



NINTH JUDICIAL COMMITTEE

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FAX COVER SHEET

9/20/93

4:50 p.m.

DATE

TIME

Ruth Hochberg, Editor
NEW YORK LAW JOURNAL

TO:

212-741-3985

FAX NUMBER:

5

This fax consists of a total of _____ 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.

Doris L. Sassower, Director

FROM:

MESSAGE:

Enclosed ltr to James Goodale, Esq. as well as the Legislative Gazette story of 9/13/93 and my Letter to the Editor printed in its 9/20/93 issue.



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By Fax: 212-909-6836

September 20, 1993

James Goodale, Esq.
Debevoise, Plimpton
875 Third Avenue
New York, New York 10002

Dear Mr. Goodale:

Per your secretary's suggestion, I am faxing you a copy of the New York Law Journal's 9/8/93 front-page story on the Levine confirmation, together with my Letter to the Editor relating thereto. I faxed and mailed that letter to the Law Journal on September 13th, together with a copy of my written statement to the Senate Judiciary Committee.

Having had no acknowledgment or response from the Law Journal, I telephoned Ruth Hochberger today and spoke to her personally. She confirmed receipt of my aforesaid material both by fax and mail. However, she said that she had been "too busy" to read it and did not know when she would. As I explained to Ms. Hochberger, what is at issue is a major news story. The brief story that appeared was not only shockingly inadequate, but in its reference to me false, misleading and defamatory. Ms. Hochberger referred me to you as the lawyer for the Law Journal.

For your information, I am also faxing you a copy of a separate Letter to the Editor I wrote to the Legislative Gazette in Albany, similarly pointing out the deficiencies of its coverage of the subject, together with a copy of its story. As you can see, the Gazette published my letter in this week's issue.

James Goodale, Esq.

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September 20, 1993

I would much appreciate your telephoning me as soon as you have reviewed this transmittal so that we can discuss any questions you may have and what the Law Journal can do to meet its journalistic responsibilities on a matter of far-reaching importance to our profession and the public.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Dor' followed by a stylized flourish and a horizontal line extending to the right.

DORIS L. SASSOWER
Director, Ninth Judicial Committee

DLS/bh

cc: Ruth Hochberger, Editor

Levine sworn in as associate judge

By DAVID C. BESSEL

Gazette staff writer

After being sworn in as the newest judge on the state's highest court last week, 61-year-old Howard A. Levine, who had been passed over for the seat six times, said there was no reason he should have been picked earlier.

He said that the competition for such a prestigious position is intense and always draws the highest quality candidates.

Gov. Mario Cuomo, who nominated him and spoke at the brief swearing in ceremony, commented that he was waiting for the right moment to appoint him.

The 61-year-old governor joked that "It occurred to me that 61 was exactly the right age."

The day before he was sworn in, the state Senate returned for a special session to hear testimony for and against and then to confirm him. Despite a single cry of discontent at the Senate Judiciary Committee's hearing headed by acting chair John J. Marchi, Levine was quickly confirmed to the Court of Appeals by a unanimous vote of the Senate immediately following the hearing.

The Senate had 30 days to decide on Levine who was nominated on Aug. 12.

He fills the seat vacated when Judith S. Kaye was elevated to chief judge last year after the resignation of Sol Wachtler. Kaye, who swore in Levine, noted that the seat being filled was technically known as the "Kaye seat," and she said she was "grateful" to the governor for filing the position "so magnificently."

