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July 19, 2002

Reggie Johnson, Policy Director
Golisano for Governor Campaign
Rochester, New York

RE: Locating the whereabouts of two cartons containing case file evidence to bring down Governor Pataki and Attorney General Eliot Spitzer

Dear Reggie:

Following up our conversation a short time ago, faxed herewith is my June 21, 2002 letter to Mr. Golisano's secretary, Ilene Siekerski, regarding the two cartons containing the politically-explosive public interest lawsuit against the NYS Commission on Judicial Conduct, left for Mr. Golisano on Saturday, May 18th at the Independence Party Convention at the Marriott Hotel.

Also enclosed are the pertinent pages from my August 17, 2001 motion, referred to by my June 21st letter, particularizing the multiple respects in which this lawsuit criminally impacts upon Governor Pataki, as well as my relevant letter to the editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" (NY Post, 12/28/98).

Please TRACK down those cartons ASAP so that Mr. Golisano can have the benefit of *independent* legal evaluation of their significance in knocking out the gubernatorial and attorney general incumbents.

Yours for a quality judiciary,
and meaningful elections,

Elena Ruth Sassower

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

Enclosures

TRANSMISSION VERIFICATION REPORT

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> judges, *inter alia*, through its pattern and practice of dismissing facially-meritorious judicial misconduct complaints against them, without investigation or reasons". [A-19, A-24]

Plainly, my father's *facially-meritorious* complaints against this Court's justices which the Commission dismissed, *without* investigation and *without* reasons, reinforce the "pattern and practice" alleged in my Verified Petition's Second Claim for Relief [A-38-40].

14. This Court's interest in preventing investigation of past *facially-meritorious* judicial misconduct complaints against its justices should, in and of itself, disqualify it from adjudicating this appeal – apart from its interest in preventing investigation of present and future *facially-meritorious* complaints.

B. <u>This Court's Justices Have a Self-Interest in the Appeal to the Extent they are Dependent on Governor Pataki for Reappointment to this Court and for Elevation to the New York Court of Appeals</u>

15. ALL this Court's justices have been either designated or redesignated to this Court by Governor Pataki. Excepting those planning to retire, ALL are dependent on him for redesignation to this Court upon expiration of their five-year appointive terms – assuming his re-election next year as Governor. ALL, too, are dependent on him for elevation to the only higher state court, the New York Court of Appeals[6]. This dependency on the Governor is even more extreme -- given what the

[6] Two of this Court's current justices have sought appointment to the Court of Appeals *and* been nominated by the New York State Commission on Judicial Nomination as "well-qualified": (1) Joseph P. Sullivan (1983, 1984 (2x), 1985, 1986, 1992, 1993 (3x), 1996, 1998); and (2) Richard T. Andrias (2000 and 1998). Upon information and belief, other justices of this Court have sought appointment, but have not been nominated by the Commission on Judicial Nomination.

record shows as to his manipulation of judicial selection to the lower state courts, as well as to the Court of Appeals[7]. Indeed, subsequent events, only briefly recited, reinforce this manipulation by the Governor and those operating at his behest.

16. As reflected in my Appellant's Brief (at p. 6), the Governor has long had information and proof that the Commission was not fulfilling its constitutional and statutory function as a monitor of judicial misconduct. Back in May 1996, he was provided with a copy of the record in an Article 78 proceeding, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (S.Ct/NY Co. #109141/95), along with petition signatures of 1,500 New Yorkers calling upon him to appoint an investigative commission. Evidentiarily established by that record was that the Commission: (1) had subverted Judiciary Law §44.1 and was dismissing, *without* investigation and *without* reason, *facially-meritorious* judicial misconduct complaints, particularly against powerful, politically-connected judges [A-177-187]; (2) had, by its attorney, the New York State Attorney General, engaged in litigation misconduct to thwart the Article 78 challenge because it had NO legitimate defense; and (3) had been rewarded by a factually fabricated and legally insupportable decision of Supreme Court Justice Herman Cahn [A-189-194], without which it could *not* have survived. Detailing the fraudulence of Justice Cahn's decision was a 3-page analysis [A-52-54]. The Governor's nonfeasance in the face of such transmittal is reflected by

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[7] This is detailed at pages 14-22 of my March 26, 1999 ethics complaint against the Governor, filed with the New York State Ethics Commission (Exhibit "E" to my July 28, 1999 omnibus motion).

my Verified Petition [A-26-27, ¶¶ELEVENTH-FIFTEENTH] and further detailed in exhibits thereto [A-48-56]. Among these exhibits, two public interest ads, "*A Call for Concerted Action*" [A-51-52] and "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" [A-55-56], both of which I wrote and the latter of which I paid for [A-26].

