

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 518-426-6952 (5 pages)

BY CERTIFIED MAIL/RRR: 7001-0320-0004-5457-4996

January 14, 2003

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

- RE:
- (1) CJA's request for a meeting to discuss the documentary evidence of the corruption of judicial selection and discipline;
 - (2) CJA's request to testify at the upcoming Senate Judiciary Committee hearing in opposition to confirmation of Court of Claims Presiding Judge Susan P. Read to the Court of Appeals;
 - (3) CJA's request for publicly-available documents in the Committee's possession establishing the legitimacy of the Commission on Judicial Nomination's recommendation of Judge Read as "well qualified" to sit on the Court of Appeals and any other publicly-available documents establishing her qualifications.

Dear Chairman DeFrancisco:

On this, your first full day as Chairman of the State Senate Judiciary Committee, the Center for Judicial Accountability, Inc. (CJA) takes the opportunity to congratulate you on assuming such important responsibility – and requests a meeting with you, *as soon as possible*, to discuss the documentary evidence of the corruption of judicial selection and discipline that is within the Committee's jurisdiction to review and its duty to act upon.

As you have been a member of the Senate Judiciary Committee since 1995, you already know that CJA is a non-partisan, non-profit citizens' organization dedicated to safeguarding the public interest in judicial selection and discipline.

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However, in the event you have never *yourself* examined the meticulous documentation substantiating CJA's advocacy as to the corruption of these essential processes, we request that you access, from whatever files the Committee maintains, our voluminous submissions to the Committee, spanning nearly a decade – from August 1993 to as recently as December 16, 2002.

In view of the Senate's upcoming confirmation proceedings on Governor Pataki's appointment of Court of Claims Presiding Judge Susan P. Read to the Court of Appeals – and CJA's request herein made to testify before the Committee in opposition – we specifically ask that you *personally* examine CJA's extensive submissions in opposition to Senate confirmation of Judge Read's immediate predecessor to the Court of Appeals: Appellate Division, Third Department Justice Victoria Graffeo. These include CJA's October 16, 2000 report, detailing the Commission on Judicial Nomination's corruption of the "merit selection" process to the Court of Appeals and CJA's November 13, 2000 report, detailing the bar associations' complicity therewith.

For your convenience, enclosed is a copy of CJA's November 13, 2000 coverletter transmitting these document-supported reports to then Senate Judiciary Committee Chairman James J. Lack. As reflected by that coverletter, the threshold issue that CJA placed before the Senate Judiciary Committee in opposition to Justice Graffeo's confirmation was:

"whether the Commission on Judicial Nomination's October 4, 2000 report [of "well qualified" nominees] conforms with the requirement of Judiciary Law §63.3 that it contain "*findings* relating to the character, temperament, professional aptitude, experience, qualifications and fitness for office of *each candidate* who is recommended to the governor"^{fn.2} and, if not, whether the Senate may lawfully proceed with confirmation, over public objection as presented by CJA's October 16, 2000 report."

There was no answer from the Committee to these straightforward questions – which CJA will again place before the Committee, this time in the context of our opposition to the Commission on Judicial Nomination's identically non-conforming December 2, 2002 report of purportedly "well qualified" nominees – Judge Read among them – likewise devoid of the findings for "each candidate" which Judiciary Law §63.3 requires.

^{fn.2}

"Emphasis added."

As particularized by CJA's October 16, 2000 report -- without dissent from the Committee -- the *readily-verifiable* corruption of the New York State Commission on Judicial Conduct necessarily corrupts the "merit selection" process. Consequently, we ask that you also *personally* examine the documents establishing the corruption of the Commission on Judicial Conduct, transmitted with that report -- as well as those thereafter transmitted under CJA's June 17, 2001 coverletter to Chairman Lack in opposition to Senate confirmation of the Governor's reappointment of Court of Claims Judge William A. Wetzel.


Needless to say, if the Committee has not retained the foregoing dispositive documents in its files, we will speedily provide duplicates so that the Committee, under your stewardship, may discharge the duty it owes to the People of this State to confront the serious and substantial evidence of the corruption of the "merit selection" process that has now produced Judge Read, and, prior thereto, her unworthy predecessors sitting on the Court of Appeals¹.

Finally, so that CJA's opposition testimony may be properly informed, we request all publicly-available documents in the Committee's possession establishing the legitimacy of the Commission on Judicial Nomination's recommendation of Judge Read as "well qualified" to sit on the Court of Appeals, together with any other publicly-available documents it possesses establishing her qualifications.

We await your prompt response and look forward to your leadership in vindicating the public's rights to meaningful processes of judicial selection and discipline -- such as presently do *not* exist.

Thank you.

Yours for a quality judiciary,


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

Enclosures

¹ The official misconduct of the sitting judges of the Court of Appeals based, *inter alia*, on their flagrant annihilation of fundamental adjudicative and ethical standards to cover-up the documentary evidence of the corruption of the Commission on Judicial Conduct and of "merit selection" to the Court of Appeals -- to the detriment of the People of this State -- will be the subject of a formal impeachment complaint which CJA will be presenting to the Committee.

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Elena Ruth Sassower, Coordinator

BY PRIORITY MAIL

CERTIFIED/RRR: 7099-3400-0001-2791-8370

CERTIFIED/RRR: 7099-3220-0010-4766-1748

November 13, 2000

Justice Victoria A. Graffeo
Appellate Division, Third Department
Justice Building, Room 310
Capitol Station, P.O. Box 7288
Albany, New York 12224

Chairman James J. Lack
Senate Judiciary Committee
The Capitol, Room 413
Albany, New York 12247

RE: The Public's Right to "Hear" and "Be Heard" at the Upcoming
Senate Judiciary Committee Confirmation Hearing on Justice
Graffeo's Appointment to the New York Court of Appeals

Dear Justice Graffeo and Chairman Lack:

Enclosed are copies of CJA's October 16, 2000 report, detailing the Commission on Judicial Nomination's subversion of the "merit selection" process to the New York Court of Appeals and CJA's November 13, 2000 report, detailing the bar associations' complicity therein.

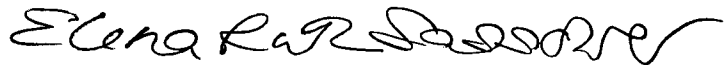
The Introduction and Conclusion of CJA's November 13, 2000 report identify that each of you are members of Chief Judge Kaye's Committee to Promote Public Trust and Confidence in the Legal System and that each of you can powerfully demonstrate your commitment to promoting public trust and confidence. This, at the upcoming Senate Judiciary Committee hearing on Justice Graffeo's confirmation, at which Chairman Lack will preside.

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November 13, 2000

CJA calls upon Justice Graffeo, who aspires to sit on our State's highest court, to demonstrate her fitness for such public office by putting aside her substantial self-interest in favor of the public interest. To that end, she must insist that Chairman Lack not "ram through" her Senate confirmation as he "rammed through" Justice Rosenblatt's Senate confirmation in 1998: by a no-notice, by-invitation-only, confirmation hearing, at which no opposition testimony was permitted¹. It is her duty – as likewise Chairman Lack's – to ensure the public of a meaningful opportunity to "hear" and "be heard" at the confirmation hearing. Likewise, it is her duty – as well as Chairman Lack's – to publicly address the serious issues particularized by CJA's reports as to the corruption of the "merit selection" process to our State's highest court. This includes the threshold issue as to whether the Commission on Judicial Nomination's October 4, 2000 report conforms with the requirement of Judiciary Law §63.3 that it contain "*findings* relating to the character, temperament, professional aptitude, experience, qualifications and fitness for office of *each candidate* who is recommended to the governor"² and, if not, whether the Senate may lawfully proceed with confirmation, over public objection as presented by CJA's October 16, 2000 report.

Yours for a quality judiciary,



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

Enclosures:

- (1) CJA's October 16, 2000 report with free-standing File Folders "A" and "B"
- (2) CJA's November 13, 2000 report
- (3) CJA's informational brochure with insert "*An Appeal to Fairness: Revisit the Court of Appeals*", Letter to the Editor, NY Post, 12/28/98

¹ This is highlighted by Exhibits "A-1" and "A-2" to CJA's October 16, 2000 report, which are, respectively, CJA's Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" (NY Post, 12/28/98), and CJA's March 26, 1999 ethics complaint (at pp. 21-22).

² Emphasis added.

Chairman DeFrancisco
Senate Judiciary Committee

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NAME : CJA

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PS Form 3800, January 2001

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January 17, 2003

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

RE: (1) Postponement of the Senate Judiciary
 Committee's January 22, 2003 Hearing on Judge Susan P.
 Read's Confirmation to the New York Court of Appeals;
 (2) Request for Information as to the Senate
 Judiciary Committee's Confirmation Procedures;
 (3) Providing the Public with Judge Read's own
 Questionnaire Responses as to her Qualifications, etc.

Dear Chairman DeFrancisco:

This follows up my extensive phone call to your Chief of Staff, Carole Luther, at 9:30 this morning – in response to the item in today's New York Law Journal that the Senate Judiciary Committee has scheduled a hearing on Susan Read's confirmation to the New York Court of Appeals for this coming Wednesday, January 22, 2003 – hardly adequate public notice.

As discussed, Judge Read is already sitting as an interim appointee to the Court (Judiciary Law §68.3)– and there is NO reason for the Senate Judiciary Committee to rush ahead with a confirmation hearing when it has yet to develop any rules of procedure for judicial confirmations – including for verifying the legitimacy of citizen opposition. Indeed, we have received no response to our January 14, 2003 letter to you, requesting to testify in opposition to Judge Read's confirmation.

January 17, 2003

Nor have we been notified as to whether you require us to supply duplicates of documents we previously submitted to the Committee, which our January 14th letter identified as relevant to our intended opposition testimony and requested you to *personally* review. Likewise, no response to our letter's first request, *to wit*, a meeting with you,

"as soon as possible, to discuss the documentary evidence of the corruption of judicial selection and discipline that is within the Committee's jurisdiction to review and its duty to act upon."

Such meeting is a priority – since the Senate Judiciary Committee cannot possibly address the corruption of judicial selection and discipline, including of "merit selection" to our State's highest Court, if it is going to retain David Gruenberg as its counsel. Please be advised that during Chairman Lack's tenure, Mr. Gruenberg used his important staff position to facilitate and further that corruption. This fact is established by the voluminous documentation substantiating CJA's December 16, 2002 letter in opposition to Chairman Lack's confirmation to the Court of Claims – documentation which should properly be in the Committee's files, unless Mr. Gruenberg's has destroyed or secreted it to conceal the "paper trail" of his misfeasance.

