

**A REQUEST FOR AN INVESTIGATION AND
REVIEW OF ELECTION BALLOTS**

**THE SANTA MONICA MUNICIPAL ELECTION
NOVEMBER 6, 1990**

**A REPORT TO THE LOS ANGELES COUNTY GRAND JURY
MAY 14, 1991**

Copies to:

**CALIFORNIA ATTORNEY GENERAL
HON. DANIEL LUNDGREN**

**CALIFORNIA ASSEMBLY ELECTIONS COMMITTEE
HON. RICHARD MOUNTJOY, VICE-CHAIRMAN**

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ACKNOWLEDGMENTS & DEDICATION

With deep gratitude to the dozens of Santa Monica Election Board Officials, and precinct inspectors, poll workers, Santa Monica City employees, voters and to the Los Angeles County Registrar-Recorder's office personnel; without whose devoted help and cooperation this report would not have been undertaken.

This report is dedicated to all the women and men who have given their lives to defend the Democratic process. We hope this report will help preserve the integrity of free elections in America.

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INTRODUCTION

The Santa Monica **CITIZENS PROTECTION ACT OF 1990** qualified for the November 6, 1990 Municipal ballot after submitting 11,000 signatures of Santa Monica voters. This Act proposed an amendment to the Santa Monica City Charter which would have made the City Attorney an elective position rather than appointive. The popular proposed amendment qualified because of the City Attorney's failure to prosecute many misdemeanor crimes such as public drunkenness, trespassing and panhandling which were intended to deter street crime.

This election report on the November 6, 1990 Santa Monica Municipal Election Irregularities has been prepared for the purpose of:

- 1) **Demonstrating the need to examine and review** the Municipal election ballots for the City of Santa Monica, including voter rosters, election documents, and vote-counting program cards used by the City of Santa Monica for the November 6, 1990 election, to permit a ballot recount to take place for the purpose of determining the integrity of the election.

- 2) **Request an investigation by the Los Angeles County Grand Jury, the State Legislature and the California Attorney General** to determine if there was possible fraudulent and illegal procedures employed by Santa Monica City Officials in the November 6, 1990 Municipal Election and to propose Legislation to protect the integrity of future elections and to determine if the Santa Monica City Council illegally approved retroactive pay increases and bonuses for City Official following the election, in a closed and unrecorded meeting.

California Elections Code Section 14811 provides that all local election materials such as ballots, absentee ballots and unused ballots, along with voter rosters, must be preserved and unaltered for six months subsequent to the date of the declaration of the result of the election. Said six-month period expires on May 27, 1991. State Assemblyman Richard Mountjoy has requested that the City Clerk make the records available to his Committee on Elections and Reapportionment. ([Attachment #1](#))

It is necessary to request the Grand Jury to act on behalf of the people because the City of Santa Monica held a "wild cat" election whereby there were no checks or balances. There was no "authority of law" behind the Santa Monica Municipal election because the City Council failed to formally and legally authorize the City Clerk, City Attorney and a private hand-picked contractor to conduct the election.

Additionally, the appointed Santa Monica City Attorney had an established self-recognized “conflict of interest” [\(Attachment #2\)](#) due to a ballot initiative that proposed to make his position elective. In spite of this, the City Attorney and his staff continued to participate in planning the election and provide legal advice orchestrating questionable procedures by which the election was held. He mailed letters using his official position to solicit political opposition to the elected City Attorney Initiative (Prop Y). [\(Attachment #3\)](#)

The following report on irregularities in the Santa Monica Municipal election substantiates the need for an investigation. City officials gained control of the ballot-counting process after having officially adopted Resolution No. 8072. [\(Attachment #5\)](#) The County Executive Officer wrote to Santa Monica City Clerk Clarice Johnson in a letter dated August 21, 1990, that the Supervisors had approved consolidation of the City’s Regular Municipal Election with the State-wide General Election. [\(Attachment #7\)](#) Later, the Santa Monica officials claimed that Los Angeles County notified them the County could NOT “consolidate” the municipal election ballot on the State-wide General Election ballot; however, the County Assistant Registrar-Recorder Bea Valdez wrote in a letter dated April 29, 1991, that the County had no written records, documents or even telephone logs pertaining to the conduct or consolidation of the Santa Monica Municipal Election on November 6, 1990. [\(Attachment #8\)](#)

The refusal of the Santa Monica City Clerk to check a small hand-counted sample of ABSENTEE VOTER BALLOTS against the electronic vote tabulation machine results during the election canvass process cast considerable doubt on the accuracy of the vote-counting results.

