

SUPREME COURT STATE OF NEW YORK
COUNTY OF ALBANY

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

Petitioners,

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

Index No. 6056/90

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.

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

ELI VIGLIANO, being duly sworn, deposes and says:

1. I am an attorney licensed to practise law in the State of New York since 1950. I am currently Chairman of the Ninth Judicial Committee, a group organized in Westchester County in 1989, comprised of lawyers and non-lawyers working to assure that the most qualified judges are chosen, that politics and politicians are removed as far as possible from the judicial arena and, in particular, to assure that the election of Judges in the Ninth Judicial District is accomplished in accordance with the legal requirements of the Election Law and Constitution of the State of New York.

2. The origin of this group came out of my observation of the manner in which the Judicial Nominating Conventions in the Ninth Judicial District are run and their failure to conform to the most fundamental procedural requirements of the Election Law of the State of New York.

3. On August 23, 1989, I attended a meeting of the Executive Committee of the Westchester County Democratic Party, at its former offices at 203 Main Street, White Plains, New York. I arrived at the meeting at about 8:00 p.m. There were approximately 30 individuals in attendance, who were, I was told, members of the Westchester Democratic County Executive Committee. RICHARD L. WEINGARTEN, Esq., the then Chairman of the WESTCHESTER DEMOCRATIC COUNTY COMMITTEE was presiding. Mr. WEINGARTEN called the meeting to order and explained in detail

the terms of an agreement that had been arrived at with the WESTCHESTER REPUBLICAN COUNTY COMMITTEE, providing for the election of Supreme Court Judges in Westchester County for the next three years, i.e., 1989, 1990, and 1991 (the "Three Year Plan").

4. Mr. WEINGARTEN outlined the benefits accruing by WESTCHESTER DEMOCRATIC COUNTY COMMITTEE becoming a party to this agreement--that by cross-endorsing the two Republican nominees, ALBERT J. EMANUELLI, Esq. and Hon. JOSEPH JIUDICE for two of the three Supreme Court vacancies in 1989, the election of SAMUEL G. FREDMAN, a Democrat, to the third vacancy would be assured. Mr. WEINGARTEN further stated that Mr. EMANUELLI would resign in 1990, eight months after his induction into office, so that he could become the cross-endorsed candidate for the office of Surrogate of Westchester County. This was necessary to satisfy Mr. COLAVITA that the Republicans would keep the Surrogate office. The Supreme Court vacancy created by Mr. EMANUELLI's resignation would then be filled by a Democratic County Court Judge, FRANCIS A. NICOLAI. In 1991, the vacancy created in the County Court by the elevation of FRANCIS A. NICOLAI to the Supreme Court would be filled by T. EMMET MURPHY, a Democratic City Court Judge, with ADRIENNE H. SCANCARELLI, a Republican, cross-endorsed for re-election to the office of Family Court Judge, Westchester County. All judicial nominees, including Mr. EMANUELLI, would pledge that after their election, they would

give out their patronage on an equal basis, according to the recommendations of the two party leaders.

5. . Some discussion ensued, primarily by Mr. M. PAUL REDD, who I believe was a member of the Executive Committee, complaining beause the agreement did not include a Democratic African American Judge. It was explained to him that, although there had been some consideration given to including an African American, it was not feasible or practical to do so at that point in time.

6. Mr. WEINGARTEN stated that the agreement had been put in written form as a Resolution. Thereupon, Mr. WEINGARTEN asked for a vote to adopt the Resolution, annexed hereto (which is also Exhibit "G" to the Petition filed herein). Mr. WEINGARTEN stated that the Resolution was expressly conditioned on its being similiarly adopted by the WESTCHESTER REPUBLICAN COUNTY COMMITTEE at its Executive Committee meeting the next night. It was adopted by a voice vote, with two abstentions. Thereupon, a member moved that adoption of the Resolution be made unanimous. The motion was seconded. Upon an overwhelming affirmative vote, one of the members who had abstained, withdrew the abstention. The other individual who had abstained, refused to withdraw it. Hence, the motion to adopt the Resolution unanimously failed to carry.

7. I then asked to say a few words and recounted my having been active many years ago in an effort to reform the Bronx Democratic Party. I noted my surprise that "deals" for judicial office, formerly made in the "smoke-filled backroom", behind closed doors by political leaders were now being discussed out in the open, and most incredibly, that a writing memorializing such "deals" was even put in resolution form at a public meeting. Mr. WEINGARTEN interrupted to ask me if I was a member of the Executive Committee. When I replied that I was not, he said that I was out of order that although Democrats were permitted to attend Executive Committee meetings, they could not participate therein. I thereupon remained silent for the rest of the meeting, which adjourned shortly after.

8. The next day, I planned to attend the scheduled meeting of the Executive Committee of the WESTCHESTER REPUBLICAN COUNTY COMMITTEE, but was informed that it was not open to the public, nor for that matter to enrolled Republicans. Executive Committee meetings were open only to its members, party officials, and invited guests. Hence, I did not attend said meeting and do not know what occurred at that meeting.

9. On September 19, 1989, I attended the Democratic Judicial Nominating Convention called for the Ninth Judicial District at the Tarrytown Hilton on the Albany Post Road, Tarrytown, New York. The meeting was held in a small meeting

room in the lower level. A cash bar was set up in the rear. I arrived at about 7:00 p.m. Some people were milling about in the hall. There was a photographer from the local newspaper, The Reporter Dispatch. At about 7:30 p.m., DORIS L. SASSOWER, Esq. arrived with a companion.