In the event you never read CJA's December 16, 2002 letter, a copy is enclosed. This includes its appended 1997 report of the Association of the Bar of the City of New York on Nomination and Confirmation of Court of Claims Judges, which recognized that in order for the Senate's "advice and consent" function to be meaningful, the Senate must have sufficient time to examine judicial qualifications and receive public input. The City Bar's recommendation was for a minimum of 30 days between the Governor's nomination and the beginning of Senate confirmation proceedings. Clearly, no less time is needed when the judicial confirmation is to our State's highest Court.

Judiciary Law §68.4(b) expressly provides for Senate confirmation up to "thirty days after receipt of the nomination from the governor". Since receipt is fixed as the first day the Senate is in session – *to wit*, Wednesday, January 8, 2003, the thirtieth day would be Friday, February 7, 2003. Moreover, pursuant to Judiciary Law §68.5, such time parameter is flexible – an obvious recognition that the State Constitution sets no time restriction (Article VI, §§2c-g).

Also appended to our December 16, 2002 letter is our December 19, 2001 information/FOIL request to the Committee. Especially germane are the following inquiries therein – to which Mr. Gruenberg refused to respond, including on December 3, 2002 when I spoke with him *in person* at Chairman Lack's Committee office:

- “(4) whether, in confirming Governor Pataki's judicial appointees, the Senate Judiciary Committee has relied on any written procedures and standards – and whether such written procedures and standards are publicly available from the Committee;
- (5) whether the Senate Judiciary Committee required Governor's Pataki's judicial appointees to complete questionnaires for its review pertaining to their qualifications and fitness;
- (6) whether the Senate Judiciary Committee interviewed members of the public who contacted it with opposition to confirmation of any of Governor Pataki's judicial appointees and whether the Committee reviewed the evidentiary basis of their opposition;
- (7) what criteria is used by the Senate Judiciary Committee to evaluate requests by members of the public to testify in opposition to Governor Pataki's judicial appointees;”

In the specific context of Judge Read's upcoming confirmation hearing, CJA calls upon you to respond to these four inquiries, as well as to inquiries #12-14 relating to the Senate Judiciary Committee's post-hearing procedures.

As discussed with Ms. Luther, no hearing should be held on Judge Read's confirmation unless and until she completes a questionnaire comparable to that which the United State Senate Judiciary Committee requires ALL federal judicial nominees to complete *before* their confirmation hearings and which forms the basis for that Committee's investigation. With the exception of a small “confidential” portion, the U.S. Senate Judiciary Committee makes these completed questionnaires publicly-available. The State Senate Judiciary

Committee must do likewise – beginning with Judge Read.

In response to my phone call to Ms. Luther at 3:30 p.m., she offered to fax me Judge Read's resume, which I just received – along with a one-page summary. This, in response to the request in CJA's January 14th letter, previously unresponded-to, for

“all publicly-available documents in the Committee's possession establishing the legitimacy of the Commission on Judicial Nomination's recommendation of Judge Read as “well qualified” to sit on the Court of Appeals, together with any other publicly-available documents it possesses establishing her qualifications.”

Such three faxed pages are no substitute for the kind of substantial information required by the U.S. Senate Judiciary Committee's questionnaire. A copy of that questionnaire is enclosed so that you may make your own comparison.

Of course, many questions on the U.S. Senate Judiciary Committee's questionnaire echo those that Judge Read was required to answer for the Commission on Judicial Nomination. Pursuant to Judiciary Law §66.2, the Senate Judiciary Committee has access to the questionnaire that Judge Read submitted to the Commission on Judicial Nomination. Consequently, the Committee – in recognition of the public's right to meaningful information -- might offer her the option of making that already completed questionnaire available to the public, with her answers to the equivalent “confidential” inquiries “blacked-out”¹.

Finally, as discussed with Ms. Luther, CJA's opposition to Judge Read's confirmation rests not only on the demonstrated corruption of the “merit selection” process that produced her, but on her official misconduct while she was Governor Pataki's Deputy Counsel. Reflecting this is our letter of yesterday's date to the Governor's Counsel, James McGuire, requesting information and documents pertaining to Judge Read's “1995-1997” tenure in that position. Presumably, the Senate Judiciary Committee has the exact dates

¹ I understand from the Association of the Bar of the City of New York and the New York State Bar Association that some nominees provide their completed questionnaires to the bar associations in connection with the bar evaluations – obviously viewing Judiciary Law §66, “Confidentiality of Proceedings and Records”, as binding the Commission, not the candidates.

January 17, 2003

Judge Read served as the Governor's Deputy Counsel by virtue of her completed Commission on Judicial Nomination questionnaire. We ask that you provide us with this reasonably requested information as soon as possible – such not being identified in either the two-page resume or one-page summary Ms. Luther faxed.

Thank you.

Yours for a quality judiciary,



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

Enclosures:

- (a) CJA's December 16, 2002 letter with the City Bar's 1997 Report on the Nomination and Confirmation of Court of Claims Judges and CJA's December 19, 2001 information/FOIL request
- (b) U.S. Senate Judiciary Committee questionnaire
- (c) CJA's January 16, 2003 letter to James McGuire

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Elena Ruth Sassower, Coordinator

December 16, 2002

Senate Majority Leader Joseph Bruno
Capitol, Room 430M
By Fax: 518-426-6815 [22 pages]
By E-Mail: lbruno@senate.state.ny.us

Senate Minority Leader Martin Connor
Legislative Office Building, Room 907
By Fax: 518-455-2816 [22 pages]
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Senate Minority Leader-Elect David Paterson
Legislative Office Building, Room 313
By Fax: 518-426-6843/212-678-0001 [22 pages]
By E-Mail: paterson@senate.state.ny.us

RE: (1) Postponing Senate Confirmation Proceedings on the
 Nomination of Senate Judiciary Committee Chairman James J.
 Lack to the Court of Claims to no earlier than January 9, 2003;
 (2) Constituting a More Neutral Senate Forum for the
 Holding of the Confirmation "Hearing"; and
 (3) Commencing Review of CJA's Documentary Evidence
 of Chairman Lack's Unfitness for Judicial Office

Dear Senate Leaders:

The Center for Judicial Accountability, Inc. (CJA) is a non-partisan, non-profit citizens organization dedicated to safeguarding the public interest in meaningful processes of judicial selection and discipline so as to ensure the integrity of the judiciary -- a goal the People of this State would expect you to share.

This letter requests that you use your preeminent Senate leadership positions to further that goal by advancing democracy's most basic concept: citizen participation.

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As you know, on December 10, 2002, Governor Pataki nominated Senate Judiciary Committee Chairman James J. Lack to the Court of Claims, purportedly after he was found "highly qualified" by the Governor's State Judicial Screening Committee. According to the Governor's press release, Senator Lack is "uniquely qualified...by virtue of his extraordinary intellect, voluminous knowledge of the law and...his superb stewardship as Chair of the Senate Judiciary Committee..."

Pursuant to Article VI, §9 of the New York State Constitution, Chairman Lack's nomination to the Court of Claims is subject to "the advice and consent of the senate". We understand that Senate confirmation proceedings are being scheduled for Tuesday, December 17, 2002. This, notwithstanding there is no urgency to fill the judgeship to which Chairman Lack has been nominated. This is evident from the fact that Governor Pataki kept it vacant these past two years.

If Senate confirmation proceedings are, indeed, being scheduled for December 17, 2002, they must be postponed to a date not earlier than 30 days from the date of Chairman Lack's nomination, *to wit*, January 9, 2003. This is within your power to do and CJA asks that you do it.

Almost precisely six years ago, the Association of the Bar of the City of New York issued a "*Report on Nomination and Confirmation of Court of Claims Judges*", reflecting unflatteringly upon the speed with which Court of Claims nominees were then being confirmed under Senator Lack's "stewardship" of the Senate Judiciary Committee. The Report began as follows:

"In recent years there has been no meaningful opportunity for public input in connection with the confirmation of Court of Claims nominees. Though the advice and consent process is the only democratic check on this segment of the judiciary...the Senate often confirms the Governor's nominees within days of their nomination."

The Report gave a brief historical review of the purpose of "advice and consent", quoting from the 1973 Report of New York's Joint Legislative Committee on Court Reorganization, Number 76 of the Federalist Papers, and, more recently, the words of U.S. Supreme Court Justice Stephen Breyer:

"We live in a democracy, and in a democracy power is supposed to flow from the people. People nonetheless are prepared to put unelected judges in high offices and grant them power to affect everyone's lives, because of the importance of such structures in our system of government...[T]he confirmation process...offer[s] people a glimpse of the person who might hold that powerful office." (at p. 3).

The Report concluded that in order for the Senate's "advice and consent" function to be meaningful, a minimum of 30 days was essential between gubernatorial nomination and commencement of Senate confirmation proceedings. This would

"encourage public participation without hampering the Governor and the Senate in promptly discharging their responsibilities in filling vacancies. It would enable interested members of the public – both individuals and organizations – to make their views known prior to the Senate's consideration of the nominees. It would also provide the public, in Justice Breyer's words, with 'a glimpse of the person' who might hold an office with the 'power to affect everyone's lives.'" (at p. 5).

Enclosed is a copy of the City Bar's five-page Report, as well as its three-page appendix. The appendix charts the time period between nomination and confirmation of Court of Claims judges in 1995 and 1996, contrasted to 1993 and 1994. The difference is striking. In 1993, *before* Chairman Lack assumed his "stewardship" of the Senate Judiciary Committee, there were at least nine weeks between nomination and confirmation. This dropped to four weeks in 1994, the first year of Chairman Lack's chairmanship when Democratic Governor Cuomo was yet in office and making the nominations. In 1995, with Republican Governor Pataki making the nominations, Chairman Lack, a Republican, had moved up Senate confirmations to within days of the nominations – and, according to the chart, confirmations were even held on the same day as the nominations were made. In 1996, most Court of Claims confirmations were within less than two weeks of the nomination, the swiftest being for former Senate Judiciary Committee Chairman Christopher J. Mega, whose renomination to that Court was confirmed the very next day.