IT IS IMPORTANT TO REMEMBER SANTA MONICA CITY AND ITS EMPLOYEES (NOT COUNTY OFFICIALS), ALONG WITH THEIR HAND-PICKED PRIVATE “NO-BID” CONTRACTOR, PROCESSED THE MUNICIPAL ELECTION.

II

GENERAL INFORMATION

In 1989 and 1990, two new voter issues emerged in Santa Monica which presented the first major challenge to the policies of incumbent City Officials whose political campaign organization had dominated City elections for the previous ten years.

The 1990 municipal election issues promised to increase voter participation. A Santa Monica voter revolt was sparked when the City Council approved major

commercial and hotel developments, including a Santa Monica Airport development agreement, which became a catalyst for citizen initiatives and startled the well-entrenched incumbent officeholders.

Political alliances were threatened as the City Council continued to approve massive development projects. Voter activism grew as the City Attorney's lenient prosecution policies and the City Council was blamed for growing street crime and violence among the derelict population that resided on the street, in the parks, and in the commercial shopping district adjacent to Pacific Palisades Park. .

Most of the derelicts coming to Santa Monica's parks and beaches are provided with meals and shower facilities, and the agencies assisting them encouraged this mostly transient population to register to vote, using the city's shelter facilities as a residence address.

The Citizens Protection Act of 1990 initiative was sponsored by voters who opposed the City Council's support for a City Attorney who refused to prosecute public drunkenness, trespassing, shopping cart theft and panhandlers who had been labeled as "homeless".

Following the qualification of four citizen-sponsored ballot initiatives, the City implemented a political strategy to place five more issues on the ballot, as alternatives. This was seen as a major reason for having two ballots (City and County) instead of one "consolidated" election conducted by Los Angeles County. This also contributed greatly to voter and election board confusion, due to conflicting procedures used for two separate elections. See Election Board instructions provided from Santa Monica Contractor and the L A County instructions to the polling place workers and how they differed vastly in procedure and detail. [\(Attachment #14\)](#)

A professional poll conducted by Arnold Steinberg & Associates [\(Attachment #4\)](#) on Proposition Y (Elected City Attorney) during the week of August 28, 1990, showed voters favoring it two to one. City TV, the City-owned and -operated television station, repeated election night exit poll interviews that reported 20 out of 25 voters cited the City Attorney and homeless crime problem as the number one issue.

Strangely, Proposition Y was defeated ... as were two of the three Council candidates who campaigned for the measure.

There is an urgent need for the L A County Grand Jury to investigate obvious conflicts of interest in the conduct of the Santa Monica Municipal election and highly suspicious post election pay raises granted to the City Officials who had the authority and responsibility for conducting the election.

In summary, at least 1,000 or more voters may have been discouraged from voting because of irregular elections procedures (as described in this report) and this, together with the possibility of missing absentee voter ballots and illegal tampering with the ballot tabulation machine, could have altered the outcome of the 1990 Santa Monica City Council races and some ballot measures.

III

ISSUES PRESENTED

- A. Whether there was an honest count of both regular and absentee voter ballots for the Santa Monica Municipal election. Was the vote count tainted by human error, fraud or mechanical EDP (electronic data processing error/failure) or missing programming?
- B. Whether approximately one thousand Santa Monica voters were disenfranchised from the voting process in the municipal election by unlawful election procedures used by City election officials.
- C. Whether the Santa Monica City Council illegally approved retroactive pay raises and “bonuses” for City Elections officials, in violation of the State Constitution and open meeting laws, following the outcome of the November 6, 1990 municipal election and upon the legal and conflicted advice of the City Attorney.

IV

STATEMENT OF THE CASE

WAS THERE AN HONEST BALLOT COUNT, ONE NOT TAINTED BY HUMAN ERROR, FRAUD OR MECHANICAL EDP FAILURE, ERROR OR MISPROGRAMMING?

