

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*

*Doris L. Sassower, Director
Elena Ruth Sassower, Coordinator*

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

In Opposition to Senate Confirmation of Robert S. Smith to the New York Court of Appeals. Presented at the Public Hearing of the New York State Senate Judiciary Committee, Monday, January 12, 2004, Albany, New York.

My name is Elena Ruth Sassower and I am the coordinator 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.

We oppose Senate confirmation of Governor Pataki's appointment of Robert S. Smith to the New York Court of Appeals. The basis, as relates to Mr. Smith's qualifications, is his insensitivity to the appearance – and quite possibly the reality – that his substantial financial contributions to Governor Pataki and the Republican Party would buy him this most important state court judgeship. This ethical insensitivity is all the more stark and inexcusable coming, as it does, in a year when the public has been bombarded with countless news articles and editorials about the sale of elective judgeships – fueled by District Attorney Hynes' supposed investigations in Brooklyn – as to which Chief Judge Kaye has convened a Commission to Promote Public Confidence in Judicial Elections. None of the paltry sums bandied about as constituting the supposed sale of elective judgeships comes close to the amounts of money Mr. Smith has donated to Governor Pataki and the Republican Party. It is, therefore, CJA's position that, at very least, Mr. Smith must not be confirmed to our state's highest court until a formal investigation has

been undertaken to determine the extent to which his appointment is the product of monetary considerations.

It is this objection which will be the subject of my testimony. Nonetheless, I submit herewith and incorporate by reference CJA's October 16, 2000 report on the Commission on Judicial Nomination's corruption of "merit selection" to the Court of Appeals, as well as CJA's November 13, 2000 companion report on the complicity of the bar associations. This, to substantiate CJA's threshold opposition to Mr. Smith's confirmation, *to wit*, that his appointment is the product of an unconstitutionally closed and documentably corrupted "merit selection" process that fails to adequately investigate candidate qualifications and is rife with conflict of interest and, further, that his confirmation is not properly before this Committee, *as a matter of law*, by reason of the non-conformity of the Commission on Judicial Nomination's October 15, 2003 "written report" of his qualifications with the "findings" requirement of Judiciary Law §63.3.

How much money did Mr. Smith contribute to Governor Pataki and the Republican Party? According to The Buffalo News¹, analysis of the past eight years of federal and state campaign contributions from 1995 to 2003 showed:

"Smith and his wife have donated at least \$219,000 to Pataki and state Republican committees. That does not include tens of thousands of dollars in additional donations Smith made to federal GOP candidates and committees, including President Bush, former U.S. Senator Alfonse D'Amato, former New York Mayor Rudolph W. Giuliani, Utah Sen. Orrin Hatch, Kentucky Sen. Mitch McConnell and former senator and now U.S. Attorney General John D. Ashcroft."

Assuredly, Mr. Smith knows the precise monetary figures – and the public is entitled to that information. Indeed, the public would already have these figures had this Committee required Mr. Smith to complete a publicly-available questionnaire comparable to that

¹ "Local judge bypassed for state's highest court", The Buffalo News, 11/5/03, Tom Precious.

which the U.S. Senate Judiciary Committee requires of federal judicial nominees, including those appointed to the U.S. Supreme Court². #17(c) of the U.S. Senate Judiciary Committee questionnaire specifically requires the nominee to:

“Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last (10) years.”

Significantly, no similar item appears on the publicly-inaccessible questionnaire that Mr. Smith was required to complete for the Commission on Judicial Nomination. As a result, the Commission’s evaluation of Mr. Smith’s candidacy may have been uninformed as to his financial contributions to Governor Pataki and the Republican Party. This is not to say that certain Republican Commission members did not know of Mr. Smith’s generosity – and that this was not their impetus in promoting him to the Commission’s unsuspecting other members in preference to other “well qualified” candidates. Such would be a further respect in which the Commission’s ratings can be “rigged”, beyond what is detailed by CJA’s October 16, 2000 report.