The City Bar presented its Report to Chairman Lack in January 1997. Had Chairman Lack chosen to do so, he could have risen above politics and imposed the simple and salutary rule that the Senate Judiciary Committee would not move to confirm judicial nominations in less than 30 days' time. This, he did not do – and the reason is obvious. A “rubber stamp” committee does not need time for receipt and review of adverse information from members of the public or to otherwise independently examine nominee qualifications. Indeed, a “rubber stamp” committee can altogether dispense with procedures and standards for confirmation because there is no true confirmation “process”. Such “process”, to be meaningful, would include requiring the Governor to substantiate the purportedly “well qualified” ratings of his judicial nominees with documentation and/or requiring the nominees to complete Senate Judiciary Committee questionnaires pertaining to their qualifications and fitness; requiring Committee staff to interview members of the public who contact the Committee with objections and to examine their substantiating documentation; rendering a written report of the results of staff interviews and investigations so that the deliberations of Committee members and the full Senate would be properly informed. Yet, Chairman Lack’s Senate Judiciary Committee has been operating without such requisites to “process” – and has NO written procedures and standards for confirmation of judicial nominees, at least none publicly available.

CJA has six years of direct, first-hand experience with Chairman Lack’s on-the-job performance in overseeing judicial confirmations – not only to the Court of Claims, but to the Court of Appeals. We can attest to his flagrant disregard for the most fundamental rules of procedure, standards of evidence, due process, honesty, and decency – the very qualities essential to being a judge. Indeed, the massive documentary evidence substantiating our experience with Chairman Lack establishes that he has wholly corrupted his preeminent position on the Senate Judiciary Committee to accommodate political interests intent on using the judiciary for political patronage. This, with knowledge that the citizens of this State are *defenseless* against the judicial misconduct of the nominees being confirmed, as of every other judge of this State, because of the corruption of the New York State Commission on Judicial Conduct – as to which Chairman Lack, with the documentary proof first provided him six years ago, has taken NO investigative steps. This includes his having failed to hold a long-overdue oversight hearing of the Commission¹.

¹ On December 18, 1981, the Senate Judiciary Committee held a joint oversight hearing with the Assembly Judiciary Committee. It has held no subsequent oversight hearing of the

In the unlikely event you are unaware of how Chairman Lack has run the Senate Judiciary Committee, presiding over the confirmation of approximately 200 judicial nominees², CJA can provide details so scandalous that they should rightfully result in his criminal prosecution for official misconduct (Penal Law §195.2) -- not simply rejection of his confirmation to the Court of Claims. Thus, over the past six years, Chairman Lack, in violation of his duties, has rejected, *out of hand*, information as to the unfitness of the judicial nominees the Committee was confirming, as well as information as to the dysfunction, politicization and corruption of the so-called "screening" processes that produced them. These purported "screening" processes are the Governor's Temporary Judicial Screening Committee, which existed for the first half of the Governor's first term until the hue and cry raised by the organized bar following publication of CJA's Letter to the Editor, "*On Choosing Judges, Pataki Creates Problems*" (New York Times, 11/16/96), forced the Governor to belatedly appoint his four Department Judicial Screening Committees and his State Judicial Screening Committee. There is also the New York State Commission on Judicial Nomination, which springs into existence to fill Court of Appeals vacancies. Over the past six years, CJA has demonstrated that these judicial screening bodies, whose operations take place entirely behind closed doors, are unworthy of public confidence and that their "highly qualified" and "well qualified" ratings of judicial nominees are fraudulent and "rigged". Nonetheless, Chairman Lack has refused to examine and discuss ANY of the substantiating documentation we have provided him, has refused to explain why, and has denied our requests to testify in opposition to nominees whose ratings we documented to be fraudulent and "rigged".

Commission, either jointly or separately, in the 21 years since. The Assembly Judiciary Committee held one additional oversight hearing of the Commission on September 22, 1987, but not in the 15 years since.

The failure of both Judiciary Committees to hold subsequent oversight hearings is all the more egregious in light of the 1989 report, "*Not Accountable to the Public*", by former State Comptroller Edward Regan, which found that the Commission was "operating without appropriate oversight" and that legislative change was needed. The indicated legislative change was never made.

² We have been unable to obtain the precise number because the Senate Judiciary Committee has claimed to have NO single document responsive to our December 19, 2001 informational/FOIL request for the names of all the Governor's judicial nominees that the Committee has confirmed, *infra*.

Only in a state such as this, where flagrant disregard of the most fundamental evidentiary and due process standards pervades *every* level of the judiciary³, would the Governor's State Judicial Screening Committee, *with knowledge of Chairman Lack's abusive and violative conduct in overseeing judicial confirmations*, find him "highly qualified" to be a judge.

Chairman Lack's practice in confirming nominees to "lower" state court judgeships, such as to the Court of Claims and interim positions on the Supreme Court, Surrogates Court, County Court and Family Court (outside NYC), is to allow NO testimony at Senate Judiciary Committee confirmation "hearings". Indeed, by denominating the confirmation "hearings" as "meetings", he both dispenses with the necessity of taking the testimony of witnesses AND of having a stenographer present to record what transpires.

And what transpires at these unrecorded "meetings" to confirm "lower" court nominees where NO testimony is permitted? A "coffee klatch", with all but the coffee, where Chairman Lack and Committee members congratulate the nominees who are called up to sit with the Senators around a table and receive praise. For the sake of form, a couple of "soft" questions are asked, along the lines of "Do you believe in G-d and apple pie?". No questions are posed by Senator Lack based on the opposition of citizens, whose requests to testify he has either denied or ignored before the "meeting" and whose very existence he conceals from Committee members. In such fashion, and taking no more than maybe five minutes for each nominee, none of whom are sworn, Chairman Lack

³ Illustrative of the judicial lawlessness that prevails in this State's courts, including the Court of Appeals, is that which is readily-verifiable from the record of the lawsuit, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York*, pending before the Court of Appeals. CJA long ago provided Chairman Lack with pertinent portions germane to Senate confirmation of judicial nominations, beginning in 1996 when we provided him with a copy of the record in *Doris L. Sassower v. Commission on Judicial Conduct* (NY Co. #95-109141), which is physically part of the subsequent lawsuit. Even more extensive portions are in the possession of Governor Pataki, to whom CJA provided them, long ago, in support of a formal request for appointment of a Special Prosecutor, as well as in opposition to prospective judicial appointments. Pertinent portions are also in Assemblyman Keith Wright's possession, having been provided to him by CJA on October 17, 2001 in substantiation of our request that he take steps to secure a legislative oversight hearing of the Commission -- the need for which was the subject of a meeting on that date with Senator Paterson, to which Assemblyman Wright sent a representative.

disposes of the important responsibility he owes the People of this State to safeguard them from unfit judges. No separate votes of Committee members are taken on the individual nominees. Indeed, Committee records show either no votes on the judicial nominees or votes by the members in favor of the nominees as a collective.

With the Committee "meeting" on lower court nominees "wrapped up in no time" by Chairman Lack, and *without* any written report being rendered by the Committee identifying and discussing the documentation received in support of the nominees, *if any*, and identifying and discussing the Committee's *own* investigation of the nominees, *if any* -- including evaluation of information and evidence received from citizens adverse to confirmation, whether *in camera* prior to the Committee "meeting" or at the "meeting" -- Chairman Lack proceeds to the Senate floor, if not directly then almost invariably on the same day as the Committee's confirmation "meeting". There, he extols "lower" court nominees he has *not* investigated, purporting there is a general view of their excellence for which the Governor is to be congratulated. Wholly omitted is any mention of citizen opposition, let alone its basis.

The result, upon information and belief, is that throughout the years of Chairman Lack's "stewardship", from 1994 to the present, ALL "lower" court nominees have been unanimously confirmed not only by his Senate Judiciary Committee, but by the full Senate⁴.

Upon information and belief, Chairman Lack has scored a similar 100% rate for the three Court of Appeals nominees he shepherded from the Senate Judiciary Committee to the Senate floor. Here, too, he has operated with comparable disregard of the duty he owes the People of this State to scrutinize nominee qualifications and monitor the integrity of the "merit selection" process that has produced them. Thus, under his "stewardship", citizens are barred from presenting their legitimate opposition testimony to confirmation of Court of Appeals judges. This is not because Chairman Lack has first interviewed these citizens or because, after reviewing their substantiating documents, he has deemed what they have to say unworthy. Rather, Chairman Lack, by his Senate Judiciary Committee staff, simply rejects their meritorious opposition, *out of hand*. The most spectacular demonstration of this was in 1998 when Chairman Lack, with written notice of CJA's request to testify in opposition to Albert

⁴ Such information was sought by CJA's comprehensive December 19, 2001 informational/FOIL request to the Senate Judiciary Committee -- without response, *infra*.

Rosenblatt's confirmation, upended 20 years of precedent for Court of Appeals confirmation hearings by holding a NO NOTICE, by-invitation-only "hearing", at which NO opposition testimony was permitted. This, in order to "ram through" the confirmation of Justice Rosenblatt, whose unfitness included his believed perjury on the publicly-inaccessible questionnaire he filed with the Commission on Judicial Nomination in response to two specific questions: whether, to his knowledge, he had every been the subject of a judicial misconduct complaint and whether he had ever been sued as a judge, other than by way of an Article 78 proceeding, both of which he would have had to have answered in the affirmative, supplying appropriate details and documents.

Tellingly, at the very outset of that NO-NOTICE "hearing", held on December 17, 1998, Chairman Lack sought to explain away his convening it *on less than 24 hours notice*. He did this by purporting that the nomination would otherwise "expire and have to be resubmitted after the first of the year" (transcript, at p. 3). This, in face of Judiciary Law §68.4, which expressly provides that when the Governor's appointment is made while the Senate is in session, the Senate has 30 days from receipt thereof to confirm or deny it. In other words, the Senate had until January 8, 1999 to confirm or deny Justice Rosenblatt's appointment, made by the Governor and received by it on December 9, 1998. Likewise, it is in the face of §68.5, which expressly states, "The failure of any officer or body to perform any act within a limitation of time established by this section shall not invalidate any appointment to the office of chief judge or associate judge of the court of appeals". Such provision is consistent with Article VI, §2 of the New York State Constitution, which sets no time parameters within which the Senate must confirm or deny a Court of Appeals appointee.

No less deceitful was Chairman Lack's November 29, 2000 "hearing" to confirm Victoria Graffeo to the Court of Appeals, notwithstanding it was held with notice. Once again, Chairman Lack refused to allow opposition testimony that he *knew* would have established Justice Graffeo's unfitness, as well as that of the "merit selection" process that had produced her nomination and appointment. To deflect press inquiries about his preclusion of this important testimony – as to which CJA had provided him with the documentary proof – Chairman Lack affirmatively misrepresented its nature and relevance.