- 1. The filing deadline date was postponed for initiatives several times to permit last-minute Council action sponsoring five (5) additional ballot measures. This delay to add other measures resulted in (9) ballot measures instead of four (4) appearing on the ballot.
- 2. The City Council retained outside legal counsel to draft the ballot title and summary for the elected City Attorney initiative (Prop. Y) due to the potential conflict of interest of City Attorney Robert Myers. [\(Attachment #1\)](#)
- 3. On August 7, 1990, the City Attorney submitted Resolutions for Council approval: Resolution #8073 (CCS). [\(Attachment #5\)](#)
- 4. Santa Monica City Officials claimed they had been notified by L.A. County that the additional ballot measures made the ballot too long for “consolidation” with the Statewide General Election. Neither the County nor the City has produced any documents to verify this claim and, to the contrary, the City received a letter dated August 21, 1990 from the Executive Officer of the Board of Supervisors, confirming approval for a consolidated election [\(Attachment #7\)](#)

5. The L.A. County Registrar-Recorder's office revealed that, contrary to the Board of Supervisor's action, the County **did NOT have any records** regarding the City's request (or County's rejection) of their request to consolidate and/or conduct the Santa Monica Municipal election of November 6, 1990. There was no documentation to substantiate the City's claim that the County had declared the ballot was too long. ([Attachment #8](#))
6. When Santa Monica separated the municipal election from the L.A. County ballot, the Santa Monica City Clerk gained complete control over the processing and counting of municipal election ballots.
7. There is no record of the City Council adopting a resolution to change from a consolidated election with L.A. County to a "concurrent" election. However, an agenda produced by the City Attorney's office ([Attachment #9](#)) indicates there was a meeting conducted by the City Attorney on September 11, 1990, to orchestrate election procedures using City employees and a hand-picked independent contractor.
8. The City hired Martin & Chapman of Irvine, California, to supply election materials and electronic ballot tabulation services without a competitive bid and without a public vote of the City Council authorizing such an act. This is an apparent violation of Article XV, Section 1508, of the City Charter that requires competitive bidding for all contracts.
9. Martin & Chapman is listed by the County Registrar-Recorder's office on their "VENDOR LIST" along with others who provide consulting services to "officeholders, candidates and political campaigns." ([Attachment #11](#)) In spite of this, the City Clerk did not obtain a "conflict of interest statement" as a condition of employment and she described the firm as a "sole source contract." Telephone interviews with Paul Marshall of Martin & Chapman revealed the firm provides "limited" services to political campaigns, including labor unions and police unions. The Santa Monica Police Union's political action committee campaigned aggressively against Proposition Y and for their endorsed slate of candidates. ([Attachment #12](#))
10. The City Clerk and Martin & Chapman's Paul Marshall refused the request of an official observer from the "Yes on Y" campaign to check a hand-counted sample of 25 to 50 absentee voter ballots on the electronic tabulation machine to verify the accuracy of the electronic program cards. ([Attachment # 13](#))
11. The City Clerk purchased election materials from Martin & Chapman, including instructions for election workers and voters that differed substantially from L.A. County procedures. ([Attachment #14](#))
12. There being no Council Resolution providing for a contract with Martin & Chapman for election supplies, and the absence of competitive bids as required by the City Charter Section 1508, it would appear that the \$84,652.26 paid to that company by the City was an agreement made without authority of law in violation of the California Constitution, Article IV, Chapter 14, Section 17. Payment was made after the questionable contract had been entered into and completed,

without any written specification to what goods or services were to have been provided ([Attachment #8](#))

