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May 17, 1994

Jerry Koenig, Programs Analyst  
Assembly Election Law Committee  
Room 727 Legislative Office Building  
Albany, New York 12248

Dear Mr. Koenig:

As recently discussed by telephone, we are enclosing herewith a copy of our April 8, 1994 letter to the New York State Ethics Commission, as well as the April 19, 1994 response of Richard Rifkin, the Ethics Commission's new Executive Director. Also enclosed is a copy of a May 10, 1994 letter from the Commission's Director of Communications, Walter Ayres, which we have just received.

Although you expressed great confidence in Mr. Rifkin--who, I believe, you said you shared an office with some 20 years ago--comparison of Mr. Rifkin's letter with our April 8th letter must necessarily dispel that confidence.

Were the Assembly Election Law Committee to locate the Castracan v. Colavita files--which you say you and the Committee's counsel, Josh Erlich, Esq., have been unable to find--you would be able to verify from our specific record references that Mr. Rifkin is "covering-up" the indefensible dismissal by the Ethics Commission's previous Executive Director, Thea Hoeth, of our fully-documented complaint against the New York State Board of Elections. We, therefore, request that you secure a duplicate copy of the Castracan files from the Ethics Commission so that the Elections Law Committees of both the Assembly and Senate can exercise long-overdue oversight in this serious matter.

A copy of this letter is simultaneously being sent to Mr. Rifkin with a request from us that the Ethics Commission immediately ready the Castracan files we furnished it for duplication and transmittal to you.

May 17, 1994

Although Mr. Rifkin describes our April 8th letter as "requesting that the Commission provide...details concerning its investigation"--which he says confidentiality precludes him from doing--all available evidence belies any claim that our complaint was investigated by the Ethics Commission. In that regard, I refer you, specifically, to the discussion of the Ethics Commission's December 26, 1992 and November 26, 1993 dismissals, appearing at pages 1-3 of our April 8th letter. As detailed therein, our shocking January 5, 1993 letter to Ms. Hoeth<sup>1</sup> has never been controverted, and, based upon the documentation presented by the files in Castracan, no peremptory dismissal of our complaint by the Ethics Commission was possible--and certainly not without the Ethics Commission first contacting the witnesses to the 1989 and 1990 Judicial Nominating Conventions and obtaining from us the 1989 tape recording of the Democratic Judicial Nominating Convention--both of which the Commission failed to do. You will note that Mr. Rifkin's cursory letter totally ignores the aforesaid facts and evidence.

Additionally, contrary to Mr. Rifkin's misleading letter, our April 8th letter did not request information as to the substance of the Commission's "investigation", but, rather, information as to the procedures employed by the Commission staff following its so-called "investigation". Thus, we asked (at pp. 3-4): (1) whether our complaint was ever presented to the Commission members for their review; (2) whether the presentation was written or oral--and if it was written, whether we might be given a copy; (3) whether the Commissioners were ever shown the Castracan files; and (4) whether the Commission members were ever informed of our desire to make a direct presentation to them in conjunction with their review.

Although I left a telephone message for Mr. Rifkin on April 27, 1994, he has not returned my call. However, some two weeks ago, Walter Ayres, the Ethics Commission's Director of Communications, told me that complaints which are dismissed are not presented to Commission members, but are handled exclusively by the staff, with dismissal determinations made by the Executive Director. Indeed, Mr. Ayres's May 10, 1994 letter confirms that fact, stating:

"the Commission has delegated to the Executive Director and the staff the authority to dismiss complaints without bringing them to the attention of the Commission members."

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<sup>1</sup> Exhibit "4" to our April 8th letter

May 17, 1994

Since review of Executive Law §94 shows that such delegation of powers is not reflected by subsections 9(g) or 12(a), I asked Mr. Ayres to provide us with such modification of the Executive Law as may have been made by the Commission pursuant to subsection 9(c), including any delegation to the Executive Director which, according to subsection 9(a), must be "in writing" with "the specific powers to be delegated...enumerated". Quite preposterously, Mr. Ayres' May 10, 1994 letter contends that "...the resolution delegating this authority is not one of the documents that is public under the law [see Executive Law §94(17)(a)]".

I would note that Mr. Ayres' letter, although referring to "the other two issues we discussed", fails to identify any second issue. Such issue was our request for information concerning Executive Law §94(12)(a)--including: (1) whether, as a matter of procedure, we were entitled to receive a copy of the written notification the Ethics Commission was required to send to the State Board of Elections--to which the State Board then, supposedly, had fifteen days<sup>2</sup> "in which to submit a written response"; and (2) whether we were entitled to reply to the State Board's "written response"--a copy of which we never saw before Ms. Hoeth, peremptorily, twice dismissed our complaint. We are, therefore, sending Mr. Ayres a copy of this letter with a request that we be supplied such previously-discussed information, as well as a copy of Mr. Rifkin's credentials--which I would remind Mr. Ayres he promised to send.

It may be noted that although Mr. Rifkin's April 19th letter cites Executive Law §94(17)(b) as barring us from "personally" addressing the Ethics Commission, that section, in fact, empowers the Commission to "expressly provide[] otherwise". Moreover, since the extent of our September 8, 1993 request to the Commission's Associate Counsel (our 4/8/94 ltr, p.3, 2nd para.) was that we be given an opportunity to submit a written statement to the Commission members to accompany their review of our complaint, Mr. Rifkin's reliance upon Executive Law §94(17)(b) is quite inapposite. Indeed, Mr. Rifkin's response is disingenuous since the relevant issue is not the confidentiality of Commission meetings, but the fact--as conceded by Mr. Ayres--that the Commission did not review the complaint.

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<sup>2</sup> As discussed with Mr. Ayres, the Ethics Commission waited nine months before dismissing our initial February 5, 1992 complaint and, thereafter, took another nine months to dismiss it a second time, following our March 1, 1993 delivery of the Castracan files.

May 17, 1994

Finally, we do not believe that there is any issue of confidentiality preventing Mr. Rifkin from responding, as the penultimate paragraph of our letter requests (at p.6), to the instances of "specific wrongdoing" of the State Board of Elections which we delineated (at pp. 4-6). It should be obvious to anyone familiar with the Castracan files--as we have a right to expect that you and Mr. Erlich will be--that the reason Mr. Rifkin fails to address the probative evidence, presented by our complaint, is because he cannot do so without exposing Ms. Hoeth's dismissals as fraudulent and insupportable.

We believe it incumbent upon you and Mr. Erlich to take steps to apprise Assemblywoman Audrey Pheffer, the Chair of the Assembly Election Law Committee, of the two election law cases, Castracan v. Colavita and its companion, Sady v. Murphy. Those cases demonstrate that, where elective judgeships are at stake, legislation must be drafted to protect the public from the corruption of the Election Law by the State Board of Elections and by self-interested and complicitous courts. It was for that reason that we provided the Assembly Election Law Committee with the files more than a year and a half ago. The Ethics Commission's documented cover-up in this matter only reinforces the absolute necessity for intervention by the Legislature.

Yours for a quality judiciary,

  
ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability

Enclosures: (a) our 4/8/94 ltr to Ms. Hoeth  
(b) Mr. Rifkin's 4/19/94 ltr  
(c) Mr. Ayres' 5/10/94 ltr

cc: New York State Ethics Commission  
Richard Rifkin, Executive Director  
Walter Ayres, Director of Communications  
Assembly Judiciary Committee  
Att: Patricia Gorman, Legislative Assistant

P.S. As discussed, I am also enclosing a copy of the April 19, 1994 article in the New York Law Journal regarding the U.S. Justice Department's current investigation into judicial elections in New York.

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