

CENTER *for*  
JUDICIAL  
ACCOUNTABILITY



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By Fax: 518-432-8255

By Certified Mail: RRR 383-202-271

April 8, 1994

Thea Hoeth, Executive Director  
New York State Ethics Commission  
39 Columbia Street  
Albany, New York 12207-2717

Dear Ms. Hoeth:

Your November 26, 1993 letter (Exhibit "1") advises us that the Commission has concluded its review of the Ninth Judicial Committee's<sup>1</sup> complaint of misconduct by the New York State Board of Elections ["the State Board"]. Said complaint, filed on February 5, 1992 (Exhibit "2"), is fully substantiated by the legal files in Castracan v. Colavita--a copy of which we hand-delivered to you on March 1, 1993<sup>2</sup>--following the first dismissal of our complaint, of which you notified us by letter dated December 30, 1992 (Exhibit "3").

As you will recall, that first dismissal was made without any review of the dispositive Castracan files--which you did not even requisition from the State Board or from any other source--and, allegedly, without any familiarity with the State Board's statutory powers of enforcement and investigation under Sec. 3-102 and 3-104 of the Election Law. These astonishing facts, vitiating the legitimacy of the Commission's purported December 1992 dismissal--and belying any claim that the Commission actually investigated our complaint--are memorialized by our January 5, 1993 letter (Exhibit "4"), the accuracy of which has never been controverted.

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<sup>1</sup> The Center for Judicial Accountability is the successor to the Ninth Judicial Committee.

<sup>2</sup> The "Doc." citations herein refer to documents in the Castracan files. As you know, to facilitate the Commission's investigation of our complaint, we completely organized and inventoried the files in Castracan and furnished a three-page index entitled, "Itemization of Documents Essential to Determining the Nonfeasance and Malfeasance of the New York State Board of Elections". A copy of the Itemization is part of Exhibit "4", annexed hereto.

By your November 26, 1993 letter (Exhibit "1"), you again purport that the Commission has dismissed our complaint, with a boiler-plate statement that "no evidence exists to support a finding of reasonable cause that the Board's officers and/or employees violated the Public Officers Law with respect to this matter" and that "consequently, the Commission will conduct no further inquiry". You make no reference whatever to the Castracan files to support what you purport to have been the Commission's disposition. Nor do you address the State Board's enforcement and investigative duties under Sec. 3-102 and 3-104 of the Election Law<sup>3</sup>.

We, therefore, request that you identify, with particularity, the procedures employed by the Commission in reaching what you purport to be its latest dismissal determination, since the aforesaid documentation and legal authority we provided the Commission amply establish, prima facie, "specific wrongdoing" by the State Board of Elections: (a) in failing to investigate specific and duly-attested to violations of the Election Law by Democratic and Republic party leaders and, thereafter, (b) in engaging in inappropriately partisan and retaliatory behavior.

As reflected by our January 5, 1993 letter (Exhibit "4"), you refused to identify the procedures employed by the Commission when it purportedly first dismissed our complaint in December 1992 (Exhibit "3"). Although your November 26, 1993 letter (Exhibit "1") claims that such prior dismissal was based on the Commission's having "interviewed witnesses and reviewed documents", the available evidence shows such no support whatever for that bald statement. Indeed, by your own admission, the Commission failed to review the Castracan files or to familiarize itself with Sec. 3-102 and 3-104 of the Election Law. Moreover, it also failed to contact the eyewitnesses to the Democratic and Republican Judicial Nominating Conventions, whose statements were enclosed with our original February 5, 1992 complaint (Exhibit "2": see the three affidavits/affirmations annexedk to Doris L. Sassower's December 19, 1991 letter to Governor Cuomo).

Following our personal transmittal of the Castracan files to you on March 1, 1993--and your hostile and perfunctory meeting with myself and the Director of the Ninth Judicial Committee on that date as we sought to assist you and your staff in its so-called investigation--we never received any request for further documentation. This includes the tape-recording of the 1989 Democratic Judicial Nominating Convention, referred to in our

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<sup>3</sup> A copy of Sec. 3-102 and 3-104 of the Election Law is attached to our January 5, 1993 letter (Exhibit "4"). Said sections were specifically cited by the Castracan Petitioners in their detailed description of the derelictions of the State Board, inter alia, at para. 45 of Doc. "C-11".

February 5, 1992 complaint (Exhibit "2")<sup>4</sup>, as well as in the Castracan files<sup>5</sup>, and at our March 1, 1993 meeting. Nor were we asked to supply the names of witnesses to provide live testimony to the Commission as to the violations of the Election Law, witnessed by them, at the 1989 and 1990 Judicial Nominating Conventions.

