

Subject: CJA's opposition to Pigott confirmation to NY Ct of Appeals

Date: 9/14/2006, 9:49 AM

From: Ctr for Judicial Accountability <judgewatchers@aol.com>

To: jcaher@alm.com


Organization: Center for Judicial Accountability, Inc.

Dear John,

You are the first to receive this.

As discussed, attached is my written statement and its accompanying appendix. These are already posted on CJA's website, www.judgewatch.org -- most conveniently accessible via "Latest News".

 [9-14-06-testimony-pigott.pdf \(534KB\)](#)

 [appendix-26pp.pdf \(1715KB\)](#)

Thanks.

Elena

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TESTIMONY OF ELENA RUTH SASSOWER, DIRECTOR CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA)

In Opposition to Senate Confirmation of Appellate Division, Fourth Department Presiding Justice Eugene F. Pigott, Jr. as Associate Judge of the New York Court of Appeals. Presented at the Public Hearing of the New York State Senate Judiciary Committee, Thursday, September 14, 2006, Albany, New York.

My name is Elena Ruth Sassower and I am director and co-founder of the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization dedicated to safeguarding the public interest in judicial selection and discipline.

CJA opposes Senate confirmation of Governor Pataki's appointment of Eugene F. Pigott, Jr. to the New York Court of Appeals. We view it as the Governor's latest manipulation of the judicial appointments processes¹, which we have documented time, after time, after time,

¹ That we are not alone in our cynical view may be seen from "*Pataki Nominates Pigott for High Court*", New York Law Journal, August 21, 2006 (by John Caher), setting forth theories and scenarios of "pundits and political plotters", reflective of the political calculus they know to underlie Governor Pataki's judicial appointments:

"Under one theory, the governor would appoint Justice Prudenti, and then promote Second Department Justice Peter B. Skelos, the brother of an influential Republican state senator, to presiding justice. Under another, Justice Prudenti would go to the Court of Appeals and First Department Justice James Catterson, who was also on the nominating commission's list, would be shifted to the Second Department and instantly installed as presider.

One scenario had the nod going to Justice Thomas E. Mercure of the Third Department – but only if the governor or his people could arrange a cross endorsement to ensure that gubernatorial counsel Richard Platkin would get Justice Mercure's Supreme Court seat. An earlier attempt to finagle a Third Department cross endorsement for Mr. Platkin's benefit fizzled, as apparently did the more recent effort.

The three Democrats on the list – Judge Smith and Justices Richard T. Andrias of the First Department and Steven W. Fisher of the Second Department – never seemed to be in serious contention."

involving appointments at all levels of the judiciary. CJA's website, www.judgewatch.org, posts the substantiating documentary proof, accessible *via* the sidebar panel "Judicial Selection-State/NY".

This Committee did not require Justice Pigott to complete a publicly-available questionnaire, setting forth the specifics of his background, his political activity, his legal, judicial, and other positions he has held, his most significant decisions, his published writings and speeches, or any other information as to what he views as his qualifications. Nor, apparently, has the Committee asked Justice Pigott to furnish other documents bearing on his qualifications and fitness to be publicly-available.² Consequently, the public – and the press, acting on its behalf – are unable to investigate what Justice Pigott purports to be his relevant background and credentials.

From our googling Justice Pigott's name on the internet, we found the New York Court system's online posting of his bio (www.courts.state.ny.us/ad4/Court/Bios/Pigott.htm) – the last sentence of which caught our interest: "He served as a member of the Governor's Temporary Judicial Screening Committee between 1995 and 1996."

The Temporary Judicial Screening Committee, established on April 25, 1995 by Governor Pataki's Executive Order #11, was supposed to be just that, "temporary". It was to exist until the permanent judicial screening committees, established by Governor Pataki's simultaneously-promulgated Executive Order #10, were "fully operational". Yet, it took nearly two years before members of the permanent committees were even appointed – and then only because of the hue and cry of the bar associations which were roused to action by CJA's Letter to the Editor, "*On Choosing Judges Pataki Creates Problems*", published by The New York Times on November 16, 1996 [A-4]. Our Letter – the lead Letter on that day's editorial page – identified scandalous facts about the Temporary Judicial Screening Committee:

"Virtually no information about that committee is publicly available.

Indeed, the Governor's temporary committee has no telephone number, and all inquiries about it must be directed to Michael Finnegan, the Governor's counsel. Mr. Finnegan refuses to divulge any information about the temporary committee's membership, its procedures or even the qualifications of the judicial candidates Governor Pataki appoints, based on its recommendation to

² CJA requested such documents and other information by a September 5, 2006 letter, invoking "the Freedom of Information Law or such other law and rules as may be applicable" [A-1]. Chairman DeFrancisco responded by providing only "a copy of the Governor's nomination of Eugene F. Pigott, Jr. as an Associate Judge of the State Court of Appeals", stating that the Committee "has no other information pertinent to your request which is subject to the Freedom of Information Law applicable to the Legislature." [A-3].

him that they are 'highly qualified.'”

Expurgated by The Times was the paragraph in our original Letter that if the Temporary Judicial Screening Committee existed, it was “controlled by the Governor *via* Mr. Finnegan, who rigs its ratings by withholding from the committee information adverse to the politically-connected candidates it reviews”.

We do not know what month in 1996 Justice Pigott stepped down as a member of the Temporary Judicial Screening Committee³, but our interaction with Mr. Finnegan was in the spring of 1996. If Justice Pigott was a member of the Temporary Judicial Screening Committee at that time – and if Mr. Finnegan did not withhold from the Committee the information and documentary evidence we had provided – his mandatory professional and ethical responsibility was not only to have voted against the specific judicial candidate to whom we were objecting, but to take other, more forceful steps to protect the public. This, because the candidate was a judicial member of the New York State Commission on Judicial Conduct – and the evidence against her was the casefile of CJA’s first Article 78 lawsuit against the Commission, suing it for corruption.

Readily-verifiable from the casefile and our related correspondence were the following: (1) the Commission had unlawfully promulgated a rule which converted its mandatory statutory duty to investigate facially-meritorious complaints into a discretionary option, unbounded by any standard; (2) the Commission was unlawfully dismissing complaints which were not only facially-meritorious, but documented as to criminal conduct by high-ranking, politically-connected judges; (3) Attorney General Vacco was defending the Commission with fraudulent defense tactics because he had no legitimate defense; (4) the Commission had been rewarded by a fraudulent judicial decision, without which it would not have survived; and (5) the Commission, including the candidate, had failed and refused take corrective steps, as was their professional and ethical duty to do.

I have brought with me today a copy of the casefile⁴ identical to the one Justice Pigott should

³ Pursuant to Executive Order #11, paragraph 3, the Temporary Judicial Screening Committee had seven members. These were: “the designee of the Attorney General, the designee of the Chief Judge of the Court of Appeals, the Counsel to the Governor, the Secretary to the Governor, the Director of Criminal Justice, the President of the New York State Bar Association or his designee and the Honorable Lawrence H. Cooke, former Chief Judge of the Court of Appeals, who shall act as its chairperson.”

I believe it likely that Justice Pigott was “the designee of the Attorney General”, which would have been Dennis Vacco, who, like himself is from Buffalo.

⁴ The casefile, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (S.Ct/NYCo. #95-109141), is posted on CJA’s website, accessible *via* the sidebar panel “Judicial Discipline-State-NY”. A summary of the casefile is set forth in CJA’s \$3,077 public interest ad, “*Restraining ‘Liars in the Courtroom’ and on the Public Payroll*”, NYLJ, August 27, 1997 [A-6].

have had before him in the spring of 1996 as a member of the Temporary Judicial Screening Committee. And this is CJA's correspondence⁵ to Mr. Finnegan and the Governor's office during that period pertaining to the specific judicial candidate, to the casefile – and to the fact that we were unable to obtain from Governor Pataki's office and from Mr. Finnegan the most basic information about the Temporary Judicial Screening Committee, including how to contact it directly.

