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BY FAX: 518-426-6952 (4 pages)

BY CERTIFIED MAIL/RRR: 7001-0360-0002-6819-6306

February 10, 2003

Chairman John A. DeFrancisco
New York State Senate Judiciary Committee
307 Legislative Office Building
Albany, New York 12247

ATT: Carole Luther, Chief of Staff

- RE:
- (1) CJA's request that Senate Judiciary Committee members be provided with copies of CJA's January 22, 2003 written statement, with appendix documents;
 - (2) CJA's request for a meeting with Chairman DeFrancisco to discuss the January 22, 2003 written statement;
 - (3) The practices and procedures of the Senate Judiciary Committee for preserving the records of its confirmation proceedings for Court of Appeals and "lower" state court judges.

Dear Ms. Luther:

As you know, on January 22nd, shortly after the Senate Judiciary Committee's "hearing" on Judge Susan Read's confirmation to the Court of Appeals, I visited Chairman DeFrancisco's Senate office – which is the Committee's office.

In addition to handing you a FOIL request for a copy of the stenographic transcript of the January 22nd "hearing", I provided you with a copy of CJA's written statement, whose public presentation Chairman DeFrancisco had thwarted at the "hearing". Such written statement was not only for Chairman DeFrancisco, but for every member of the Committee. Indeed, I specifically

requested that copies be distributed to each Committee member. I also requested a meeting with Chairman DeFrancisco to discuss the issues presented by CJA's statement which he had deemed not relevant to the "hearing".

More than 2-1/2 weeks have since elapsed. Please confirm, in *writing*, whether copies of that written statement, *with attached appendix*, have been provided to Committee members. Please also advise as to when Chairman DeFrancisco will be available for a meeting to discuss the statement's content, preferably with other Committee members present and participating. As you know, Chairman DeFrancisco never responded to CJA's initial request for a meeting, set forth in our January 14th letter to him¹. Such letter, sent on the very first day of his Chairmanship, requested a meeting "*as soon as possible*" for the express purpose of discussing:

"the documentary evidence of the corruption of judicial selection and discipline that is within the Committee's jurisdiction to review and its duty to act upon." [A-1].

Additionally, please confirm, *in writing*, that the official stenographic record of the Senate Judiciary Committee's proceedings on Judge Read's confirmation will append CJA's written statement, *including attached appendix*

By way of comparison, the official stenographic record of the Committee's September 7, 1993 proceedings to confirm Justice Howard Levine to the Court of Appeals appends the 19-page written statement that Doris L. Sassower, as Director of the Ninth Judicial Committee, had been prevented from orally presenting at that day's confirmation "hearing", as well as the 4-page written statement and annexed proposed bill of Eli Vigliano, the Ninth Judicial Committee's founder. A further example is the official stenographic record of the Committee's December 17, 1998 proceedings on Justice Albert Rosenblatt's confirmation. It appends a supporting letter of the New York State Bar Association, a supporting letter of former New York State Bar President Robert Ostertag, and a written statement from Stephen Schechter, a Professor of Political Science at Russell Sage College, who had testified at the "hearing" in support of confirmation.

¹ The appendix to CJA's January 22, 2003 statement includes the January 14, 2003 letter to Chairman DeFrancisco at A-1.

If, for some reason, CJA's January 22nd statement with its attached appendix is not to be appended to the official record of the Committee's proceedings on Judge Read's confirmation, please advise, *in writing*, where it will be permanently preserved as part of the "record", accessible to scholars, journalists, and members of the public interested in examining how the Senate, through its Judiciary Committee, has discharged its constitutionally-mandated "advice and consent" function in confirming the Governor's appointees to our State's highest Court.

On that subject, please advise, *in writing*, as to the whereabouts of documents received by the Committee in connection with its proceedings to confirm other appointees to the Court of Appeals throughout the 25 years since New Yorkers relinquished their right to elect Court of Appeals judges. As illustrative, enclosed is a copy of CJA's December 19, 2001 FOIL request for documents received by the Committee in opposition to Judge Joseph Bellacosa's confirmation to the Court of Appeals (Exhibit "A-1"). The stenographic record of the January 27, 1987 "hearing" on that appointment *expressly* identifies the requested documents as having been made part of the "record" – a fact pointed out in our FOIL request, annexing the pertinent stenographic pages.

To date, more than 13 months since that December 19, 2001 FOIL request, Committee counsel David Gruenberg has refused to identify where such "record" documents are located – other than to state, by a May 8, 2002 letter, "We are not in possession of the documents relating to the Bellacosa nomination." (Exhibit "A-2")².

Mr. Gruenberg has also refused to identify the whereabouts of documents received by the Committee during his *own* tenure as Committee counsel – even refusing to confirm that they have been preserved for the "record". As illustrative, annexed is a copy of CJA's exchange of correspondence pertaining to the preservation of documents submitted in connection with the Committee's November 29, 2000 "hearing" on Justice Victoria Graffeo's confirmation to the Court of Appeals. These are: CJA's December 1, 2000 fax (Exhibit "B-1"); CJA's January 4, 2001 letter (Exhibit "B-2"); Mr. Gruenberg's January 9, 2001 letter (Exhibit "B-3"); CJA's March 26, 2001 letter (Exhibit "B-4"); and an

² Mr. Gruenberg's May 8, 2001 letter also responded to CJA's companion FOIL request, also dated December 19, 2001. Such FOIL request appears in the appendix to CJA's January 22, 2003 statement at A-31. The corresponding item in that request, not responded to by Mr. Gruenberg, is #11 therein [A-32].

undated generic note from then Committee Chairman James Lack, making no mention of the inquired-about documents in enclosing a transcript of the November 29, 2000 "hearing" on Justice Graffeo's confirmation (Exhibit "B-5")³.

The documents submitted by CJA in opposition to Justice Graffeo's confirmation -- our October 16, 2000 and November 13, 2000 reports on the corruption of "merit selection" -- were identified by our January 14, 2003 letter to Chairman DeFrancisco and reiterated by our January 17, 2003 letter to him, as critical to our opposition to Justice Read's confirmation [A-2-5; A-8]. On January 21, 2003, when I spoke with Mr. Gruenberg by phone, I specifically inquired as to the whereabouts of these reports. His answer was to the effect that if I required them for my next day's testimony I would have to supply duplicates because they would not otherwise be available to Committee members.

Since CJA's October 16, 2000 and November 13, 2000 reports will be required for our upcoming meeting with Chairman DeFrancisco -- as likewise the documents CJA submitted to the Committee over these past nine years in opposition to Senate confirmation of Justices Howard Levine, Carmen Ciparick, and Albert Rosenblatt to the Court of Appeals and of Judges Juanita Bing Newton, Andrew O'Rourke, and William Wetzel to the Court of Claims -- we further request that you verify their whereabouts and clarify the Committee's past preservation practices and procedures.

Thank you.

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosures (by mail)

³ Such transcript ends without reflecting my interjection that there was "citizen opposition" -- an interjection noted by CJA's December 1, 2000 fax (Exhibit "B-1") as "immediately prior to the hearing's conclusion".

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