As may be seen from the foregoing, CJA strenuously opposes Chairman Lack's confirmation to the Court of Claims – and can substantiate his absolute unfitness for judicial office by extensive documentary proof from six years'

direct experience with his appalling "stewardship" of the Senate Judiciary Committee.

We have already notified the Senate Judiciary Committee of our request to testify in opposition to Chairman Lack's confirmation – requesting, as well, the presence of a stenographer so that a record will be made of the confirmation of at least one "lower" court nominee in the period of his tenure as Chairman. Additionally, we have requested that the Committee access from its files the originals of the documents we provided it over these many years to support our requests to testify as to the unfitness of five separate judicial nominees it was confirming based on fraudulent and "rigged" ratings. By these documents, CJA opposed confirmation of: (1) Juanita Bing Newton's renomination to the Court of Claims, confirmed June 11, 1996; (2) Andrew O'Rourke's nomination to the Court of Claims, confirmed January 13, 1998; (3) Albert Rosenblatt's appointment to the Court of Appeals, confirmed December 17, 1998; (4) Victoria Graffeo's appointment to the Court of Appeals, confirmed November 19, 2000; and (5) William Wetzel's renomination to the Court of Claims, confirmed June 20, 2001.

Such original documents not only constitute the BEST EVIDENCE of Chairman Lack's criminal betrayal of the public trust and disregard for its fundamental rights and welfare, but are IRREFUTABLE evidence. These must be examined by Senators in discharge of their "advice and consent" responsibilities – with specific questions based thereon directed to Chairman Lack for response. Indeed, in light of Chairman Lack's supposed "extraordinary intellect" and "voluminous knowledge of the law", he must be required to address the myriad of serious and substantial legal issues therein presented – ALL ignored by him without the slightest comment or concern. The most sweeping of these issues is the corruption of the New York State Commission on Judicial Conduct, which necessarily taints and corrupts the judicial screening committees, dependent as they are on the Commission for accurate information about the fitness of sitting judges seeking reappointment to the same judicial office, or appointment to other, often higher, judicial office. It would, therefore, be appropriate – and a fair test of his "extraordinary intellect" and "voluminous knowledge of the law" -- if, for starters, Chairman Lack addressed the appellate papers in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551), furnished him under a June 17, 2001 coverletter, in opposition to confirmation of Court of Claims

Judge William Wetzel. Those appellate papers establish, *inter alia*, that Justice Wetzel knowingly and deliberately obliterated ALL cognizable adjudicative standards to "throw" that important case to "protect" a corrupt Commission, to the detriment of the People of this State. As Chairman Lack did not see fit to require Justice Wetzel to in any way account for his verifiably fraudulent decision in confirming him for reappointment to the Court of Claims⁵, it is only fair that Chairman Lack should now himself be required to account for the decision. Indeed, in so doing, Chairman Lack will not only have to confront the utter lawlessness of that decision, including Justice Wetzel's indefensible failure to have disqualified himself for interest and bias, but the *verifiable* corruption of the same components of the judicial selection "process" that has now led to his own December 10, 2002 nomination, *to wit*, the Governor's State Judicial Screening Committee and the Governor

We are **already** assembling a duplicate set of these appellate papers, as well as CJA's other documentary submissions to the Senate Judiciary Committee over the past six years, in the event the Committee has destroyed the originals. This seems likely in view of the Committee's disregard for proper procedure, including appropriate record-keeping relating to its confirmations of judicial nominees. Indeed, based on the Committee's non-response to most every question posed by CJA's comprehensive December 19, 2001 informational/FOIL request, it would appear that the Committee maintains only the most minimal documentation relating to such confirmations.

A copy of CJA's comprehensive December 19, 2001 informational/FOIL request is enclosed, as its specific questions are a ROADMAP exposing the

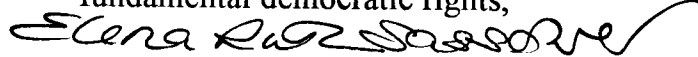
⁵ I brought a full copy of the lower court record in *E. R. Sassower v. Commission* to the Committee's June 20, 2001 "meeting" on Justice Wetzel's confirmation in further support of CJA's June 17, 2001 letter requesting to testify. I made this known to Chairman Lack during the Committee "meeting", when, following the Committee's "chit-chat" with Justice Wetzel, I orally reiterated my request to testify, by stating, "Judge Wetzel is a demonstrably corrupt judge, known as such by the Governor. I've brought with me the case file proof of his corruption and request the opportunity to testify in opposition based on direct, first-hand experience." I do not recall whether Chairman Lack denied the request or simply ignored it in hurriedly closing the meeting - Judge Wetzel having been the last of the eight judicial nominees whose confirmations were being considered. In that connection, it must be noted that at the outset of the June 20, 2001 "meeting", I rose, on a "point of order", stating, "The Center for Judicial Accountability, acting in the public interest, has made a written request to have these important proceedings recorded by a stenographer". Chairman Lack's response was to threaten to have me removed by security officers - at least one of whom I believe was present in the room, having been called in advance by Chairman Lack and/or his staff in anticipation of my presence at the Committee "meeting".

sham judicial confirmation "process" over which Chairman Lack has presided. The public has a right to answers from Chairman Lack at his confirmation "hearing" to each and every one of these questions – and you must procure them from him on the public's behalf.

Finally, it is obvious that Chairman Lack is disqualified from presiding over the Senate Judiciary Committee's confirmation "hearing" of his own nomination to the Court of Claims and must recuse himself. It must also be recognized, however, that the members of the Senate Judiciary Committee are, likewise, disqualified from holding such "hearing". Not only is there an unmistakable "appearance" that they could not be "fair and impartial" in evaluating their Chairman's nomination, their knowledge and complicity in his above-described official misconduct gives them an interest in precluding and suppressing CJA's intended testimony.

CJA, therefore, requests that you, as the Senate's leadership, constitute a more neutral Senate forum through which evidence can be independently reviewed and testimony taken, alternatively, that the Senate, as a whole, conduct the confirmation "hearing". Needless to say, deferring the Senate's confirmation proceedings for three additional weeks to January 9, 2003 will enable you to responsibly arrange the logistics and undertake the appropriate preliminary review of the voluminous documentation supporting CJA's intended opposition testimony. Plainly, even were a "hearing" to proceed on December 17, 2002, NO Senate vote to confirm could properly be taken without examination of this substantiating documentation.

Yours for a quality judiciary and
fundamental democratic rights,



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

Enclosures:

- (1) *"Report on Nomination and Confirmation of Court of Claims Judges"*, Association of the Bar of the City of New York, January 1997 [8 pages]
- (2) CJA's December 19, 2001 informational/FOIL request on judicial confirmations [3 pages]

cc: Senate Judiciary Committee Chairman James J. Lack; NYS Senators; Press

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

COUNCIL ON JUDICIAL ADMINISTRATION

REPORT ON NOMINATION AND CONFIRMATION
OF COURT OF CLAIMS JUDGES

In recent years there has been no meaningful opportunity for public input in connection with the confirmation of Court of Claims nominees. Though the advice and consent process is the only democratic check on this segment of the judiciary, as demonstrated in the appendices to this Report, the Senate often confirms the Governor's nominees within days of their nomination. Indeed, of 37 Court of Claims nominees in 1995 and 1996, 36 were confirmed within two weeks of their nomination and some in much less time than that. For example, in 1995, of the 12 Court of Claims judges confirmed by the Senate, eight were confirmed within four days of their nomination. For the reasons set forth below, we recommend that the Governor and the Senate agree on procedures that would ensure a 30-day period for public comment between the date the Governor announces nominees for the Court of Claims and the date the Senate begins confirmation proceedings. In making this recommendation, it is not our intention to attack the quality of individual judges who have previously been confirmed; rather, our goal is to improve the confirmation process by providing for meaningful public participation.

Article 6, Section 9 of the Constitution of the State of New York provides that judges of the Court of Claims shall be appointed by the Governor by and with the advice and consent of the Senate. A purpose of the advice and consent process is to elicit public participation in judicial selection. For example, when a constitutional amendment authorizing the Governor to appoint Court of Appeals judges with the advice and consent of the Senate was first proposed in the early 1970's, it was contemplated that before acting on nominees for the Court of Appeals, the Senate would "receive a report from its Judiciary Committee, which will have held public hearings, with the nominee asked to appear for questioning by Committee members and with interested citizens invited to be heard." Report of the Joint Legislative Committee on Court Reorganization, State of New York Legislative Document No. 24, at 12 (1973). Senate confirmation -- with public input -- was viewed as an essential element of the appointive method of judicial selection.

Hamilton ascribed a similar purpose to the advice and consent clause in the federal Constitution. As he wrote in The Federalist, No. 76, while the act of nomination was proposed to be conferred exclusively on the President, the cooperation of the Senate

would have a powerful, though, in general a silent operation. It would be

an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters

United States Supreme Court Justice Stephen Breyer recently reflected on the intense media scrutiny surrounding his own confirmation experience: "[T]he reason people were interested was because I had been nominated to a non-elective and powerful position." *Centennial Address*, 46 Syracuse L. Rev. 1179, 1180 (1996). The confirmation process, he noted, is a compromise between the need to have important decisions made democratically and the need, absolutely important, to appoint unelected judges." *Id.* at 1182. The Senate's role in this balancing act is critical:

We live in a democracy, and in a democracy power is supposed to flow from the people. People nonetheless are prepared to put unelected judges in high offices and grant them power to affect everyone's lives, because of the importance of such structures in our system of government [T]he confirmation process . . . offer[s] people a glimpse of the person who might hold that powerful office.

Id. at 1181. For this process to be meaningful, however, it must involve "the active participation of the Senate and individual citizens, acting alone or through organized groups." William G. Ross, *The Supreme Court Appointment Process: A Search For A Synthesis*, 57 Alb. L. Rev. 993, 996 (1994).

In New York, unfortunately, such public input in connection with the confirmation of Court of Claims nominees has been virtually impossible. For example, in 1995, of the 12 Court of Claims judges confirmed by the Senate, eight were confirmed within four days of their nomination -- four within three days, two within two days and two on the same day. Three of the other four were confirmed within eight days of their nomination. In 1996, of 25 nominees submitted to the Senate, 24 were confirmed within two weeks of their nomination; in one instance, confirmation occurred within 24 hours of the nomination. Moreover, a number of these judges were incumbents, as to whom there is even less excuse for not allowing the public adequate time to comment. Presumably, the Governor and the Senate have had even more time to evaluate the qualifications of an incumbent Court of Claims judge who has nearly completed a nine-year term than the qualifications of a new candidate. (A list of all Court of Claims nominees for the past two years, with their dates of nomination and confirmation, is annexed.) This tradition of speedy confirmations apparently has become the norm, regardless of party.

