

CENTER for JUDICIAL ACCOUNTABILITY, INC. *

Post Office Box 3002
Southampton, New York 11969

Tel. (631) 377-3583
Fax (631) 377-3582

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

BY FAX: 518-426-6806 (5 page)

BY E-MAIL: sampson@senate.state.ny.us

February 6, 2009

Senator John L. Sampson, Chairman
New York State Senate Standing Committee on the Judiciary
Room 506, Legislative Office Building
Albany, New York 12247

RE: Request for Transcript & Other Information Concerning the Senate Judiciary Committee's February 3, 2009 Hearing "The nomination process for Judges to the New York State Court of Appeals"

Dear Chairman Sampson:

Following up my phone conversation with Dilay Watson yesterday morning, this is to reiterate my request for a copy of the stenographic transcript of the Senate Judiciary Committee's second hearing on "The nomination process for Judges to the New York State Court of Appeals", held on February 3, 2009 – at which the only witness testifying was John O'Mara, Chairman of the Commission on Judicial Nomination.

No notice of this second hearing appears on your Senate website, <http://nyssenate19.com> – which doubles as the Senate Judiciary Committee website. Indeed, I understood from Ms. Watson that no public notice was issued by the Committee about this hearing. She told me "there wasn't time" because the Committee "had to accommodate [Mr. O'Mara's] schedule". Is this so? Please advise as to the date the Committee arranged with Chairman O'Mara for his February 3, 2009 testimony.

* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization, based in New York, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

Please further advise why Chairman O'Mara was the only witness. Certainly, based on my testimony at the Committee's first hearing on January 27, 2009, at which I strenuously protested that neither Chairman O'Mara, nor any of the Commission members, nor any of the Commission's counsel were present to testify, and vigorously asserted the public's right to their testimony and to present live rebuttal, I would have expected the Committee to have notified me of the scheduling of its second hearing for Chairman O'Mara's testimony so that I could hear it and provide rebuttal testimony, if appropriate.

As plain from my testimony on January 27, 2009 – and from my January 26, 2009 letter to you which underlay it – our non-partisan, non-profit citizens' organization has a wealth of information to impart about the Commission's operations. Indeed, I could have immediately informed the Senators that Chairman O'Mara's February 3, 2009 written testimony not only largely regurgitates, *verbatim*, the Commission on Judicial Nomination's brochure, but is materially false. As illustrative, his self-promotion that "The merit selection process for the Court of Appeals has worked well for 30 years" (at p. 1) and "The Commission has served New York's citizens well for 30 years." (at p. 3). The Center for Judicial Accountability, Inc. (CJA) has evidentiarily disproven this again and again over more than a decade and a half – as the Commission well knows.¹ As a matter of fact, during Mr. O'Mara's ten-plus years as the Commission's chairman – itself violative of Judiciary Law §62.4² – we provided the Commission with a copy of our March 26, 1999 ethics complaint against it based on its corrupting "merit selection" to advance Albert Rosenblatt's appointment to the New York Court of Appeals. That fully-documented and politically-explosive complaint, filed with the New York State Ethics Commission, remains open and pending as of this date, nearly a full decade later. We also provided the Commission with a copy of our October 16, 2000 report to the bar associations – to which our March 26, 1999 ethics complaint was annexed as its Exhibit A-2 – detailing the Commission's corrupting of "merit selection" for the Court of Appeals vacancy thereafter filled by Victoria Graffeo.

As pointed out by our October 16, 2000 report (at p. 3), as likewise, by our subsequent advocacy before the Senate Judiciary Committee at its hearings to confirm the nominations to the Court of Appeals of Susan Read (January 22, 2003), Robert Smith (January 12, 2004),

¹ CJA's correspondence with the Commission, as well as the documents pertaining to CJA's public advocacy about the corruption of "merit selection", are posted on our website, www.judgewatch.org, accessible via the sidebar panel "Searching for Champions-NYS" which links to a webpage for the Commission on Judicial Nomination.

² "The members shall designate one of their number to serve as chairman for a period of two years or until his term of office expires, whichever period is shorter."

Eugene Piggott (September 14, 2006), Theodore Jones (February 12, 2007), and Judith Kaye (March 6, 2007)³, the Commission's reports to the Governor of its nominees are "the only visible manifestation of the Commission's supposed adherence to 'merit selection' principles". Yet, as we stated time and again, including by our March 26, 1999 ethics complaint, these reports do not conform to the requirements of Judiciary Law §63.3 in that their scant recitation as to the collective qualifications of the candidates is bald and conclusory and fails to make requisite "findings" as to "each candidate[s]" "character, temperament, professional aptitude, experience, qualifications and fitness for office", as Judiciary Law §63.3 requires. This repeated public criticism by CJA of the Commission's reports resoundingly puts the lie to Chairman O'Mara's assertion to the Committee, in the penultimate paragraph of his written testimony, that:

“...After the Commission's December 1, 2008 report was delivered to the Governor, some criticized the report and its findings as insufficiently detailed. Notably, the level of detail in that report is the same as in all earlier reports – none of which produced any such criticism...” (p. 14, underlining added).

