

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

BY HAND

January 7, 1998

Chief Judge Judith S. Kaye
Chief Judge of the State of New York
230 Park Avenue, Suite 826
New York, New York 10169-0007

RE: Safeguarding the Public's Rights and Interest in the State
Judicial Appointments Process

Dear Chief Judge Kaye:

This letter calls upon you, New York's highest and most powerful state judge, to safeguard the public's right to a state judicial appointments process that complies with the *explicit* requirements of the Governor's own Executive Order #10 and the "Uniform Rules for N.Y.S. Judicial Screening Committees" -- and to documentation that would substantiate such compliance.

This is not the first time that we are publicly asking your assistance in this regard. On June 19, 1997, you were the guest speaker at the Annual Meeting of Citizens Union. Following your remarks, you entertained questions from the audience and were good enough to recognize me -- by name -- so that I could direct a question to you. My question was more in the nature of a statement. Before the assembled members of the Citizens Union, I explicitly implored your assistance, on behalf of the public.

I noted that the last time we had spoken, you had complimented me on my November 16, 1996 New York Times Letter to the Editor, "*On Choosing Judges, Pataki Creates Problems*", (Exhibit "A"), which described how Governor Pataki had failed to set up Permanent Judicial Screening Committees, as provided for under his Executive Order #10 and was, instead, utilizing a Temporary Judicial Screening Committee under his Executive Order #11. As to that Temporary Judicial Screening Committee, the Governor's office had withheld from the public virtually all information about its procedures. I stated that even *after* the Governor belatedly set up the Permanent Judicial Screening Committees, following the hue and cry caused by my Letter to the Editor, he had continued to use its "highly qualified" ratings to make judicial appointments.

I said that the Center for Judicial Accountability, Inc. (CJA) had just written a letter to the Governor, asserting the public's right to *basic* information about his Judicial Screening Committees. However, based on our past experience, as recounted in my Times Letter to the Editor, and in the letter we had

just written, we did not believe that the Governor would respect our informational requests -- even as to the information to which the Governor's own Executive Orders *expressly* entitle the public: the committee reports of the qualifications of his judicial appointees -- by then approximately 100 in number.

I, therefore, asked for your help in vindicating the public's right to *basic* information about the Governor's judicial screening process -- and, in particular, to these committee reports. I pointed out that you are not a spectator to the Governor's Executive Order #10 -- but a participant in the judicial screening process it sets up by virtue of the fact that under that Order you designate members to the Permanent Judicial Screening Committees. For this reason, I asked if you would read our most recent letter to the Governor. Your memorable public response was "I read all your letters, Ms. Sassower".

I then walked the distance from my seat to the podium and presented you with a copy of our June 2, 1997 letter to the Governor, as well as our June 12, 1997 coverletter to it, which we had sent to all the indicated recipients of our June 2, 1997 letter: the members of the Temporary and Permanent Judicial Screening Committees, the presidents of prestigious bar associations, and the executive directors of good government organizations. That coverletter called upon them to assist us in vindicating the public's right to *basic* information about the judicial screening process and in safeguarding the integrity of the process. Upon your departure, I caught up with you outside the meeting room to reinforce the importance of your assistance¹.

In the nearly seven months since, we have not heard from you. Nor have we heard from a single one of the recipients of the June 12, 1997 letter. This notwithstanding that letter offered evidentiary proof to substantiate our serious charges that at least two "highly qualified" ratings of the Temporary Judicial Screening Committee -- Court of Claims Judge Juanita Bing Newton and Westchester Supreme Court Justice Nicholas Colabella -- were not the product of the "thorough inquiry" required under the Executive Orders and had been "rigged". As a result of this inaction, which likely replicates inaction behind-the-scenes as well, we have not received any response from the Governor's office to these extremely serious charges or to our informational requests about the judicial screening process. Indeed, our June 12, 1997 letter predicted -- and my June 19th public remarks reflected -- that the Governor's response would depend upon the support we received from the indicated recipients of our June 2, 1997 letter.