Mr. Smith must be directly asked whether, in fact, he disclosed to the Commission his financial contributions – as, for instance, during its personal interview of him or in his written response to #35 of its questionnaire:

² Prior to this testimony, I repeatedly inquired as to whether the Committee had required Mr. Smith to complete any publicly-available questionnaire. This is reflected, as well, by CJA’s December 19, 2003 letter to Senate Judiciary Committee Chairman DeFrancisco [A-1], which further identified that a blank copy of the U.S. Senate Judiciary Committee’s questionnaire was included in the appendix to CJA’s January 22, 2003 written testimony in opposition to Senate confirmation of Presiding Court of Claims Judge Susan P. Read to the New York Court of Appeals.

The only publicly-available documents furnished by the Committee were mailed on January 7, 2004 [A-4] and consisted of a cursory one-page resume, various legal briefs on which Mr. Smith’s name appears along with other names, and an undated essay, with no indication as to whether it was published anywhere and the details thereof. None of this permits intelligent review and evaluation – and stands in sharp contrast to the kind of integrated, substantial information afforded by a publicly-available questionnaire completed by the nominee.

“Set forth any information not elicited by this questionnaire which would affect, favorably or unfavorably, your eligibility for the office for which you are a candidate or bear upon the Commission’s consideration of your candidacy.”

Mr. Smith’s nomination by the Commission on Judicial Nomination cannot stand if he did not inform the Commission of his largesse to Governor Pataki and the Republican Party – or if the Commission did not otherwise ascertain such fact from its purported “investigation” of him, as for instance, by a computer search of campaign contributions filed with the New York State Board of Elections and Federal Election Commission, as was readily accomplished by the media within hours of the Governor’s announcement of Mr. Smith’s appointment. Certainly, it cannot stand without a statement from the Commission that knowledge of Mr. Smith’s contributions by all members would have made no difference in their “consideration” of the pool of candidates that culminated in their October 15, 2003 “written report” nominating seven, Mr. Smith among them.

Absent such statement, the ratings conferred on Mr. Smith by the New York State Bar Association and the Association of the Bar of the City of New York are irrelevant – since the only basis for their evaluation of Mr. Smith’s qualifications was his inclusion as a nominee in the Commission’s “written report”. If that inclusion was the product of material non-disclosure and deceit, he was not legitimately nominated and there is nothing for the bar associations to evaluate.

As to Governor Pataki, Mr. Smith must be asked whether, to his knowledge, the Governor knew of his political contributions. Of course, this inquiry must also be made directly to Governor Pataki³. I do not believe that the Governor has ever denied that his

³ Notwithstanding the Governor’s press spokesman has insisted that the Governor’s “decisions on nominations are made solely on the merits” [“*Gov Taps Donor for Top Court*”, *New York Post*, 11/5/03, Fredric Dicker], the Executive Chamber has failed to furnish CJA with requested publicly-available materials pertaining to Governor Pataki’s appointment of Mr. Smith. This includes Mr. Smith’s financial statement which he was required to submit as part of his application for the Court of Appeals and which the

appointment of Mr. Smith was with knowledge of Mr. Smith's political donations – at least I have not seen any report of this in the media. At the November 4, 2003 press conference announcing Mr. Smith's appointment, the Governor acknowledged that he had met Mr. Smith on occasion⁴. It is reasonable to assume that such would have included political fundraisers or special events to which generous donors are invited.

It is entirely possible that even before this appointment, Mr. Smith had already been favored with a "return" on his political contributions. According to a December 4, 2003 Newsday article⁵, it was "at Pataki's request" that Mr. Smith had earlier been designated as "special counsel" in a lawsuit challenging the Legislature's bailout to New York City – for which the state set aside \$500,000 for its contract with Mr. Smith's law firm – with \$236,000 already billed. That remunerative "special counsel" arrangements may be earmarked for financial patrons and benefactors, such as Mr. Smith, is itself worthy of official investigation⁶ and press attention.

Governor Pataki came to office in 1994 on a pledge to restore the death penalty and he did restore it by legislation now being challenged at the Court of Appeals. It makes no sense, except as a "payback", that he would risk it by appointing Mr. Smith, whose publicly-expressed reservations about the death penalty are reinforced by his *pro bono* representation of death penalty defendants.

Governor is mandated to make publicly available pursuant to Judiciary Law §63.4 [A-5; A-7; A-9].