13. The Martin & Chapman invoice #90789 for \$84,652.26 ([Attachment #10](#)) was submitted to the City on November 27, 1990. Many of the items listed on the invoice were for services that were to be provided by L. A. County, such as address labels and tape of voter files, but most interesting of all was the 570 plastic padlock seals for ballot boxes. With only 96 precincts in the City of Santa Monica, there were more than enough seals to permit the boxes to be sealed and opened and resealed and reopened without causing concern about broken seals.
14. The Santa Monica municipal election was conducted by County-hired and trained election workers, and the procedure discrepancies created inordinate confusion among the Santa Monica voters and election workers. ([Attachment #18](#)) Interviews with election board officials revealed that many election board workers were rotated from County to City election during the day. Samples of conflicting procedures were:
 - **County:** Required all unused ballots to be defaced or destroyed.
 - **Santa Monica:** Required unused ballots to be returned unmarked. ([Attachment #11](#))
 - **County:** Did not require absent voters to sign a roster when returning marked ballots to polls.
 - **Santa Monica:** Required absent voters to sign a separate roster when returning market ballots to polls.
15. Because of these and other conflicting instructions, there were many inconsistencies concerning both County and Municipal voter rosters. Many absentee voters signed the regular rosters and it appeared their ballots were counted with the total count of votes cast at the polls. There was no indication as to whether the absent ballots were surrendered and new ballots issued or simply that the voters returned the marked absent voter ballots. In many precincts, the number of provisional ballots and absentee voter ballots were unaccounted for. Many election boards did not “reconcile” or “certify” or sign declarations as to the number of ballots received, used or spoiled. ([Attachment #19](#))
16. As required by California Elections Code (Section 804, Section 1640), the Santa Monica City Clerk failed to adequately recruit, instruct and require accountability from election night and precinct election board officials. Almost one third of the Santa Monica precinct rosters were incomplete, unsigned and not witnessed by precinct officials. ([Attachment 12](#)) Out of a total of 96 precincts, only 19 were completely staffed by workers whose names had been published in the newspaper as required by the California Election Code Section 1640. ([Attachment 20](#))
17. The Santa Monica City Clerk admittedly hired “unclassified” City employees from the City Attorney’s office as election night workers who, by their non-civil service status, would have a “conflict of interest” because they are part of the City Attorney’s staff. The questionable practice of hiring City Attorney staff members to process ballots on election night would appear to compromise the integrity of

the election. While the City Attorney and his staff openly campaigned against a ballot measure (Prop Y) and he had publicly recognized a potential conflict of interest, apparently neither the City Clerk nor the City Manager took any steps to protect the integrity of the election from potential conflicts. The City Attorney had a responsibility to advise them to do so. According to the City Clerk, City Hall employees were solicited to work “overtime” on election night to process and handle the ballots.

18. In accordance with City Council Resolutions No. 8073 and 8074 (CCS), Santa Monica was to have held a “consolidated” election . This never occurred, according to employees of the L.A. County Registrar-Record’s office who stated, in a response to a Public Records Act Request, that Santa Monica conducted their own election ([Attachment #4](#)) without any oversight or legal authority by Resolution of the elected City Council members.
19. Although the City Clerk permitted election night observers from the various campaigns, they were limited as to exposure and assigned to observe from an area behind the City Council dais to view the electronic tabulation process. After contacting all the observers ([Attachment #21](#)) listed by the City Clerk as having been authorized, only one witness observed two (2) ballot box seals being broken. No other official observers could recall seeing any ballot boxes opened, or where they were being taken by the City Clerk’s staff on election night from the parking lot where election board workers were instructed to return them.
20. By appointing a Santa Monica uniformed police officer to receive ballot boxes, the City Clerk again compromised the integrity of the election. The Santa Monica Police Officers Association contributed \$5,000 to defeat Proposition Y and untold amounts to elect their endorsed candidates who voted to approve the salary and benefit packages.
21. A precinct inspector, who was returning ballots and materials to the City Hall parking lot, observed a ballot box being opened by workers who took the boxes from the car in front of hers. She also believes that they opened the ballot box from her precinct while standing behind her car. It is unknown whether or not this action would be prohibited by the Elections Code. However this practice could well jeopardize the integrity of the election by individuals disposed to manipulate the outcome.
22. The so-called “sole source” contractor (Martin & Chapman) used three (3) different electronic tabulation machines on November 14, 1990, before counting absentee ballots: two model numbers were M1000 and one was a M600. On November 15, 1990, the remaining absentee voter ballots were counted on a model number M1000. When questioned about the accuracy of the machines, Paul Marshall of Martin & Chapman stated that all vote-counting machines are “certified” by the Secretary of State’s Office. In a letter to State Assemblyman Richard Mountjoy, Vice Chair of the Assembly Elections Committee, the Secretary of State’s Office stated that individual machines were not certified and no record of serial numbers used by contractors are maintained by their office. ([Attachment #22](#))

