

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 HAND

June 11, 1996

New York State Senate
Albany, New York

RE: Opposition to Senate Confirmation of Governor Pataki's Judicial Nominees
and, in particular, to Judge Juanita Bing Newton

Dear Senators:

We are a non-partisan, non-profit, citizens' organization, based in New York, focusing on the twin issues of judicial selection and discipline--on the federal, state and local levels. In 1993, we testified on two separate occasions before the Senate Judiciary Committee in opposition to two of Governor Cuomo's nominees to the Court of Appeals. A copy of our informational brochure, reflecting the foregoing, is attached.

The purpose of this letter is to urge you to vote against confirmation of Governor Pataki's judicial nominees and, in particular, against confirmation of Judge Juanita Bing Newton. As highlighted by our *direct, first-hand experience* with the Governor's office, over the past six-months, these judicial nominations are the product of a process which is sham, dishonest, and thoroughly contemptuous of the rights of the public.

This letter is necessitated by the fact that the Senate Judiciary Committee does *not* permit the public to testify at its hearings confirming the Governor's nominees to courts other than the Court of Appeals. According to David Gruenberg, counsel to the Chairman of the Senate Judiciary Committee, the public is permitted *only* to observe while the Senators purport to question the judicial nominees.

Although we apprised Mr. Gruenberg of our opposition to Senate confirmation of Judge Newton, by letter to him dated April 18, 1996, he has only now informed us that he has *not* distributed it to the members of the Senate Judiciary Committee nor made its contents known to them. Mr. Gruenberg has stated that it is up to us to communicate individually with the Senate Judiciary Committee members. The consequence of this is obvious. Unless we undertake the arduous, time-consuming, and costly effort of directly presenting our opposition to the Senate Judiciary Committee members, there will be *no* questions based thereon at the confirmation hearings.

This letter, therefore, serves that purpose--as well as the broader purpose of making known to the Senate, as a whole, the serious and substantial basis upon which it must oppose not only Judge Newton's confirmation, but the confirmation of all of Governor Pataki's judicial nominees.

Ex "B"

In announcing his 26 judicial nominations two weeks ago, Governor Pataki publicly proclaimed that each of the nominees had been found "highly qualified" by his Temporary Judicial Screening Committee (*New York Law Journal*, 5/31/96, at p. 2). This claim is a deceit upon you and upon the People of this State. As demonstrated herein, the Temporary Judicial Screening Committee is a "front" for the Governor's office, which rigs the ratings.

Annexed hereto are copies of our aforesaid April 18th letter to Mr. Gruenberg (Exhibit "A"), as well as our April 29th letter to the Governor's counsel, Michael Finnegan (Exhibit "B")¹. As those letters make eminently clear, Governor's office withholds from the public *basic* information about the membership of the Temporary Committee and about its procedures. It also prevents the public from communicating with the Temporary Committee, except through the Governor's office. According to the Governor's office, it has no telephone number for the Committee.

Consequently, on April 11th, when the *New York Law Journal* reported that the Governor's Temporary Committee was interviewing Judge Juanita Bing Newton for reappointment to the Court of Claims, the only way we could advise the Committee of information bearing upon her unfitness was by calling the Governor's office. Yet, no one from the Temporary Committee ever called us back--despite our repeated phone messages, left at the Governor's office, requesting it to do so.

It was for this reason that we first contacted the Senate Judiciary Committee and wrote our April 18th letter to Mr. Gruenberg (Exhibit "A")--with a copy to Mr. Finnegan. Summarized at pages 2-4 therein was our serious and substantial opposition to Judge Newton, which we were unable to present directly to the Temporary Committee.

The basis for our opposition was Judge Newton's self-interested betrayal of the public in her capacity as a judicial member of the New York State Commission on Judicial Conduct. We described how Judge Newton has used her position to protect high-ranking, politically-connected judges from the consequences of their misconduct by permitting *fully documented* complaints against them--including complaints of heinous criminal acts---to be dismissed by the Commission, *without investigation*.