The October 16, 2000 report also pointed out (at p. 6) that “The *sine qua non* of 'merit selection' is thorough investigation of candidates' qualifications and fitness” and that this was not taking place because the Commission was “not avail[ing] itself of information about the candidates it purports to be investigating from credible sources likely to have negative information” – such as CJA. Indeed, our October 16, 2000 report highlighted that with respect to Rosenblatt's nomination, the Commission had totally ignored the negative information CJA had provided it by a hand-delivered October 5, 1998 letter – information as to criminal conduct by him as an Appellate Division, Second Department judge and judicial candidate – and passed Rosenblatt's name on to then-Governor Pataki.

The Commission did the same with the Lippman nomination. A civic-minded citizen, William Galison, provided the Commission with a November 20, 2008 letter⁴, summarizing information about violative, if not criminal, conduct by Lippman as the Appellate Division, First Department's Presiding Justice and, additionally, about conflict of interest at the

³ All CJA's written statements in opposition to these nominees, as well as the transcripts of the Senate Judiciary Committee's confirmation "hearings" are posted on our website, accessible *via* the sidebar panel "Judicial Selection-State-NY", containing links for each of these nominees under a heading "The Corruption of 'Merit Selection' to New York's Highest State Court".

⁴ This important letter, as likewise Mr. Galison's related correspondence preceding and following it, are posted on our website, most conveniently accessible *via* the sidebar panel "Our Members' Efforts", containing a link to a webpage for Mr. Galison.

Commission affecting its consideration of Lippman's candidacy – only to have it totally ignored by the Commission, which then passed Lippman's name on to Governor Paterson.

Mr. Galison has told me that on January 15, 2009, just two days after the Governor appointed Lippman as Chief Judge of the New York Court of Appeals, he telephoned your Senate office in Albany, summarizing for your counsel, Tim Spotts, his experience with the Commission and requesting to testify at the Committee's hearing on "how the Commission decided on its final list of candidates and the methods employed throughout the candidate selection process", which you had announced, in a press release, would be your "first order of business" before Judge Lippman's confirmation hearing. Mr. Galison then sent Mr. Spotts a January 15, 2009 e-mail, recapitulating the pertinent facts and attaching, in substantiation, the November 20, 2008 letter he had sent to the Commission. Nonetheless, the Committee did not invite Mr. Galison to testify at its January 27, 2009 hearing on "The nomination process for Judges to the New York State Court of Appeals" and only learned of the hearing after-the-fact.

Mr. Galison has further told me that he thereupon telephoned Mr. Spotts who assured him that the Committee would be holding further hearings on the Commission at which he could testify, including one in New York City. Thereafter, and perhaps in response to Mr. Galison's separate phone call to your Brooklyn office, you personally called him, learned directly of his experience with the Commission pertaining to the Lippman nomination, and that you also assured him that he would have an opportunity to testify at a further hearing on the Commission, which you told him had not then been scheduled.

Although one would reasonably expect that upon the Committee's arranging for Chairman O'Mara to testify on February 3, 2009, it would have invited Mr. Galison to also testify – and particularly so that Chairman O'Mara could then be called to respond thereto – the Committee neither invited Mr. Galison to testify nor gave him notice that Chairman O'Mara would be testifying so that he could be present. Indeed, Mr. Galison was completely unaware of the February 3, 2009 hearing until yesterday morning, February 5, 2009 – when I telephoned him the news. This was shortly after I had telephoned your Albany office and had spoken to Ms. Watson – which I did after discovering Chairman O'Mara's February 3, 2009 written testimony on the Commission's website, <http://www.nysegov.com/cjn/>.

Please further advise whether the Senate Judiciary Committee is planning additional hearings on "The nomination process for Judges to the New York State Court of Appeals" at which Mr. Galison will be called to testify. I understood from my conversation with Ms. Watson yesterday that no further hearings on the Commission were anticipated, notwithstanding you had announced at the January 27, 2009 hearing that there would be two additional hearings, at least one of which would be in New York City.

Finally, since the Committee did not directly notify the public of its February 3, 2009 hearing – nor notify such interested parties as CJA and Mr. Galison – query: did the Committee notify the press, other than Joel Stashenko of the New York Law Journal? If so, how and when? According to Mr. Stashenko, with whom I spoke yesterday, he was the only representative of the press at the Committee’s February 3, 2009 hearing.

For your convenience, the questions to which your prompt response is requested are underlined. Please advise as to your answers by fax (631-377-3582) and/or e-mail (cja@judgewatch.org).

Thank you.

Yours for a quality judiciary,

A handwritten signature in black ink, appearing to read "Elena R. Sassower", with a long horizontal flourish extending to the right.

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

cc: William Galison
Tim Spotts, Counsel/Senate Judiciary Committee
Dilay Watson, Committee Clerk/Senate Judiciary Committee
Joel Stashenko, New York Law Journal