

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 PRIORITY MAIL

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

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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:

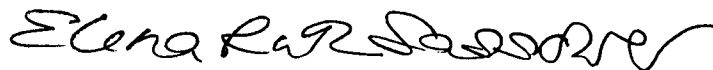
Enclosed are copies of CJA's October 16, 2000 report, detailing the Commission on Judicial Nomination's subversion of the "merit selection" process to the New York Court of Appeals and CJA's November 13, 2000 report, detailing the bar associations' complicity therein.

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.

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.

NEW YORK POST

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letters@nypost.com

An Appeal to Fairness: Revisit the Court of Appeals

• Your editorial "Reclaiming the Court of Appeals" (Dec. 18) asserts that Albert Rosenblatt will be judged by how well he upholds the democratic process "from those who would seek to short-circuit" it.

On that score, it is not too early to judge him. He permitted the state Senate to make a mockery of the democratic process and the public's rights when it confirmed him last Thursday.

The Senate Judiciary Committee's hearing on Justice Rosenblatt's confirmation to our state's highest court was by invitation only.

The Committee denied invitations to citizens wishing to testify in opposition and prevented them from even attending the hearing by withholding information of its date, which was never publicly announced.

Even reporters at the Capitol did not know when the confirmation hearing would be held until last Thursday, the very day of the hearing.

The result was worthy of the former Soviet Union: a rubber-

stamp confirmation "hearing," with no opposition testimony — followed by unanimous Senate approval.

In the 20 years since elections to the Court of Appeals were scrapped in favor of what was purported to be "merit selection," we do not believe the Senate Judiciary Committee ever — until last Thursday — conducted a confirmation hearing to the Court of Appeals without notice to the public and opportunity for it to be heard in opposition.

That it did so in confirming Justice Rosenblatt reflects its conscious knowledge — and that of Justice Rosenblatt — that his confirmation would not survive publicly presented opposition testimony. It certainly would not have survived the testimony of our non-partisan citizens' organization.

This is why we will be calling upon our new state attorney general as the "People's lawyer," to launch an official investigation. **Elena Ruth Sassower**
Center for Judicial Accountability
White Plains

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