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BY FAX AND BY HAND

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October 5, 1998

*Forachi Greenwood for
Judicial Commission
10-6-98*

State of New York Commission on Judicial Nomination
666 Fifth Avenue
New York, New York 10103-0084

ATT: Stuart A. Summit, Counsel

RE: Media-reported candidacies of Justice Thomas E. Mercure, Justice D. Bruce Crew III, and Justice Albert M. Rosenblatt for the New York Court of Appeals

Dear Mr. Summit:

This letter follows up our telephone conversations on October 1st and 2nd, in which I reported to you that the Center for Judicial Accountability, Inc. (CJA) has documentary information establishing the unfitness of three candidates who -- according to an item in the September 15th New York Law Journal (Exhibit "A-1") -- have been interviewed by the State Commission on Judicial Nomination to fill the vacancy on the New York Court of Appeals created by the resignation of Judge Vito J. Titone. These candidates are two Appellate Division, Third Department Justices, Thomas E. Mercure and D. Bruce Crew III, and Appellate Division, Second Department Justice Albert M. Rosenblatt, reported to be a "favorite-son candidate of Second Department justices".

You informed me that statutory confidentiality prevents you from confirming or denying whether these Justices are, in fact, candidates -- or to otherwise identify the candidates being considered by the Commission. You also stated that you were not the source for the aforesaid New York Law Journal item and that you had no knowledge as to who its sources were.

For purposes of this letter, we are assuming that Justices Mercure, Crew III, and Rosenblatt have, as reported, each been interviewed by the Commission. According to the Commission's brochure (Exhibit "B-1"), such interview means that these candidates have passed the first hurdle of screening, to wit, that the Commission completed its "investigation" of their qualifications based upon the responses they were required to provide to the Commission in response to its questionnaire form.

Ex "H"

As reflected by the materials transmitted and summarized herein, these three justices disregarded ethical rules of disqualification and participated in judicial panel decisions which "threw" two politically-explosive cases. In so doing, they protected the powerful, politically-connected defendants, whose criminal and corrupt conduct was demonstrated in the record before them. These two cases are:

- (1) *Mario Castracan and Vincent Bonelli, acting pro bono publico v. Anthony Colavita, et al.* (3rd Dept. #62134), a proceeding brought in the Third Department under New York's Election Law; and
- (2) *Doris L. Sassower v. Mangano, et al.* (2nd Dept. #93-02925), a special proceeding brought in the Second Department under CPLR Article 78.

In *Castracan v. Colavita*, the *pro bono* petitioners, represented by *pro bono* counsel, Doris L. Sassower challenged as illegal, unethical, and unconstitutional, a written cross-endorsements deal between Democratic and Republican party leaders, trading seven judgeships over a three-year period, implemented at unlawfully-conducted judicial nominating conventions. Justices Mercure and Crew participated at different stages of the case on appeal. Justice Mercure was on the appellate panel which failed to disclose that all its judges were themselves the product of multi-party endorsements and denied petitioners' motion to accord the appeal the preference mandated under the Election Law and the Third Department's own rules. As a result, the appeal was not heard until *after* the 1990 Election. Justice Mercure was also a member of the appellate panel which gave the NAACP Legal Defense and Educational Fund a week less time than it stated it required for its *amicus curiae* brief -- although its time request was unopposed and was two weeks before the scheduled argument of the appeal. The result was to prevent the NAACP Legal Defense and Educational Fund from submitting an *amicus* brief because of its conflicting U.S. Supreme Court deadlines, of which it had informed the Third Department when it made its *amicus* request. As for Justice Crew, he was a member of the panel deciding the appeal -- three of whose members had multi-party endorsements. Its *per curiam* affirmance of the lower court's dismissal of the case, albeit on other grounds, not only ignored the transcending public interest at stake, but the fraud by the lower court, whose decision was shown to have violated elementary adjudicatory standards and falsified the record.

In the *Sassower v. Mangano* Article 78 proceeding, Ms. Sassower charged the Second Department with flagrant and deliberate misuse of its disciplinary power, including by its issuance of a fraudulent June 14, 1991 "interim" order suspending her law license, immediately, indefinitely, and unconditionally -- unsupported by an underlying petition, without reasons, without findings, without a hearing, and without any right of appeal. The Second Department panel, of which Justice Rosenblatt was a member, refused Ms. Sassower's request that it recuse itself and transfer the case to another Department. Included on the panel were three judges who had participated in every disciplinary order challenged as unlawful, including the June 14, 1991 suspension order, and a fourth who had participated in more than half of

the challenged orders. The panel dismissed the case, based on a false claim that it knew to be an "outright lie" -- and, which Ms. Sassower thereafter, additionally demonstrated as such.