Meanwhile, based on our direct, first-hand experience with the First Department Judicial Screening Committee, to whose Chairman we supplied documentary materials dispositive of the unfitness of two

¹ The June 2, 1997 letter is Exhibit "A" to our December 23, 1997 letter to James McGuire. The June 12, 1997 letter is Exhibit "B" to our December 29, 1997 letter to the members of the State Judicial Screening Committee.

candidates to the Appellate Division, First Department: Manhattan Supreme Court Justices Herman Cahn² and Stephen Crane (Exhibits "B-2" - "B-6") -- candidates who the Committee thereafter found to be "highly qualified" (Exhibit "C-2") -- we can attest to the profound dysfunction of that Committee³, on which your designee, Claire Gutekunst, sits.

Ms. Gutekunst also sits on the State Judicial Screening Committee -- another profoundly dysfunctional Committee. We can also attest to the fact that its "highly qualified" rating of Andrew O'Rourke to the Court of Claims is *not* the product of any "thorough inquiry" -- as is *expressly* required under the Governor's Executive Orders #10 and #11. Indeed, it appears that the State Judicial Screening Committee did not even produce a written report on Mr. O'Rourke's qualifications, as is *expressly* required under those Executive Orders. Under such circumstances, the State Judicial Screening Committee could not properly rate him "highly qualified" -- which, moreover would have required a "majority vote of all members", as well as compliance with other requirements of Executive Order #10 and the "Uniform Rules". Nor could the Governor properly nominate Mr. O'Rourke to the Court of Claims. This is particularized in the materials we hand-delivered to your office on December 29th, which

² The unfitness of Justice Cahn, not just for promotion but for any judicial office, is documentarily established by his on-the-bench misconduct in our Article 78 proceeding against the New York State Commission on Judicial Conduct. Justice Cahn's dishonest and fraudulent decision, throwing the case, is *verifiable* from the litigation file (N.Y. Co. #95-109141) and has been the subject of a mountain of correspondence from us, including a December 15, 1995 letter to the Assembly Judiciary Committee, as well as published pieces, among them: "*Commission Abandons Investigative Mandate*" (NYLJ, Letter to the Editor, 8/14/95) and "*A Call for Concerted Action*" (NYLJ, ad, 11/20/96). The pertinent portions of that letter and those published pieces were faxed to the First Department Judicial Screening Committee (Exhibit "B-4"), with an offer from us that we would replicate the full file (Exhibit "B-2"). Thereafter, the judicial misconduct in that case was particularized in our public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", in the August 27, 1997 New York Law Journal. In the unlikely event that you missed that prominently-placed (pp. 3-4) \$3,000 ad, a copy is annexed (Exhibit "C-1"), together with the Law Journal's September 22, 1997 notice that the First Department Judicial Screening Committee had approved Justice Cahn to sit on the Appellate Division, First Department (Exhibit "C-2").

³ Notwithstanding our June 2, 1997 letter vigorously protested the Governor's appointment of Westchester Supreme Court Justice Nicholas Colabella to the Appellate Division, First Department, based on an allegedly "highly qualified" rating conferred upon him by the Temporary Judicial Screening Committee -- and provided case file references to support our allegations of his lawless and retaliatory on-the-bench conduct -- the First Department Judicial Screening Committee will be interviewing him to be Presiding Justice of the Appellate Division, First Department! A copy of the notice which appeared in the December 26, 1997 New York Law Journal is annexed as Exhibit "D".

detailed our unsuccessful efforts to obtain *basic* information about that nomination, including, most particularly the committee report on Mr. O'Rourke's qualifications, which the Executive Order *expressly* requires to be made available for "public inspection" upon the announcement by the Governor of [the] appointment". The Governor nominated Mr. O'Rourke to the Court of Claims more than three weeks ago, on December 12th.

The documentary materials we hand-delivered to your office consisted of:

- (1) CJA's December 23, 1997 letter to the Governor's Counsel, James McGuire, calling upon the Governor to withdraw Mr. O'Rourke's nomination;
- (2) CJA's December 26, 1997 letter to Mr. O'Rourke, calling upon him to substantiate the "highly qualified" rating; and
- (3) CJA's December 29, 1997 letter to the members of the State Judicial Screening Committee, calling upon them to withdraw the "highly qualified" rating.