Finally, after nearly six months with no word from the Commission, we requested a status report, by letter dated August 25, 1993 (Exhibit "5"). In a telephone conversation with the Commission's Associate Counsel, G. Stephen Hamilton on September 8, 1993, I was informed that the staff had not completed its investigation. Mr. Hamilton, who did not request any additional substantiating evidence from us, agreed to notify us when the staff's report was ready to be presented to the Commission members so that we could present our own statement to the Commissioners in conjunction with its consideration of this matter.

Neither Mr. Hamilton nor any other member of the Commission staff thereafter contacted us. On November 24, 1993, I telephoned Mr. Hamilton and left a detailed message for him. I was told Mr. Hamilton would call back "later in the day". Nevertheless, Mr. Hamilton did not return my call that day or thereafter. Indeed, subsequent messages left for him in the days that followed were, likewise, unreturned. It is against this background that your November 26, 1993 letter, bearing a postal service marking of "PM 11/30/93" (Exhibit "1") arrived.

In view of the foregoing, it is our belief that this matter was never presented to the Commission members--and that, if it was, the Commissioners never actually saw the documentation we supplied, substantiating our complaint against the State Board.

We, therefore, formally request to know:

- (a) the date on which the staff presented this matter to the Commissioners, if they ever did;
- (b) whether the presentation was oral or written--and whether we may receive a copy of any written report rendered by the staff;

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<sup>4</sup> See p. 2 (para 3) of Doris L. Sassower's October 24, 1991 letter to Governor Cuomo, annexed thereto.

<sup>5</sup> See Doc. "C-11", at para. 37, and the Affirmation of Eli Vigliano, Esq., annexed thereto.

(c) whether the Commissioners were shown the Castracan v. Colavita files and, in particular, the documents and page references set forth in our three-page Itemization thereto<sup>6</sup>; and

(d) whether the Commissioners were informed of our desire, discussed with Mr. Hamilton, to make a direct presentation to them in conjunction with their review.

As the Castracan files reflect--and as the Commissioners should have been informed--the State Board admitted to dismissing, without investigation (Doc. "C-11", Ex. "C" thereto), a November 1, 1989 citizen complaint of an attorney, Eli Vigliano, Esq., concerning "Election Fraud" in the Ninth Judicial District. That complaint (Doc. "C-11", Ex. "B" thereto) not only detailed violations of the Election Law at the 1989 Democratic Judicial Nominating Convention, but offered affidavits and "evidentiary proof, oral and documentary" to show that the Certificates of the Minutes and Nominations were "false, fraudulent, and constitute a violation of Election Law Sec. 17-120, a felony." Numerous exhibits were enclosed by Mr. Vigliano to support his complaint, including a written resolution between the Democratic and Republican parties to cross-endorse seven judgeships, pursuant to specific terms and conditions (Doc. "B-1", pp. 52-4)--among them, the resignation of Albert Emanuelli eight months after his cross-endorsed election to a 14-year Supreme Court term so that he could be cross-endorsed to be Surrogate of Westchester County--which Mr. Vigliano described as a further "election fraud".

As the Castracan files further reflect, in Mr. Vigliano's one and only telephone conversation thereafter with the State Board, he informed its "Law Enforcement Counsel" that:

"he had three witnesses who could corroborate his allegations, he could procure affidavits from them, if she desired, and that if she wished, he would make available to her a tape recording, which he had made of the 1989 Democratic judicial nominating proceedings." (Doc. "C-11", para. 37)

In the face of the serious allegations made by Mr. Vigliano's complaint, the documentation provided by him, and the further substantiation he offered by way of affidavits and a tape recording--the State Board's dismissal of the complaint, which it admits was with "no investigation" constitutes "specific wrongdoing by the Board"--which, in light of its investigatory powers under Sec. 3-102 and 3-104 of the Election Law, should have been

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<sup>6</sup> Said Itemization was first transmitted to you with our January 5, 1993 letter (Exhibit "4" and supplied, again, on March 1, 1993, when we hand-delivered the Castracan files.

identified as such to the Commissioners. The State Board's attempt to justify itself by, thereafter, claiming in an October 17, 1990 letter that Mr. Vigliano's complaint did "not raise a substantial reason to believe a violation had occurred." (Doc. "C-11", Ex. "C" thereto) is an outright lie since the State Board's May 25, 1990 dismissal letter made no such claim (Doc. "D-6", Ex. "2" thereto)<sup>7</sup> and, indeed, the evidentiary proofs proffered by Mr. Vigliano--but refused by the State Board-- established "probable cause.