17. Two and a half years later, in December 1998, when the Governor appointed Appellate Division, Second Department Justice Albert Rosenblatt to the Court of Appeals, it was with knowledge [A-87, A-90, A-99] that Justice Rosenblatt had been the subject of three of the *facially-meritorious* complaints whose unlawful dismissals by the Commission, *without* investigation and *without* reasons, had generated *Doris L. Sassower v. Commission* [A-28, A-57, A-66, A-87] – covered up by Justice Cahn's fraudulent decision. It was also with knowledge [A-87, A-90, A-99] that a *facially-meritorious* October 6, 1998 complaint against Justice Rosenblatt [A-57-83] was then pending before the Commission, based, *inter alia*, on his believed perjury on his publicly-inaccessible application to the New York State Commission on Judicial Nomination (Br. 6) [A-57-58, A-64].

18. As highlighted by my Appellant's Brief (at 6), the Governor's appointment of Justice Rosenblatt was sped through the Senate by an unprecedented no-notice, by-invitation-only confirmation "hearing" at which no opposition testimony was permitted [A-101]. Thereafter, *without* investigation and *without* reasons, the Commission dismissed my *facially-meritorious* October 6, 1998 complaint [A-93].

19. The Commission's unlawful dismissal of my *facially-meritorious* October 6, 1998 complaint [A-93, A-57-83] and its failure to receive and determine my *facially-meritorious* February 3, 1999 complaint based thereon [A-97-101, A-36-7, A-45] were the predicates for this proceeding against the Commission [A-16-121]. The initial allegations of my Verified Petition highlight Justice Cahn's fraudulent decision in *Doris L. Sassower v. Commission* [A-25-28]– annexing a copy of the same 3-page analysis [A-52-54] as had been given to the Governor three years earlier [A-49].

20. As my Brief details (at 3, 15, 22, 40), Justice Wetzel was not randomly-assigned to the proceeding. Administrative Judge Stephen C. Crane, who had long sought gubernatorial designation to the Appellate Division[8], "steered" it to him [A-122, A-127]. By then, the record of my proceeding showed my detailed argument that the Governor was criminally implicated in the proceeding, both by reason of his long-standing knowledge of the Commission's corruption and his immediate knowledge of the *facially-meritorious* October 6, 1998 judicial misconduct complaint against Justice Rosenblatt (Br. 17-18, 47). Indeed, the record included copies of my ethics and criminal complaints against the Governor based on the facts giving rise to this proceeding, as well as for his manipulation of judicial selection to the lower courts by "rigged" ratings of his state judicial screening committees[9].

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[8] *See* footnote 1 to my Appellant's Brief (at p. 3), referencing Administrative Judge Crane's ambitions for higher judicial office, etc.

[9] *See* pages 1, 2, 14-22 of my March 26, 1999 ethics complaint (Exhibit "E" to my July 28, 1999 omnibus motion); pages 2-3 of my September 15, 1999 supplement thereto (annexed as Exhibit "G" to my September 24, 1999 reply affidavit in further support of my omnibus motion).

21. As detailed by my Appellant's Brief (Br. 27-29, 46-49), Justice Wetzel was not only Governor Pataki's former law partner, who the Governor had appointed to the Court of Claims. He was wholly dependent on the Governor – his appointive term having expired five months earlier [A-264]. Additionally, Justice Wetzel had recently been the beneficiary of the Commission's unlawful dismissal, without investigation [A-278] of a *facially-meritorious* complaint that had been filed against him [A-266-277] – one based, *inter alia*, on his having held a 1994 fundraiser in his home for then gubernatorial candidate Pataki, notwithstanding he was a village town justice. All this and more were objected to in my application for Justice Wetzel's recusal [A-250-290], which requested that if Justice Wetzel denied recusal he make pertinent disclosure, pursuant to §100.3F of the Chief Administrator's Rules, particularly as to his relationship with Governor Pataki and his knowledge of judicial misconduct complaints filed against him[10] [A-258-259].

22. Without making any disclosure, Justice Wetzel denied my recusal application in the same decision as is the subject of this appeal [A-9-14][11]. He then dismissed my Verified Petition based on Justice Cahn's decision in *Doris L. Sassower*

Also, my September 7, 1999 criminal complaint (Exhibit "H" to my September 24, 1999 reply affidavit).

[10] As reflected by my Appellant's Brief (fn. 29), Justice Wetzel had also been the recent beneficiary of the Commission's dismissal of a series of three other *facially-meritorious* judicial misconduct complaints. *See* Exhibit "F" herein, pp. 29-30.

