

CENTER for JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org

Elena Ruth Sassower, Coordinator

BY FAX: 518-436-7109 (6 pages)

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James McKinley, Jr., New York Times
Albany Bureau

The "highly qualified" rating which the State Judicial Screening Committee gave to Chairman Lack is "fraudulent and rigged" – and you must and can READILY prove it.

Paragraph 2c of the Governor's Executive Order 10.1 states:

"No committee shall pass on the qualifications of any candidate until after a thorough inquiry has been made by the committee and staff." (emphasis added)

Any "thorough inquiry" would have revealed the widely-reported "road rage" incident of June 2001. DID THE STATE JUDICIAL SCREENING COMMITTEE OR ITS "STAFF" EVER INTERVIEW LORE VON HOFFEN ABOUT IT TO GET HER *DIRECT, FIRST-HAND* ACCOUNT AS TO WHAT HAD OCCURRED? Did they ever contact and interview any of the other Long Islanders, who "came out of the woodwork" in response to reportage about that "road rage" incident (Newsday, 6/22/01: "*Senator Has Road Rage*") -- some of whose names appeared in subsequent Newsday stories (7/1/01: "*Lack of Restraint: State Senator Hoping to be Judge has History of Temper*"; "*Creating a Judgeship...*") and published letters? How about the reporters? Were they ever contacted by the Judicial Screening Committee or its staff for pertinent information not included in their stories, etc?

THAT IS THE QUESTION you need to get the answer to from Lore Von Hoffen and all these people. The Judicial Screening Committee and its staff are predictably going to come out with a "highly qualified" rating if they do NOT pursue obvious and important sources of disqualifying information. They, thereby "rig" the results.

Additionally, you should ask Lore Von Hoffen whether the Senate Judiciary

Committee ever contacted and interviewed her in the days between the nomination and confirmation, when news articles of the nomination uniformly repeated the "road rage" incident, including by their titles ("*Gov tabs ally despite road rage*", Daily News, 12/12/02; "*'Road rage' pol tabbed to be judge*", NY Post, 12/12/02; "*'Road rage' senator put up for judgeship*", Gannett, 12/12/02; "*Lack Tapped for Judgeship: Temperament no problem, panel says*", Newsday, 12/12/02. Likewise, that question should be posed to the other Long Islanders who had come forward and to the reporters who had written up their accounts.

Naturally, you should also ask Lore Von Hoffen and the others whether they themselves contacted the Committee in the wake of last week's announcement of the nomination – or had considered doing so.

Further, from the State Judicial Screening Committee – and Nan Weiner, its Executive Director, you should verify what efforts were made made, pursuant to paragraph 2a of Executive Order 10.1, to "actively recruit" candidates for the TWO-YEAR OLD vacancy filled by Senator Lack. Look at the enclosed Part VII, "Solicitation of Candidates", of the Screening Committee's Uniform Rules: in what fashion was "public notice" given of the vacancy, of the procedures that prospective candidates had to follow to be considered, and of any date for receipt of questionnaires. after which questionnaires may no longer be accepted."

It is important to get a copy of the questionnaire in blank – request for which we have repeatedly made, by FOIL and otherwise, since 1996.

As discussed, find out what time the December 10, 2002 press release of the nomination went out – inasmuch as December 10, 2002 is the date on which, according to the Screening Committee's "written report", Senator Lack appeared before the Committee for evaluation.

More to follow.

Elena

APPENDIX G

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Governor's Executive Order No. 10.1

EXECUTIVE ORDER

ESTABLISHING JUDICIAL SCREENING COMMITTEES TO ENSURE THAT JUDICIAL OFFICER APPOINTMENTS ARE OF THE HIGHEST QUALITY

WHEREAS, under the Constitution and Laws of the State of New York the Governor is entrusted with the responsibility of appointing various judicial officers;

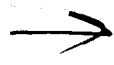
WHEREAS, both the rule of law and public confidence in the integrity of the judicial process require that the primary criteria for selecting judicial officers be the quality of their intellect, judgment, temperament, character and experience; that candidates for judicial office be chosen without regard to political party affiliation or background; that highly qualified candidates be encouraged to apply for judicial offices; and that highly qualified candidates should be drawn from a cross-section of the state, reflecting a diversity of experience and background;

WHEREAS, the highest quality of judicial officer appointments can best be assured with the assistance of non-partisan judicial screening committees composed of outstanding citizens drawn from all quarters of the state; and

WHEREAS, the first obligation of Government is to protect its citizens from crime and violence; public confidence in the criminal justice system has been eroded; and certain judicial offices exercise important responsibilities in the administration of the criminal justice system;