Additionally, this is our many years' worth of written requests to the Governor's office for such documentation as the Temporary Judicial Screening Committee's written reports of the qualifications of candidates appointed by the Governor to judicial office, which Executive Order #11 explicitly made publicly available⁶. The Governor's office provided us with not a single report – which, if they exist, should include a report on Justice Pigott's qualifications for an interim Supreme Court judgeship.

It may be surmised that the reason Justice Pigott stepped down from the Temporary Judicial Screening Committee sometime in 1996 was so that he might be approved by it for judicial office. On January 9, 1997, presumably based on a report of the Temporary Judicial Screening Committee approving Justice Pigott, the Governor nominated him to be an interim Justice of the Supreme Court for the Eight Judicial District [A-19]. The nomination was approved by this Committee at a "meeting" held on February 4, 1997 [A-20], for which, upon information and belief, there is no recording or transcript.

This interim Supreme Court judgeship enabled Justice Pigott to run as an incumbent later that year, winning election that November to a 14-year Supreme Court term. Less than 2-1/2 months into that term, in March 1998, Governor Pataki elevated Justice Pigott to the Appellate Division, Fourth Department, giving him precedence over countless more senior Supreme Court Justices. Presumably, this was with the approval of the Governor's now "fully operational" permanent Fourth Department Judicial Screening Committee. However, the Governor's office has not furnished us with any of that Committee's publicly-available reports approving the qualifications of candidates appointed by Governor Pataki for dates

⁵ The correspondence is posted on CJA's website, accessible *via* the sidebar panel "Judicial Selection-State-NY", which brings up a menu list including "Corruption of Judicial Appointments to New York's Lower State Courts". From there, go to "Chronological Paper Trail of Interaction with the Process-1996-2003". Illustrative correspondence is annexed, albeit without the substantiating exhibits: (1) CJA's April 18, 1996 letter to David Gruenberg, former Counsel to this Committee – to which Mr. Finnegan was an indicated recipient, sent a copy by certified mail/return receipt [A-9]; and (2) CJA's April 29, 1996 letter to Mr. Finnegan, sent to him, certified mail/return receipt [A-14].

⁶ The correspondence is posted on CJA's website, accessible *via* the sidebar panel "Judicial Selection-State-NY", which brings up a menu list including "Freedom of Information Law & Other Informational Requests Pertaining to Governor Pataki's Judicial Appointments & the Judicial Appointments Process".

earlier than June 1999.

It may be noted that Justice Pigott's March 1998 appointment to the Appellate Division, Fourth Department was as a so-called "temporary" Justice. This meant that he could remain on that Court not just for five years, which is the tenure of Appellate Division Justices, but, potentially, through the expiration of his 14-year Supreme Court term. Less than two years later, in February 2000, Governor Pataki elevated Justice Pigott yet again, making him the Appellate Division, Fourth Department's Presiding Justice, again giving him precedence over more senior Justices.⁷ Presumably, this, too, was approved by the Governor's permanent Fourth Department Judicial Screening Committee, although there was no such report from among those we received from the Governor's office.

Justice Pigott then set his sights on the New York Court of Appeals, to which in 2002⁸ and 2003 the Commission on Judicial Nomination recommended him to Governor Pataki for appointment.. Among the members of the Commission on Judicial Nomination, from 1996 to the present, the Governor's former counsel, Michael Finnegan, who ran the Temporary Judicial Screening Committee from his counsel office, rigging its ratings.

CJA long ago and repeatedly documented that the Commission on Judicial Nomination – which operates behind-closed-doors – has corrupted its important role in the constitutionally-mandated "merit selection" of New York Court of Appeals judges. We did this in fact-specific criminal and ethics complaints detailing its wilful disregard of documentary proof of nominee unfitness and of the corruption of its chief information source about its mostly judge applicants: the Commission on Judicial Conduct. This Committee has received from us two fact-specific, documented reports dated October 16, 2000 and November 13, 2000 and a wealth of subsequent correspondence, statements, and testimony on the subject. These are all posted on CJA's website.⁹

⁷ These included Appellate Division Fourth Department Justice Samuel L. Green, a black jurist, "who at the time had 27 years of judicial experience compared with Justice Pigott's three years", "*Pataki Nominates Pigott for High Court*", NYLJ, August 21, 2006 (Caher).

⁸ After being recommended to the Governor by the Commission on Judicial Nomination in 2002, Justice Pigott withdrew his name from consideration, allegedly because of "an administrative issue in his judicial department", "*Pataki Nominates Pigott for High Court*", NYLJ, August 21, 2006 (Caher). As the issue necessitating withdrawal was "administrative", rather than personal, the public should be entitled to information as to what that work-related issue was – and how it was resolved.

⁹ See, in particular, the sidebar panel "Judicial Selection-State-NY", whose menu list includes "The Corruption of 'Merit Selection' to New York's Highest Court". As for our criminal and ethics complaints, see the sidebar panel "Searching for Champions-NYS", with its links to webpages for Attorney General Spitzer, the New York District Attorney, the U.S. Attorneys for the Southern and Eastern Districts of New York, and the New York State Ethics Commission.

As a result of the inaction of all concerned – including the press – the Commission on Judicial Nomination’s behind-closed-doors abandonment of “merit selection” principles has continued unabated, fatally tainting this nomination.

The only aspect of the Commission’s work not behind closed doors – and the only visible measure of whether it has adhered to any semblance of “merit selection” – is its July 20, 2006 report to the Governor recommending Justice Pigott for appointment to the New York Court of Appeal, along with six others [A-21]. Such report – a mere 1-1/2 pages – like the Commission’s predecessor reports, establishes the Commission’s violation of “merit selection” as it is NOT in conformity with the express requirement of Judiciary Law §63.3, which mandates that it:

“shall include the commission’s findings relating to the character, temperament, professional aptitude, experience, qualifications and fitness for office of each candidate who is recommended to the governor” (italics added).

The Commission’s July 20, 2006 report makes NO findings as to EACH of the seven recommended candidates. Rather, it contains a bald, conclusory statement that “in the collective judgment of the Commission” all seven candidates are “well qualified” according to the aforesaid criteria. This is then followed by an attached “summary of the careers of the recommended candidates” [A-23], which is nothing more than a distillation of resume-type biographic information, with NO qualitative assessment. Justice Pigott’s summary is 10 skimpy lines, none mentioning his membership on Governor Pataki’s Temporary Judicial Screening Committee. The summaries of the other six candidates are anywhere from 8 to 14 lines.

So that the record is clear, of the seven candidates which the Commission on Judicial Nomination presented to Governor Pataki by its July 20, 2006 report, CJA is able to attest, with substantiating documentation, that five would necessarily have been rejected by any Commission operating under “merit selection” principles. Such principles required the Commission to properly investigate their candidacies, which it demonstrably did not do as to these five – Justice Pigott, among them – or as to the other two.

This Committee’s duty, on behalf of the Senate, is to ensure the People’s constitutional right to “merit selection” of its New York Court of Appeals judges, for which, in 1977, they relinquished their right to elect Court of Appeals judges. On that basis, it must reject Justice Pigott’s appointment as there is NO publicly available evidence showing anything but that it is “merit selection” in name only. Investigation of the substantiating documentation would so prove.