We further stated that such unlawful conduct, violating the Commission's investigative mandate under Judiciary Law §44.1, had been challenged by us in an Article 78 proceeding. The petition in that proceeding specifically requested that the members of the Commission be referred for "appropriate criminal and disciplinary investigation" for their complicity in high-level judicial corruption.

1

The April 29th letter is annexed without accompanying exhibits--all of which are in the possession of the Senate Judiciary Committee. As to the April 18th letter, two of its exhibits are included: Exhibit "D"--being our Letter to the Editor, entitled "Commission Abandons Investigative Mandate", published in the August 14, 1995 *New York Law Journal*--and Exhibit "F"--being the first three pages of our December 15, 1995 letter to the Assembly Judiciary Committee.

We also stated that the Commission had survived our challenge *only* because it had defended itself by litigation misconduct before a Supreme Court justice, who dumped the case in a fraudulent decision of dismissal. We emphasized that although Judge Newton has been on notice of the Commission's litigation misconduct and of the Supreme Court's fraudulent decision, of which the Commission was the beneficiary, she has refused to meet her ethical and professional duty to take corrective steps. Such an individual, we argued, is "unworthy of any judicial office".

On May 7th, having received *no* response whatever from either the Governor's office or the Temporary Committee to our April 18th and April 29th letters (Exhibits "A" and "B"), we hand-delivered to the Governor's office a copy of the Article 78 file to substantiate our serious allegations against Judge Newton². This, in addition to the petition signatures of almost 1,500 New Yorkers calling upon Governor Pataki "to appoint a State Commission and hold public hearings on judicial corruption and political manipulation of judgeships in the State of New York". Still, *no* response from the Governor's office or the Temporary Committee.

This remains true to date. Indeed, following the Governor's May 30th announcement of his 26 judicial nominations--including his nomination of Judge Newton--we telephoned the Governor's office, requesting information about the Temporary Committee's "highly qualified" ratings, including documentation to substantiate the nominees' credentials. None of our repeated calls have been returned.

This continued refusal of the Governor's office to provide the public with information *reasonably* requested about the Temporary Committee and its ratings suggests that it has something to hide. Either there is *no* committee or its screening procedures are such as would *not* withstand public scrutiny. This is the inevitable conclusion to be drawn from our unanswered April 18th and April 29th letters (Exhibits "A" and "B").

Moreover, the Temporary Committee's "highly qualified" rating of Judge Newton--in the face of the disqualifying conduct described by our April 18th letter and substantiated by the Article 78 file--makes evident that the Temporary Committee, if it exists, is either incompetent or, more likely, that it knows nothing of our opposition because the Governor's office has deliberately kept it "in the dark".

This may be the *modus operandi* by which the Governor has obtained his 26 judicial nominees, purportedly all "highly qualified". The Governor simply prevents his Temporary Committee from receiving any information that would impact adversely upon the pre-ordained rating for the nominees he favors.

2

On that same date, we also transmitted a copy of the Article 78 file to the most unwilling hands of Mr. Gruenberg.

June 11, 1996

Indeed, one of the questions posed in our unresponded-to April 18th and April 29th letters (Exhibits "A", p.2 and "B", pp.3-4) is why Governor Pataki, who is well within the second year of his Administration, is still employing the Temporary Committee, set up under his Executive Order #11, rather than the State Judicial Screening Committee, envisioned by his Executive Order #10. It may well be that it is because the State Committee would not as easily lend itself to being controlled and manipulated by the Governor's office.

In view of the serious and substantial evidence herein presented, the public can have no confidence in the behind-closed-doors process that has produced the Governor's judicial nominees and, in particular, Judge Newton. We believe that before any confirmations take place, the Senate must call upon the Governor's office to explain why it has not responded to the shocking correspondence annexed hereto (Exhibits "A" and "B"). Indeed, unless the Senate obtains responses to the specific questions raised by those letters, it cannot determine whether the Temporary Judicial Screening Committee functions as an independent entity, whose ratings are worthy of respect.