The Council urges the adoption of a brief 30-day interregnum between the date the Governor announces nominees for the Court of Claims and the date the

Senate begins confirmation proceedings for those nominees. Such a modest "opening up" of the process would encourage public participation without hampering the Governor and the Senate in promptly discharging their responsibilities in filling vacancies. It would enable interested members of the public -- both individuals and organizations -- to make their views known prior to the Senate's consideration of the nominees. It would also provide the public, in Justice Breyer's words, with "a glimpse of the person" who might hold an office with the "power to affect everyone's lives."

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**COURT OF CLAIMS JUDGES
CONFIRMED IN 1995**

COURT OF CLAIMS JUDGE	NOMINATED	CONFIRMED
John J. Brunetti	6/6	6/14
Donald J. Corbett, Jr.	5/10	6/14
James P. King	6/12	6/14
Richard M. Klein	6/12	6/15
Dan Lamont	6/29	6/29
Jonathan Lippman	6/29	6/29
Colleen McMahon	6/12	6/15
Thomas J. McNamara	6/12	6/15
Nicolas V. Midey, Jr.	6/6	6/14
Terry Jane Ruderman	6/12	6/14
Ronald H. Tills	6/6	6/14
William A. Wetzel	6/12	6/15

**COURT OF CLAIMS JUDGES
CONFIRMED IN 1996**

COURT OF CLAIMS JUDGE	NOMINATED	CONFIRMED
Phyllis Skloot Bamberger	5/30	6/11
Antonio I. Brandveen	5/30	6/11
Joan B. Carey	5/30	6/13
Matthew J. D'Emic	6/27	7/3
Lewis L. Douglass	5/30	6/13
Norman George	5/30	6/13
Robert J. Hanophy	5/30	6/11
Alan L. Honorof	6/27	7/3
Michael R. Juviler	5/30	6/11
Gabriel S. Kohn	5/30	6/11
Dan Lamont	5/30	6/11
John P. Lane	5/30	6/13
Joseph J. Maltese	6/27	7/3
Dominic R. Massaro	5/30	6/13
Christopher J. Mega	7/2	7/3
Michael F. Mullen	5/30	6/11
Juanita Bing Newton	5/30	6/11
Victor M. Ort	6/27	7/3
Phillip J. Patti	7/5	7/12
Stephen J. Rooney	7/1	7/3
Frank S. Rosseti	5/30	6/13
Harold J. Rothwax	5/30	6/13
James G. Starkey	5/30	6/13
Franklin R. Weissberg	5/30	6/13
John M. Perone	7/11	9/17

78455

**COURT OF CLAIMS JUDGES
CONFIRMED IN 1993**

COURT OF CLAIMS JUDGE	NOMINATED	CONFIRMED
Louis C. Benza	4/8	6/22
Dorothy A. Cropper	4/8	6/23
Edward M. Davidowitz	4/8	6/22
William C. Donnino	4/8	6/22
Jerome F. Hanifin	4/8	6/22
Julian F. Kubiniec	4/8	6/22
Herbert J. Lipp	4/8	6/23
Christopher J. Mega	7/7	7/7
Ronald Zweibel	4/8	6/23

**COURT OF CLAIMS JUDGES
CONFIRMED IN 1994**

COURT OF CLAIMS JUDGE	NOMINATED	CONFIRMED
Israel Margolis	4/11	5/10
Leonard Silverman	4/11	5/10

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 518-426-6904 (3 pages)

BY CERTIFIED MAIL/RRR: 7000-1670-0007-9431-9950

December 19, 2001

New York State Senate Judiciary Committee
The Capitol, Room 413
Albany, New York 12247

ATT: Susan Zimmer, Clerk

RE: Request for Information Pertaining to Senate Confirmation of Governor George Pataki's Judicial Appointees to the Lower State Courts and to the New York Court of Appeals – and Request to Inspect Relevant Documents Pursuant to F.O.I.L.

Dear Ms. Zimmer:

This is to request the following information:

- (1) the number of Governor Pataki's judicial appointees¹ that the Senate Judiciary Committee has confirmed to the bench since the Governor took office in January 1995;
- (2) the names of all such judicial appointees, the dates on which Governor Pataki appointed them, and the courts to which they were appointed;
- (3) the nature of the documentation, if any, that Governor Pataki has transmitted to the Senate Judiciary Committee pertaining to the qualifications and fitness of his judicial appointees;

¹ Please consider appointment to include the Governor's reappointment of judges whose prior appointive terms had either expired or were expiring.

- (4) whether, in confirming Governor Pataki's judicial appointees, the Senate Judiciary Committee has relied on any written procedures and standards – and whether such written procedures and standards are publicly available from the Committee;
- (5) whether the Senate Judiciary Committee required Governor's Pataki's judicial appointees to complete questionnaires for its review pertaining to their qualifications and fitness;
- (6) whether the Senate Judiciary Committee interviewed members of the public who contacted it with opposition to confirmation of any of Governor Pataki's judicial appointees and whether the Committee reviewed the evidentiary basis of their opposition;
- (7) what criteria is used by the Senate Judiciary Committee to evaluate requests by members of the public to testify in opposition to Governor Pataki's judicial appointees;
- (8) whether the Senate Judiciary Committee permitted members of the public to testify in opposition to any of Governor's Pataki's judicial appointees, the identity of such members of the public, and the judicial appointees whose confirmation they opposed;
- (9) the dates of the Senate Judiciary Committee's confirmation hearings (a.k.a. confirmation "meetings") for each of Governor Pataki's judicial appointees;
- (10) whether the Senate Judiciary Committee's confirmation hearings for Governor's Pataki's judicial appointees were recorded, stenographically or by audio or video – and if so, which hearings;
- (11) which documents relative to the Senate Judiciary Committee's confirmation of Governor Pataki's judicial appointees are publicly-available from the Committee – and whether such documents include the written statements received from members of the public opposing confirmation of specific appointees and requesting to testify in opposition at confirmation hearings;

- (12) whether, *prior* to Senate confirmation of Governor Pataki's judicial appointees, the Senate Judiciary Committee provided the Senators with *documents* pertaining to the appointees' qualifications and fitness --and if so, which documents;
- (13) whether, *prior* to Senate confirmation of Governor Pataki's judicial appointees, the Senate Judiciary Committee provided the Senators with *documents* pertaining to opposition to confirmation by members of the public -- and if so, documents pertaining to opposition to which confirmations;
- (14) whether, *prior* to Senate confirmation of any of Governor Pataki's judicial appointees, the Senate Judiciary Committee notified the Senators of opposition to confirmation by members of the public and the basis therefor -- and if so, notification of opposition to which confirmations;
- (15) whether any of the Senate Judiciary Committee's votes confirming Governor Pataki's judicial appointees have *not* been unanimous -- and if so, which ones;
- (16) whether any Senate votes confirming Governor's Pataki's judicial appointees have *not* been unanimous -- and if so, which ones.

To the extent the Senate Judiciary Committee maintains documents responsive to the foregoing inquiries, request is made to inspect such documents pursuant to the Freedom of Information Law (F.O.I.L.) [Public Officers Law, Article VI, §88].

To the extent responsive documents exist pursuant to F.O.I.L, your response is required within five business days of receipt of this written request [Public Officers §89.3].

Thank you.

Yours for a quality judiciary,



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

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).
2. **Position:** State the position for which you have been nominated.
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.
4. **Birthplace:** State date and place of birth.
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.
7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.
8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.
9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.
10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.
11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.
12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion—either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.
- * 13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the

date and place where they were delivered, and readily available press reports about the speech.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

- * 16. **Citations:** If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written;
- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and
- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.
- (b) List all memberships and offices held in any political party or election committee during the last ten (10) years.
- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last ten (10) years.

- * 18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:
 - (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;
 - (2) whether you practiced alone, and if so, the addresses and dates;
 - (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.
- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.
- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.
- (2) Indicate the percentage of these appearances in:
- (A) federal courts;
(B) state courts of record;
(C) other courts.
- (3) Indicate the percentage of these appearances in:
- (A) civil proceedings;
(B) criminal proceedings.
- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.
- (5) Indicate the percentage of these trials that were decided by a jury.
- (d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.
- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

- * 19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:
- (a) the citations; if the cases were reported, and the docket number and date if unreported;
- (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (c) the party or parties whom you represented; and
- (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.
20. **Prior Arrest:** State whether you have ever been arrested for, charged with or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.
21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings

in which you were a guardian *ad litem*, stakeholder, or material witness.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.
23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.
24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.
25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.
26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?
 - (a) If so, did it recommend your nomination?
 - (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.
 - (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE

CONFIDENTIAL

NAME:

HOME ADDRESS:

TELEPHONE NUMBER:

1. **Employment History:** State whether you have ever been discharged from employment for any reason or have ever resigned after being informed that your employer intended to discharge you.
2. **Bankruptcy and Tax Information:** Information under this heading must be provided for yourself and your spouse.
 - (a) Have you and your spouse filed and paid all taxes (federal, state, and local) as of the date of your nomination? Please indicate if you filed "married filing separately." Did you make any back tax payments, and if so, indicate if you have made any back tax payments with in the past three (3) years. If so, please provide full details.
 - (b) Has a tax lien or other collection procedure(s) ever been instituted against you or your spouse by federal, state, or local authorities? If so, please provide full details.
 - (c) Have you or your spouse ever been the subject of any audit, investigation, or inquiry for federal, state, or local taxes? If so, please provide full details.
 - (d) Have you or your spouse ever declared bankruptcy? If so, please provide full details.
3. **Past Investigations and Complaints:** State whether, to your knowledge, you have ever been under federal, state, or local investigation for a possible violation of any civil or criminal statute or administrative agency regulation. If so, please provide full details.
 - (a) Has any organization of which you were an officer, director, or active participant ever been the subject of such an investigation with respect to activities within your responsibility? If so, please provide full details.
 - (b) Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for a breach of ethics, unprofessional conduct or a violation of any rule of practice? If so, please provide full details.
4. **Disclosure:** Please advise the Committee of any unfavorable information that may affect your nomination, including prior use, possession, purchase or distribution of any illegal substance.