Elena R. R.
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APPENDIX

- A-1 CJA's September 5, 2006 letter to NYS Senate Judiciary Committee Chairman John A. DeFrancisco
- A-3 Chairman DeFrancisco's September 8, 2006 letter to CJA
- A-5 "*On Choosing Judges, Pataki Creates Problems*", CJA's Letter to the Editor, The New York Times, November 16, 1996
- A-6 "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", CJA's \$3,077 public interest ad, New York Law Journal, August 27, 1997, pp. 3-4
- A-9 CJA's April 18, 1996 letter to David Gruenberg, former counsel to the NYS Senate Judiciary Committee – to which Governor Pataki's then counsel, Michael Finnegan, was an indicated recipient, sent a copy by certified mail/return receipt
- A-14 CJA's April 29, 1996 letter to Michael Finnegan, Governor Pataki's then counsel, sent certified mail/return receipt
- A-19 Governor Pataki's January 9, 1997 Nomination of Eugene F. Pigott, Jr. to be an interim Supreme Court Justice for the Eighth Judicial District
- A-20 NYS Senate Judiciary Committee's February 4, 1997 notice of meeting to consider the nomination of Eugene F. Pigott, Jr. as interim Supreme Court Justice
- A-21 NYS Commission on Judicial Nomination's July 20, 2006 letter-report to the Governor, with enclosed "summary of the careers of the recommended candidates"

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BY FAX: 518-426-6952 (2 pages)
BY E-MAIL: jdefranc@senate.senate.ny.us

September 5, 2006

Chairman John A. DeFrancisco
New York State Senate Judiciary Committee
Albany, New York 12247

RE: Senate confirmation of Appellate Division, Fourth Department Presiding Justice Eugene F. Pigott, Jr. to the New York Court of Appeals:

- (1) Request for publicly-available documents
- (2) Request to testify in opposition at the Senate Judiciary Committee's September 14, 2006 confirmation hearing

Dear Chairman DeFrancisco:

This letter follows up my telephone conversation at 9:30 this morning with your Legislative Director, Jeffrey Sandquist, regarding the Senate Judiciary Committee's hearing to confirm Governor Pataki's appointment of Appellate Division, Fourth Department Presiding Justice Eugene F. Pigott, Jr. to be an associate judge of the New York Court of Appeals, scheduled for Thursday, September 14, 2006¹.

Mr. Sandquist advised that all involved Senate Judiciary Committee personnel are on vacation this week, including your Chief of Staff, Carole Luther, and that no one would be able to get back to me until next Monday, September 11, 2006. In the interim, Mr. Sandquist stated that I should telephone the Secretary of the Senate, Steven Boggess, for the information I told him I was requesting. Although I expressed great skepticism that the Secretary of the Senate would have such information, I did promptly call Mr. Boggess' office (516-455-2051). I spoke with his Executive Assistant, Lois Ferro, explaining the situation and stating that I would fax her a copy of this written request for such action as Mr. Boggess deemed appropriate.

¹ I was first given that date when I telephoned (518-455-3511) on Thursday, August 31, 2006, requesting a copy of the hearing notice. Although I provided my name and fax number for such purpose, I received no copy of the notice.

My written request – pursuant to the Freedom of Information Law or such other law and rules as may be applicable – is as follows:

(a) for all publicly-available documents in the Committee's possession bearing upon Justice Pigott's qualifications and fitness to be an associate judge of the New York Court of Appeals;

(b) for any written procedures and standards governing the Committee's proceedings to confirm New York Court of Appeals judges. This would presumably reflect whether the Committee now requires nominees to our state's highest court to complete a publicly-available questionnaire, such as the U.S. Senate Judiciary Committee requires in its proceedings to confirm federal judges² – and whether it has developed any criteria by which it evaluates requests by members of the public to testify in opposition at its confirmation hearings.

Additionally, by this letter, the Center for Judicial Accountability requests to testify in opposition at the Senate Judiciary Committee's September 14, 2006 public hearing on Justice Pigott's confirmation.

Finally, please note our new mailing address, as above-indicated by our letterhead – and adjust your records accordingly.

Thank you.

Yours for a quality judiciary,



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

cc: Steven M. Boggess, Secretary of the Senate

By Fax: 518-455-3332

ATT: Lois Ferro, Executive Assistant

² A blank copy of the U.S. Senate Judiciary Committee questionnaire was annexed to CJA's January 17, 2003 letter to you relating to the New York State Senate Judiciary Committee's procedures in confirming Presiding Court of Claims Judge Susan P. Read to the New York Court of Appeals. It is included in the appendix to CJA's January 22, 2003 written testimony in opposition to her confirmation [A-34-40]. IF the State Senate Judiciary Committee is preserving the records of its proceedings to confirm Court of Appeals judges – as was requested by CJA's February 10, 2003 letter to you – all such documents should be readily accessible to you.

rec'd 9/12/06

THE SENATE
STATE OF NEW YORK



JOHN A. DeFRANCISCO
SENATOR, 50TH DISTRICT

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INTERGOVERNMENTAL AFFAIRS

September 8, 2006

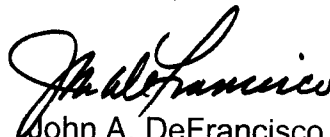
Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc.
P.O. Box 8200
White Plains, New York 10602

Dear Ms. Sassower:

Enclosed please find a copy of the Governor's nomination of Eugene F. Pigott, Jr. as an Associate Judge of the State Court of Appeals.

Please be advised that the Senate Standing Committee on Judiciary has no other information pertinent to your request which is subject to the Freedom of Information Law applicable to the Legislature.

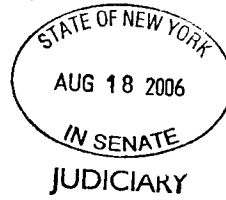
Very truly yours,


John A. DeFrancisco
State Senator

JAD/cl
enclosure

A-3

A message from the Governor
was received and read in the words
following



State of New York
Executive Chamber

August 18, 2006

TO THE SENATE:

Pursuant to the provisions of section 2 of Article VI of the
Constitution and the provisions of section 68 of the Judiciary Law,
I hereby nominate as Associate Judge of the Court of Appeals the

HONORABLE EUGENE F. PIGOTT, JR.

of Grand Island, to fill a term commencing on September 24, 2006 and
expiring on September 23, 2020.



M. E. Patai

A-4

The New York Times

EDITORIALS/LETTERS SATURDAY, NOVEMBER 16, 1996

On Choosing Judges, Pataki Creates Problems

To the Editor:

Our citizens' organization shares your position that Gov. George E. Pataki should take the lead in protecting the public from processes of judicial selection that do not foster a quality and independent judiciary ("No Way to Choose Judges," editorial, Nov. 11). However, the Governor is the problem — not the solution.

A Sept. 14 news article described how Governor Pataki had politicized "merit selection" to New York's highest court by appointing his own counsel, Michael Finnegan, to the Commission on Judicial Nomination, the supposedly independent body that is to furnish him the names of "well qualified" candidates for that court.

More egregious is how Governor Pataki has handled judicial appointment to the state's lower courts. Over a year and a half ago, the Governor promulgated an executive order to establish screening commit-

tees to evaluate candidates for appointive judgeships. Not one of these committees has been established. Instead, the Governor — now almost halfway through his term — purports to use a temporary judicial screening committee. Virtually no information about that committee is publicly available.

Indeed, the Governor's temporary committee has no telephone number, and all inquiries about it must be directed to Mr. Finnegan, the Governor's counsel. Mr. Finnegan refuses to divulge any information about the temporary committee's membership, its procedures or even the qualifications of the judicial candidates Governor Pataki appoints, based on its recommendation to him that they are "highly qualified."

Six months ago we asked to meet with Governor Pataki to present him with petitions, signed by 1,500 New Yorkers, for an investigation and public hearings on "the political manipulation of judgeships in

the State of New York." Governor Pataki's response? We're still waiting.