These two cases, both of which were denied review by the New York Court of Appeals, were featured in CJA's very first public interest ad, "*Where Do You Go When Judges Break the Law?*", printed on the Op-Ed page of the October 26, 1994 New York Times, reprinted in the November 1, 1994 New York Law Journal (Exhibit "C"). Such ad was part of CJA's on-going effort to vindicate the public interest and secure disciplinary and criminal investigations of the justices involved. These efforts have included requests for gubernatorial appointment of a special prosecutor and for appointment of an investigative commission, the latter request supported by 1.500 petition signatures, the filing of complaints with agencies of government charged with investigative responsibilities, among them, the State Commission on Judicial Conduct, the State Ethics Commission, the Brooklyn District Attorney's Office, the U.S. Justice Department, and presentations to the State Assembly and Senate, including testimony before the Senate Judiciary Committee in opposition to confirmation of Howard Levine, who -- as an Appellate Division, Third Department justice -- participated in the *Castracan* appeal -- as well as against Carmen Ciparick, who, as a member of the Commission, participated in its summary dismissal, without investigation, of facially-meritorious judicial misconduct complaints, including two complaints arising from *Castracan*.

All government agencies and officials to whom we have turned and to whom we have provided the substantiating case files have knowingly and deliberately failed and refused to investigate our fact-specific, documented allegations of corruption and political manipulation. This has obliged us to undertake further litigation:

(1) *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (N.Y. Co. Clerk #95-109141), an Article 78 proceeding suing the Commission on Judicial Conduct for its complicity in high-level state judicial corruption, by its dismissal, without investigation, of our judicial misconduct complaints -- among them, those based on *Castracan* and the *Sassower v. Mangano* Article 78 proceeding; and

(2) *Doris L. Sassower v. Guy Mangano, et al.* (U.S. Supreme Ct #98-106), a federal civil rights action under 42 U.S.C. §1983, in which the Appellate Division, Second Department is being sued for retaliating against Ms. Sassower for her judicial whistleblowing advocacy, including in the *Castracan* case, and in which the State Attorney General is being sued for complicity in the Second Department's subversion of her state Article 78 proceeding.

These two cases, which had the potential to expose the fact that the *Castracan* case and *Sassower v. Mangano* Article 78 proceeding were "thrown" by fraudulent judicial decisions, were themselves "thrown" by fraudulent judicial decisions. CJA's public interest ad, "*Restraining 'Liars in the*

Courtroom' and on the Public Payroll' (NYLJ, 8/27/97) provides illustrative details (Exhibit "D").

Upon request, CJA would be pleased to transmit for your review copies of the files in *Castracan* and in the *Sassower v. Mangano* Article 78 proceeding. We believe, however, that the enclosed materials will suffice to convince you that Justices Mercure, Crew, and Rosenblatt not only abused their judicial offices and are unworthy of the public trust, but that Justice Rosenblatt must be referred for criminal investigation, if -- as we believe -- he gave perjurious responses to pivotal questions on the Commission's questionnaire. These questions, #30(a)- (b), and #32(d) (Exhibit "B-3"), required Justice Rosenblatt to set forth his knowledge of judicial misconduct complaints filed against him and to disclose whether, during the past 10 years, he has been a party in litigation, other than Article 78, brought against him as a public officer. Disclosure also required him to provide the Commission with specific documents pertaining to any such litigation, to wit, a copy of the complaint therein and decisions thereon¹. That he failed to do so appears evident from the fact that, in our October 1st conversation together, you asked me to explain to you the circumstances leading up to the Appellate Division, Second Department's suspension of Ms. Sassower's law license. Such inquiry would have been wholly superfluous had Justice Rosenblatt supplied the Commission with the verified complaint in the *Sassower v. Mangano, et al.* federal action -- to which he is a party, both in his official and personal capacities. Indeed, rather than going into the details of the suspension, I referred you to the particularized allegations of the complaint, which I stated I would be sending -- and for which you specifically requested the affidavit of service. Assuredly had Justice Rosenblatt already furnished the complaint and provided the information requested as to his knowledge of judicial misconduct complaints against him, we would reasonably expect the Commission to have summarily excluded him from consideration for higher judicial office, without any interview.

The following are enclosed: As to Justice Crew, whose participation in *Castracan* was as a member of the same appellate panel as Justice Levine, enclosed is a copy of our fact-specific September 7, 1993 testimony in opposition to Justice Levine's confirmation to the New York Court of Appeals, which

¹ The text of these questions is as follows (Exhibit "B-3"):

30. (a) To your knowledge, has any complaint or charge ever been made against you in connection with your service in a judicial office? Include in your response any question raised or inquiry conducted of any kind by any agency or-official of the judicial system.