⁴ See, *inter alia*, "Pataki campaign contributor nominated to Court of Appeals", The Ithaca Journal, 11/5/03, Michael Gormley (AP).

⁵ "Pataki Donor Could Gain From City Bond Sale", Newsday, 12/4/03, Dan Janison.

⁶ CJA's own investigation has gotten as far as written requests to the New York State Comptroller and to the Chairwoman of the Local Government Assistance Corporation for information, as well as for documents pursuant to F.O.I.L. [A-10; A-14].

In appointing Mr. Smith to the Court of Appeals, Governor Pataki passed over six other nominees designated as “well qualified” by the Commission on Judicial Nomination’s “written report” – including Appellate Division, Fourth Department Presiding Justice Eugene Pigott, Jr., whose appointment would have rectified the Court’s gross geographic imbalance. You may be sure that each of these six nominees not only believes that he was equally, if not more, qualified than Mr. Smith, but that it was Mr. Smith’s political contributions that “tipped the scales”. Examination of the Committee’s non-conforming “written report” does nothing to dispel that notion or to ensure their trust – and that of the public -- in the “merit” of the nominating process.

Assembly Speaker Sheldon Silver is quoted⁷ as saying that Mr. Smith’s appointment bears “the taint of political contributions”, and as further stating, “I wish we could have shown the process to be clean and clear”. There is no reason for such past tense wistfulness when a formal investigation can ensure that the process will be “clean and clear” in finding an untainted replacement for Mr. Smith⁸.

⁷ “Trust, But Verify”, New York Post, editorial, 11/7/03.

⁸ The Senate Judiciary Committee and the Senate have an absolute right to reject the Governor’s appointed nominee. Rejection is expressly contemplated by Article VI, §2f of the NYS Constitution and Judiciary Law §68.3 and §68.4. This includes the rejection of “qualified” candidates. Indeed, the very premise of these constitutional and statutory provisions is that each of the candidates recommended by the Commission on Judicial Nomination has already been determined to be not just “qualified”, but “highly qualified” by “character, temperament, professional aptitude and experience” [Article VI, §§2c, d(4); Judiciary Law §63.1].

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Elena Ruth Sassower, Coordinator

BY FAX: 518-426-6952 (2 pages)

BY E-MAIL: jdefranc@senate.state.ny.us

BY CERTIFIED MAIL/RRR: 7003-1680-0001-8617-5175

December 19, 2003

Chairman John A. DeFrancisco
New York State Senate Judiciary Committee
307 Legislative Office Building
Albany, New York 12247

RE: Senate confirmation of Robert S. Smith, Esq. to the New York Court of Appeals: (1) Request for publicly-available documents; (2) Request to testify in opposition.

Dear Chairman DeFrancisco:

This letter follows up my today's phone conversation with your Chief of Staff, Carole Luther, requesting all publicly-available documents in the Committee's possession bearing upon the qualifications and fitness of Robert S. Smith, Esq. to be an associate judge of the New York Court of Appeals. I further notified Ms. Luther of the Center for Judicial Accountability's request to testify in opposition at the Senate Judiciary Committee public hearing to be held on Mr. Smith's confirmation.

Ms. Luther stated that the Senate Judiciary Committee has no publicly-available documents for Mr. Smith presently available and that the date for the confirmation hearing has not yet been scheduled.

By this letter, CJA requests any written procedures and standards governing the Senate Judiciary Committee's proceedings to confirm New York Court of Appeals judges. These would presumably reflect whether the Committee now requires nominees to our state's highest court to complete a publicly-available questionnaire, such as done by the U.S. Senate Judiciary Committee in its proceedings to confirm

federal judges¹ – 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.

Thank you.

Yours for a quality judiciary,



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

TRANSMISSION VERIFICATION REPORT

TIME : 12/19/2003 16:07
NAME : CJA
FAX : 9144284994
TEL : 9144211200

DATE, TIME	12/19 16:06
FAX NO./NAME	15184266952
DURATION	00:00:59
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

¹ 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.

Subject: ATT: Carole Luther: Senate Confirmation of Robert S. Smith to NYS Court of Appeals


Date: 12/19/2003, 4:14 PM

From: Elena Ruth Sassower <judgewatchers@aol.com>

To: jdefranc@senate.state.ny.us

Organization: Center for Judicial Accountability, Inc.