ELENA RUTH SASSOWER
Coordinator, Center for Judicial
Accountability Inc.
White Plains, Nov. 13, 1996

New York Law Journal

AUGUST 27, 1997

[at page 3]

RESTRAINING "LIARS IN THE COURTROOM" AND ON THE PUBLIC PAYROLL

On June 17th, The New York Law Journal published a Letter to the Editor from a former New York State Assistant Attorney General, whose opening sentence read "Attorney General Dennis Vacco's worst enemy would not suggest that he tolerates unprofessional or irresponsible conduct by his assistants after the fact". Yet, more than three weeks earlier, the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization, submitted a proposed Perspective Column to the Law Journal, detailing the Attorney General's knowledge of, and complicity in, his staff's litigation misconduct - before, during, and after the fact. The Law Journal refused to print it and refused to explain why. Because of the transcending public importance of that proposed Perspective Column, CJA has paid \$3,077.22 so that you can read it. It appears today on page 4.

[at page 4]

RESTRAINING "LIARS IN THE COURTROOM" AND ON THE PUBLIC PAYROLL

*- a \$3,077.22 ad presented, in the public interest, by the Center for Judicial Accountability, Inc. -
(continued from page 3)*

In his May 16th Letter to the Editor, Deputy State Attorney General Donald P. Berens, Jr. emphatically asserts, "the Attorney General does not accept and will not tolerate unprofessional or irresponsible conduct by members of the Department of Law."

A claim such as this plainly contributes to the view - expressed in Matthew Lifflander's otherwise incisive Perspective Column "Liars Go Free in the Courtroom" (2/24/97) -- that the State Attorney General should be in the forefront in spearheading reform so that the perjury which "pervades the judicial system" is investigated and deterrent mechanisms established. In Mr. Lifflander's judgment, "the issue is timely and big enough to justify creation of either a state Moreland Act Commission investigation by the Governor and the Attorney General, or a well-financed legislative investigation at the state or federal level", with "necessary subpoena power". Moreover, as recognized by Mr. Lifflander and in the two published letter responses (3/13/97, 4/2/97), judges all too often fail to discipline and sanction the perjurers who pollute the judicial process.

In truth, the Attorney General, our state's highest law enforcement officer, lacks the conviction to lead the way in restoring standards fundamental to the integrity of our judicial process. His legal staff are among the most brazen of liars who "go free in the courtroom". Both in state and federal court, his Law Department relies on litigation misconduct to defend state agencies and officials sued for official misconduct, including corruption, where it has no legitimate defense. It files motions to dismiss on the pleadings which falsify, distort, or omit the pivotal pleaded allegations or which improperly argue *against* those allegations, without any probative evidence whatever. These motions also misrepresent the law or are unsupported by law. Yet, when this defense misconduct -- readily verifiable from litigation files -- is brought to the Attorney General's attention, he fails to take any corrective steps. This, notwithstanding the misconduct occurs in cases of great public import. For its part, the courts -- state and federal -- give the Attorney General a "green light."

Ironically, on May 14th, just two days before the Law Journal published Deputy Attorney General Berens' letter, CJA testified before the Association of the Bar of the City of New York, then holding a hearing about misconduct by state judges and, in particular, about the New York State Commission on Judicial Conduct. The Law Journal limited its coverage of this important hearing to a three-sentence blurb on its front-page news "Update" (5/15/97).

Our testimony described Attorney General Vacco's defense misconduct in an Article 78 proceeding in which we sued the Commission on Judicial Conduct for corruption (N.Y. Co. #95-109141). Law Journal readers are already familiar with that public interest case, spearheaded by CJA. On August 14, 1995, the Law Journal printed our Letter to the Editor about it, "Commission Abandons Investigative Mandate" and, on November 20, 1996, printed our \$1,650 ad, "A Call for Concerted Action".

A-6

The case challenged, *as written and as applied*, the constitutionality of the Commission's self-promulgated rule, 22 NYCRR §7000.3, by which it has converted its mandatory duty under Judiciary Law §44.1 to investigate facially-meritorious judicial misconduct complaints into a discretionary option, unbounded by any standard. The petition alleged that since 1989 we had filed eight facially-meritorious complaints "of a profoundly serious nature -- rising to the level of criminality, involving corruption and misuse of judicial office for ulterior purposes -- mandating the ultimate sanction of removal". Nonetheless, as alleged, each complaint was dismissed by the Commission, *without* investigation, and *without* the determination required by Judiciary Law §44.1(b) that a complaint so-dismissed be "on its face lacking in merit". Annexed were copies of the complaints, as well as the dismissal letters. As part of the petition, the Commission was requested to produce the record, including the evidentiary proof submitted with the complaints. The petition alleged that such documentation established, "*prima facie*, [the] judicial misconduct of the judges complained of or probable cause to believe that the judicial misconduct complained of had been committed".

Mr. Vacco's Law Department moved to dismiss the pleading. Arguing *against* the petition's specific factual allegations, its dismissal motion contended -- *unsupported* by legal authority -- that the facially irreconcilable agency rule is "harmonious" with the statute. It made no argument to our challenge to the rule, *as applied*, but in opposing our Order to Show Cause with TRO falsely asserted -- *unsupported* by law or any factual specificity -- that the eight facially-meritorious judicial misconduct complaints did not have to be investigated because they "did not on their face allege judicial misconduct". The Law Department made no claim that any such determination had ever been made by the Commission. Nor did the Law Department produce the record -- including the evidentiary proof supporting the complaints, as requested by the petition and further reinforced by separate Notice.

Although CJA's sanctions application against the Attorney General was fully documented and uncontroverted, the state judge did not adjudicate it. Likewise, he did not adjudicate the Attorney General's duty to have intervened on behalf of the public, as requested by our formal Notice. Nor did he adjudicate our formal motion to hold the Commission in default. These threshold issues were simply obliterated from the judge's decision, which concocted grounds to dismiss the case. Thus, to justify the rule, *as written*, the judge advanced his own interpretation, falsely attributing it to the Commission. Such interpretation, belied by the Commission's own definition section to its rules, does nothing to reconcile the rule with the statute. As to the constitutionality of the rule, *as applied*, the judge baldly claimed what the Law Department never had: that the issue was "not before the court". In fact, it was squarely before the court -- but adjudicating it would have exposed that the Commission was, as the petition alleged, engaged in a "pattern and practice of protecting politically-connected judges...shield[ing them] from the

disciplinary and criminal consequences of their serious judicial misconduct and corruption".

The Attorney General is "the People's lawyer", paid for by the taxpayers. Nearly two years ago, in September 1995, CJA demanded that Attorney General Vacco take corrective steps to protect the public from the combined "double-whammy" of fraud by the Law Department and by the court in our Article 78 proceeding against the Commission, as well as in a prior Article 78 proceeding which we had brought against some of those politically-connected judges, following the Commission's wrongful dismissal of our complaints against them. It was not the first time we had apprised Attorney General Vacco of that earlier proceeding, involving perjury and fraud by his two predecessor Attorneys General. We had given him written notice of it a year earlier, in September 1994, while he was still a candidate for that high office. Indeed, we had transmitted to him a full copy of the litigation file so that he could make it a campaign issue -- which he failed to do.

