

SUPREME COURT STATE OF NEW YORK  
COUNTY OF ALBANY

-----x  
In the Matter of the Application of  
MARIO M. CASTRACAN and VINCENT F. BONELLI,  
acting Pro Bono Publico,

Petitioners,

Index No. 6056/90

for an Order, pursuant to Sections  
16-100, 16-102, 16-104, 16-106 and  
16-116 of the Election Law,

Affidavit

-vs-

ANTHONY J. COLAVITA, Esq., Chairman,  
WESTCHESTER REPUBLICAN COUNTY COMMITTEE,  
GUY T. PARISI, Esq., DENNIS MEHIEL, Esq.,  
Chairman, WESTCHESTER DEMOCRATIC COUNTY  
COMMITTEE, RICHARD L. WEINGARTEN, Esq.,  
LOUIS A. BREVETTI, Esq., Hon. FRANCIS A.  
NICOLAI, HOWARD MILLER, Esq., ALBERT J.  
EMANUELLI, Esq., R. WELLS STOUT,  
HELENA DONAHUE, EVELYN AQUILA, Commissioners  
constituting the NEW YORK STATE BOARD  
OF ELECTIONS, ANTONIA R. D'APICE,  
MARION B. OLDI, Commissioners constituting  
the WESTCHESTER COUNTY BOARD OF ELECTIONS,

Respondents,

for an Order declaring invalid the Certificates  
purporting to designate Respondents Hon. FRANCIS A.  
NICOLAI and HOWARD MILLER, Esq. as candidates for  
the office of Justice of the Supreme Court of the  
State of New York, Ninth Judicial District, and  
the Petitions purporting to designate ALBERT J.  
EMANUELLI, Esq. a candidate for the office of  
Surrogate of Westchester County to be held in  
the general election of November 6, 1990.

-----x  
STATE OF NEW YORK            )  
COUNTY OF WESTCHESTER ) ss.:

VINCENT F. BONELLI, being duly sworn, deposes and  
says:

1. I am one of the Petitioners in the above-entitled matter and submit this Affidavit in support of the relief requested in my Petition and Order to Show Cause instituting the above-entitled special proceeding, dated September 26, 1990.

2. I am a full-time professor of history at Bronx Community College of the City University of New York and an adjunct professor of history and government at the Westchester Community College in Valhalla, New York, with a doctorate in history and political science. I have been so employed for twenty (20) years.

3. On Monday evening, September 24, 1990, I, together with Eli Vigliano, Esq., Doris L. Sassower, Esq., and Filomena Vigliano, went to the Days' Inn located on White Plains Road in Greenburgh, New York, where the Democratic Judicial Nominating Convention was scheduled to take place at 7:00 p.m. We arrived at the Days' Inn at that hour.

4. When we went into the lobby, we were directed to Meeting Rooms A and B, where we were told the Convention would take place. We proceeded to the entrance of said Meeting Rooms, where an attendance sheet on a table was available to sign. A woman seated at the table stated that one did not have to be a Delegate or an Alternate Delegate in order to sign the attendance sheet. Mr. Vigliano signed the sheet, the rest of us did not.

5. We then entered the meeting room, which had a movable partition, separating rooms A and B, which was recessed into a slot in the wall. There were approximately 25-30 people seated at the time. The chairs were arranged in rows of five on one side, with a middle aisle separating four chairs on the other side. There were a total of eight rows on each side. A count showed 32 chairs on one side, 37 on the other, totaling 69 seats. We occupied four of the 69 seats. There was also a dais with four chairs and side tables set up with refreshments.

6. At about 7:40 p.m., a man identified himself as DENNIS MEHIEL, Chairman of the Westchester Democratic County Committee. He called the meeting to order. He said he was reading a letter sent to him by Hon. JOHN MARINO, Chairman of the Democratic State Committee, which stated that he had been designated as the person to convene the Convention and to call the Convention to order.

7. Not all the seats were occupied at that time. There were about 10-15 people milling about in the rear of the room, and 8-10 people milling about at the side of the room where a table had been set up with sodas, coffee, and pastries.

8. When Mr. MEHIEL concluded reading the aforesaid letter from Mr. MARINO, he stated he would call the Roll. A

motion was thereupon made that the calling of the Roll be dispensed with. Mr. MEHIEL then turned to a man later identified as J. HASHMALL, Esq. and requested a ruling as to the legality of dispensing with the Roll Call. Mr. HASHMALL responded that, in the opinion of counsel to the County Committee, if a resolution dispensing with the calling of the Roll was adopted unanimously, the Convention could legally be organized and proceed with conducting its business.

9. Mr. MEHIEL thereupon accepted the motion, which was seconded. He called for a vote. A number of people raised their hands and said "Aye". Mr. MEHIEL asked if there were any "Nays"; none were expressed. The Chairman made no inquiry as to the identity or credentials of the persons voting, nor did he attempt to establish the presence of a quorum. Nevertheless, he announced that by the unanimous adoption of the motion to dispense with the Roll, it was legal and valid for the Convention to proceed with its business.