[11] My second "Question Presented" (Br. 1) and my Point II (Br. 42-52) relate to the sufficiency of my recusal application [A-250-293; A-308-334; A-336-342]. Plainly, this second "Question" is one in which this Court has a particular self-interest, as the grounds of that recusal application are echoed on this motion as to the justices' dependency on the Governor and Commission, and their obligations to make disclosure.

v. Commission -- *without* findings as to the accuracy of my 3-page analysis of that decision [A-52-54]. Such analysis was not only *uncontroverted* in the record before him, but was fully substantiated by the record of *Doris L. Sassower v. Commission*, a copy of which I had provided the Court [A-346] and *physically* incorporated in the record of my proceeding.

23. Nor did Justice Wetzel make *any* findings as to the accuracy of my 13-page analysis of Justice Lehner's decision in *Mantell v. Commission* [A-321–334], on which he secondarily relied in dismissing my Verified Petition [A-13]. Such analysis, like my analysis of Justice Cahn's decision, demonstrated that Justice Lehner's decision was also factually-fabricated and legally insupportable. It, too, was *uncontroverted* in the record before Justice Wetzel and fully substantiated by the record of *Mantell v. Commission*, a copy of which I had provided the Court [A-350] and *physically* incorporated in the record of my proceeding.

24. Verifying that Justice Wetzel knowingly predicated his dismissal of Verified Petition on two decisions whose fraudulence was established by *uncontroverted, fully-documented analyses in the record before him* [A-52-54; A-321-334, A-346, A-350]– and that his decision, in *every* material respect, falsifies and distorts the record to deny me, and the public interest I represent, the relief to which I am entitled, will, *in and of itself*, criminally implicate Governor Pataki. This, because, by letter, dated February 23, 2000 (Exhibit "F"), I provided the Governor with a copy of the record of my proceeding, as well as a 14-page analysis of Justice

Wetzel's decision[12], demonstrating it to be "*readily-verifiable* as a wilful and deliberate subversion of the judicial process, constituting a criminal act"[13].

25. The purpose of the 14-page analysis in my February 23, 2000 letter – a precursor to the presentation that now appears in my Appellant's Brief (at 42-68) – was to avert the possibility that the Governor would reappoint Justice Wetzel, by then a seven-and-a-half month "holdover" on the Court of Claims, to that or any other court. It was also to prevent the Governor from designating Administrative Judge Crane to the Appellate Division. The letter presented the facts as to Administrative Judge Crane's complicity in Justice Wetzel's decision in a detailed 8-page recitation[14] -- foreshadowing the presentation in my Appellant's Brief, including my first "Question Presented" (Br. 1, 15, 22, 30, 34, 39-42).

26. In view of the demonstrably self-motivated and corrupt nature of the misconduct of Justice Wetzel and Administrative Judge Crane, my letter further asked the Governor to meet his "duty to secure their removal and criminal prosecution" (Exhibit "F", pp. 2, 32-35). As Justice Wetzel was a "hold-over", his removal could easily be accomplished, requiring no more than the Governor's appointing a successor to his seat. As for Administrative Judge Crane, the situation was more complicated, and the letter stated (at p. 32) that a request would be made to Chief Judge Kaye that

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[12] This 14-page analysis of Justice Wetzel's decision appears at pages 15-29 of the February 23, 2000 letter (Exhibit "F").

[13] *See* page 32 of the February 23, 2000 letter (Exhibit "F").

[14] This 8-page recitation of Administrative Judge Crane's misconduct appears at pages 6-14 of the February 23, 2000 letter (Exhibit "F").

she join in the necessary steps and, as an immediate matter, that she take steps to secure Administrative Judge Crane's demotion from his administrative position.

27. The February 23, 2000 letter additionally requested (at pp. 33-35) that the Governor appoint a special prosecutor or investigative commission – the need for which was exigent. As detailed, the record of my proceeding, with its physically-incorporated copies of the record of *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission*, not only showed the Commission had been the beneficiary of three fraudulent judicial decisions without which it could *not* have survived, but that, in each of these three proceedings, the Attorney General had polluted the judicial process with litigation misconduct – because he had NO legitimate defense. Meantime, the public agencies and officers to whom I had turned with formal ethics and criminal complaints against the Commission, the Attorney General, and the judges involved were paralyzed by conflicts of interest[15]. The Governor, too, suffered from "monumental conflicts of interest", however, the February 23, 2000 letter asked that he put these aside for purposes of appointing a special prosecutor or investigative commission, concluding that

> "[his] failure to do so would not only constitute official misconduct but further evidence of his complicity in the systemic governmental corruption that CJA long ago made the subject of its ethics and criminal complaints against him." (Exhibit "F", at pp. 34-35)

[15] The ethics and criminal complaints themselves detailed these conflicts of interest – a fact identified – with pertinent pages references – in a February 25, 2000 memo to the public officers and agencies (Exhibit "H"). A copy of this letter was transmitted to the Governor under a March 7, 2000 transmittal letter (Exhibit "G-2").