Law Journal readers are also familiar with the serious allegations presented by that Article 78 proceeding, raised as an essential campaign issue in CJA's ad "*Where Do You Go When Judges Break the Law?*". Published on the Op-Ed page of the October 26, 1994 New York Times, the ad cost CJA \$16,770 and was reprinted on November 1, 1994 in the Law Journal, at a further cost of \$2,280. It called upon the candidates for Attorney General and Governor "to address the issue of judicial corruption". The ad recited that New York state judges had thrown an Election Law case challenging the political manipulation of elective state judgeships and that other state judges had viciously retaliated against its "judicial whistle-blowing", *pro bono* counsel, Doris L. Sassower, by suspending her law license immediately, indefinitely, and unconditionally, *without* charges, *without* findings, *without* reasons, and *without* a pre-suspension hearing, -- thereafter denying her any post-suspension hearing and any appellate review.

Describing Article 78 as the remedy provided citizens by our state law "to ensure independent review of governmental misconduct", the ad recounted that the judges who unlawfully suspended Doris Sassower's law license had refused to recuse themselves from the Article 78 proceeding she brought against them. In this perversion of the most fundamental rules of judicial disqualification, they were aided and abetted by their counsel, then Attorney General Robert Abrams. His Law Department argued, *without* legal authority, that these judges of the Appellate Division, Second Department were not disqualified from adjudicating their own case. The judges then granted their counsel's dismissal motion, whose legal insufficiency and factual perjuriousness was documented and uncontroverted in the record before them. Thereafter, despite repeated and explicit written notice to successor Attorney General Oliver Koppell that his judicial clients' dismissal decision "was and is an outright lie", his Law Department opposed review by the New York Court of Appeals, engaging in further misconduct before that court, constituting a deliberate fraud on that tribunal. By the time a writ of certiorari was sought from the U.S. Supreme Court, Mr. Vacco's Law Department was following in the footsteps of his predecessors (AD 2nd Dept. #93-02925; NY Ct. of Appeals: Mo. No. 529, SSD 41; 933; US Sup. Ct. #94-1546).

Based on the "hard evidence" presented by the files of these two Article 78 proceedings, CJA urged Attorney General Vacco to take immediate investigative action and remedial steps since what was at stake was not only the corruption of two vital state agencies -- the Commission on Judicial Conduct and the Attorney General's office -- but of the judicial process itself.

What has been the Attorney General's response? He has ignored our voluminous correspondence. Likewise, the Governor, Legislative leaders, and other leaders in and out of government, to whom we long ago gave copies of one or both Article 78 files. No one in a leadership position has been willing to comment on either of them.

Indeed, in advance of the City Bar's May 14th hearing, CJA challenged Attorney General Vacco and these leaders to deny or dispute the file evidence showing that the Commission is a beneficiary of fraud, without which it could *not* have survived our litigation against it. None appeared -- except for the Attorney General's client, the Commission on Judicial Conduct. Both its

Chairman, Henry Berger, and its Administrator, Gerald Stern, conspicuously avoided making *any* statement about the case -- although each had received a personalized written challenge from CJA and were present during our testimony. For its part, the City Bar Committee did not ask Mr. Stern *any* questions about the case, although Mr. Stern stated that the sole purpose for his appearance was to answer the Committee's questions. Instead, the Committee's Chairman, to whom a copy of the Article 78 file had been transmitted more than three months earlier -- but, who, for reasons he *refused* to identify, did *not* disseminate it to the Committee members -- abruptly closed the hearing when we rose to protest the Committee's failure to make such inquiry, the importance of which our testimony had emphasized.

Meantime, in a §1983 federal civil rights action (*Sassower v. Mangano, et al*, #94 Civ. 4514 (JES), 2nd Cir. #96-7805), the Attorney General is being sued as a party defendant for subverting the state Article 78 remedy and for "complicity in the wrongful and criminal conduct of his clients, whom he defended with knowledge that their defense rested on perjurious factual allegations made by members of his legal staff and wilful misrepresentation of the law applicable thereto". Here too, Mr. Vacco's Law Department has shown that there is no depth of litigation misconduct below which it will not sink. Its motion to dismiss the complaint falsified, omitted and distorted the complaint's critical allegations and misrepresented the law. As for its Answer, it was "knowingly false and in bad faith" in its responses to *over 150* of the complaint's allegations. Yet, the federal district judge did not adjudicate our fully-documented and uncontroverted sanctions applications. Instead, his decision, which obliterated any mention of it, *sua sponte*, and *without* notice, converted the Law Department's dismissal motion into one for summary judgment for the Attorney General and his co-defendant high-ranking judges and state officials -- where the record is wholly devoid of *any* evidence to support anything but summary judgment in favor of the plaintiff, Doris Sassower -- which she expressly sought.

Once more, although we gave particularized written notice to Attorney General Vacco of his Law Department's "fraudulent and deceitful conduct" and the district judge's "complicity and collusion", as set forth in the appellant's brief, he took no corrective steps. To the contrary, he tolerated his Law Department's further misconduct on the appellate level. Thus far, the Second Circuit has maintained a "green light". Its one-word order "DENIED", *without* reasons, our fully-documented and uncontroverted sanctions motion for disciplinary and criminal referral of the Attorney General and his Law Department. Our perfected appeal, seeking similar relief against the Attorney General, as well as the district judge, is to be argued **THIS FRIDAY, AUGUST 29TH**. It is a case that impacts on every member of the New York bar -- since the focal issue presented is the unconstitutionality of New York's attorney disciplinary law, *as written and as applied*. You're all invited to hear Attorney General Vacco *personally* defend the appeal -- if he dares!

We agree with Mr. Lifflander that "what is called for now is action". Yet, the impetus to root out the perjury, fraud, and other misconduct that imperils our judicial process is not going to come from our elected leaders -- least of all from the Attorney General, the Governor, or Legislative leaders. Nor will it come from the leadership of the organized bar or from establishment groups. Rather, it will come from *concerted* citizen action and the power of the press. For this, we do not require subpoena power. We require only the courage to come forward and publicize the readily-accessible case file evidence -- *at our own expense, if necessary*. The three above-cited cases -- *and this paid ad* -- are powerful steps in the right direction.

CENTER for
JUDICIAL
ACCOUNTABILITY, Inc.



Box 69, Gedney Station, White Plains, NY 10605

Tel: 914-421-1200 Fax: 914-428-4994

E-Mail: judgewatch@aol.com

On the Web: www.judgewatch.org

Governmental integrity cannot be preserved if legal remedies, designed to protect the public from corruption and abuse, are subverted. And when they are subverted by those on the public payroll, including by our State Attorney General and judges, the public needs to know about it and take action. That's why we've run this ad. Your tax-deductible donations will help defray its cost and advance CJA's vital public interest work.

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554

E-Mail: probono@delphi.com

Box 69, Gedney Station
White Plains, New York 10605

By Certified Mail/RRR: P-801-449-993

April 18, 1996

David Gruenberg, Counsel
Senate Judiciary Committee
Senator James J. Lack, Chairman
Room 413, The Capitol
Albany, New York 12247

RE: Opposition to Senate Confirmation of Judge Newton
Member, New York State Commission on Judicial Conduct

Dear Mr. Gruenberg:

This confirms our telephone conversation yesterday in which I notified you of the Center's intention to oppose Senate confirmation of Juanita Bing Newton--should Governor Pataki reappoint her to the Court of Claims. As hereinafter set forth, the basis for our opposition is Judge Bing's self-serving betrayal of the public trust in her capacity as a judicial member of the New York State Commission on Judicial Conduct.

Although last week's New York Law Journal reported that Ms. Newton was being interviewed by Governor Pataki's temporary judicial screening commission (Exhibit "A"), we have been unable to reach the Governor's temporary judicial screening commission directly. This is because the Governor's office has refused to provide us with any information as to how to do so.

Indeed, it is now four months that we have been endeavoring, without success, to obtain the names of the members of the temporary judicial screening commission from the Governor's office. The Governor's office has not only refused to provide us with such basic information--as may be seen from the enclosed repeatedly faxed letter request (Exhibits "B-1", "B-2")--it varyingly pretends that it has no liaison to the temporary judicial screening commission who can provide us with procedural information as to how the Governor's temporary judicial screening commission operates.

