

By Fax: 518-473-2344

June 18, 1991

John J. Poklemba, Esq.  
Director of Criminal Justice Services  
State Capitol, Room 245  
Albany, New York 12224

Attn: Sean Byrne, Esq.  
Counsel to the Director

Dear Mr. Byrne:

This letter confirms and reiterates the request made on behalf of the Ninth Judicial Committee for appointment of a Special Prosecutor. That request was made personally on March 25, 1991, following my argument before the Appellate Division, Third Department, of the case of Castracan v. Colavita, at which time we also hand-delivered relevant materials to your office, including the Briefs and Record on Appeal in that case.

To assist you in your presentation to the Special Prosecutor Review Board, I wish to draw your attention to certain facts, including the fact that the request for a Special Prosecutor was first made by Eli Vigliano, Esq., Chairman of the Ninth Judicial Committee, nearly two years ago. You will note such request in Mr. Vigliano's extensively detailed and documented 4-page letter to the Governor, hand-delivered to the Governor's New York Office on November 1, 1989. That letter, annexed to my Reply Brief as Appendix #3 (Exhibit "B" thereto), clearly outlined the criminal violations inherent in the 1989 Judicial Nominating Conventions held in the Ninth Judicial District. At the Democratic Convention, such violations included, inter alia, lack of a quorum, failure to call the roll, failure to hold the convention in a room large enough to accommodate all delegates and their alternates. As pointed out by Mr. Vigliano's letter, the Republicans took the position that the public could be excluded from the conventions which nominate their Supreme Court Justices<sup>1</sup>, the right to vote for whom is expressly granted by the

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<sup>1</sup> Guy Parisi, counsel to the Westchester Republican Committee and Anthony Colavita, continued to maintain such position at the oral argument before the Appellate Division on March 25, 1991, without any supporting authority to justify it.

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Constitution of this State. They thereby escaped scrutiny by impartial observers who could report their Election Law violations that year.

Appendix #3 of my Reply Brief details the inaction and improper action of the New York State Board of Elections, to whom the Governor's Counsel referred Mr. Vigliano's 1989 letter. That public agency, entrusted with the duty to protect the franchise and safeguard the public interest, failed to make any investigation of the facts so as to prevent recurrence of the violations identified in Mr. Vigliano's aforesaid 1989 letter.

As a result, virtually identical violations of the Election Law were repeated at the 1990 judicial conventions--unrestrained by any action of the State Board of Elections. Indeed, in 1990, the State Board of Elections dismissed the Statement of Objections and the Specifications thereof (R-35, 45), filed by Dr. Mario Castracan (a registered Republican) and Professor Vincent Bonelli (a registered Democrat)--without any hearing or investigation--and sustained the perjurious Certificates of Nomination signed by the Chairman, Presiding Officer and Secretary respectively of the Democratic and Republican Ninth Judicial District Convention--even where, as was the case with the Republican Party, the Election Law violation was apparent on the face of the Certificate. The Certificate itself showed that Anthony Colavita, Convenor of the Republican Convention, continued to assert his coercive influence, in violation of Section 6-126(1) the Election Law, by acting as Temporary and Permanent Chairman thereof (R-26). Nevertheless, the Determination of the State Board of Elections validating the Certificate stated:

"...the issues raised in the specifications of objections go behind the documents and records on file in this office and, as such, cannot be determined by the Board."

This point, as well as other aspects of the State Board of Elections' position, are discussed at pp. 12-14 of my Reply Brief.

It is respectfully submitted that the foregoing sufficiently merits appointment of an independent special prosecutor to investigate the State Board of Elections' abandonment of its responsibility to protect the public interest. However, even more serious is the State Board of Elections' active, adversarial posture once judicial review was sought of its determination validating the 1990 Certificates. Indeed, the State Board of Elections adopted the argument of collateral estoppel originally advanced by way of defense in the Answers of Respondents

Westchester Republican Committee and Colavita. That argument rested on the notion that Petitioners Castracan and Bonelli could not assert their objections because:

"By virtue of the fact that Petitioners' agents have previously filed a complaint alleging the same cause of action with the New York State Board of Election (sic) which has been dismissed, Petitioners are collaterally estopped from instituting this proceeding."