Dear Ms. Luther,

Attached is the Center for Judicial Accountability's already-faxed letter to Chairman DeFrancisco. Hard copy to be mailed.  [12-19-03-DeFrancisco.doc \(36KB\)](#)

Happy Holidays.

Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)
(914) 421-1200

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Sent To: *Chairman John A. DeFrancisco*
Att. Carole Luther
 Street, Apt. No. or PO Box No.: *NYS Senate Judiciary Committee*
207 Copius Courthouse Office Building
 City, State, ZIP: *Albany, NY 12247*

PS Form 3800, June 2002 See Reverse for Instructions

A-3

NEW YORK STATE SENATE



ALBANY, NEW YORK 12247

SENATOR JOHN A. DeFRANCISCO
50TH DISTRICT

January 7, 2004

TO: Elena Sassower
FROM: Carole Luther
RE: Robert S. Smith material

Enclosed is material on Robert S.
Smith which you requested.

Elena Sassower, Coordinator
Center for Judicial Accountability
PO Box 69, Gedney Station
White Plains, NY 10605-0069



H M E I E N 7 0 3 8 8 7
0475

A-4

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Web site: www.judgewatch.org

Elena Ruth Sassower, Coordinator

BY FAX: 518-486-9652 (1 page)

BY CERTIFIED MAIL/RR: 7001-0320-0004-5457-4828

December 6, 2003

Governor George Pataki
Executive Chamber, The Capitol
Albany, New York 12247

ATT: W. Brooks DeBow, Deputy Counsel

RE: Publicly-Available Materials Pertaining to Governor Pataki's
Appointment of Robert S. Smith, Esq. to the New York Court of Appeals

Dear Deputy Counsel DeBow:

Request is made for any publicly-available materials pertaining to Governor Pataki's appointment of Robert S. Smith, Esq. to the New York Court of Appeals from among the seven candidates nominated by the Commission on Judicial Nomination. This includes evaluations and supporting materials received from the bar associations for these seven candidates.

Additionally, pursuant to Judiciary Law §63.4, which states:

"...The governor shall make available to the public the financial statement filed by the person appointed to fill a vacancy",

request is made for the financial statement that Mr. Smith was required to submit as part of his application for the Court of Appeals.

Thank you.

Yours for a quality judiciary,



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

TRANSMISSION VERIFICATION REPORT

TIME : 12/06/2003 14:02
 NAME : CJA
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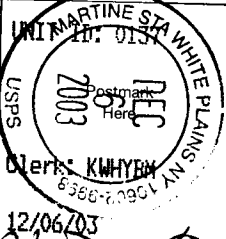
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MODE	STANDARD ECM

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.65



Sent To *W. Brooks DeB...*
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 PS Form 3800, January 2001

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1. Article Addressed to:
W Brook DeB...
Deputy Counsel to
Sp. Asst.
Executive Chamber
The Capitol
Albany, NY 12247

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2. Article Number (Transfer from service label) **7001 0320 0004 5457 4828**

A-6



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

December 12, 2003

Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc.
P.O. Box 69, Gedney Station
White Plains, NY 10605-0069

Dear Ms. Sassower:

This letter is to acknowledge that, on or about December 8, 2003, this office received your Freedom of Information Law (FOIL) request for "materials pertaining to Governor Pataki's appointment of Robert S. Smith, Esq. to the New York Court of Appeals from among the seven candidates nominated by the Commission on Judicial Nomination," including "evaluations and supporting materials received from the bar associations for [the] seven candidates," as well as "the financial statement that Mr. Smith was required to submit."

Please be advised that as with any FOIL request, this office is only obligated to grant access to those documents or records which are kept by the Executive Chamber, subject to certain exemptions. Further, this office is not obligated to grant access to documents or records that are not kept within the Executive Chamber or that do not exist. In addition, FOIL does not require this office to create documents in response to a FOIL request.

I will review our records to determine what materials we have that would be responsive to your request. Pursuant to the provision of Public Officers Law § 89 (3), we should be able to provide you with a further response by approximately January 9, 2004.