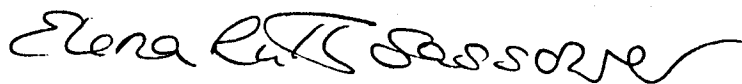
Should the Senate nonetheless proceed to confirm the current judicial nominees, we respectfully request that the Senate Judiciary Committee, in its questioning of Judge Newton at its confirmation hearing, require her to address the issues identified at page 3 of our April 18th letter (Exhibit "A"), to wit, that she

"...demonstrate that the dismissal of our Article 78 proceeding against the Commission on Judicial Conduct is not a fraud--and..justify the constitutionality of the Commission's [self-promulgated] rule, 22 NYCRR §7000.3, as written and as applied--challenged in that proceeding" (emphasis in the original)

and do so by meeting the specific factual and legal issues, set forth in the first three pages of our December 15, 1995 letter to the Assembly Judiciary Committee (See Exhibit "A").

In view of Senate Majority Leader Bruno's expressed concern that the Commission on Judicial Conduct function properly--as recited at page 3 of our April 18th letter (Exhibit "A")--we would expect him to ensure that if and when Judge Newton's nomination is discussed on the Senate floor, she has responded to the evidence, presented by the Article 78 file, that the Commission is "not merely 'ineffective' or dysfunctional, it is corrupt."

Yours for a quality judiciary,



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

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").

Ex "A"

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

David Gruenberg, Esq.

Page Four

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

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 Priority Mail

December 15, 1995

Assembly Judiciary Committee
L.O.B. Room 831
Empire State Plaza
Albany, New York 12248

ATT: Patricia Gorman, Counsel

Dear Pat:

Time moves faster than I do. Ever since our meeting in Albany on October 24th, I have been meaning to write a note of thanks to you and Joanne Barker, counsel to the Assembly Judiciary Committee, to Anthony Profaci, associate counsel of the Assembly Judiciary Committee, to Joan Byalin, counsel to Chairwoman Weinstein, and to Josh Ehrlich, counsel to the Assembly Election Law Committee, for the two hours time each of you gave us to discuss CJA's recommendations for imperatively-required legislative action.

I did telephone Joan Byalin on October 26th and conveyed our appreciation. I hope it was passed on to Chairwoman Weinstein and to the counsel present at the October 24th meeting.

We trust you have now had sufficient time to review the documents we supplied the Assembly Judiciary Committee and to verify their extraordinary significance. This includes the court papers in our Article 78 proceeding against the New York State Commission on Judicial Conduct¹--and our related correspondence.

By your review of Point II of our Memorandum of Law²--detailed with legislative history and caselaw--there should be no question but that the self-promulgated rule of the Commission (22 NYCRR §7000.3) is, on its face, irreconcilable with the statute defining the Commission's duty to investigate facially meritorious complaints (Judiciary Law, §44.1) and with the constitutional amendments based thereon. For your convenience, copies of the rule and statutory and constitutional provisions are annexed hereto as Exhibits "A-1", "A-2", and "A-3", respectively.

¹ For ease of reference, the court papers in the Article 78 proceeding against the Commission are designated herein by the numbers assigned them by our Inventory of Transmittal.

² See Doc. 6, pp. 10-17.

Moreover, you should now be convinced that the Supreme Court's decision of dismissal, justifying §7000.3, as written,--by an argument not advanced by the Commission--is palpably insupportable.

The definitions section of §7000.1 (Exhibit "A-1"), which the Court itself quotes in its decision³, belies its claim that "initial review and inquiry" is subsumed within "investigation". Such definitions section expressly distinguishes "initial review and inquiry" from "investigation"⁴.