B. WERE APPROXIMATELY ONE THOUSAND SANTA MONICA VOTERS DISENFRANCHISED BY PROCEDURAL CONFUSION AND TWO BALLOTS?

Eight hundred sixty-four (864) Santa Monica voters did not cast ballots in the municipal election, even though they went to the polling places and cast ballots in the statewide general election. These figures come from a comparison of the L.A. County election results and the Santa Monica election returns. ([Attachment #23](#))

According to statements made by Santa Monica precinct officials, 864 voters who did not cast municipal ballots were discouraged by the inordinate confusion created with two separate ballots, the long lines and lack of coordination between County and municipal election procedures which caused those lines.

According to the City Clerk computer, records show 6,626 Absentee Voters' (AV) ballot applications were mailed out to voters from the City of Santa Monica and they were accounted for as follows:

Total AV Ballots issued	6,626
Returned to be counted	4,452
Returned too late	331
Returned but not counted	93 (not properly executed)
Not returned	1,750

Because of the conflicting County and City procedures, records of the returned municipal AV ballots to polling place are incomplete. Many precinct officials did not require the municipal voters to sign the AV Voter Roster when returning pre-marked ballots to the polls. Therefore, it is impossible to reconcile whether all AV ballots that were returned were actually counted without having access to the AV ballots and envelopes on file in sealed boxes with the City Clerk. These and all other election materials may be destroyed after May 27, 1991, according to the Elections Code.

The City Clerk and City Attorney's office refused to provide the "Yes on Prop Y" campaign with a listing of all AV applicants until after the election. ([Attachment #24](#)) The Clerk then made it almost impossible to ascertain who voted by limiting the space and access to voter rosters. The computer printout, which was finally provided to the "Yes on Prop Y" campaign following the election, was not coded in such a manner as to indicate which of the applicants had returned a ballot, on what date and if the ballot had not been returned. ([Attachment #25](#))

In checking the municipal and general election voter rosters, many persons returning AV ballots were allowed to sign the regular voter rosters in error. In checking many of the precinct counts, these AV ballots issued prior to the election had been surrendered. Most precincts did not account for surrendered or provisional ballots.

At least four municipal Absentee Voter ballots, whose names were listed by the City Clerk as NOT having returned their absentee ballots, stated they had either returned their ballots in person to their polling place or had mailed them in plenty of time. ([Attachment #26](#)) When questioned about this, the City Clerk cited a computer error whereby she claimed that approximately 90 persons were coded wrongly. It was impossible to contact all of the 1,750 voters who had been identified as not having returned their AV ballots to verify whether they had returned their ballots.

C. DID THE CITY COUNCIL APPROVE ILLEGAL RETROACTIVE PAY RAISES AND BONUSES FOLLOWING THE NOVEMBER 6, 1990, CITY ELECTION.

With the legal advice of the City Attorney and the scrutiny of the City Manager, the Santa Monica City Council took the following actions in a private, closed session (which was unrecorded as indicated by the City Attorney's Office) and may have been in violation of the California Constitution and open meeting laws.

1. On December 18, 1990, the City Council rewarded the City Manager with a salary (retroactive to July 1, 1990) increased from \$118,212 to \$127,669, plus a "bonus" of \$9,445, with a 3% market adjustment. ([Attachment #27](#))
2. On December 18, 1990, the City Council, by a vote of six in favor and one abstention, approved a reward and unprecedented pay raise for the City Clerk, who serves a Chief Elections Officer of the City, from \$52,748 to \$72,156, retroactive to July 1, 1990, with a 7% "performance payment". She was also removed from the pay schedule of a "Classified" civil service position (that is mandated for the position of City Clerk by the City Charter) and placed in the Executive Pay Plan ([Attachment #28](#)). This action appeared to be illegal and would require amending the City Charter, which requires voter approval. ([Attachment #29](#))
3. On December 18, 1990, the City Council rewarded the City Attorney with a considerable salary increase from \$100,380 to \$105,399, plus a "bonus" of \$8,030. In spite of the recognized "conflict of interest," the City Attorney continued to provide legal advice to the City on election procedures which affected Prop. Y, as well as regarding this possible illegal, retroactive pay raise and bonus for himself, in a closed and unrecorded Council meeting.
4. Although Resolution 8145 (CCS) authorizing the Clerk's pay raise and "performance pay" was approved at the December 18, 1990, Council meeting, and the Minutes so reflect, the Resolution indicates only that it took effect on July 1, 1990. An attachment to the Resolution bears the signature of Mayor Dennis Zane and the City Clerk and is dated December 18, 1990.
5. The City Clerk has stated there were no agenda proposals set forth in writing which proposed the pay raises for the City Attorney and the City Manager. A Public Records Act Request failed to produce even copies of amended contracts. ([Attachment #15](#)) The only record available to the public were the Minutes of the December 1990 Council meeting. ([Attachment #27](#))