(b) If the answer to subpart (a) is "Yes", furnish full details, including the agency or officer making or conducting the inquiry, the nature of the question or inquiry, the outcome and relevant dates.

32. (d) During the past 10 years, have you been a party in any litigation other than an Article 78 proceeding brought against you as a public officer? If so, state the facts, provide the relevant dates and provide a copy of the complaint and any judicial decision in the action.

should be deemed equally applicable to Justice Crew. The testimony highlights *Castracan's* transcending significance and is supported by a compendium of documents from the *Castracan* record, also enclosed. These documents include the appellate panel's *per curiam* decision and appellants' motion for reargument/renewal/recusal, with its alternative request for leave to appeal to the Court of Appeals. As to Justice Mercure, his participation in the self-interested panel which denied the formal preference application in *Castracan* is identified in the reargument/renewal/recusal motion (compendium, p. 45), with the testimony pointing out that the denial of the preference, as well as the denial of NAACP Legal Defense and Educational Fund's *amicus* time request (in which Justice Mercure also participated) were part of "a pattern of judicial rulings so unusual and aberrant as to be clearly suspect." (at p. 9)

As to Justice Rosenblatt, enclosed is a copy of Ms. Sassower's petition for a writ of certiorari and supplemental brief² in the *Sassower v. Mangano* §1983 federal action -- to which Justice Rosenblatt is a party. The verified complaint therein, which Justice Rosenblatt was required to produce for the Commission on Judicial Nomination, pursuant to its Question #32(d), is reprinted in full in the cert appendix [A-49-100]³, together with the pertinent lower court decisions [A-21; A-36]. Personal service of the verified complaint was effected on October 17, 1994 and admitted by the Appellate Division's Clerk, Martin Brownstein, on behalf of the Appellate Division, Second Department's 20 listed justices, Justice Rosenblatt among them. Mr. Brownstein's signed receipt is annexed as Exhibit "3" to Ms. Sassower's December 5, 1994 judicial misconduct complaint against Justice Rosenblatt -- the fourth of a series of complaints which she filed against him with the State Commission on Judicial Conduct.

² The supplemental brief contains, in its appendix [SA-47], Ms. Sassower's July 27, 1998 letter to the Public Integrity Section, Criminal Division of the U.S. Justice Department seeking criminal investigation, *inter alia*, of the judges and state officials involved in the *Sassower v. Mangano* federal action. This includes Justice Rosenblatt. A free-standing copy of that letter was docketed with the Supreme Court Clerk, together with its exhibits, comprising our prior correspondence with the Justice Department seeking investigation of the judicial corruption reflected by the record in *Castracan v. Colavita*, the *Sassower v. Mangano* Article 78 proceeding, and our Article 78 proceeding against the Commission on Judicial Conduct and provided to the Justice Department. A copy of the free-standing letter with exhibits is enclosed. (See Exhibits "A" - "H" thereto) so that the Commission may, pursuant to the "Information and Privacy Waiver (Federal)" (Exhibit "B-5" herein) which Justices Rosenblatt, Mercure, and Crew were required to sign, make inquiries of the Justice Department relative to their findings, based on their examination of the aforesaid transmitted case records.

³ The complaint [A-49-100] chronicles: (1) the retaliatory relationship between Ms. Sassower's advocacy in the *Castracan* case and the Appellate Division, Second Department's fraudulent "interim" suspension of her law license [See, *inter alia*, ¶¶76-8, 90, 103, 117-118]; (2) the subversion of Ms. Sassower's Article 78 remedy in *Sassower v. Mangano* [See, *inter alia*, ¶¶166-170, 173-178, 182-191, 195-209]; (3) Ms. Sassower's testimony before the Senate Judiciary Committee in opposition to confirmation of Justices Levine and Ciparick for the Court of Appeals [See ¶¶179-181; 192-194]

