

ork Law J

NEW YORK, FRIDAY, NOVEMBER 20, 1998

©1



PHOTOGRAPH BY RICK KOPSTEIN

NARROW MARGIN: Eliot Spitzer claimed victory in the race for Attorney General at a press conference yesterday. But lawyers for incumbent Dennis Vacco contend counting irregularities still leave the election in doubt.

Spitzer Claims Victory; And Now, the Litigation

BY MARK HAMBLETT

AS ELIOT SPITZER declared victory in the race for State Attorney General yesterday, a team of veteran election lawyers labored behind the scenes to

ensure his narrow margin over incumbent Republican Dennis C. Vacco would hold.

By evening, Henry T. Berger of Fisher, Fisher & Berger was scheduled to

Continued on page 4, column 4

SC

Attorney General Race Heads to Court

Continued from page 1, column 4

meet with attorneys for Mr. Vacco to try to resolve discrepancies on vote tallies in New York City and other counties.

Although Mr. Spitzer was still maintaining a margin of slightly more than 22,000 votes, longtime election attorney Thomas J. Spargo and other lawyers for the state Republican Committee were contending that counting irregularities leave the election in doubt.

Mr. Spargo, a sole practitioner in East Berne, N.Y., who worked for Presidential candidate Steve Forbes and was influential in getting him on the state Republican primary ballot in 1996, yesterday reviewed tally sheets and voting machine numbers at One Police Plaza with Michael A. Avella, deputy counsel to the state Republican Committee.

'Scrooge-Like'

"I'm sitting here poring over ballots like Scrooge," Mr. Spargo said. "It is possible (that) before we are done resolving the machine tallies ... there could be a shift of thousands of votes."

But Mr. Berger, who served as counsel for Mayor David Dinkins 1993 race and Iowa Senator Tom Harkin's Presidential primary race in 1992, disputed that yesterday. "It is less than 2,000," he said, minutes before Mr. Spitzer made his victory declaration at the offices of Constantine & Partners, his law firm. Mr. Berger said that while Mr. Vacco's attorneys claimed that Mr. Spitzer had 1,000 more votes in Brooklyn than he should have, that would not matter. "We still gain 350 in Brooklyn," he said.

Both sides will return to State Supreme Court in Manhattan Monday to report on their review of thousands of voting machines to Justice Thomas W. Keegan of Albany, who is sitting in Manhattan by special assignment.

Mr. Spitzer called on Mr. Vacco to concede defeat and announced that his law partner, Lloyd Constantine, would head his transition team. Mr. Spitzer also asked the Attorney General to at least appoint members of his staff to guarantee an "orderly transfer" on Jan. 1.

Mr. Spargo ignored the request. "We are still counting ballots to determine who was rightfully elected and we expect that question to be resolved through the judicial proceeding," he said. "This is one of the closest state-wide elections we have had in 40 or 50 years."

Behind the Scenes

Mr. Berger is joined in the Spitzer camp by Democratic State Senator

and Senate Minority leader Martin Connor and Stanley K. Schlein, also of Fisher, Fisher & Berger.

Jeffrey T. Buley, counsel to the New York Republican State Committee, is a veteran of several state and presidential campaigns. And while Mr. Spargo and Mr. Avella sat in a warehouse with pencil and paper, Mr. Buley was preparing to meet with Mr. Berger to discuss which numbers are in contention.

Mr. Spargo has represented both Republicans and Democrats during his long career as an election lawyer, including Democratic Attorney General candidate Karen Burstein in 1994. He said that attorneys on both sides of this current bitter election dispute have been professional.

"I've been on the same side with them periodically, and on this one, on the opposite side," he said. "Essentially, both sides are looking at the

same work product, but there has been great cooperation."

Mr. Constantine headed the Antitrust Bureau under former Attorney General Robert Abrams. Strongly critical of Mr. Vacco's record on antitrust enforcement, Mr. Constantine revealed yesterday that he had been, for a brief time, on Mr. Vacco's transition team following his election in 1994.

"I left the experience feeling Dennis Vacco was a nice guy and I hope he is a nice guy here."

As of 4:30 yesterday afternoon, Mr. Spitzer led Mr. Vacco by 22,626 votes, 2,065,186 to 2,042,650. Lee Daghlian, spokesperson for the New York State Board of Elections, said approximately 15,000 paper ballots, which include absentee, affidavit or emergency ballots, have yet to be opened. Some of those ballots, largely from Westchester and Oneida Counties, are being challenged and may never be opened.