Sincerely,

Mark R. Ustin
Assistant Counsel to the Governor
Records Access Officer

A-7



CENTER for JUDICIAL ACCOUNTABILITY, INC.

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

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Web site: www.judgewatch.org

Elena Ruth Sassower, Coordinator

BY CERTIFIED MAIL/RRR: 7001-0320-0004-5457-4941

December 26, 2003

Governor George Pataki
Executive Chamber, The Capitol
Albany, New York 12224

ATT: W. Brooks DeBow, Deputy Counsel

RE: Publicly-Available Materials Pertaining to Governor Pataki's
Appointment of Robert S. Smith, Esq. to the New York Court of Appeals

Dear Deputy Counsel DeBow:

This responds to your December 12, 2003 letter acknowledging receipt of what you describe as "[our] Freedom of Information Law (FOIL) request for 'materials pertaining to Governor Pataki's appointment of Robert S. Smith to the New York Court of Appeals'...".

Be advised that our aforesaid December 6, 2003 request did not invoke F.O.I.L. Moreover, with respect to our request therein for "the financial statement that Mr. Smith was required to submit", we invoked Judiciary Law §63.4, which states:

"...The governor shall make available to the public the financial statement filed by the person appointed to fill a vacancy".

Please respond expeditiously.

Thank you.

Yours for a quality judiciary,



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

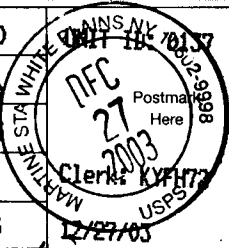
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Sent To: *Gov. George Pataki*
Att: W Brooks DeBruin
 Street, Apt. No. or PO Box No: *Executive Chamber*
 City, State, ZIP: *Albany, NY 12224*

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Governor George Pataki
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Executive Chamber
Albany, NY
12224

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A-9

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: 518-474-5119 (2 pages)

BY CERTIFIED MAIL/RRR: 7003-1680-0001-8617-1146

December 22, 2003

New York State Comptroller
110 State Street, 14th Floor
Albany, New York 12236

ATT: Harvey Silverstein, Esq., Supervising Attorney

RE: Request for Information & Documents Pertaining to the State's
Authorizations, Designations, and Payments to Special Counsel
and, in Particular, to Robert S. Smith, Esq.

Dear Mr. Silverstein:

Following up my phone conversation this morning with Lynn Knowles, this is request to speak with you about the procedures by which the state authorizes, designates, and pays special counsel to represent the state in litigation. Ms. Knowles indicated that you would be able to provide me with the information I seek, and called me back to ask that I formalize my request in writing – particularly since I am also seeking documents within the purview of the Freedom of Information Law [F.O.I.L.: Public Officers Law, Article VI].

Insofar as documents, I request any cumulative list(s) of authorizations for, designations of, and payments to such special counsel from the inception of Governor George Pataki's administration in January 1995 to the present and, additionally, request to inspect and copy the individual records from which these cumulative list(s) have been compiled. Most immediately, however, I am interested in the authorizations, designations, and payments to special counsel in a pending lawsuit of the Local Government Assistance Corp. against the New York State Legislature involving New York City debt. Robert S. Smith, Esq. and/or the law firm Kornstein, Veisz, Wexler & Pollard have been special counsel in that lawsuit. I understand that after Governor Pataki appointed Mr. Smith to the New York Court of Appeals in November, Mr. Smith was replaced by Guy Miller Struve, Esq. of Davis, Polk & Wardwell.

Any other lawsuits in which Mr. Smith and Guy Miller Struve have been designated as special counsel are also of most immediate interest.

Inasmuch as the State Senate Judiciary Committee will be scheduling its hearing on Mr. Smith's confirmation to the Court of Appeals in the near future, prompt attention is essential. In any event, to the extent that the publicly-available documents herein requested are within the purview of the F.O.I.L., I hereby invoke same. Pursuant thereto, response is required within five business days of receipt of this written request [Public Officers Law §89.3].

I look forward to speaking with you as soon as possible and thank you, in advance, for your assistance with regard to the information and documents I seek.

