eyewitness' affidavits submitted in support of the Petition, Justice Kahn made a factual finding which flew in the face of the record before him. So that you can immediately determine this for yourself, a copy of Justice Kahn's October 16, 1990 decision and the three affidavits are enclosed.

As our October 24, 1991 letter discussed, the politically-suspect decisions in Castracan v. Colavita and its 1991 progeny Sady v. Murphy--from the Supreme Court on up to the Court of Appeals, sustaining dismissals in both cases without any hearing on the merits--demonstrate why the court system is falling apart. It is not because there is insufficient funding, but because the system has been contaminated by judges willing to subordinate "the rule of law" to the demands of party politics. Our October 24, 1991 letter fully detailed the relevant facts and referred you to appropriate court records and legal documents.

The aforesaid corruptive political influences demand your immediate attention. The Report of the New York State Commission on Government Integrity--a Commission you created in response to corruption scandals involving government officials--described the gross political dependence of our state judiciary and recommended the complete overhaul of the process of judicial election.

Chief Judge Wachtler himself candidly testified before the Commission on Government Integrity as to the powerful political forces influencing and compromising the judiciary's independence.

In light of Judge Wachtler's aforesaid testimony--contributing to a Report that cost the citizens of this State close to \$10,000,000--we respectfully submit that the time is overdue to implement the Commission's recommendations and to investigate the extent to which the lack of judicial competence and integrity has exacerbated, if not created, the financial crisis in our courts.

Most respectfully,



DORIS L. SASSOWER

Director, Ninth Judicial Committee

DLS/er
Enclosures

cc: Chief Judge Sol Wachtler, Court of Appeals
Dean John D. Feerick, Fordham University School of Law
Matthew T. Crosson, Chief Administrator of the Courts
Hon. Ralph Marino, President Pro Tem and Majority Leader
Hon. Saul Weprin, Speaker N.Y. State Assembly
Hon. Christopher J. Mega
Chairman, N.Y. State Senate Judiciary Committee
Hon. G. Oliver Koppell
Chairman, N.Y. State Assembly Judiciary Committee
Hon. Gerald Stern, Commission on Judicial Conduct
Dr. M. L. Henry, Fund for Modern Courts