NOW, THEREFORE, I, GEORGE E. PATAKI, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

1. Judicial Screening Committees, as described below, are hereby established.
2. Each Judicial Screening Committee shall:
 - a. Actively recruit candidates for appointment or designation to the judicial offices within the committee's jurisdiction, to the end of obtaining candidates reflecting the diverse backgrounds and experience of the citizens of this State;
 - b. Review and evaluate the qualifications of candidates recruited by it or proposed to it by any person or organization, and conduct all appropriate inquiry into the qualifications of all such candidates. In reviewing and evaluating the qualifications of candidates,



each committee member shall give primary consideration to the quality of a candidate's intellect, judgment, temperament, character and experience, and shall not give any consideration to the race, religion, gender, national origin, sexual orientation or political party affiliation of a candidate. Whenever appropriate to a particular judicial office, each committee member shall remain cognizant of my commitment to protecting the citizens of this State from crime and violence and to enhancing public confidence in the criminal justice system;

c. Recommend for appointment or designation only those candidates who, as determined by a majority vote of all members of the committee, are highly qualified for the judicial office for which they are being considered. No committee shall pass on the qualifications of any candidate until after a thorough inquiry has been made by the committee and its staff;

d. Prepare written reports on the qualifications of each candidate it determines to be highly qualified and recommends to the Governor. The reports shall remain confidential, except that upon the announcement by the Governor of an appointment the report relating to the appointee shall be available for public inspection. All records and deliberations of, and all communications to, the Judicial Screening Committee with respect to a candidate's qualifications shall be held in confidence and shall not be disclosed to anyone other than the Governor, Counsel to the Governor or their designees. Notwithstanding the foregoing, information submitted to the Judicial Screening Committees relating to an appointee may be disclosed to the Senate when necessary for constitutional confirmation of the appointee, and information submitted to the Judicial Screening Committee may be disclosed to any other person or organization if disclosure is required in connection with disciplinary proceedings.

3. A State Judicial Screening Committee is hereby established. The State Judicial Screening Committee shall consist of thirteen members: one person selected by the Governor, the Chairperson of each of the Departmental Judicial Screening Committees established by paragraph 4 of this Order, and two of the other members of each of the Departmental Judicial Screening Committees, who shall be selected by the Governor. The chairperson of the State Judicial Screening Committee shall be appointed by the Governor from among the members of the Committee.

The term of office of any member of the State Judicial Screening Committee who is a member of a Departmental Screening Committee shall expire at the same time as the member's term of office on a Departmental Screening Committee expires.

The State Judicial Screening Committee shall have jurisdiction to consider the qualifications of candidates for appointment to the offices of Judge and Presiding Judge of the Court of Claims, and to recommend to the Governor all persons whom it finds highly qualified for those judicial offices.

When exercising the power to designate the Presiding Judge of the Court of Claims pursuant to section 2(7) of the Court of Claims Act; or the power to appoint a Judge of the Court of Claims pursuant to section 9 of Article VI of the Constitution and sections 2(2) and 2(4) of the

**UNIFORM RULES FOR
N.Y.S. JUDICIAL SCREENING COMMITTEES
GOVERNOR GEORGE E. PATAKI**

N.Y.S. JUDICIAL SCREENING COMMITTEE
Paul Shechtman, Esq. - Chairman
633 Third Avenue, 38th Floor
New York, New York 10017

(212) 681-4540

VII.

Solicitation of Candidates

1. When the Chairman of a Judicial Screening Committee, or the Executive Director, has been duly notified or becomes aware that a vacancy on a court within its jurisdiction has occurred or is about to occur, its respective Chairman and the Executive Director shall arrange for broadly disseminated public notice of the existence of the vacancy, of the procedure to be followed by prospective candidates in order to be considered by the Committee, and of any date that has been set after which questionnaires may no longer be accepted. Notice of the vacancy shall be given to newspapers of general circulation, bar associations, and such other persons and organizations as the Committee or its respective Chairman and Executive Director may deem appropriate and reasonable of accomplishment to ensure that highly qualified candidates are drawn from a cross-section of the jurisdiction involved, reflecting a diversity of experience and background.

2. When a Departmental Judicial Screening Committee has been duly notified that a vacancy has occurred or is about to occur on the Appellate Division for the judicial department within its jurisdiction by virtue of the death, resignation, retirement or incapacity of any incumbent Justice, the respective Chairman and Executive Director shall arrange with the Office of Court Administration for dissemination to the current Supreme Court Justices in the respective judicial department notice of the vacancy and shall arrange for broadly disseminated public notice of the existence of the vacancy.

3. Each member of a Judicial Screening Committee and the respective counsel shall