Between the non-information and misinformation we have received from the Governor's office over the past many months, it would seem that the Governor wants to make it as difficult as possible for the public to contribute anything to his behind-closed-doors selection of judges. Such private conduct of government business is consistent with what was reported by Andrea Bernstein in her piece "Pataki's Secrets" that appeared on the Op-Ed page of the March 23, 1996 New York Times (Exhibit "C").

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April 18, 1996

You told me you also had no information about the membership and rules and procedures of the Governor's temporary judicial screening commission. Nor could you explain why Governor Pataki, now in his second year in office, has not yet established a permanent judicial screening commission.

We believe it is absolutely essential that the public--as well as the Senate Judiciary Committee--have such information. Therefore, we are sending a copy of this letter to Michael Finnegan, the Governor's counsel, so that he can enlighten both you and us on the subject.

You did tell me that the Governor has made no judicial nominations since last June. We would greatly appreciate your written confirmation of that fact, as well as information as to:

- (1) how many judicial nominations were made by the Governor up until that time;
- (2) their names;
- (3) the dates on which they were nominated;
- (4) the dates on which the nominees were confirmed by the Senate Judiciary Committee and full Senate.

Although you assured me that you would contact us immediately should Governor Pataki reappoint Judge Newton to the Court of Claims, we would like to provide you with a bit more specificity--in the interim--as to the serious and substantial nature of our opposition to Judge Newton.

In her capacity as a judicial member of the New York State Commission on Judicial Conduct, Judge Newton has not protected the public from unfit judges--as has been her duty to do. Rather, she has used her position as Commissioner to protect high-ranking, politically-connected judges from the consequences of their official misconduct. She has done this by permitting fully documented complaints against them--including complaints of heinous criminal acts--to be summarily dismissed. Such summary dismissals, without any determination by the Commission that the complaints facially lack merit (because indeed they do not), violate the Commission's explicit statutory investigative duty under Judiciary Law §44.1.

Last year, we brought an Article 78 proceeding against the Commission on Judicial Conduct. Included among the relief was a request for referral to the Governor so that a special prosecutor might be appointed to investigate the Commission's complicity in high-level judicial corruption, demonstrated by its aforesaid contrary-to law dismissal of documented complaints of

criminal conduct by powerful judges.

Our Article 78 challenge was so devastating that the only way the Commission on Judicial Conduct could survive it was by engaging in litigation misconduct before a Supreme Court Justice who, by a fraudulent decision of dismissal, would dump the case. This is proven by the litigation file--a copy of which is in the possession of the Assembly Judiciary Committee, together with voluminous correspondence from us on the subject.

As reflected by that correspondence, Judge Newton, as a member of the Commission on Judicial Conduct, has been on notice of the Commission's litigation misconduct in the Article 78 proceeding and of the fraudulent dismissal--of which it is the beneficiary. Indeed, on August 14, 1995, the New York Law Journal, published our Letter to the Editor "Commission Abandons Investigative Mandate", which publicly proclaimed that the dismissal was an insupportable fraud (Exhibit "D")--a charge the Commissioners have not denied, let alone controverted.

Yet, Judge Newton--like the rest of the Commissioners--has refused to meet her ethical and professional duty to take corrective steps. Such an individual is unworthy of any judicial office.

We would expect that the Senate--under the leadership of Senate Majority Leader Joseph Bruno--will be particularly interested in clarifying the facts relative to the Commission on Judicial Conduct. As may be seen from the article "State Politicians to Scrutinize Judicial Conduct Panel", which appeared in the March 1, 1996 issue of The New York Post (Exhibit "E"), Majority Leader Bruno has expressed great concern at indications that the Commission on Judicial Conduct is "ineffective". As documented by the Article 78 file, the Commission is not merely "ineffective" or dysfunctional, it is corrupt.


Consequently, by copy of this letter directly to Judge Newton, we call upon her to demonstrate that the dismissal of our Article 78 proceeding against the Commission on Judicial Conduct is not a fraud--and to justify the constitutionality of the Commission's rule, 22 NYCRR §7000.3, as written and as applied--challenged in that proceeding.

To assist Judge Newton in meeting the specific legal and factual issues involved, we enclose the first three pages of our December 15, 1995 letter to the Assembly Judiciary Committee (Exhibit "F")--a copy of which was sent to the Administrator of the

April 18, 1996

Commission on Judicial Conduct, with a request that it be distributed to the Commissioners.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosures

cc: Michael Finnegan, Counsel to Governor Pataki
By Certified Mail/RRR: P-801-449-994
Senate Majority Leader Joseph Bruno
By Certified Mail/RRR: P-801-449-995
Judge Juanita Bing Newton
By Certified Mail/RRR: P-801-449-996
Assembly Judiciary Committee
By Certified Mail/RRR: P-801-449-997
Andrea Bernstein, New York Observer
The New York Times
The New York Law Journal
Al Guart, The New York Post

P 801 449 994
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Restricted Delivery Fee	
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Dr. George Pataki
Executive Chamber
Albany, NY 12224

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P 801 449 994

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<input type="checkbox"/> Express Mail	<input type="checkbox"/> Insured
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6. Signature (Addressee or Agent)
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E-Mail: probono@delphi.com

Box 69, Gedney Station

White Plains, New York 10605

By Fax: 518-486-9652

By Certified Mail/RRR: P-608-518-937

April 29, 1996

Michael Finnegan, Counsel to the Governor
Executive Chamber, The Capitol
Room 241
Albany, New York 12224

Dear Mr. Finnegan:

This letter memorializes our on-going "Twilight Zone" experience as we struggle to obtain what should be readily-available information about how Governor Pataki makes his judicial appointments.

After months of unsuccessful attempts via your office at the Executive Chamber of the Capitol in Albany to find out the names of the members of the Governor's Temporary Judicial Screening Committee--of which you are a member--we ventured on an alternative approach.

On Friday, April 26th, I called the Communications Office of the Office of Court Administration (212-417-5900), requesting information about the Governor's Department Judicial Screening Committees for the four judicial departments. I was told that for such information I would have to speak with the Governor's Press Office and was given the telephone number (212-681-4580).

I then called the Governor's Press Office. I was routed around four or five times--each time repeating my request for information about the Governor's judicial screening committees. Eventually, the individuals to whom my call was routed answered the telephone with the identifying introduction, "Executive Chamber" and "Michael Finnegan's office".

Ultimately, a woman on the other end of the phone asked me my name. After momentarily putting me on hold, she stated that the person I needed to speak with was "out of the office" and "very busy". She then falsely claimed that she had previously told me to put my request in writing. I asked the woman if she was Peggy, a secretary with whom I had spoken on April 11th, April 15th, and April 16th, when I left phone messages for a Nan Weiner. She confirmed she was.

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April 29, 1996

After I vigorously denied that Peggy had ever told me anything but that Ms. Weiner would be returning my phone calls, Peggy gave me the address to which to send my written requests (the same as is indicated by this letter).

I then asked Peggy the name of the person to whom I was to address my communications. Peggy's memorable response was "I don't have her name. She only calls in for messages". Peggy maintained this ludicrous position as I tried to contain my laughter.

When I asked Peggy whether Ms. Weiner, who on my prior three calls she had refused to identify except as an "assistant to the Governor," was the person to whom I should address my written requests, Peggy enigmatically acknowledged that Ms. Weiner was "part of this". When I asked who else was "part of this", Peggy claimed she did not know.