Even more importantly, the Court's aforesaid sua sponte argument, which it pretends to be the Commission's "correct[] interpret[ation]" of the statute and constitution, does NOTHING to reconcile §7000.3, as written, with Judiciary Law, §44.1 (Exhibit "A-2"). This is because §7000.3 (Exhibit "A-1") uses the discretionary "may" language in relation to both "initial review and inquiry" and "investigation"--THUS MANDATING NEITHER. Additionally, as written, §7000.3 fixes NO objective standard by which the Commission is required to do anything with a complaint--be it "review and inquiry" or "investigation". This contrasts irreconcilably with Judiciary Law §44.1, which uses the mandatory "shall" for investigation of complaints not determined by the Commission to facially lack merit.

³ The Supreme Court decision does not quote the entire definition of "investigation", set forth in §7000.1(j). Omitted from the decision is the specification of what "investigation" includes. The omitted text reads as follows:

"An investigation includes the examination of witnesses under oath or affirmation, requiring the production of books, records, documents or other evidence that the commission or its staff may deem relevant or material to an investigation, and the examination under oath or affirmation of the judge involved before the commission or any of its members."

⁴ Accordingly, the "initial review and inquiry" is conducted by the "commission staff" and is

"intended to aid the commission in determining whether or not to authorize an investigation." (emphases added).

December 15, 1995

As to the issue of the constitutionality of §7000.3, as applied, your review of the papers should have persuaded you that such important issue was squarely before the Court⁵--contrary to the Supreme Court's bold representation that it was not.

Finally, we expect you have also confirmed that the threshold issues which the Supreme Court was required to adjudicate before it could grant the Commission's dismissal motion were entirely ignored by it. Those threshold issues--fully developed in the record before the Supreme Court--included the uncontroverted default of the Commission on Judicial Conduct⁶ and the uncontroverted showing that the Commission's dismissal motion was insufficient, as a matter of law⁷. This is over and beyond the conflict of interest issues affecting the Attorney General's representation of the Commission, which we made the subject of repeated objection to the Court⁸.

Consequently, based on the record before you, you should have now confirmed that the Supreme Court's decision of dismissal is a knowing and deliberate fraud upon the public--and is known to be such by the Commission on Judicial Conduct, the State Attorney General, and the State Ethics Commission, who have each received explicit and extensive communications from us on that subject (Exhibits "C", "D", and "E").

Since none of these public agencies and offices have taken steps to vacate for fraud the Supreme Court's decision of dismissal--which was pointed out as their duty to do⁹--it now falls to the Assembly Judiciary to take action to protect the public. As a first priority, the Assembly Judiciary Committee must require the Commission on Judicial Conduct to address the specific issues raised herein as to the false and fraudulent nature of the Supreme Court's decision.

⁵ See Doc. 1: Notice of Petition: (a)(b)(c); Article 78 Petition: ¶¶ NINETEENTH, TWENTIETH, TWENTY-FIRST, TWENTY-SECOND, TWENTY-THIRD, TWENTY-FOURTH, TWENTY-FIFTH, TWENTY-SIXTH, TWENTY-SEVENTH, TWENTY-EIGHTH, TWENTY-NINTH, THIRTY-THIRD, "WHEREFORE" clause: (a), (b), (c).

⁶ See Doc. 2, Aff. of DLS in Support of Default Judgment; Doc. 5, ¶¶2-3, 7; Doc. 6, pp. 1-2.

⁷ See Doc. 6, pp. 2-9.

⁸ See Doc. 2: DLS Aff. in Support of Default Judgment, ¶¶9, 14, Ex. "B" thereto, p. 3; Doc. 5, ¶¶10, 50-4

⁹ See Exhibit "D", p. 6; Exhibit "E".