Also enclosed is the series of complaints which Ms. Sassower filed with the Commission, dated September 19, 1994, October 5, 1994⁴, October 26, 1994, and December 5, 1995. Although all are facially-meritorious, the statutory standard mandating the Commission to investigate them (Judiciary Law §44.1), the Commission summarily dismissed each one, without investigation and without any reasons. This is reflected by the Commission's dismissal letters, which are also enclosed, together with its acknowledgment letters. Such dismissals formed the gravamen of Ms. Sassower's Article 78 proceeding against the Commission, which -- as particularized in CJA's public interest ad, "*Restraining Liars in the Courtroom' and on the Public Payroll*" (Exhibit "D") -- and, prior thereto in our published Letter to the Editor, "*Commission Abandons Investigative Mandate*", NYLJ, 8/14/95 (Exhibit "E-1") and our public interest ad, "*A Call for Concerted Action*", NYLJ, 11/20/96 (Exhibit "E-2") -- it survived only by fraud. Indeed, the September 19, 1994 judicial misconduct complaint was not only facially-meritorious, but fully documented. It transmitted to the Commission a copy of the record in the *Sassower v. Mangano* Article 78 proceeding --including the papers before the New York Court of Appeals⁵. That Justice Rosenblatt is *fully knowledgeable* of that complaint, documenting his misconduct in the Article 78 proceeding, is reflected by the recitations in the October 26, 1994 and December 5, 1994 complaints. These detail that Ms. Sassower presented the September 19th complaint to Justice Rosenblatt as among the grounds for his disqualification from a panel hearing seven appeals in an unrelated civil action in which Ms. Sassower and her law firm were defendants -- appeals which the panel thereafter disposed of by a legally and factually insupportable and dishonest decision. Exhibit "T" to the October 26, 1994 complaint, which is Ms. Sassower's October 17, 1994 letter to James Pelzer, Supervisor of the Decision Department of the Appellate Division, Second Department, describes what took place at the October 5th so-called "oral argument" of the seven appeals: Ms. Sassower was arbitrarily precluded both from handing up her formal Order to Show Cause for recusal and transfer, as well as from orally arguing it. In pertinent part, Ms. Sassower's letter, which includes *verifications* signed by both Ms. Sassower and myself, states:

"At that point, my daughter, who was present as my paralegal assistant, rose to state what would have been included by me in an oral application for recusal and transfer -- had Justice Thompson permitted me to make one -- to wit, that the panel was disqualified and that on September 19, 1994 I had filed a formal complaint with the Commission on Judicial Conduct against the Appellate Division, Second Department

⁴ The October 5, 1994 complaint is annexed to the October 26, 1994 complaint as Exhibits "H" and "F".

⁵ As part of his application, Justice Rosenblatt was obliged to sign an "Information and Privacy Waiver (New York State and Miscellaneous)", expressly consenting to release of "information in the possession of the New York State Commission on Judicial Conduct" (Exhibit "B-4"). This would include release to the Commission on Judicial Nomination of the substantiating record in the *Sassower v. Mangano* Article 78 proceeding, transmitted with Ms. Sassower's September 19, 1994 complaint.

and, in particular, against two members of the panel.

Justice Rosenblatt, who was seated directly in front of my daughter, then asked who those members were, to which my daughter responded that they were Justice Thompson and himself. Obviously, my daughter's statement would have been wholly unnecessary had I been permitted to make my recusal/transfer application orally. Indeed, my September 19, 1994 complaint to the Commission on Judicial Conduct was annexed as Exhibit "C" to my Order to Show Cause."

The October 17, 1994 letter further recites that *immediately* following the October 5, 1994 "oral argument", Ms. Sassower left a copy of the Order to Show Cause with Mr. Pelzer and went to the Commission on Judicial Conduct, where she filed the original with a hand-written complaint. Copies of these documents were annexed to the October 17, 1994 letter, which was hand-delivered to Mr. Pelzer, together with five copies for the four judges of the appellate panel and for Appellate Division, Second Department Presiding Justice Mangano. This is reiterated in the October 26, 1994 and December 5, 1994 complaints -- the latter of which expressly identifies (at p.3, fn. 4) that each of the copies of the October 17, 1994 letter annexed full copies of that Order to Show Cause. Consequently, Justice Rosenblatt not only has knowledge of the September 19, 1994 complaint against him from my direct exchange with him at the October 5, 1994 "oral argument" -- but was furnished a copy of it as part of the annexed Show Cause Order, as well as a copy of the October 5, 1994 hand-written complaint.

