

CENTER for
JUDICIAL
ACCOUNTABILITY



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By Priority Mail

April 26, 1994

Chris Herren Esq.
Civil Rights Division: Voting Section
Department of Justice
P.O. Box 66128
Washington, D.C. 20035-6128

RE: Justice Department Investigation

Dear Mr. Herren:

Pursuant to our lengthy conversation last week, the Center for Judicial Accountability, the successor to the Ninth Judicial Committee¹, is pleased to transmit--as our contribution to "Law Day" (May 1st)--the following documents for review by the Justice Department in connection with its current investigation of judicial elections in New York:

- (A) Our March 20, 1992 letter to the Governor's Task Force on Judicial Diversity, outlining the significance of the Election Law cases Castracan v. Colavita (3rd Dept.) and Sady v. Murphy (2nd Dept.) and transmitting the contents of the "Two Blue Portfolios" described below (at Item "C" herein);
- (B) The April 19, 1994 New York Law Journal article, "Justice Officials Set to Wind Up Inquiry Into Judicial Elections", quoting Professor Sherillyn Ifill, formerly with NAACP Legal Defense and Educational Fund, as saying:

"There's no question that political control over slating and cross-endorsements contribute to the systematic exclusion of minorities" (at p. 6)

¹ The Ninth Judicial Committee, a non-partisan, grass-roots citizens group, was formed in 1989 to combat the politicization of the judiciary in the Ninth Judicial District of New York.

As reflected by the attachment to our March 20, 1992 letter to the Task Force (Item "A" hereinabove), Ms. Ifill, on behalf of NAACP/LDF, requested the court's permission to file an amicus brief in Castracan²;

- (C) Two Blue Portfolios containing the court papers of Castracan (Folders "B"- "G") and Sady (Folders "AA"- "CC"), in addition to our three letters to Governor Cuomo (Folder "A"), calling for the appointment of a Special Prosecutor to investigate the politicization and corruption of the courts and State Board of Elections, documented by those cases. A "Contents of Transmittal" is enclosed, inventorying the documents.
- (D) Copies of our written testimony, orally presented to the New York State Senate Judiciary Committee in opposition to their confirmations to the New York Court of Appeals of:

(i) Justice Howard Levine, based upon his participation in the "cover-up" in Castracan when he sat as a member of the panel of the Appellate Division, Third Department which heard the case on appeal; and

(ii) Justice Carmen Ciparick, based, inter alia, upon her participation in the "cover-up" as a member of the Commission on Judicial Conduct, which received copies of our above-mentioned letters to the Governor relative to Castracan and Sady and dismissed our complaint, without investigation.

Copies of the Compendia of Exhibits, supporting our testimony, are also enclosed;

² Professor Ifill can be reached at the University of Maryland Law School, (410) 706-8394.

- (E) Photocopies from Government Ethics Reform for the 90's: The Collected Reports of the New York State Commission on Government Integrity, including its report "Becoming a Judge: Report on the Failings of Judicial Elections in New York State". That report describes judicial elections as "so captive to the interests of political party organizations that they clash with the ideal of an independent and non-partisan judiciary" (at p. 272);
- (F) Map of the Judicial Districts and Departments in New York State;
- (G) Sections 3-102 and 3-104 of the New York State Election Law, assigning the State Board of Elections broad powers of enforcement and investigation;
- (H) "Itemization of Documents Essential to Determining the Nonfeasance and Malfeasance of the New York State Board of Elections", listing record references to the Castracan files; and
- (I) pp. 5-8 of a March 14, 1994 submission to the New York State Court of Appeals in support of its review of Sassower v. Hon. Guy Mangano, et al., a special proceeding under CPLR Article 78, charging the Appellate Division, Second Department with using its judicial office for ulterior political and retaliatory purposes. That proceeding is now pending before the N.Y.S. Court of Appeals.

I assume that you have already read our letter to the Task Force on Judicial Diversity (Item "A" hereinabove), faxed to you last week. By way of further overview, may I suggest that you next read my mother's October 24, 1991 letter to Governor Cuomo (Doc. A-1), followed by her September 7, 1993 testimony before the New York State Senate Judiciary Committee in opposition to Justice Levine's confirmation to the Court of Appeals. These documents sum up, succinctly, the enormous breath and significance of the Castracan and Sady cases and demonstrate that where issues touch upon judicial self-interest, the corruption of our judicial process reaches all levels.

You will note that my mother's professional credentials--including those in the field of judicial selection--are summarized at pp. 4-5 of her aforesaid September 7, 1993 testimony.

May I also draw your attention to our description (at p. 6 of our December 15, 1993 testimony in opposition to Justice Ciparick's confirmation to the Court of Appeals) of the testimony of John Babigian, a lawyer employed in the Law Department of the Civil Court of the City of New York³, when he opposed the confirmation of then Judge Judith Kaye as Chief Judge to the Court of Appeals. As reflected by the transcript of Mr. Babigian's March 17, 1993 testimony (at pp. 126-134 of our December 15, 1993 Compendium), Mr. Babigian brought a court challenge to the right of the judiciary to appoint New York City Housing Court judges, created in 1973 under §110(e) of the Civil Court Act. The summary manner in which the courts disposed of Babigian v. Wachtler (69 N.Y.2d 1012, 517 N.Y.S.2d 905, 511 N.E.2d 48 (1987)) raises the same issues of the integrity of the judicial process and its adverse impact upon efforts to diversify the bench, as did the courts' disposition of Castracan and Sady.