So that the record is clear, we have spent months just trying to find out who in the Governor's office works on judicial appointments. Everyone in the Governor's office claims to be unable to give us this basic information. As further demonstrative of the outlandishness of this situation, I have spoken to Susan Meier, who has claimed that her involvement in judicial appointments ended this past January. Logically, this should mean that Ms. Meier would, at least, be able to tell us who sits on the Governor's Temporary Judicial Screening Committee, established by Executive Order in April of last year (Exhibit "F"). However, Ms. Meier has claimed that she does not know who its members are and that she does not know who has replaced her in handling judicial screening issues for the Governor.

As to placing our requests for information in writing, although no one in the Governor's office ever told us to do so, we have consistently set them forth in writing. This may be seen from our repeatedly faxed January 10, 1996 letter (Exhibit "A"), resent by mail under a March 29, 1996 letter (Exhibit "B-1"), then itself resent under a April 24, 1996 letter (Exhibit "B-2").

The aforesaid three telephone messages for Ms. Weiner which I left with Peggy--and which neither Ms. Weiner nor anyone on her behalf returned--were not for the purpose of obtaining information about the Governor's Temporary Judicial Screening Committee. Rather, they were to provide information to the Commission bearing adversely upon the qualifications of Juanita Bing Newton. According to an April 11th squib in the New York Law Journal, the Temporary Judicial Screening Committee was that day interviewing Judge Newton for reappointment by the Governor to the Court of Claims.

Having received no return call from Ms. Weiner and fearing that the Governor's office might "pull a fast one"--with Senate confirmation scheduled the day following the Governor's appointment so that by the time we would read about the nomination in the newspaper, the confirmation would already be over--as was the case, for instance, with the Governor's appointment last year of Jonathan Lippman to the Court of Claims (Exhibit "C")--we contacted the Senate Judiciary Committee to notify it of our opposition to Judge Newton. A copy of our April 18, 1996 letter to David Gruenberg, counsel to that Committee, confirming his assurance to us that we would be immediately notified should the Governor reappoint Judge Newton, was sent to you (Exhibit "D"). Consequently, that, too, is already in writing.

So that there is no mistake about the information we are currently seeking, this letter, therefore, constitutes our explicit written request for information as to Governor Pataki's Executive Orders 10 and 11 relating to the establishment of judicial screening committees. Copies of those Executive Orders are annexed hereto as Exhibits "E" and "F", respectively. What committees are, in fact, operational and who are their members?

We understand that the Temporary Judicial Screening Committee, set up by Executive Order 11 (Exhibit "F"), has not yet been superseded by a State Judicial Screening Committee, as contemplated by ¶4 of that Order. What is the reason for this?

Under Executive Order 10, the State Judicial Screening Committee is charged with the duty to:

"promulgate appropriate rules and regulations to govern its proceedings and those of the Departmental and County Judicial Screening Committees established by this Order. The rules and regulations shall include standards and procedures for ensuring, to the extent possible, uniformity of criteria for evaluation the qualifications of candidates for appointment or designation to judicial office throughout the State." (Exhibit "E", p. 2)

If the State Judicial Screening Committee has not been set up, what are the rules and regulations under which the Temporary Judicial Screening Committee and the Departmental and County Judicial Screening Committees have been operating?

April 29, 1996

Inasmuch as the Governor's Executive Orders identify counsel to the Governor as being both a member of the Temporary and a would-be member of the State Judicial Screening Committee, we trust you will readily be able to respond with such information.

Finally, we note that Executive Order 11 charges the "Office of Counsel to the Governor" with the duty of making

"available to the [Temporary Judicial Screening] committee sufficient staff and resources to enable the committee to carry out properly its responsibilities including adequate investigations into all matters relevant to the qualifications of candidates for appointment to judicial office" (Exhibit "F", ¶3).

Since it is now many months that we have been endeavoring, without success, to know who in the Governor's office functions as liaison to the Temporary Judicial Screening Committee--and more than two and a half weeks since we left the first of our unreturned telephone messages for Ms. Weiner, advising that we had adverse information to present to the Screening Committee about Judge Newton's qualifications, we request that you identify what "staff and resources" you have made available to the Committee to permit it to meet its proclaimed purpose of "ensur[ing] that judicial officer appointees are of the highest quality" (Exhibit "F", title).

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

Enclosures

cc: Senate Judiciary Committee
David Gruenberg, counsel
Committee to Encourage Judicial Service of the Association
of the Bar of the City of New York
Sidney H. Asch, Chairman
Fund for Modern Courts
Gary Brown, Executive Director
New York media

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Capitol, Room 241
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PS Form 3811, December 1994

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A-18

A message from the Governor
was received and read in the words
following



State of New York

In Senate,

Confirmed _____ 19____

The following nomination was received from the Governor and confirmed by the Senate:

State of New York Executive Chamber

ALBANY

January 9, 1997

TO THE SENATE:

I hereby nominate as a Justice of the Supreme Court for the
Eighth Judicial District

EUGENE F. PIGOTT, JR.

for a term expiring on December 31, 1997.

IN SENATE
CONFIRMED FEB 4 - 1997

VOLKER

RATH

MAZIARZ

STACHOWSKI

(L.S.)

/s/ George E. Pataki

Betsy McCauly

PRESIDENT

Steph L. Blum

SECRETARY

A-19

Senate Committee

Committee: JUDICIARY

Chairman: Senator James J. Lack

Date: Tuesday, February 4, 1997

Time: 9:30 a.m.

Room: 124 CAP

The Senate Judiciary Committee will consider the following nominations
to the New York State Court of Claims:

S. Michael Nadel of New York City

Thomas J. Carroll of New York City

The Committee will also consider the following nominations:

Eugene F. Pigott, Jr. as a Justice of the Supreme Court
for the Eighth Judicial District

Burton Ledina as Judge of the Sullivan County Court

NOTE: The Committee will meet at 9:30 a.m. for this meeting only.

**STATE OF NEW YORK
COMMISSION ON JUDICIAL NOMINATION**

666 Fifth Avenue, 28th Floor
New York, New York 10103-0084
(212) 841-0715
FAX (212) 262-5152

John F. O'Mara, Chair
Edward F. Cox
Michael C. Finnegan
Joseph R. Jampietro
Janet M. Kassar
Gerald B. Lefcourt
Alan Mansfield
E. Leo Milonas
Margaret S. Morton
Richard P. Nathan
David M. Schwartz
Edward A. Weinstein

July 20, 2006

Stuart A. Summit, Counsel
Stephen P. Younger, Assistant Counsel
Frederick B. Warder III, Assistant Counsel

The Honorable George Pataki
Executive Chamber
State Capitol
Albany, New York 12224

Dear Governor Pataki:

As Chair of the Commission on Judicial Nomination, I have the honor to report to you on behalf of the Commission, pursuant to Article 6, Section 2 of the Constitution, and Section 63(3) of Article 3-A of the Judiciary Law, the names of seven candidates for appointment to the office of Associate Judge of the Court of Appeals, who in the collective judgment of the Commission are "well-qualified," by their character, temperament, professional aptitude, experience, qualifications and fitness for office, to discharge the duties of that high office and are considered the best qualified of those who filed applications for consideration in accordance with the Commission's rules. The vacancy in that office is the result of the expiration of the term of Associate Judge George Bundy Smith, as of September 23, 2006.

As in the past, the Commission took many steps to seek the largest possible number of qualified applicants for the position, including Statewide notification of the application procedure, and individual solicitation of applications.

Also as in the past, the Commission caused an investigation to be conducted of the qualifications of the large number of applicants it determined to interview. The result of each investigation was reported to the Commission and discussed before and after the interviews. The Commission sought by its investigations and interviews assurance of each candidate's integrity, sound judgment, judicial temperament and high intellectual quality and writing ability.