Thus, the October 17, 1994 letter to Mr. Pelzer establishes, at minimum, that Justice Rosenblatt had knowledge sufficient to have responded affirmatively to this Commission's Question #30(a) and, as to (b), to have provided information as to the September 19, 1994 and October 5, 1994 complaints. Indeed, Justice Rosenblatt may well have learned of the additional October 26, 1994 and December 5, 1994 misconduct complaints against him. Such knowledge is not unlikely in view of the fact that Justice Rosenblatt's misconduct, as alleged therein and in the prior complaints, is bound up with that of Justice William Thompson, the presiding justice in the *Sassower v. Mangano* Article 78 proceeding panel and in the panel deciding the seven appeals. Justice Thompson is a member of the Commission on Judicial Conduct and can be presumed to have seen those complaints. Based on his egregious and criminal acts as therein particularized, one would not suppose that Justice Thompson would have any compunction about disclosing the existence of such subsequent complaints to Justice Rosenblatt. Moreover, since those misconduct complaints were widely circulated as exhibits to Ms. Sassower's verified petition in her Article 78 proceeding against the Commission on Judicial Conduct, Justice Rosenblatt may have been apprised of them -- and received copies -- from any number of sources, who additionally, were free to access the ligation file, containing the misconduct complaints, from the N.Y. County Clerk's office.

Simultaneous with our hand-delivery of this letter to you, we are delivering a copy to the Commission on Judicial Conduct, as yet a further facially-meritorious complaint against Justice Rosenblatt. This instant complaint rests on our belief -- for reasons hereinabove particularized (at p. 4) -- that Justice Rosenblatt committed perjury in his responses to Questions #30(a)-(b) and #32(d) (Exhibit "B-3"). Following your verification of such fact, we request you provide the Commission on Judicial Conduct with a copy of those responses, pursuant to Judiciary Law, Article 3-A, §66 -- which excepts from confidentiality perjury under Article 210 of the Penal Law. Indeed, the preface to the Committee's questionnaire (Exhibit "B-2") specifically alerts candidates to such perjury exception.

Our instant judicial misconduct complaint is additionally based on Justice Rosenblatt's collusion and complicity -- as well as that of his Second Department brethren -- in the fraudulent defense tactics of co-defendant counsel, the New York State Attorney General in the *Sassower v. Mangano* federal action, as particularized in the *unopposed* cert petition and publicized in the closing paragraphs of our ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "D"), which Justice Rosenblatt and his Second Department co-defendants can be presumed to have seen. Such litigation fraud plainly constitutes conduct "prejudicial to the administration of justice" and should lead not only to a disciplinary investigation by the Commission on Judicial Conduct, but to further disqualification of Justice Rosenblatt from this Commission's consideration.

Based on CJA's direct personal experience spanning many, many years, the Governor's office and the Senate Judiciary Committee are utterly contemptuous of documentary proof establishing the unfitness of the Governor's judicial nominees. Consequently, *IF* there is to be any respect for "merit selection" principles, it falls to this Commission to pursue rigorous and effective investigations of would-be nominees to the Court of Appeals and to take appropriate action against dishonest applicants. As reflected by the foregoing presentation, CJA has a great deal to offer in providing the Commission with readily-verifiable information pertinent to candidate qualifications. We, therefore, request that much as the Commission, in the normal course of its investigations, purports to contact references and individuals having knowledge of the candidates, so it include CJA among its knowledgeable sources before finalizing its deliberations⁶.

Finally, and on the subject of the political deal-making and disrespect in Albany for judicial qualifications, CJA has extensive correspondence with Governor Pataki's office during Michael Finnegan's tenure as Governor Pataki's counsel. Such correspondence exposed not only the Governor's sham judicial screening procedures, but the flagrant misconduct of Mr. Finnegan and his subordinates

⁶ The need for thorough investigation of judicial qualifications -- including verification of information provided by applicants in response to questionnaires -- was highlighted, to no avail, in our December 15, 1993 testimony in opposition to Senate confirmation of Justice Ciparick's nomination to the New York Court of Appeals. A copy of our testimony, which also objected to the confidentiality provisions of Article 3-A as unconstitutional, is enclosed, together with its substantiating compendium.

October 5, 1998

in connection therewith. This is reflected by our Letter to the Editor, "*On Choosing Judges, Pataki Creates Problems*", published in the November 16, 1996 New York Times (Exhibit "F"). Mr. Finnegan is a member of the Commission on Judicial Nomination, by appointment of the Governor -- a circumstance that bodes ill for the integrity of the process.

Yours for a quality judiciary,



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

- Enclosures: (1) testimony and compendia in opposition to Senate confirmation of Justices Howard Levine and Carmen Ciparick to the New York Court of Appeals
(2) *Sassower v. Mangano, et al.* cert petition and supplemental brief
(3) 7/27/98 letter to Public Integrity Section, Criminal Division, U.S. Justice Department
(4) judicial misconduct complaints: 9/19/94, 10/26/94, 12/5/94; with the Commission on Judicial Conduct's acknowledgment and dismissal letters
(5) CJA's informational brochure

cc: New York State Commission on Judicial Conduct