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January 26, 2009

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

RE: Requests to Testify:

(a) at Tomorrow's Senate Judiciary Committee Hearing on "The Nomination Process for Judges to the New York State Court of Appeals";

(b) at the Yet-Unscheduled Senate Judiciary Committee Hearing to Confirm Judge Jonathan Lippman as Chief Judge of the New York Court of Appeals

Dear Chairman Sampson,

Reference is made to the Senate Judiciary Committee's undated "Notice of Public Hearing" whose stated purpose is to "examine the process by which nominees to the Court of Appeals are selected by the Commission on Judicial Nomination to be forwarded to the Governor". Such notice announces the hearing scheduled for tomorrow, Tuesday, January 27, 2009, specifying that it is to "explore the judicial selection process, including a perceived lack of transparency in the Commission's process, and recommend any legislative remedies that may be deemed necessary". In bold-faced, capitalized type, it also announces "ORAL TESTIMONY BY INVITATION ONLY".

As the Senate Judiciary Committee's new chairman and, I believe, not a member of the Committee until 2007, you may be unaware of the fact that over the past decade and a half, there has been one lone critic of the Commission on Judicial Nomination and of the "process" of judicial selection to the New York Court of Appeals at the Committee's hearings to confirm Court of Appeals nominees. That lone, outspoken critic is our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), which, as far back as December 1993, in opposition testimony to Carmen Ciparick's

appointment to the New York Court of Appeals, alerted the Senate Judiciary Committee of the necessity to amend, if not repeal, the confidentiality provisions of Judiciary Law §66 to ensure the Commission on Judicial Nomination's adherence to "merit selection" principles—the basis upon which, in 1977, the citizens of New York gave up their right to elect judges to our state's highest court. Indeed, over the past years, CJA has not only been interrupted and cut off from its opposition testimony at Senate Judiciary Committee's hearings to confirm Court of Appeals judges, but also precluded entirely, on the false pretext that our testimony is about "process" and not about the nominee. An example of such indefensible preclusion was the Senate Judiciary Committee's March 2007 hearing to confirm the reappointment of New York Court of Appeals Chief Judge Judith Kaye – at which you were present.

It is, therefore, most disappointing that at what is perhaps the Senate Judiciary Committee's first hearing on the Commission on Judicial Nomination in its 30-year existence, CJA has not been invited to testify. Indeed, upon my telephoning your office on Friday afternoon, January 23<sup>rd</sup>, requesting to testify on a subject about which CJA has unique insight born of direct, first-hand interaction with the Commission on Judicial Nomination, spanning more than a decade, as well as from study of its legislative history, I was told by counsel Tim Spotts, who is the listed contact on the "Public Hearing Reply Form" that we would not be able to testify. As I recollect, he gave no reason why. Nor would he tell me who had been invited to testify or who would be testifying. He stated the Committee was still waiting to hear from invited speakers confirming they would testify. Mr. Spotts also purported not to know when the Committee's "Notice of Public Hearing" had been issued – a notice I had discovered on your Senate website on Friday, January 23<sup>rd</sup>, as I was preparing to call Mr. Spotts in follow-up to the phone message I had left for him more than a week before, on Thursday, January 15<sup>th</sup>, requesting to testify in opposition to Governor Paterson's just announced appointment of Judge Jonathan Lippman to succeed Judge Kaye as Chief Judge of the New York Court of Appeals. Mr. Spotts stated he had not returned that call because he had been busy. He also told me that the Committee had not yet scheduled a date for Judge Lippman's confirmation hearing.

Apparently, Mr. Spotts was also quite busy on Friday, January 23<sup>rd</sup>, as he hurried off the phone after no more than a two or three-minute conversation with me, stating that he had another call waiting for him, but would call me back. I thereafter telephoned your office at least twice, only to be told that Mr. Spotts was either on another call or unavailable. I was unable to obtain answers from the staff to whom I spoke as to the date the "Notice of Public Hearing" had been issued, the date it had been posted on your Senate website, the names of those who had been invited or were testifying, or the criteria for the Committee's invitations.

I provided your staff with information about the sidebar panel "Judicial Selection-State-NY" on CJA's website, [www.judgewatch.org](http://www.judgewatch.org), from which Mr. Spotts could find a link for the

primary source documents establishing CJA's credentials with respect to the Commission on Judicial Nomination and "merit selection" to the New York Court of Appeals.<sup>1</sup> I also provided my cell phone number (646-220-7987), in addition to CJA's phone number (631-377-3583), so that Mr. Spotts would be able to reach me over the weekend about my request to testify at Tuesday's hearing. As of now, Monday morning, January 26<sup>th</sup>, I have received no call from him.

By this letter, I reiterate my request to testify at tomorrow's hearing on the Commission on Judicial Nomination – a request consistent with the Senate Judiciary Committee's "interest in considering testimony from all sources", as stated in its undated notice:

"In order to further publicize these hearings, please inform interested parties and organizations of the Committee's interest in considering testimony from all sources."

Additionally, by this letter, I formalize my request to testify in opposition to Judge Lippman at the Senate Judiciary Committee's as-yet-unscheduled hearing to confirm his appointment as Chief Judge of the New York Court of Appeals. In pertinent part, such opposition is based on his complicity, as New York's Chief Administrative Judge, in the corruption of "merit selection" to the New York Court of Appeals involving not only the Commission on Judicial Nomination, but the Commission on Judicial Conduct, an integral component of the "merit selection" process.

Thank you.

Yours for a quality judiciary,



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

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<sup>1</sup> See, also, sidebar panel: "Searching for Champions-NYS", which leads to a link for a webpage for the Commission on Judicial Nomination.