Also transmitted to you was a copy of our fully-documented critique of Mr. O'Rourke's judicial qualifications, which we submitted in May 1992 to the U.S. Senate Judiciary and Senate leadership in opposition to his confirmation to the federal bench, together with our June 1992 supplement. The critique dispositively establishes that Mr. O'Rourke is thoroughly unfit for *any* judicial office, as well as the failure of the federal judicial screening process, most particularly, the screening of the American Bar Association and Association of the Bar of the City of New York. We demonstrated that these organizations had not properly investigated Mr. O'Rourke's qualifications when they approved him for the federal judgeship. This is particularly significant because, according to a December 22nd Gannett article, "*O'Rourke Could Be Wearing Judge's Robes in January*"⁴, the State Judicial Screening Committee had reservations about Mr. O'Rourke's qualifications because he had not practiced law for 15 years, but Mr. O'Rourke "reminded" it that the ABA and City Bar had approved him for the federal judgeship. It appears, however, that Mr. O'Rourke did not remind the State Judicial Screening Committee of our critique -- whose existence the Committee would have readily uncovered for itself had it done anything resembling a "thorough inquiry".

We have provided all of the foregoing correspondence and the critique and supplement to the Governor's office, as well as to the members of the State Judicial Screening Committee. We have yet to receive a response from anyone. This includes from Ms. Gutekunst to whom we hand-delivered these materials on December 29th, the same day as we delivered them to your office. A receipt of our delivery to her office is annexed (Exhibit "E").


⁴ That article is Exhibit "G-2" to our December 23rd letter to Mr. McGuire and is appended, as well, to our December 26th letter to Mr. O'Rourke.

As pointed out in our December 29th letter to the members of the State Judicial Screening Committee (at pp. 7-8), the seriousness of the dysfunction in the Governor's judicial appointments process is amplified by the dysfunctional confirmation "process" in the State Senate⁵. On that subject, enclosed is a copy of CJA's January 2, 1998 letter to the State Senate Judiciary Committee memorializing our informational requests to the Committee and its complete failure to contact us regarding our opposition to Mr. O'Rourke's confirmation -- of which we gave it notice on December 15th, the *first* business day after his nomination was announced.

These above-described transmitted materials -- all meticulous and documented as to their allegations of dysfunction and political manipulation of the judicial appointments process -- require your IMMEDIATE attention. Senate confirmation of Mr. O'Rourke's nomination to the Court of Claims could be as early as Tuesday, January 13th.

We are certain that if you show leadership, the state bar associations and others will follow as a sycophantic chorus.

Yours for a quality judiciary,


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

Enclosure

- cc: James McGuire, Counsel to Governor Pataki
- Paul Shechtman, Chairman, State Judicial Screening Committee
- James Gill, Chairman, First Department Screening Committee
- Claire Gutekunst, member of First Department Judicial Screening Committee
and State Judicial Screening Committee
- Nan Weiner, Executive Director, Governor Pataki's Judicial Screening Committees
N.Y.S. Senate Judiciary Committee
- Michael Cardozo, President, Association of the Bar of the City of New York
- Joshua Pruzansky, President, New York State Bar Association
- Jerome Shestack, President, American Bar Association
- Gary Brown, Executive Director, Fund for Modern Courts
- Media

⁵ Of course, as to the hoax of the Senate Judiciary Committee's scrutiny of judicial nominations, you already have a copy of CJA's June 11, 1996 letter to the State Senate, which I gave you in hand when we spoke at the City Bar on December 7, 1996, following your complimenting me on my Times' Letter to the Editor. A copy of it and our June 12, 1996 letter to the Governor were also annexed to our March 7, 1997 letter to City Bar President Michael Cardozo -- to which you were an indicated recipient because it recounted (at pp. 6-7) your kind words and great interest in my published Letter.