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE

AFFIDAVIT

I, _____, being duly sworn, hereby state that I have read and signed the foregoing Questionnaire for Nominees Before the Committee on the Judiciary and that the information provided therein is, to the best of my knowledge, current, accurate, and complete..

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____.

Notary Public

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks				Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule				Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property							
Cash value-life insurance							
Other assets itemize:							
				Total liabilities			
				Net Worth			
Total Assets				Total liabilities and net worth			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)			
On leases or contracts				Are you defendant in any suits or legal actions?			
Legal Claims				Have you ever taken bankruptcy?			
Provision for Federal Income Tax							
Other special debt							

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: 518-486-9652 (3 pages)

BY CERTIFIED MAIL/RR: 7001-0360-0002-6822-1916

January 16, 2003

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

ATT: James McGuire, Counsel

RE: Information and F.O.I.L. Request Pertaining to Susan P.
Read's Tenure as Governor Pataki's Deputy Counsel
"1995-1997"

Dear Mr. McGuire:

According to the 10-line "summary" of the career of Susan P. Read, attached to the Commission on Judicial Nomination's December 2, 2002 report of "well qualified" nominees for appointment to the New York Court of Appeals, she was the Governor's Deputy Counsel from "1995-1997". No precise dates are given and there is no information as to her duties as Deputy Counsel. Request is therefore made for this *basic* information – which, if you do not know of your own personal knowledge, is readily available to you.

Presumably, documents exist constituting a "job description" for Deputy Counsel, containing precise dates for Ms. Read's tenure, and representing her work product. Consequently, please also consider this a request under the Freedom of Information Law [Public Officers Law, Article VI] to inspect and copy same. Pursuant to F.O.I.L [Public Officers Law §89.3], your response is required within five (5) business days of receipt.

Please also confirm that during 1995-1997, there was but a single position of Deputy Counsel – which was between the single position of Governor's Counsel and the single position of Governor's First Assistant Counsel – the latter two positions being filled by Michael Finnegan and yourself, respectively¹.

¹ Upon information and belief, Mr. Finnegan was Counsel until October 1, 1997 and you assumed the Counsel position that same month (News Update, New York Law Journal, 8/15/97; "Pataki's Chief Deal Maker Departs", New York Times, 10/2/97; "Governor's Counsel in Synch with His Boss", New York Law Journal, 4/6/98).

Unless we hear from you to the contrary, we will assume that Ms. Read, as Deputy Counsel, was privy to CJA's extensive correspondence with Mr. Finnegan and yourself in 1996 and, depending on the concluding date of her tenure, in 1997 as well. This would include CJA's hand-delivered May 6, 1996 letter to you, transmitting a copy of the file of the lawsuit, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (S.Ct/NY Co. #109141/95) and petitions signed by 1,500 New Yorkers, calling upon the Governor to appoint "a State Commission to investigate and hold public hearings on judicial corruption and the political manipulation of judgeships in the State of New York". I believe also transmitted with that litigation file was a copy of CJA's December 15, 1995 letter to the Assembly Judiciary Committee – the first three pages of which were a critique of the fraudulent July 13, 1995 judicial decision "throwing" the case.

Ironically, CJA's first letter to you upon your becoming Counsel was a December 23, 1997 letter, with a RE: clause asserting "The Public's Right to *Basic* Information about the Governor's Judicial Selection Process..." Its first page expressly asked, in bold type, "please advise as to what became of our litigation file against the Commission on Judicial Conduct and of the petitions signed by 1,500 New Yorkers." You never responded to such straightforward inquiry -- nor to the balance of that incriminating letter. Nor did you respond to any of CJA's subsequent, similarly incriminating, correspondence. This includes CJA's March 26, 1999 ethics complaint against Governor Pataki, filed with the New York State Ethics Commission, a copy of which we sent you². Such complaint, encompassing the period in which Ms. Read was Deputy Counsel, particularized the Governor's manipulation of the judicial selection process, including by "rigged" ratings, his complicity in the Commission on Judicial Conduct's corruption, and his subversion of the Ethics Commission – the state agency with disciplinary jurisdiction over him.

Unless you contend that Ms. Read, as Mr. Finnegan's second-in-command and your direct superior, was kept "in the dark" as to CJA's 1996-7 correspondence with Mr. Finnegan and yourself on these issues and that there was no discussion in the Counsel's office following publication of CJA's letter to the editor, "On Choosing Judges, Pataki Creates Problems" (New York Times, 11/16/96), and public interest ads, "A Call for Concerted Action" (New York Law Journal, 11/20/96, p. 3), and "Restraining 'Liars in the Courtroom' and on the Public Payroll" (New York Law Journal, 8/27/97, pp. 3-4), she is chargeable with complicity in the official misconduct in the relevant time frame outlined by the March 26, 1999 ethics

² A copy of the certified mail/return receipt to you, as well as of the March 26, 1999 ethics complaint itself, is Exhibit "A-2" to CJA's October 16, 2000 report on the Commission on Judicial Nomination's corruption of "merit selection". Your receipt of that important report was confirmed by your secretary – as reflected by CJA's October 24, 2000 letter to you.

complaint.

As you know, such complaint, as likewise CJA's September 7, 1999 criminal complaint against the Governor based thereon, filed with the U.S. Attorney for the Eastern District of New York, have never been dismissed. Rather, these fact-specific, meticulously documented complaints remain pending, *uninvestigated*, because those disciplinary and criminal authorities, as others to whom CJA has turned, have collusively failed and refused to respect *fundamental* conflict of interest rules by referring them to outside bodies, such as the Public Integrity Section of the U.S. Justice Department's Criminal Division³.

Had such complaints been investigated, Ms. Read would have had NO chance of being elevated to the New York Court of Appeals – and may well have had to resign the Court of Claims judgeship, bestowed upon her by the Governor, based on her facilitating role in a relevant portion of the complained-of unethical and criminal acts.

We await your response.

Yours for a quality judiciary,



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

³ Among the myriad of conflicts which have served to insulate the Governor from investigation is his appointment of Paul Shechtman, his former Director of Criminal Justice and member of his so-called "Temporary" Judicial Screening Committee, to the Chairmanship of both his State Judicial Screening Committee and the State Ethics Commission. Indeed, CJA's March 26, 1999 ethics complaint against the Governor is conjoined with one against Mr. Shechtman (pp. 14-20).

CNA's 1/17/03
Letter to Chair -
San Francisco

TRANSMISSION VERIFICATION REPORT

TIME : 01/17/2003 16:40
NAME : CJA
FAX : 9144284994
TEL : 9144211200

DATE, TIME	01/17 16:37
FAX NO./NAME	15184266952
DURATION	00:03:20
PAGE(S)	05
RESULT	OK
MODE	STANDARD
	ECM

CNA's 1/17/03
Letter to
Chairman
San Francisco

TRANSMISSION VERIFICATION REPORT

TIME : 01/17/2003 17:00
NAME : CJA
FAX : 9144284994
TEL : 9144211200

DATE, TIME	01/17 16:42
FAX NO./NAME	15184266952
DURATION	00:17:21
PAGE(S)	32
RESULT	OK
MODE	STANDARD
	ECM

CNA's 1/16/03 ldr to
James McGuire
see A-41
herein

TRANSMISSION VERIFICATION REPORT

TIME : 01/16/2003 11:39

NAME : CJA

FAX : 9144284994

TEL : 9144211200

DATE, TIME	01/16 11:37
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MODE	STANDARD ECM

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

ALBANY, NY 12247

Postage	\$ 0.37	UNIT ID: 0137 Postmark Clerk: KWHYB 01/17/03
Certified Fee	2.30	
Return Receipt Fee (Endorsement Required)	1.75	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 4.42	

Sent To *James McGuire Counsel*
Street, Apt. No.,
or PO Box No. *Executive Center*
City, State, ZIP+4 *Albany NY 12247*

PS Form 3800, January 2001

See Reverse for Instructions

A-45

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 FAX: 518-486-9652 (1 page)

BY CERTIFIED MAIL/RR: 7001-0360-0002-6819-6313

January 14, 2003

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

ATT: James McGuire, Counsel

RE: Publicly-Available Materials Pertaining to Governor Pataki's
Appointment of Court of Claims Presiding Judge Susan P. Read
to the New York Court of Appeals

Dear Mr. McGuire:

Request is made for any publicly-available materials pertaining to Governor Pataki's appointment of Court of Claims Presiding Judge Susan P. Read to the 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.

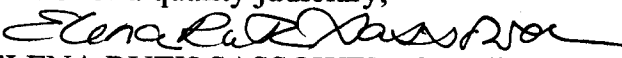
Additionally, pursuant to Judiciary Law §63.4, which states:

"...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 Judge Read was required to submit as part of her application for the Court of Appeals.

Thank you.

Yours for a quality judiciary,


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

A-46

1/14/03 WR Governor Pataski
James McGuire
Counsel

TRANSMISSION VERIFICATION REPORT

TIME : 01/14/2003 12:27

NAME : CJA

FAX : 9144284994

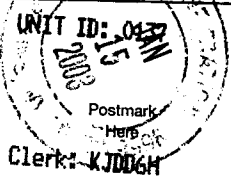
TEL : 9144211200

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MODE	STANDARD
	ECM

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

ALBANY, NY 12242

Postage	\$ 0.37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42



01/15/03

COMPLETE THIS SECTION

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COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent
☒ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label)

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PS Form 3811, August 2001

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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: 518-486-9652 (5 pages)

January 20, 2003

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

ATT: James McGuire, Counsel

RE: CJA's upcoming testimony in opposition to Senate confirmation of Governor Pataki's appointment of Judge Susan Read to the Court of Appeals – requiring your immediate response to its faxed January 16th and 14th letters to you for information and documents

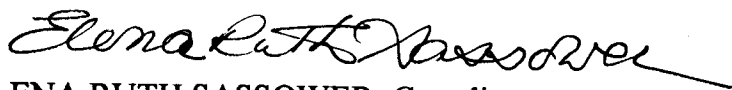
Dear Mr. McGuire:

As the Senate Judiciary Committee has precipitously and without proper notice scheduled a confirmation hearing on the Governor's appointment of Judge Susan Read to the Court of Appeals for 10:00 a.m. this Wednesday, January 22nd – and I will be testifying in opposition -- please respond, BY FAX (914-428-4994) and WITHOUT DELAY, to my faxed January 16th letter to you regarding her tenure as the Governor's Deputy Counsel from "1995-1997", as well as to my prior faxed January 14th letter.