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The Honorable George Pataki

July 20, 2006

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The candidates thus nominated by the Commission for the office of Associate Judge, listed in alphabetical order, are:

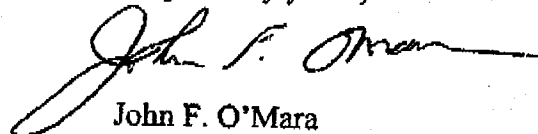
Richard T. Andrias
James M. Catterson
Steven W. Fisher
Thomas E. Mercure
Eugene F. Pigott, Jr.
A. Gail Prudenti
George Bundy Smith

Each candidate recommended for the office of Associate Judge has been interviewed by the Commission and each has filed the financial statement required by law, being transmitted to you separately. A summary of the careers of the recommended candidates is attached.

Section 66(2) of the Judiciary Law provides that "the governor shall have access to all papers and information relating to persons recommended to him by the commission." The Commission, through its Chair, and its Counsel, Stuart A. Summit, stands ready to furnish you with any such material and to respond to your inquiries.

With warm greetings, and highest regard, always

Respectfully yours,



John F. O'Mara
Chair

JFO/ic
Enclosure

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RICHARD T. ANDRIAS

Currently serving as an Associate Justice of the Appellate Division, First Department, he was born in 1943 and admitted to the Bar in 1971. Received a B.A. degree from Bowdoin College, *cum laude*, and a J.D. degree from Columbia Law School, *cum laude*. Engaged in the private practice of law in New York City during 1970-71 and 1975-83. Became a Judge of the Criminal Court of the City of New York in 1983. Deputy Supervising Judge of that Court and Acting Supreme Court Justice in 1985. Became a Supreme Court Justice, New York County in 1988. Designated an Associate Justice of the Appellate Division in 1996. Chair, Task Force on Processing Civilian Complaints by the Criminal Court, 1988-89. Member, New York State AIDS Advisory Council's ESAP Subcommittee, 2000-2003. Adjunct Professor, Pace Law School, 1992 to date. Author and lecturer on various legal topics. Active in professional, community and educational affairs. Recommended previously in 1998 and 2000 by this Commission to the Governor for appointment to the office of Associate Judge of the Court of Appeals.

JAMES M. CATTERSON

Currently serving as an Associate Justice of the Appellate Division, First Department, he was born in 1958 and admitted to the Bar in 1986. Received a B.A. degree from Colgate University and a J.D. degree from St. John's Law School. Served as Assistant County Attorney, Suffolk County during 1985-87. Assistant U.S. Attorney, Eastern District of New York, 1987-92. Deputy County Attorney, Suffolk County, 1992-98. Became a Justice of the Supreme Court, Suffolk County, in 1999. Designated an Associate Justice of the Appellate Division in 2004. Lecturer on legal writing and litigation topics. Adjunct Professor, Cardozo Law School, 1995 and Touro Law School, 1997-2002.

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STEVEN W. FISHER

Currently serving as an Associate Justice of the Appellate Division, Second Department, he was born in 1946 and admitted to the Bar in 1973. Received a B.A. degree from Queens College and a J.D. degree *cum laude* from Brooklyn Law School. Assistant District Attorney, Kings County 1972-76. Engaged in private practice of law in New York City, 1977-79. Served as Principal Law Clerk to Presiding Justice, Appellate Division, Second Department, 1979-83. Became a Judge of the Criminal Court of the City of New York in 1983. Acting Supreme Court Justice, Kings County, 1986-89; Queens County, 1990-92. Became a Justice of the Supreme Court, Queens County in 1993 and Administrative Judge for the Eleventh Judicial District in 1998. Designated an Associate Justice of the Appellate Division in 2004. Co-Chair, Committee on Criminal Jury Instructions. Member, Capital Cases Judicial Resource Committee. Author and lecturer for judicial and professional organizations on criminal law topics. Active in professional and community affairs. Recommended previously in 2000, 2002 and 2003 by this Commission to the Governor for appointment to the office of Associate Judge of the Court of Appeals.

THOMAS E. MERCURE

Currently serving as an Associate Justice of the Appellate Division, Third Department, he was born in 1943 and admitted to the Bar in 1969. Received a B.A. degree *cum laude* from St. Michael's College and a J.D. degree from Georgetown University Law Center. Engaged in the private practice of law in Fort Edward, New York, 1969-80. First Assistant District Attorney, Washington County, 1974-76. District Attorney, Washington County, 1977-80. County Court Judge, Washington County, 1981. Became a Justice of the Supreme Court, Fourth Judicial District in 1982. Designated an Associate Justice of the Appellate Division, Third Department in 1988. Member, Committee on Pattern Jury Instructions. Member, Advisory Committee on Judicial Ethics. Member, Federal-State Judicial Council. Active in community affairs.

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EUGENE F. PIGOTT, JR.

Currently serving as Presiding Justice of the Appellate Division, Fourth Department, he was born in 1946 and admitted to the Bar in 1974. Received a B.A. degree from LeMoyne College and a J.D. degree from State University of New York at Buffalo School of Law. Engaged in private practice of law in Buffalo, 1974-81 and 1986-97. County Attorney, Erie County, 1982-86. Became a Justice of the Supreme Court, Eight Judicial District in 1997. Designated an Associate Justice, Fourth Department in 1998 and became Presiding Justice in 2000. Legal Aid Society, Erie County (Director, 1982-86; President, 1986-88). Active in professional, community and educational affairs. Lecturer on topics including appellate practice and civil litigation. Recommended previously in 2002 and 2003 by this Commission to the Governor for appointment to the office of Associate Judge of the Court of Appeals.

A. GAIL PRUDENTI

Currently serving as Presiding Justice of the Appellate Division, Second Department, she was born in 1953 and admitted to the Bar in 1980. Received a B.A. degree from Marymount College and a Bachelor of Law degree from the University of Aberdeen. Served as Assistant District Attorney, Suffolk County, from 1980-82. Engaged in the private practice of law in Suffolk County, 1982-1991. Became a Justice of the Supreme Court, Tenth Judicial District in 1992. Surrogate, Suffolk County, 1995-2000. Designated Associate Justice of the Appellate Division in 2001 and became Presiding Justice in 2002. Co-Chair, Chief Judge's Task Force on Delay in the Courts, 1997 to date. Member, Executive Committee, Council of Chief Judges of the National Center for State Courts, 2003 to date. Member, American Justinian Society of Jurists, 1992 to date. Past Co-Chair, Surrogate's Court Committee, Suffolk County Bar Association. Author and lecturer on various legal topics.

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GEORGE BUNDY SMITH

Currently serving as an Associate Judge of the Court of Appeals, he was born in 1937 and admitted to the Bar in 1963. Received a B.A. degree from Yale University, an M.A. degree from New York University, and an LL.B. degree from Yale Law School. Staff attorney, NAACP Legal Defense Fund, 1962-64. Law Secretary to Civil Court Judge Jawn A. Sandifer, 1964-67. Law Secretary to Supreme Court Justice Edward R. Dudley, 1967-71. Law Secretary to Presiding Justice Harold A. Stevens, Appellate Division, First Department, 1972-74. Administrator, Model Cities Administration of the City of New York, 1974-75. Judge of the Civil Court of the City of New York, 1975-80. Became a Justice of the Supreme Court, First Department in 1980. Designated an Associate Justice of the Appellate Division in 1987. Commissioner, New York State Ethics Commission for the Unified Court System, 1989-2001. Adjunct Professor, Fordham Law School, 1981 to date. Author and lecturer on legal and non-legal topics. Active in professional, community and educational matters. Appointed Associate Judge of the Court of Appeals in 1992.