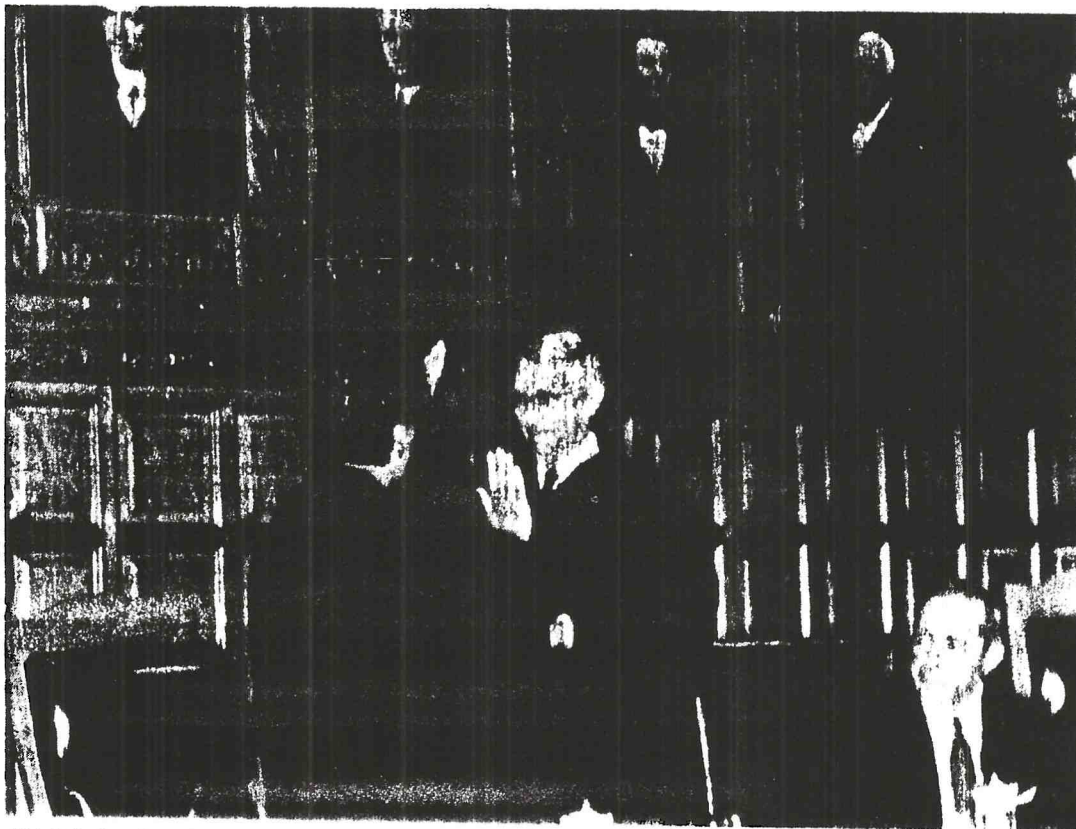
During the Senate Judiciary Committee's public hearing, the Schenectady Republican was described as a man of principle, depth, fairness, kindness and sensitivity by Justice John T. Casey of the Appellate Division of State Supreme Court.

Rachel Kretser, an assistant state attorney general and vice president of the State Women's Bar Association, said in her testimony that Levine epitomizes the virtues of "independence, dignity combined with a sense of humor, impartiality, patient courtesy, a quick mind and an understanding heart."

His efforts to alleviate gender bias from his court were also noted as well as several landmark decisions on child and welfare rights cases.

Sen. Hugh T. Farley, a member of the Judiciary Committee, said that "no one has ever been more eminently qualified" for the position and Sen. Stephen M. Saland summarized the hearing as containing the "most uniform comments he has ever seen."

In addition, the State Bar Association has established the "Howard A. Levine Award for Excellence in Juvenile Justice



Chief Judge Judith Kaye swears in Associate Judge Howard A. Levine as Gov. Mario Cuomo looks on.

and Child Welfare."

Despite the accolades, Doris Sassower, a Westchester County lawyer representing a small citizens action group known as the Ninth Judicial Committee, was distressed with the possibility of Levine sitting on the state's highest court.

Sassower, who was assisted by her daughter Elena, claims that Levine, who sat on a panel that dismissed Sassower's 1991 case against political cross-endorsing, showed signs of a pattern of politically motivated decisions which eventually got him nominated to the Court of Appeals as a "payback from the governor."

The committee dismissed the Sassower arguments against Levine and Democratic Sen. Emanuel R. Gold assured them that their case had been taken seriously, but the committee could grant them no more time to speak. Gold noted that it would be "foolish not to read the bad comments slower than the good."

As the Sassowers refused to yield and began yelling "cover up," "suppressed testimony," and "rubber stamp" at the committee, Gold responded: "I am not rubber

stamping anyone."

Judge Levine, who didn't comment at the time, later said that it would be inappropriate for him to comment. He did say that the policy of cross endorsing, when members of both parties nominate one candidate eliminating voter choice, should be addressed by the people of the state and

Gazette photo by Courtney Caggiano
their Legislators.

Sen. Richard A. Dollinger, who questioned Sassower about any other evidence she had against Levine, later commented that although he finds cross-endorsing distasteful, there is no law against the practice.

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.

DORIS L. SASSOWER, director,
Ninth Judicial Committee
White Plains