28. It was in face of this evidence-supported February 23, 2000 letter (Exhibit "F"), as well as massive subsequent correspondence I transmitted to the Governor relating thereto (Exhibits "G-1" – "G-5"), including in connection with Administrative Judge Crane's October 2000 nomination to the Court of Appeals by the New York State Commission on Judicial Nomination (Exhibit "G-5"), that the Governor made his two "pay-back" judicial appointments: In March 2001, he elevated Administrative Judge Crane to the Appellate Division, Second Department and, in June 2001, reappointed Justice Wetzel to the Court of Claims. The Governor thereby knowingly and deliberately rewarded their demonstrably corrupt and criminal conduct in obliterating my Article 78 proceeding – the subject of this appeal.

29. That this appeal seeks more than reversal of Justice Wetzel's fraudulent decision is explicitly stated in my Appellant's Brief (at 4, 70). It seeks judicial action consistent with the mandatory "disciplinary responsibilities" that §100.3D(1) and (2) of the Chief Administrator's Rules Governing Judicial Conduct impose on every judge. On this appeal, the "appropriate action" mandated by those rules would be referral of Justice Wetzel and of now Appellate Division, Second Department Justice Crane to disciplinary and law enforcement agencies – a disposition with severe criminal ramifications on Governor Pataki *personally*, as well as on those involved in his judicial selection operations.

30. That Governor Pataki's State Judicial Screening Committee purportedly found Administrative Judge Crane "highly qualified" for elevation to the Appellate Division and Justice Wetzel "highly qualified" for reappointment to the Court of

Claims raises serious questions as to whether my evidence-supported February 23, 2000 letter (Exhibit "F") was withheld from the members of the State Judicial Screening Committee to "rig" its ratings. These questions are reflected by my March 30, 2001 letter to Nan Weiner, Executive Director of the Governor's Judicial Screening Committees (Exhibit "I") and, in particular, by my June 17, 2001 letter to the New York State Senate Judiciary Committee (Exhibit "J-2", pp. 6-8), transmitted to Ms. Weiner under a June 18, 2001 coverletter (Exhibit "J-1"), with the pivotal questions reflected therein reiterated by a June 21, 2001 letter (Exhibit "J-3"). Tellingly, there has been no response from Ms. Weiner to these letters, nor from Paul Shechtman, Chairman of the State Judicial Screening Committee, to whom the June 17, 2001 letter was also sent (Exhibit "J-4").

31. Inasmuch as my long ago filed ethics and criminal complaints against the Governor involved not only his complicity in the Commission's corruption, but his manipulation of judicial selection through "rigged" ratings of his judicial screening committees, the "highly qualified" ratings for Justice Wetzel and Administrative Judge Crane in face of my February 23, 2000 letter provide further substantial substantiation of that aspect of those complaints.

C. **This Court's Justices Have a Self-Interest in this Appeal to the Extent They are Dependent on Other Public Officers, such as Chief Judge Kaye, Implicated in the Systemic Corruption Exposed by this Appeal**

32. In addition to Governor Pataki, there are a host of public officers and agencies whose misfeasance criminally implicates them in the Commission's corruption and the subversion of the judicial process in the three Article 78

NEW YORK POST
America's oldest continuously published daily newspaper

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An Appeal to Fairness: Revisit the Court of Appeals

•Your editorial "Reclaiming the Court of Appeals" (Dec. 18) asserts that Albert Rosenblatt will be judged by how well he upholds the democratic process "from those who would seek to short-circuit" it.

On that score, it is not too early to judge him. He permitted the state Senate to make a mockery of the democratic process and the public's rights when it confirmed him last Thursday.

The Senate Judiciary Committee's hearing on Justice Rosenblatt's confirmation to our state's highest court was by invitation only.

The Committee denied invitations to citizens wishing to testify in opposition and prevented them from even attending the hearing by withholding information of its date, which was never publicly announced.

Even reporters at the Capitol did not know when the confirmation hearing would be held until last Thursday, the very day of the hearing.

The result was worthy of the former Soviet Union: a rubber-stamp confirmation "hearing," with no opposition testimony — followed by unanimous Senate approval.

In the 20 years since elections to the Court of Appeals were scrapped in favor of what was purported to be "merit selection," we do not believe the Senate Judiciary Committee ever — until last Thursday — conducted a confirmation hearing to the Court of Appeals without notice to the public and opportunity for it to be heard in opposition.

That it did so in confirming Justice Rosenblatt reflects its conscious knowledge — and that of Justice Rosenblatt — that his confirmation would not survive publicly presented opposition testimony. It certainly would not have survived the testimony of our non-partisan citizens' organization.

This is why we will be calling upon our new state attorney general as the "People's lawyer," to launch an official investigation. **Elena Ruth Sassower**
Center for Judicial Accountability
White Plains