10. Mr. MEHIEL thereupon accepted a motion to elect a Temporary Chairman to the Convention. An individual nominated Jay B. HASHMALL, Esq. The motion was seconded. A voice vote was taken and Mr. HASHMALL was unanimously elected Temporary Chairman. Thereupon, Mr. MEHIEL turned the meeting over to Mr. HASHMALL.

11. Thereupon, Mr. HASHMALL called for a nomination for the election of a Temporary Secretary, and a MARC OXMAN was nominated. The nomination was seconded. Nominations were closed. A voice vote was taken and Mr. OXMAN was elected Temporary Secretary.

12. Mr. HASHMALL then said that the business of the Convention was to nominate three (3) candidates to fill the three (3) vacancies in the office of Justice of the Supreme Court of the State of New York for the Ninth Judicial District and that nominations would be in order. He then recognized THOMAS ABINANTI, Esq., who nominated JOAN LEFKOWITZ as a candidate for one of the three vacancies. The nomination was seconded. Thereupon Mr. KENNETH P. ZEBROSKI was recognized, who nominated FRANCIS A. NICOLAI for the second vacancy, and the nomination was seconded. Mr. HASHMALL then recognized Mr. WILLIAM FRANK, who nominated HOWARD MILLER, Esq., for the third vacancy. The nomination was, likewise, seconded. Mr. HASHMALL then asked whether there were any other nominations. There being none, a motion to close nominations was made, seconded, and carried by a voice vote.

13. Thereupon Mr. HASHMALL asked for a motion that the Secretary cast one ballot for the adoption of the resolution nominating JOAN LEFKOWITZ, FRANCIS A. NICOLAI, and HOWARD MILLER as the candidates of the Democratic Party to fill the three vacancies for Supreme Court Justices. Such motion was made,

seconded, and a voice vote taken. All "Ayes" were heard, and there being no "Nays", the one ballot was cast for said nominations.

14. Mr. HASHMALL then recognized DIANA JUETTNER, Esq., who made a motion naming certain individuals to constitute the Committee on Vacancies, which motion was seconded and adopted by voice vote.

15. Acceptance speeches by each of the Candidates were then given.

16. Thereupon, Mr. HASHMALL entertained a motion to adjourn the meeting, which was seconded, a vote taken thereon, and the resolution was adopted at approximately 8:10 p.m. The Convention then adjourned.

17. At that point, Mr. Vigliano and I left the room and went into the lobby. Mr. Vigliano spoke to some man I did not know. Ms. Sassower, who had previously left the meeting room, was speaking to various individuals milling about in the lobby.

18. I can state unequivocally that no Roll Call was ever taken during the proceedings I attended, which purported to be a Democratic Judicial Nominating Convention. Moreover, I have

since learned that there were 129 Judicial Delegates and 129 Alternate Delegates elected in 1990. However, I am informed that Meeting Rooms A and B could not physically provide seating capacity for 258 Delegates and Alternates. The rooms were only set up with a total seating to accommodate no more than 75 persons.

19. It is clear that a quorum of the Delegates was not present, which would have required at least 65 Delegates and/or Alternates to be in attendance. In addition to the four of us, who were not Delegates or Alternate Delegates, it appeared that there were many other people in the room, who were likewise not Delegates or Alternates. This became apparent when acceptance speeches were made by the three nominees, at which time their various relatives and friends were identified.

20. There was no way provided to verify how many people sitting in the chairs in the Meeting Room on that night were, in fact, duly-elected Delegates or Alternates, to the Convention. Delegates and Alternates were not provided with any badge or other indicia of their status. There was no inquiry or interest by those in charge into the status of anyone sitting in the room--or their right to be counted in a quorum or their right to vote. Indeed, on several occasions, Mr. Vigliano's mother, Filomena Vigliano, in the spirit of cooperation, said "Aye", without challenge, to a number of motions being voted upon.

21. Based on what I saw and heard that night, there is not a shred of doubt (and it should be undisputed) that the judicial nominees for the Supreme Court of the Ninth Judicial District, named on the Certificate filed with the New York State Board of Elections, were not duly nominated at a duly constituted Convention, at which a majority of Delegates or Alternates entitled to vote were present to constitute a legal quorum, as required by applicable provisions of the Election Law. The most elemental requirement of duly-electing nominees and adopting resolutions at a Convention, is the fundamental determination as to whether a quorum of the duly-elected Delegates and Alternates are present and voting. The vote to dispense with calling the Roll, without first ascertaining that there was a legal quorum present and entitled to vote thereon, plainly rendered all resulting votes meaningless. It should be declared void by this Court.

WHEREFORE, it is respectfully prayed that the aforesaid judicial nominations of Hon. FRANCIS A. NICOLAI and HOWARD MILLER, Esq. be invalidated, and that the additional relief requested in my Petition and Order to Show Cause be granted in its entirety.

Sworn to before me this  
14 day of October, 1990

S/  
VINCENT F. BONELLI

DORIS A. SASSOWER  
Notary Public, State of New York  
No. 60-345772  
Qualified in Westchester County  
Term Expires March 30, 1997