6. The California Constitution, Article IV, Section 17, states, “The Legislature has no power to grant, or to authorize a city, county or other public body to grant, extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or to authorize payment of a claim against the State or a city, county or other public body under an agreement made without authority of law.”
7. The Santa Monica City Attorney is required by the City Charter to prepare all Council Resolutions and employment agreements, which would include those between the City Council and himself as City Attorney and the City Manager [\(Agreement #30\)](#)
8. The City Attorney drafted and approved wording of a retroactive pay raises and bonuses for himself, the City Manager and the City Clerk all of which are highly questionable, especially the change in job “classification” for the City Clerk that appeared to be in conflict with the mandate of the City Charter. Additionally the City Attorney admitted there was no Council authorization or contract with the Martin & Chapman for Election supplies and vote-counting services, who was hired without competitive bidding. [\(Attachment #15\)](#) This, along with his documented “conflict of interest” [\(Attachment #3\)](#) on Proposition Y, creates a lack of confidence in the integrity of the election results where the outcome could have adversely impacted his career and employment with the City.
9. According to the City Attorney’s letter dated May 10, 1991, there was no audio tape of the December 18, 1990 meeting [\(Attachment #15 \(3\)\)](#) during which retroactive pay raises and bonuses for himself and the City Manager were purportedly approved by the City Council, without a formal City Resolution or paperwork submitted.
10. City TV is a public cable channel owned and operated by Santa Monica City and its employees at City Hall. Each Council meeting is aired live on Tuesdays and repeated again on Saturday mornings. This strangely was not the case regarding the December 18, 1990, meeting, which lasted only 15 minutes when the Council went into executive session to discuss the questionable pay raises and bonuses. According to Laura Greenfield, Manager of City TV, the City Manager instructed her to turn off the cameras and send the crew home after the Council went into Executive Session in the interest of “not wasting taxpayer money.” [\(Attachment #31\)](#)

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BIOGRAPHIES

Mr. G.M. LARENAS

AUDITOR, Retired from Watt Industries, Santa Monica. Formerly AUDITOR with the Honeywell Corporation. Mr. Larenas is a thirty-year resident of Santa Monica and a long time member of the Institute of Internal Auditors, Inc. He is involved in Santa Monica Community activities which includes several grassroots organizations.

MRS. J. F. DUTTON

A native Southern Californian who has resided in Santa Monica for twenty-one years, her husband has resided in Santa Monica since 1945. As President of the American Association of Women, Mrs. Dutton testified before the Presidential Commission on AIDS, on Blood Transfusion Safety (1988), White House Conference on Choice in Education, and is currently working with parents in the Imperial Courts Housing project in Watts (South Central Los Angeles) to guarantee the children's Constitutional Right to attend "Safe Schools":. Additionally, Mrs. Dutton organized residents of the Florence/Main Street area to prevent illegal dumping of trash and to provide for adequate sanitation services for the minority communities in the City of Los Angeles.

MS. LINDA M. ROSS

A third generation Southern Californian and four-year resident of Santa Monica. Ms Ross was graduated from the University of California. She won a Ford Foundation Fellowship as a Coro Foundation Fellow in Public Affairs. She was a Legislative Assistant in the U.S. Congress for Congressman John Moss (D) of Sacramento. For ten years Linda was head of the Ph.D. program and then Development Director for University of Southern California, Gerontology Center. She then formed her own institutional development consulting firm. More recently, she consults on pension fund management.