

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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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 petitioners¹, 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

¹ 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.

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so as to "dump" the case².

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"³.

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. 293⁴)

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'Rourke⁵.

³ 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].

⁴ 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.

⁵ See, pp. 22-24, 43 of our critique.

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 nomination⁶.

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

⁶ 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