Finally, I note from the correspondence you faxed to me yesterday, the participation of Peter Kosinski, as Special Counsel to the New York State Board of Elections, and Patricia Martinelli, as Deputy First Assistant Attorney General. As reflected by the Castracan files, both these individuals were pivotally responsible for the State Board's failure to investigate the Election Law violations at the 1989 Judicial Nominating Conventions and the legality of the written deal between the Democratic and Republican party leaders trading seven judgeships over a three-year period, with terms and conditions, including contracted-for resignations to create vacancies and patronage (Doc. B-1, at pp. 52-4). For specific discussion of Mr. Kosinski's and Ms. Martinelli's participation in the "cover-up" and pretense that there was no "substantial reason to believe that a violation had occurred" so as to warrant investigation, I refer you to Doc. C-11, at pp. 23-28, including footnotes 2 and 3 thereto and Exhibits "B", "C", and "D".

To further assist your evaluating the State Board's fraud and misconduct, a copy of sections 3-102 and 3-104 of the Election Law (referred to at pp. 27-28 of Doc. C-11) is enclosed, together with an "Itemization of Documents" from the Castracan case. The documents listed therein establish--beyond question--the State Board's nonfeasance and malfeasance in:

- (1) dismissing--without investigation (Doc. C-11, at Ex. C; Doc. D-1, at Ex. A; Doc. D-6, at Ex. 2)--Mr. Vigliano's 1989 eye-witness complaint (Doc. C-11, at Ex. B);

³ Mr. Babigian's telephone number is (212) 374-8044.

- (2) dismissing--without investigation (Doc. B-1, at p. 129)--the duly-filed Objections and Specifications of Dr. Mario Castracan and Professor Vincent Bonelli to the 1990 Democratic and Republican Certificates of Nominations (Doc. B-1, at pp. 32-51) and validating the Republican Certificate of Nomination (Doc. B-1, at pp. 26-7)--although, on its face, it violated the Election Law⁴; and
- (3) vigorously and viciously opposing judicial review of its administrative inaction in the subsequently commenced Castracan case (Doc. C-4, Doc. D-1, Doc. F-3, Doc. G-10)⁵.

Castracan and Sady demonstrate that the Justice Department must alter its perspective as it reviews the law governing judicial elections in New York--since those cases show, unequivocally, that law means nothing when the agencies of government charged with its enforcement refuse to enforce it (i.e., the New York State Board of Elections) and when the courts, charged with upholding the law, abandon fundamental adjudicatory standards and falsify the factual record, as here was done.

Please let us know if you would like to see documentation as to the complicity of other agencies of state government in refusing to investigate the evidence of corruption which Castracan and Sady resoundingly document. These agencies include the New York State Ethics Commission, with oversight over the State Board of Elections, and the Commission on Judicial Conduct, with oversight over the judges involved in the deal and the illegally-run judicial nominating conventions. This is in addition to the complicity and inaction of the other two branches of government, the executive and legislative branches, which we can also document.

Let there be no mistake about it: what is here involved is criminal conduct of the most profound nature, which should be referred for criminal investigation by the Justice Department. Indeed, as discussed by phone, as early as January 1991, we notified the U.S. Attorney in White Plains (914-993-1902) of the political machinations in the Ninth Judicial District, affecting the integrity of the franchise and the judiciary, and, in

⁴ See, discussion, inter alia, at Doc. D-8, at pp. 2-3, 12-13.

⁵ The Castracan Petitioners' dispositive rebuttals to the false and frivolous legal arguments of the State Board in its submissions herein cited can be found in the documents listed in the "Itemization" referred to hereinabove.

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March 1992, transmitted to that office the same full set of papers in Castracan and Sady, as is herein being transmitted.

As set forth in the postscript to my mother's October 24, 1991 letter to Governor Cuomo (Doc. A-1, at pp. 9-10), and as described to you by phone, my mother has been the subject of brutal and malicious retaliation by the Appellate Division, Second Department for bringing the Castracan case and for speaking out on the sensitive political issues involved. By "interim" order of that court, she was suspended on June 14, 1991, "immediately, indefinitely, and unconditionally". Said "interim" order of suspension--now in force for almost three years--was accomplished without a plenary proceeding, with no notice of written charges, no hearing, no evidentiary findings, and without any statement of reasons in the suspension order itself--all contrary to the explicit requirements of the Appellate Division's own Rules. Notwithstanding controlling black-letter law of the Court of Appeals mandating vacatur, the Appellate Division has, without reasons, refused to vacate the "interim" order and, likewise, without reasons, refused to direct a post-suspension hearing.

There is now pending before the Court of Appeals a special proceeding under CPLR Article 78 in which my mother is seeking review of the Appellate Division, Second Department's criminal and retaliatory conduct. Pertinent pages of her attorney's March 14, 1994 letter to the Court of Appeals in support of its taking jurisdiction over Sassower v. Hon. Guy Mangano, et al. are enclosed⁶.

Should the Justice Department desire additional information and materials from us as to the corruption of judicial elections and the judiciary--beyond what is herein transmitted--or wish to personally interview us, we would be more than ready to oblige.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability

Enclosures: as indicated above

⁶ The court of original jurisdiction in that case was the Appellate Division, Second Department. Although its own judicial conduct was being directly challenged as fraudulent and criminal, the Second Department refused to recuse itself and transfer the proceeding, instead granting the dismissal motion of its own attorney, the Attorney-General.

Chris Herren, Esq.

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cc: Professor Sherrilyn Ifill
John Babigian, Esq.
New York State Attorney General G. Oliver Koppell
New York State Assembly Judiciary Committee