10. At about 8:00 p.m., the Convenor, LOUIS BREVETTI, Esq., called the Convention to order, and announced that he had been designated as the person to convene the Convention. Without any Roll Call of the Delegates present, he announced that since he could observe that a quorum was present, the Convention would proceed to transact its business. Whereupon, he asked for a motion that he be elected Temporary Chairman, which motion was adopted. He proceeded to ask for a motion to have two Temporary Secretaries elected, which was adopted. He asked for a motion to have himself elected as Permanent Chairman, which was adopted. He then asked for a motion to have GWENDOLYN B. LYNCH and MIMI P. SCHNALL elected as the Permanent Secretaries, which was likewise adopted. None of these motions electing the individuals to said respective offices were adopted by any Roll Call vote.

11. Indeed, at no time was a Roll Call vote ever taken, not even to ascertain the presence of a quorum. There were no badges or other identification as to who were, in fact, duly elected Delegates and Alternate Delegates to the Convention. At no point was there any count taken to ascertain that a

sufficient number of Delegates and Alternates were present so that it could, in fact, be determined that there was a quorum of legally elected Delegates and/or Alternate Delegates present. There was no demarcation in the seating arrangements of any area reserved for Delegates and/or Alternates. There were clearly a number of people seated in the room who were not Delegates or Alternates, and there were many empty chairs.

12. I learned thereafter that although 125 Delegates and 125 Alternate Delegates were elected, only about 100 chairs were provided in the room. Thus, clearly, there was not sufficient seating provided to accommodate the 250 Delegates and Alternate Delegates, as required. In fact, the total number of people in the room was no more than 65, of whom many were not Delegates and/or Alternates. It would appear that because Mr. Weingarten realized there definitely was no quorum, he decided to dispense with any roll call which would have plainly established the absence thereof.

13. Among those who were seated who were not Delegates or Alternates were myself, Doris L. Sassower, Esq., and her companion. Others included MILTON HOFFMAN, the Political Editor for the Westchester-Rockland Newspapers, who was covering the Convention. In addition, all of the judicial candidates were seated, with friends and relatives. These included Hon. SAMUEL G. FREDMAN, then a sitting Supreme Court Justice, with a companion,

ALBERT J. EMANUELLI, a practicing lawyer who had been named in the Resolution adopted by both the WESTCHESTER DEMOCRATIC EXECUTIVE COMMITTEE and the WESTCHESTER REPUBLICAN EXECUTIVE COMMITTEE, and Hon. JOSEPH JIUDICE, Justice of the Supreme Court. Also present was GUY T. PARISI, Esq., counsel to the WESTCHESTER REPUBLICAN COUNTY COMMITTEE.

14. Mr. WEINGARTEN was then given the floor by Mr. BREVETTI, who stated that the purpose of the Convention was to nominate three Democratic candidates for the three vacancies that would be voted for at the 1989 General Election for office of Justice of the Supreme Court, State of New York, Ninth Judicial District. He then talked proudly about the "historic" agreement that had been made between him and Mr. COLAVITA, and described in detail the Resolution adopting it by the Executive Committees of the County Committees in all five counties comprising the Ninth Judicial District. Mr. WEINGARTEN recited his background as an enrolled Democrat and his involvement in politics spanning 35 years. He remarked sardonically that he never thought he would see the day that he would be a party to an agreement to nominate Republican candidates, or that he would ever see two Republican candidates on the Democratic line, without opposition, for Justice of the Supreme Court in the Ninth Judicial District.

15. Mr. WEINGARTEN then nominated Mr. ALBERT J. EMANUELLI as the first nominee. Mr. STANLEY GOODMAN was then

given the floor. He nominated Mr. SAMUEL G. FREDMAN. Mr. BERNARD KESSLER took the floor and nominated JOSEPH JIUDICE. All of the nominations were seconded, and voice votes were taken separately adopting each nomination unanimously. The three candidates then were asked to address the Convention in acceptance of their nominations and to sign the acceptance Certificates, and the meeting was then adjourned.

16. At the conclusion of the meeting Mr. EMANUELLI went to Mr. BREVETTI and complimented him on the fine way he had conducted the meeting. They joked about the fact that in the course of conducting the meeting, Mr. BREVETTI had lapsed and referred to conducting the meeting in accordance with a "script". Mr. EMANUELLI suggested that since he did such a fine job in running the Democratic Convention, he should conduct the Republican Convention scheduled for later that week. GUY T. PARISI interjected that Mr. COLAVITA ran the nominating judicial conventions himself personally, and would not permit anyone else to conduct such important business. Everyone understood that the work of the Republican Judicial Convention was to rubber stamp the deal which Mr. COLAVITA had made with Mr. WEINGARTEN.

17. The next day, Wednesday, I telephoned the WESTCHESTER COUNTY REPUBLICAN headquarters to inquire whether an enrolled Republican would be permitted to attend and observe the Republican Convention for the Ninth Judicial District scheduled

for the coming Friday, September 22. I was told unequivocally, that the Republican nominating judicial Convention was open only to Delegates, Alternate Delegates, and party officials, and no others were permitted to attend.

18. I have read the accompanying Affidavit of Professor VINCENT F. BONELLI describing his observations concerning attendance at and his observations of the proceedings conducted at the Democratic Judicial Convention held on September 14, 1990. I confirm, adopt, and ratify, as true correct and accurate, his recital of the facts therein stated, most especially, his statements relative to the failure to call the Roll at any time, even to establish the presence of a quorum, the fact that there was no quorum, and the clear inadequacy of the room size and seating accommodations, in violation of Election Law requirements.

S/

ELI VIGLIANO

Sworn to before me this
14th day of October, 1990

S/

Notary Public