P 801 449 993
RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

Sent to *David Greenberg*
Senate Judiciary Committee
 Street and No. *Room 413 Capitol*
 P.O. State and ZIP Code *Albany, NY 12247*
 Postage \$ *1.47*
 Certified Fee \$ *1.10*
 Special Delivery Fee
 Restricted Delivery Fee
 Return Receipt showing to whom and Date Delivered
 Return Receipt showing to whom, Date, and Address of Delivery
 TOTAL Postage and Fees \$ *2.57*
 Postmark or Date *956 6*

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
 ■ Complete items 1 and/or 2 for additional services.
 ■ Complete items 3, 4a, and 4b.
 ■ Print your name and address on the reverse of this form so that we can return this card to you.
 ■ Attach this form to the front of the mailpiece, or on the back if space does not permit.
 ■ Write "Return Receipt Requested" on the mailpiece below the article number.
 ■ The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
 1. Addressee's Address
 2. Restricted Delivery
 Consult postmaster for fee.

3. Article Addressed to:
David Greenberg
Senate Judiciary Committee
Room 413, The Capitol
Albany, NY 12247

4a. Article Number
P 801 449 993

4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)
X [Signature] 4/22/96

Domestic Return Receipt
 PS Form 3811, December 1994

Thank you for using Return Receipt Service.

P 801 449 997
RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

Sent to *Assembly Judiciary Committee*
Post John C. Neal
 Street and No. *LOB 831 Empire State Plaza*
 P.O. State and ZIP Code *Albany NY 12248*
 Postage \$ *1.24*
 Certified Fee \$ *1.10*
 Special Delivery Fee
 Restricted Delivery Fee
 Return Receipt showing to whom and Date Delivered
 Return Receipt showing to whom, Date, and Address of Delivery
 TOTAL Postage and Fees \$ *2.34*
 Postmark or Date *956 6*

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
 ■ Complete items 1 and/or 2 for additional services.
 ■ Complete items 3, 4a, and 4b.
 ■ Print your name and address on the reverse of this form so that we can return this card to you.
 ■ Attach this form to the front of the mailpiece, or on the back if space does not permit.
 ■ Write "Return Receipt Requested" on the mailpiece below the article number.
 ■ The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
 1. Addressee's Address
 2. Restricted Delivery
 Consult postmaster for fee.

3. Article Addressed to:
Assembly Judiciary Committee
Post John C. Neal
LOB 831 Empire State Plaza
Albany, NY 12248

4a. Article Number
P 801-449-997

4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)
X [Signature]

Domestic Return Receipt
 PS Form 3811, December 1994

Thank you for using Return Receipt Service.

PS Form 3800, June 1985

PS Form 3800, June 1985

reverse side

SENDER:
 ■ Complete items 1 and/or 2 for additional services.
 ■ Complete items 3, 4a, and 4b.
 ■ Print your name and address on the reverse of this form so that we can return this card to you.
 ■ Attach this form to the front of the mailpiece, or on the back if space does not permit.
 ■ Write "Return Receipt Requested" on the mailpiece below the article number.
 ■ The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
 1. Addressee's Address
 2. Restricted Delivery
 Consult postmaster for fee.

3. Article Addressed to:
 Senate Majority
 Leader Bruno
 NYS Senate
 Albany, NY 12247

4a. Article Number
 P 801 449 995
 4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD
 7. Date of Delivery

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)
 X *Mebali* 4/22/96

Thank you for using Return Receipt Service.

PS Form 3811, December 1994

Domestic Return Receipt

P 801 449 995
RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	<i>Senate Majority Leader Joseph Bruno</i>
Street and No.	<i>NYS Senate</i>
P.O., State and ZIP Code	<i>Albany, NY 12247</i>
Postage	\$ <i>1.47</i>
Certified Fee	\$ <i>1.10</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom, Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ <i>2.57</i>
Postmark or Date	<i>APR 11 1996</i>