To expedite your response, copies of these two important letters are enclosed.

Thank you.

Yours for a quality judiciary,



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

Enclosures (2)

A-48

1/20/03 10V

James McGuire,
Cancel to
JMS Adak

TRANSMISSION VERIFICATION REPORT

TIME : 01/20/2003 09:31

NAME : CJA

FAX : 9144284994

TEL : 9144211200

DATE, TIME	01/20 09:28
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DURATION	00:03:12
PAGE(S)	05
RESULT	OK
MODE	STANDARD
	ECM

A-49

The New York Times

EDITORIALS/LETTERS SATURDAY, NOVEMBER 16, 1996

On Choosing Judges, Pataki Creates Problems

To the Editor:

Our citizens' organization shares your position that Gov. George E. Pataki should take the lead in protecting the public from processes of judicial selection that do not foster a quality and independent judiciary ("No Way to Choose Judges," editorial, Nov. 11). However, the Governor is the problem — not the solution.

A Sept. 14 news article described how Governor Pataki had politicized "merit selection" to New York's highest court by appointing his own counsel, Michael Finnegan, to the Commission on Judicial Nomination, the supposedly independent body that is to furnish him the names of "well qualified" candidates for that court.

More egregious is how Governor Pataki has handled judicial appointment to the state's lower courts. Over a year and a half ago, the Governor promulgated an executive order to establish screening commit-

tees to evaluate candidates for appointive judgeships. Not one of these committees has been established. Instead, the Governor — now almost halfway through his term — purports to use a temporary judicial screening committee. Virtually no information about that committee is publicly available.

Indeed, the Governor's temporary committee has no telephone number, and all inquiries about it must be directed to Mr. Finnegan, the Governor's counsel. Mr. Finnegan refuses to divulge any information about the temporary committee's membership, its procedures or even the qualifications of the judicial candidates Governor Pataki appoints, based on its recommendation to him that they are "highly qualified."

Six months ago we asked to meet with Governor Pataki to present him with petitions, signed by 1,500 New Yorkers, for an investigation and public hearings on "the political manipulation of judgeships in

the State of New York." Governor Pataki's response? We're still waiting.

ELENA RUTH SASSOWER
Coordinator, Center for Judicial
Accountability Inc.
White Plains, Nov. 13, 1996

A CALL FOR CONCERTED ACTION

Last Saturday, The New York Times printed our Letter to the Editor, "On Choosing Judges, Pataki Creates Problems", about the Governor's manipulation of appointive judgeships. Meanwhile, the New York Law Journal has failed to print the following Letter to the Editor, which we submitted last month, and ignored our repeated inquiries. We think you should see it.

In his candid Perspective piece "The Importance of Being Critical" (10/17/96), Richard Kuh expresses concern that the Committee to Preserve the Independence of the Judiciary, in its rush to defend judges from personal attack, will ignore legitimate criticism against judges. He therefore suggests that the now seven-month old Committee be countered by formation of "an up-front, outspoken, courageous group...to publicly attack bench shortcomings".

In fact, such "up-front, outspoken, courageous group" already exists and has not only challenged "bench shortcomings", but the rhetorical posturing of the Committee to Preserve the Independence of the Judiciary.

The group is the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit organization of lawyers and laypeople. For the past seven years, CJA has documented the dysfunction and politicization of judicial selection and discipline processes on local, state, and national levels and has been on the front-lines in taking action to protect the public. Two years ago, we ran an ad on the Op-Ed page of *The New York Times* entitled, "Where Do You Go When Judges Break the Law?", about our in-the-trenches formative background in battling political manipulation of judicial elections in this state and about judicial retaliation against a judicial whistleblower. On November 1, 1994, we ran that ad in this newspaper.

CJA's work has received growing media attention: in an A&E cable television Investigative Report on the American justice system, in *Reader's Digest* and, most recently, in an article entitled "Playing Politics with Justice" in the November issue of *Penthouse*.

Both this year and last, the *New York Law Journal* has printed Letters to the Editor from us. In "No Justification for Process's Secrecy" (1/24/96), we recounted our testimony at the so-called "public" hearing of Mayor Giuliani's Advisory Committee on the Judiciary, protesting the public's exclusion from the Mayor's behind-closed-doors judicial selection process and demonstrating that such secrecy makes "merit selection" impossible. In "Commission Abandons Investigative Mandate" (8/14/95), we described our ground-breaking litigation against the New York State Commission on Judicial Conduct, challenging the constitutionality of its self-promulgated rule (22 NYCRR §7000.3) by which it has unlawfully converted its statutory duty to investigate facially-meritorious complaints (Judiciary Law §44.1) into a discretionary option, unbounded by any standard. Our published Letter invited the legal community to review the New York County Clerk's file (#95-109141) to verify the evidentiary proof therein that the Commission protects politically-connected, powerful judges from disciplinary investigation and that it survived our legal challenge only because of a judge's fraudulent dismissal decision.

Back in February of this year, at a time when bar leaders were hemming and hawing on the sidelines as Mayor Giuliani and Governor Pataki were calling for the removal of Judge Lorin Duckman based on their selected readings of transcript excerpts from hearings at which Judge Duckman lowered bail for Benito Oliver, CJA had already obtained the full transcript. We wasted no time in publicly rising to the defense of Judge Duckman. We wrote to the Mayor, the Governor, and the Brooklyn

District Attorney, charging them with inciting the public by deliberately misrepresenting and distorting the transcript. Indeed, because of Mayor Giuliani's professed concern in protecting New Yorkers from "unfit judges", we delivered to him a copy of the file of our case against the Commission on Judicial Conduct so that he could take action against it for endangering the public by its demonstrable cover-up of judicial misconduct and corruption.

It was against this dazzling record of *pro bono* civic activism by CJA, protecting the public from self-serving politicians, no less than from unfit judges, that bar leaders and law schools formed the Committee to Preserve the Independence of the Judiciary in early March. Prior to its organizational meeting at the New York County Lawyers Association, CJA requested the opportunity to be present. We made known to the Committee's organizers our public defense of Judge Duckman, as well as the significance of our case against the Commission on Judicial Conduct -- the file of which we had provided six weeks earlier to the City Bar. Nevertheless, when we arrived for the Committee meeting, with yet another copy of the file of our case against the Commission, the room was literally locked with a key to bar our entry. Meantime, Judge Duckman's attorney was ushered in to address the assembled bar leaders and law school deans and was present while the Committee reviewed its draft Statement. This Statement, of course, included rhetorical support for "the independent functioning of the constitutionally created New York State Commission on Judicial Conduct".

Since then, the Committee to Preserve the Independence of the Judiciary has continued to shut us out and ignore the file evidence in its possession that the Commission is "not merely dysfunctional, but corrupt". Likewise, the politicians to whom we have given copies of the court file, including Governor Pataki, have ignored it. Indeed, we cannot find anyone in a leadership position willing even to comment on the Commission file.

Such conduct by bar leaders, law school deans, and public officials only further reinforces the conclusion that if the real and pressing issues of judicial independence and accountability are to be addressed, including protection for judicial "whistleblowers", it will require the participation of those outside the circles of power in the legal establishment.

CJA invites lawyers who care about the integrity of the judicial process -- and the quality of judges around which the process pivots -- to join us for *concerted action*. Requests for anonymity are respected.

CENTER for
JUDICIAL
ACCOUNTABILITY, Inc.



Box 69, Gedney Station, White Plains, NY 10605
Tel: 914-421-1200 Fax: 914-684-6554
E-Mail: judgewatch@aol.com
On the Web: <http://www.judgewatch.org>

If you share CJA's view that our reply to Mr. Kuh's Perspective piece is an important one and deserved to be seen by the legal community, help defray the cost of this ad. It cost us \$1,648.36. All donations are tax-deductible. Better still, join CJA as a member. Your participation, up-front or behind-the-scenes, will make change happen.

A-51

New York Law Journal

AUGUST 27, 1997

[at page 3]

RESTRAINING "LIARS IN THE COURTROOM" AND ON THE PUBLIC PAYROLL

On June 17th, The New York Law Journal published a Letter to the Editor from a former New York State Assistant Attorney General, whose opening sentence read "Attorney General Dennis Vacco's worst enemy would not suggest that he tolerates unprofessional or irresponsible conduct by his assistants after the fact". Yet, more than three weeks earlier, the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization, submitted a proposed Perspective Column to the Law Journal, detailing the Attorney General's knowledge of, and complicity in, his staff's litigation misconduct -- before, during, and after the fact. The Law Journal refused to print it and refused to explain why. Because of the transcending public importance of that proposed Perspective Column, CJA has paid \$3,077.22 so that you can read it. It appears today on page 4.

[at page 4]

RESTRAINING "LIARS IN THE COURTROOM" AND ON THE PUBLIC PAYROLL

— a \$3,077.22 ad presented, in the public interest, by the Center for Judicial Accountability, Inc. —
(continued from page 3)

In his May 16th Letter to the Editor, Deputy State Attorney General Donald P. Berens, Jr. emphatically asserts, "the Attorney General does not accept and will not tolerate unprofessional or irresponsible conduct by members of the Department of Law."

A claim such as this plainly contributes to the view -- expressed in Matthew Lifflander's otherwise incisive Perspective Column "Liars Go Free in the Courtroom" (2/24/97) -- that the State Attorney General should be in the forefront in spearheading reform so that the perjury which "pervades the judicial system" is investigated and deterrent mechanisms established. In Mr. Lifflander's judgment, "the issue is timely and big enough to justify creation of either a state Moreland Act Commission investigation by the Governor and the Attorney General, or a well-financed legislative investigation at the state or federal level", with "necessary subpoena power". Moreover, as recognized by Mr. Lifflander and in the two published letter responses (3/13/97, 4/2/97), judges all too often fail to discipline and sanction the perjurers who pollute the judicial process.

In truth, the Attorney General, our state's highest law enforcement officer, lacks the conviction to lead the way in restoring standards fundamental to the integrity of our judicial process. His legal staff are among the most brazen of liars who "go free in the courtroom". Both in state and federal court, his Law Department relies on litigation misconduct to defend state agencies and officials sued for official misconduct, including corruption, where it has no legitimate defense. It files motions to dismiss on the pleadings which falsify, distort, or omit the pivotal pleaded allegations or which improperly argue *against* those allegations, without any probative evidence whatever. These motions also misrepresent the law or are unsupported by law. Yet, when this defense misconduct -- readily verifiable from litigation files -- is brought to the Attorney General's attention, he fails to take any corrective steps. This, notwithstanding the misconduct occurs in cases of great public import. For its part, the courts -- state and federal -- give the Attorney General a "green light."