The fact that the State Board of Elections adopted the contention of the Republican Respondents that a proceeding brought to challenge nominations resulting from the improprieties pervading the 1990 conventions should be barred by Mr. Vigliano's aforesaid letter to the Governor concerning the 1989 convention abuses (further discussed at Appendix #3 of my Reply Brief) additionally warrants investigation.

This is particularly so in view of the fact that counsel to the Westchester Republican Committee and Mr. Colavita, the originators of such argument, supported same with material from the confidential files of the New York State Board of Elections.

It must be noted that the District Attorney of Westchester County has been an integral part of the Republican power structure, controlled and dominated by Anthony Colavita for more than 20 years. Even if Mr. Vergari could be fair in evaluating this case for purposes of presenting an indictment to the grand jury, which is unlikely given the enormous pressure on him from behind the scenes, the public would perceive the failure to indict as a suspect decision resulting from the political interconnections of the parties involved.

The public has already suffered a tremendous loss of confidence in that the beneficiaries of the corrupt Three-Year Cross-Endorsements Deal, challenged by Castracan v. Colavita, are now sitting on the bench. Indeed, the fraudulent practices of the Republican and Democratic party leaders at the judicial nominating convention were an essential element to the success of that Deal.

The terms and conditions of the unprecedented Deal, which guaranteed election of seven judges over a three-year period, are spelled out in a written Resolution ratified by the judicial

nominating conventions, as well as by the judicial nominees, (at R-52-4). Such terms and conditions included early resignations to create vacancies and division of patronage along party lines, in violation also of Code of Judicial Conduct, as well as the Rules of the Chief Administrator of the Courts. The basis of criminal liability on the part of the public officials involved rests, inter alia, in violation of 17-158(3) of the Election Law proscribing trading judgeships for "valuable consideration", as well as on the filing of false and fraudulent Certificates of Nomination, in violation of 17-120 of the Election Law.

Like the New York State Board of Elections, the Courts have utterly failed to protect the public interest. The Lower Court blinded itself to the documentary evidence of the Election Law violations at the judicial nominating conventions (R-55-76), and did not address the legality of the cross-endorsements Deal. The Appellate Division denied Petitioners their rightful preference under the Election Law and the Courts' own rules in Election Law proceedings to have the case decided before Election Day, and just last month dismissed the case on procedural objections. Even were those objections valid, they had not been preserved for appellate review, and certainly, at that post-election stage of the proceedings, could have been overcome without prejudice--had the Appellate Division viewed the public interest as paramount. The fact that three of the five members of the appellate bench did not disclose that they themselves had been cross-endorsed raises serious question as to their impartiality. In any case, our Committee has voted to take the case up to the Court of Appeals, which action will be initiated this week by the filing of a Notice of Appeal.

As a result of the Three-Year Deal, and the contracted-for resignations to create and maintain vacancies, which the Governor was precluded from filling, the already back-logged Court calendars in the Ninth Judicial District have been thrown into chaos. Trial dates of more than a year ago have not been met and motions submitted more than a year ago are still undecided--with litigants' lives and property in limbo in the interim.

The lack of effective action--administrative or judicial--has sent a message to the wrongdoers that they can continue to violate the law, disregard the adverse impact on the public interest, and go on to bigger and better cross-endorsement deals, corruptive of our democratic and judicial process.

The 1991 judicial nominating conventions are close at hand and the third phase of the Deal is being implemented. To prevent a complete loss of confidence by this crisis situation, our

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Committee believes the Governor must act swiftly by appointment of a Special Prosecutor. Such action would reflect the Governor's concern that judicial nominations be the end-product of the democratic process--not its perversion--and that party bosses will be held accountable for their flagrant violation of the People's constitutionally and statutorily-protected voting rights.

Very truly yours,



DORIS L. SASSOWER

Pro Bono Counsel

Ninth Judicial Committee

DLS/er

cc: Eli Vigliano, Esq.  
Chairman, Ninth Judicial Committee