That the State Board's cover up of Election Law violations was designed to assist powerful and politically-connected interests and individuals, who had an "inside track" with it, is illustrated by the fact that the State Board's dismissal of Mr. Vigliano's confidential November 1, 1989 complaint, thereafter, inexplicably turned up in the hands of counsel to the Westchester Republican County Committee at oral argument of Castracan v. Colavita for use against the Petitioners therein<sup>8</sup>. As set forth in Doris L. Sassower's October 24, 1991 letter to Governor Cuomo (Doc "A-1", p. 2, fn. 1)-- a copy of which was enclosed with our initial February 5, 1992 complaint (Exhibit "2")--it has never been explained how that dismissal letter was obtained by counsel for the Westchester Republican County Committee. Indeed, neither your December 30, 1992 nor November 26, 1993 dismissal letters (Exhibits "3" and "4") make any reference to this additional allegation of "specific wrongdoing" by the State Board, which plainly would also violate Sec. 74.3(c) of the Public Officers Law.

Likewise, your letters do not address the State Board's "specific wrongdoing" in denying Dr. Mario Castracan and Professor Vincent Bonelli a hearing on the violations of the Election Law at the 1990 Democratic and Republican Judicial Nominating Conventions, attested to by them in their Objections and Specifications to the Objections (Doc. "B-1", pp. 35-51), duly filed with the State Board. Nor do your letters address the State Board's further "specific wrongdoing" in validating the 1990 Republican Certificate of Nomination (Doc. "B-1", p. 129)--notwithstanding such Certificate (Doc. "B-1", pp. 26-7) was, on its face, violative of the Election Law (Doc. "D-8", pp. 2-3).

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<sup>7</sup> The State Board's May 25, 1990 dismissal letter (Doc. "D-6", Ex. "2" thereto) took the position that the proper avenue for redress of Election Law violations at a nominating convention would be "a proceeding instituted in the Supreme Court by...a person that has filed objections"-- and then proceeded to give misinformation as to the time parameter in which such objections were required to be filed (Doc. "C-11", para. 41, particularly fn. 3 thereto).

<sup>8</sup> See Doc. "C-11": para. 39 and, particularly fn. 2 thereto, as well as Doc. "A-1": p. 2 and fn. 1 thereto.

No less egregious, your two dismissal letters entirely ignore the State Board's "specific wrongdoing" in preventing judicial review of its conceded administrative inaction<sup>9</sup> and its vicious and deceitful attempts to intimidate the Castracan Petitioners and their counsel with threats of sanctions for their public-spirited efforts to secure enforcement of the Election Law safeguards to which the public is entitled.

We would request that when you respond to the foregoing inquiry as to the manner in which our fully documented complaint was presented to the members of the New York State Ethics Commission--if it ever was--you also respond, specifically, to the points raised herein as to the "specific wrongdoing" of the State Board--all of which were identified in our initial February 5, 1992 complaint (Exhibit "2")<sup>10</sup>, in numerous telephone conversations with your staff, and at our March 1, 1993 meeting.

Such pattern of "specific wrongdoing", as here documented, establishes the State Board's flagrant contempt for Secs. 74.3.(c), (d), (f), (h) of the Public Officers Law and should have impelled the Ethics Commission, under Sec. 94.9(1) of the Executive Law, to have made appropriate recommendations to the Governor and Legislature--as previously pointed out by us in our January 5, 1993 letter (Exhibit "4", p. 2).

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability

Exhibits annexed hereto.

cc: Attorney General G. Oliver Koppell  
Chairwoman Weinstein, Assembly Judiciary Committee  
Chairman Vitaliano, Assembly Committee on Election Law

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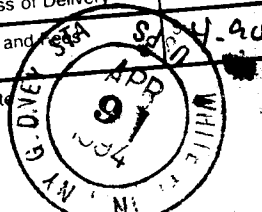
<sup>9</sup> See, particularly, Doc. "D-8": pp. 12-13 and Appendix #3 thereto; Doc. "F-9": pp. 4-15; Doc. "G-15": paras. 3, 12-15; 17-34.

<sup>10</sup> See pp. 2-3 of Doris L. Sassower's October 24, 1991 letter to Governor Cuomo, annexed thereto.

P 383 202 271  
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Special Delivery Fee		
Restricted Delivery Fee		
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- Attach this form to the front of the mailpiece, or on the back if space does not permit.
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Consult postmaster for fee.

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5. Signature (Addressee) Peter A. Bennett	4b. Service Type <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise
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