Ironically, on May 14th, just two days before the Law Journal published Deputy Attorney General Berens' letter, CJA testified before the Association of the Bar of the City of New York, then holding a hearing about misconduct by state judges and, in particular, about the New York State Commission on Judicial Conduct. The Law Journal limited its coverage of this important hearing to a three-sentence blurb on its front-page news "Update" (5/15/97).

Our testimony described Attorney General Vacco's defense misconduct in an Article 78 proceeding in which we sued the Commission on Judicial Conduct for corruption (N.Y. Co. #95-109141). Law Journal readers are already familiar with that public interest case, spearheaded by CJA. On August 14, 1995, the Law Journal printed our Letter to the Editor about it, "Commission Abandons Investigative Mandate" and, on November 20, 1996, printed our \$1,650 ad, "A Call for Concerted Action".

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The case challenged, *as written and as applied*, the constitutionality of the Commission's self-promulgated rule, 22 NYCRR §7000.3, by which it has converted its mandatory duty under Judiciary Law §44.1 to investigate facially-meritorious judicial misconduct complaints into a discretionary option, unbounded by *any* standard. The petition alleged that since 1989 we had filed eight facially-meritorious complaints "of a profoundly serious nature -- rising to the level of criminality, involving corruption and misuse of judicial office for ulterior purposes -- mandating the ultimate sanction of removal". Nonetheless, as alleged, each complaint was dismissed by the Commission, *without* investigation, and *without* the determination required by Judiciary Law §44.1(b) that a complaint so-dismissed be "on its face lacking in merit". Annexed were copies of the complaints, as well as the dismissal letters. As part of the petition, the Commission was requested to produce the record, including the evidentiary proof submitted with the complaints. The petition alleged that such documentation established, "*prima facie*, [the] judicial misconduct of the judges complained of or probable cause to believe that the judicial misconduct complained of had been committed".

Mr. Vacco's Law Department moved to dismiss the pleading. Arguing *against* the petition's specific factual allegations, its dismissal motion contended -- *unsupported* by legal authority -- that the facially irreconcilable agency rule is "harmonious" with the statute. It made no argument to our challenge to the rule, *as applied*, but in opposing our Order to Show Cause with TRO falsely asserted -- *unsupported* by law or *any* factual specificity -- that the eight facially-meritorious judicial misconduct complaints did not have to be investigated because they "did not on their face allege judicial misconduct". The Law Department made no claim that any such determination had ever been made by the Commission. Nor did the Law Department produce the record -- including the evidentiary proof supporting the complaints, as requested by the petition and further reinforced by separate Notice.

Although CJA's sanctions application against the Attorney General was fully documented and uncontroverted, the state judge did not adjudicate it. Likewise, he did not adjudicate the Attorney General's duty to have intervened on behalf of the public, as requested by our formal Notice. Nor did he adjudicate our formal motion to hold the Commission in default. These threshold issues were simply obliterated from the judge's decision, which concocted grounds to dismiss the case. Thus, to justify the rule, *as written*, the judge advanced his own interpretation, falsely attributing it to the Commission. Such interpretation, belied by the Commission's own definition section to its rules, does nothing to reconcile the rule with the statute. As to the constitutionality of the rule, *as applied*, the judge baldly claimed what the Law Department never had: that the issue was "not before the court". In fact, it was squarely before the court -- but adjudicating it would have exposed that the Commission was, as the petition alleged, engaged in a "pattern and practice of protecting politically-connected judges....shield[ing them] from the

disciplinary and criminal consequences of their serious judicial misconduct and corruption".

The Attorney General is "the People's lawyer", paid for by the taxpayers. Nearly two years ago, in September 1995, CJA demanded that Attorney General Vacco take corrective steps to protect the public from the combined "double-whammy" of fraud by the Law Department and by the court in our Article 78 proceeding against the Commission, as well as in a prior Article 78 proceeding which we had brought against some of those politically-connected judges, following the Commission's wrongful dismissal of our complaints against them. It was not the first time we had apprised Attorney General Vacco of that earlier proceeding, involving perjury and fraud by his two predecessor Attorneys General. We had given him written notice of it a year earlier, in September 1994, while he was still a candidate for that high office. Indeed, we had transmitted to him a full copy of the litigation file so that he could make it a campaign issue -- which he failed to do.

Law Journal readers are also familiar with the serious allegations presented by that Article 78 proceeding, raised as an essential campaign issue in CJA's ad "*Where Do You Go When Judges Break the Law?*". Published on the Op-Ed page of the October 26, 1994 New York Times, the ad cost CJA \$16,770 and was reprinted on November 1, 1994 in the Law Journal, at a further cost of \$2,280. It called upon the candidates for Attorney General and Governor "to address the issue of judicial corruption". The ad recited that New York state judges had thrown an Election Law case challenging the political manipulation of elective state judgeships and that other state judges had viciously retaliated against its "judicial whistle-blowing", *pro bono* counsel, Doris L. Sassower, by suspending her law license immediately, indefinitely, and unconditionally, *without* charges, *without* findings, *without* reasons, and *without* a pre-suspension hearing, -- thereafter denying her any post-suspension hearing and any appellate review.

Describing Article 78 as the remedy provided citizens by our state law "to ensure independent review of governmental misconduct", the ad recounted that the judges who unlawfully suspended Doris Sassower's law license had refused to recuse themselves from the Article 78 proceeding she brought against them. In this perversion of the most fundamental rules of judicial disqualification, they were aided and abetted by their counsel, then Attorney General Robert Abrams. His Law Department argued, *without* legal authority, that these judges of the Appellate Division, Second Department were not disqualified from adjudicating their own case. The judges then granted their counsel's dismissal motion, whose legal insufficiency and factual perjuriousness was documented and uncontroverted in the record before them. Thereafter, despite repeated and explicit written notice to successor Attorney General Oliver Koppell that his judicial clients' dismissal decision "was and is an outright lie", his Law Department opposed review by the New York Court of Appeals, engaging in further misconduct before that court, constituting a deliberate fraud on that tribunal. By the time a writ of certiorari was sought from the U.S. Supreme Court, Mr. Vacco's Law Department was following in the footsteps of his predecessors (AD 2nd Dept. #93-02925; NY Ct. of Appeals: Mo. No. 529, SSD 41; 933; US Sup. Ct. #94-1546).

Based on the "hard evidence" presented by the files of these two Article 78 proceedings, CJA urged Attorney General Vacco to take immediate investigative action and remedial steps since what was at stake was not only the corruption of two vital state agencies -- the Commission on Judicial Conduct and the Attorney General's office -- but of the judicial process itself.

What has been the Attorney General's response? He has ignored our voluminous correspondence. Likewise, the Governor, Legislative leaders, and other leaders in and out of government, to whom we long ago gave copies of one or both Article 78 files. No one in a leadership position has been willing to comment on either of them.

Indeed, in advance of the City Bar's May 14th hearing, CJA challenged Attorney General Vacco and these leaders to deny or dispute the file evidence showing that the Commission is a beneficiary of fraud, without which it could *not* have survived our litigation against it. None appeared -- except for the Attorney General's client, the Commission on Judicial Conduct. Both its Chairman, Henry Berger, and its Administrator, Gerald Stern, conspicuously avoided making *any* statement about the case -- although each had received a personalized written challenge from CJA and were present during our testimony. For its part, the City Bar Committee did not ask Mr. Stern *any* questions about the case, although Mr. Stern stated that the sole purpose for his appearance was to answer the Committee's questions. Instead, the Committee's Chairman, to whom a copy of the Article 78 file had been transmitted more than three months earlier -- but, who, for reasons he *refused* to identify, did *not* disseminate it to the Committee members -- abruptly closed the hearing when we rose to protest the Committee's failure to make such inquiry, the importance of which our testimony had emphasized.

Meantime, in a §1983 federal civil rights action (*Sassower v. Mangano, et al*, #94 Civ. 4514 (JES), 2nd Cir. #96-7805), the Attorney General is being sued as a party defendant for subverting the state Article 78 remedy and for "complicity in the wrongful and criminal conduct of his clients, whom he defended with knowledge that their defense rested on perjurious factual allegations made by members of his legal staff and wilful misrepresentation of the law applicable thereto". Here too, Mr. Vacco's Law Department has shown that there is no depth of litigation misconduct below which it will not sink. Its motion to dismiss the complaint falsified, omitted and distorted the complaint's critical allegations and misrepresented the law. As for its Answer, it was "knowingly false and in bad faith" in its responses to *over 150* of the complaint's allegations. Yet, the federal district judge did not adjudicate our fully-documented and uncontroverted sanctions applications. Instead, his decision, which obliterated any mention of it, *sua sponte*, and *without* notice, converted the Law Department's dismissal motion into one for summary judgment for the Attorney General and his co-defendant high-ranking judges and state officials -- where the record is wholly devoid of *any* evidence to support anything but summary judgment in favor of the plaintiff, Doris Sassower -- which she expressly sought.

Once more, although we gave particularized written notice to Attorney General Vacco of his Law Department's "fraudulent and deceitful conduct" and the district judge's "complicity and collusion", as set forth in the appellant's brief, he took no corrective steps. To the contrary, he tolerated his Law Department's further misconduct on the appellate level. Thus far, the Second Circuit has maintained a "green light". Its one-word order "DENIED", *without* reasons, our fully-documented and uncontroverted sanctions motion for disciplinary and criminal referral of the Attorney General and his Law Department. Our perfected appeal, seeking similar relief against the Attorney General, as well as the district judge, is to be argued **THIS FRIDAY, AUGUST 29TH**. It is a case that impacts on every member of the New York bar -- since the focal issue presented is the unconstitutionality of New York's attorney disciplinary law, as *written and as applied*. You're all invited to hear Attorney General Vacco *personally* defend the appeal -- if he dares!

We agree with Mr. Lifflander that "what is called for now is action". Yet, the impetus to root out the perjury, fraud, and other misconduct that imperils our judicial process is not going to come from our elected leaders -- least of all from the Attorney General, the Governor, or Legislative leaders. Nor will it come from the leadership of the organized bar or from establishment groups. Rather, it will come from *concerted* citizen action and the power of the press. For this, we do not require subpoena power. We require only the courage to come forward and publicize the readily-accessible case file evidence -- *at our own expense, if necessary*. The three above-cited cases -- *and this paid ad* -- are powerful steps in the right direction.

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