PS Form 3800, June 1985

Sent to	<i>Judge J. Van Dyke</i>
Street and No.	<i>40 Cheneston Ave</i>
P.O. State and ZIP Code	<i>NY 10017</i>
Postage	\$ <i>1.45</i>
Certified Fee	\$ <i>1.10</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ <i>2.55</i>
Postmark or Date	<i>APR 11 1996</i>

P 801 449 996
RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL

SENDER:

■ Complete items 1 and/or 2 for additional services.
 ■ Complete items 3, 4a, and 4b.
 ■ Print your name and address on the reverse of this form so that we can return this card to you.
 ■ Attach this form to the front of the mailpiece, or on the back if space does not permit.
 ■ Write "Return Receipt Requested" on the mailpiece below the article number.
 ■ The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
 1. Addressee's Address
 2. Restricted Delivery
 Consult postmaster for fee.

3. Article Addressed to:
 Judge J. Van Dyke
 New York, Comm. S.
 NYS Commission on
 Judicial Conduct
 801 Second Avenue
 NYC 10017

4a. Article Number
 P 801 449 996
 4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD
 7. Date of Delivery

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)
 X *J. Van Dyke*

PS Form 3811, December 1994

Domestic Return Receipt

PS Form 3800, June 1985

Is your RETURN ADDRESS completed on the reverse side of this form?

Thank you for using Return Receipt Service.

P 801 449 994
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Michael Finnegan John & Geo Pataki</i>	
Street and No. <i>Executive Chamber</i>	
P.O. State and ZIP Code <i>Albany, NY 12224</i>	
Postage	\$ <i>1.47</i>
Certified Fee	<i>1.10</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	<i>110</i>
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ <i>3.67</i>
Postmark or Date	<i>1995</i>

Is your RETURN ADDRESS completed on the reverse side?

SENDER: ■ Complete items 1 and/or 2 for additional services. ■ Complete items 3, 4a, and 4b. ■ Print your name and address on the reverse of this form so that we can return this card to you. ■ Attach this form to the front of the mailpiece, or on the back if space does not permit. ■ Write "Return Receipt Requested" on the mailpiece below the article number. ■ The Return Receipt will show to whom the article was delivered and the date delivered.		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.	
3. Article Addressed to: <i>Michael Finnegan, Casey John George Pataki Executive Chamber Albany, NY 12224</i>		4a. Article Number <i>P 801 449 994</i>	
		4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
		7. Date of Delivery <i>4-22-96</i>	
5. Received By: (Print Name) 6. Signature (Addressee or Agent) <i>X Paul Boye</i>		8. Addressee's Address (Only if requested and fee is paid)	

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

PS Form 3800, June 1985

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 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.

EX "B"

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

TIME: 04/29/1996 14:30
 NAME:
 FAX: 9146846554
 TEL:

DATE, TIME	04/29 14:27
FAX NO./NAME	15184869652
DURATION	00:02:50
PAGE(S)	05
RESULT	OK
MODE	STANDARD

P-608 518 937
 RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to: *Michael Finnegan*
Chief of Staff
Executive Chamber
Capitol, Room 241
 Albany, NY 12224

Postage \$ *170*

Certified Fee \$ *110*

Additional Delivery Fee \$ *110*

Postmaster's Date: *390*

U.S.G.P.O. 153-806
 GEDNEY STATION
 APR 30 1996
 WHITE PLAINS, NY 10805-9998

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. Addressee's Address
 2. Restricted Delivery
 Consult postmaster for fee.

3. Article Addressed to:
Michael Finnegan
Chief of Staff
Exec. Chamber
Re Capitol
Room 241
Albany, NY 12224

4a. Article Number
P608 518 937

4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD

7. Date of Delivery
5-2-96

5. Received By: (Print Name)
Jim VanBuren

6. Signature: (Addressee or Agent)
Jim VanBuren

8. Addressee's Address (Only if requested and fee is paid)

Is your RETURN ADDRESS completed on the reverse side?

PS Form 3811, December 1994 Domestic Return Receipt

ink you for using Return Receipt Service.