Yours for a quality judiciary,



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

TRANSMISSION VERIFICATION REPORT

TIME : 12/22/2003 13:08
NAME : CJA
FAX : 9144284994
TEL : 9144211200

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12/23/03

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Att: Harvey Silverstein, Esq.
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 or PO Box No. *110 State Street 14th floor*
 City, State, ZIP+4
Albany, NY 12236

PS Form 3800, June 2002

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1. Article Addressed to:

NYS Comptroller
110 State Street
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Att: Harvey Silverstein,
Esq.

2. Article Number
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PS Form 3811, August 2001

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3. Service Type
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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

ALAN G. HEVESI
COMPTROLLER

PRESS OFFICE
Tel: 518-474-4015
Fax: 518-473-8940

December 31, 2003

Elena Ruth Sassower
CJA
P.O. Box 69
Gedney Station
White Plains, NY 10605-0069

Re: FR#03-338

Dear Ms. Sassower:

I have received your Freedom of Information Law request dated December 22, 2003 received in this office on December 24, 2003.

I have asked the appropriate personnel within this agency to provide the requested information to the extent that it is available and accessible under the law.

We will process your request as soon as possible. I will contact you when the material has been retrieved to advise you of the availability of the records you described. This may take approximately six to eight weeks.

Sincerely,

A handwritten signature in cursive script that reads "Shelly Brown".

Shelly Brown
Records Access Officer

SB:wt

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: 518-257-3183 (2 pages)

BY E-MAIL: lrex@dasny.org

BY CERTIFIED MAIL/RRR: 7002-2030-0007-8572-9020

January 2, 2004

Maryanne Gridley, Chair
Local Government Assistance Corporation
c/o New York State Dormitory Authority
515 Broadway
Albany, New York 12207-2965

RE: Request for information, as well as documents pursuant to F.O.I.L.,
pertaining to special counsel representing the Local Government
Assistance Corporation in its lawsuit against the NYS Legislature

Dear Chairwoman Gridley:

This follows up my brief phone conversation on December 31st with Lori Rex, your assistant at the New York State Dormitory Authority, who asked that I put my request in writing.

Please advise as to the process and procedures by which special counsel was authorized and designated for the Local Government Assistance Corporation's lawsuit against the New York State Legislature involving New York City debt, as well as fee arrangements for and payments to such special counsel. These special counsel have included Robert S. Smith, Esq. and/or the law firm of Kornstein, Veisz, Wexler & Pollard and Guy Miller Struve, Esq. and/or the law firm of Davis, Polk & Wardwell.

How were these lawyers and law firms selected? Was it an open competitive process? Was it by recommendation—and, if so, whose? How many competing candidates were recommended and what was the mechanics of the evaluation?

Pursuant to the Freedom of Information Law [F.O.I.L.: Public Officer's Law, Article VI], request is also made for any and all publicly available documents reflecting the procedures and processes pertaining to the foregoing -- beginning with such written notification as was

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given by the Attorney General, declining to represent the Local Government Assistance Corporation in the lawsuit and including such applications and forms as prospective special counsel were required to complete, the retainer agreements, vouchers, billing statements, and payments.

Inasmuch as the State Senate Judiciary Committee will be scheduling its hearing on Mr. Smith's confirmation to the New York Court of Appeals in the near future, prompt attention is essential. In any event, pursuant to F.O.I.L., your response is required within five business days of receipt of this written request [Public Officers Law §89.3].

Thank you.

Yours for a quality judiciary,

Elena Ruth Sassower

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

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Maryanne Gridley, Exec Director
 Street, Apt. No., or PO Box No.: *575 Broadway*
 City, State, ZIP+4: *Albany, NY 12207-2965*

PS Form 3800, June 2002 See Reverse for Instructions

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Subject: Request for information, as well as documents pursuant to FOIL

Date: 1/2/2004, 11:01 AM

From: Elena Ruth Sassower <judgewatchers@aol.com>

To: lrex@dasny.org

Organization: Center for Judicial Accountability, Inc.

Dear Ms. Rex:

Thank you for your assistance.

Attached is my already-faxed letter to Maryanne Gridley in her capacity as chairwoman of the Local Government Assistance Corporation. A further copy will be mailed.

 1-2-04-gridley.doc (35KB)

Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)
(914) 421-1200

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