

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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BY FAX: 518-486-9693 (5 pages)

CERTIFIED MAIL/RRR: 7000-1670-0007-0498-0553

March 30, 2001

Nan Weiner, Executive Director
Governor Pataki's Judicial Screening Committees
The Capitol, Room 242
Albany, New York 12224

RE: Requests for:

- (1) information as to the screening process relating to the designation of Supreme Court Justice Stephen G. Crane to the Appellate Division, Second Department;
- (2) access to the judicial screening committee report of Justice Crane's qualifications, as well as to the judicial screening committee reports of the qualifications of all the Governor's other judicial appointees/designees;
- (3) a copy of blank questionnaire forms which the judicial screening committees require candidates to complete;
- (4) a copy of the judicial screening committees' most recent "Uniform Rules";
- (5) information as to the newly-created "Federal Appointments Screening Committee", including its membership, rules and procedures, questionnaire forms, and telephone number

Dear Ms. Weiner:

This follows up the voice mail message I left for you (518-474-1289) on Friday, March 16th -- the day on which the New York Law Journal published a front-page story announcing the Governor's designation of five judges to the Appellate Divisions -- one of them Supreme Court Justice Stephen G. Crane. As of this date, I have received no response.

In my voice mail message, I raised questions as to the screening process that had produced Justice Crane's designation – in view of CJA's February 23, 2000 letter to the Governor, detailing Justice Crane's official misconduct in two separate cases -- the most recent and profoundly devastating to the public being the Article 78 proceeding, *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) – as to which a copy of the record was transmitted to substantiate the seriousness of Justice Crane's misconduct.

As you know, CJA's February 23, 2000 letter, addressed to your attention as Executive Director of the Governor's Judicial Screening Committees, was followed by subsequent document-supported correspondence, reflecting CJA's exhaustive efforts to initiate official investigation of Justice Crane's misconduct in that important Article 78 proceeding – and his demotion, removal from the bench, and criminal prosecution by reason thereof. This subsequent correspondence consisted of: (1) CJA's March 7, 2000 letter, also addressed to your attention, but requesting that you share it and CJA's document-supported February 23, 2000 letter with the Governor's counsel, James McGuire; and (2) CJA's document-supported March 17, 2000 and April 24, 2000 memoranda, sent directly to Mr. McGuire's attention.

Six months later, when the New York State Commission on Judicial Nomination named Justice Crane among its recommendees to the Governor for appointment to the Court of Appeals, CJA delivered an extensive October 16, 2000 report for Mr. McGuire's attention, identifying (at pp. 6-7) that the Commission on Judicial Nomination had not contacted CJA for information about the candidates it purported to have investigated – notwithstanding its knowledge that CJA was “a credible source...capable of making a powerful contribution of negative information”. This was followed by delivery of a document-supported October 24, 2000 letter to the Governor, also addressed to Mr. McGuire's attention.

The Governor's appointments to the “lower” state courts are now governed by his Executive Order #10.1 establishing judicial screening committees¹. ¶2(c) expressly states that “No committee shall pass on the qualifications of any candidate until after a thorough inquiry has been made by the committee and its staff.” Nonetheless, at no time did anyone from the Governor's judicial screening committees ever

¹ Prior to this Executive Order, promulgated on November 25, 1997, the Governor's judicial appointments process was governed by his Executive Order #10, establishing judicial screening committees, and Executive Order #11, establishing a temporary judicial screening committee – both Orders promulgated on April 25, 1995.

contact CJA regarding our opposition to Justice Crane – much as neither you nor Mr. McGuire ever contacted us. Such contact was absolutely essential -- if for no other reason than to learn the particulars of Justice Crane's official misconduct in *Doris L. Sassower v. Kelly, Rode & Kelly* (NY Co. #93-120917) – the second case identified in CJA's February 23, 2000 letter (at p. 8), with no detail other than that Justice Crane had “wholly subverted the judicial process by rendering and adhering to fraudulent judicial decisions” – possibly for ulterior retaliatory reasons. CJA's October 16, 2000 report highlighted (at p. 16) that contact would have provided the “appalling particulars” of Justice Crane's official misconduct in *Kelly, Rode*.

As you know, on March 13th, just two days before the Governor's appointment of Justice Crane to the Appellate Division, I telephoned you. I stated that my call was occasioned by the front-page notice in that day's New York Law Journal that Justice Herman Cahn had “important political backing” supporting his elevation to the Appellate Division. I reminded you of CJA's opposition to Justice Cahn, based on his official misconduct in an earlier Article 78 proceeding against the New York State Commission on Judicial Conduct, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co. #95-109141) – and that back in 1996, CJA had transmitted to the Governor a copy of the record in that case, along with 1,500 petition signatures, calling for investigation². Noting also that a March 5, 2001 front-page New York Law Journal notice had identified that Supreme Court Justice Kenneth Rudolph was being considered for the Appellate Division, I further reminded you of CJA's opposition to Justice Rudolph. This opposition, based on Justice Rudolph's official misconduct in the case of *Baer v. Lipson* (L & T 1117/97), when he sat in City Court in New Rochelle, had been particularized in CJA's February 9, 2000 letter to the Governor, addressed to your attention.³

By virtue of the vigor of CJA's opposition to Justice Crane throughout the past year, you surely did not need my fortuitous March 13th phone call to recall CJA's opposition to him. Yet, you did not take the opportunity of my phone call to make any inquiries about any aspect of that opposition – nor to alert me that Justice Crane was about to be designated by the Governor. I pointed this out in my March 16th voice mail message, further noting that Justice Crane's name – unlike the names of

² See, *inter alia*, CJA's February 23, 2000 letter to the Governor (at p. 2).

³ By letter, dated August 19, 1998, CJA notified you of our opposition to the Governor's consideration of Justices Cahn and Rudolph for elevation to the Appellate Division, based on documentary proof of their on-the-bench judicial misconduct.

Justices Cahn and Rudolph—had not surfaced in the New York Law Journal as a contender for appellate vacancies, for which reason I did not reiterate CJA's opposition to Justice Crane in our March 13th phone conversation.

As you know, ¶2(d) of the Governor's Executive Order #10.1 provides that "upon the announcement by the Governor of an appointment the report relating to the appointee shall be available for public inspection"⁴. My March 16th voice mail message *expressly* requested access to the screening committee report of Justice Crane's qualifications – and to the screening committee reports of the qualifications of the other appointed justices.

Please advise when CJA will be given access to these screening committee reports – as, likewise, to the screening committee reports of the qualifications of Governor's other judicial appointees. As you know, since 1996 CJA has *repeatedly* requested the screening committee reports of the qualifications of the Governor's judicial appointees⁵. Yet, in wilful violation of our public access rights under the Governor's Executive Orders, as well as under the Freedom of Information Law, not a single judicial screening committee report for any of the Governor's hundreds of judicial appointees has been produced for inspection⁶.

Finally, my March 16th voice mail message *expressly* requested copies of the questionnaire forms which judicial candidates are required to complete for the Governor's judicial screening committees. These questionnaires are identified by Governor Pataki's undated "Uniform Rules for N.Y.S. Judicial Screening Committees" as Appendices "A", "B", and "C". As you know, CJA has *repeatedly* requested copies of these blank questionnaire forms⁷ – without response from you,

⁴ This exact provision appears in Executive Order #10, ¶2(d) and in Executive Order #11, ¶2(c).

⁵ See, *inter alia*, CJA's June 12, 1996 letter to Michael Finnegan; CJA's June 2, 1997 letter to Governor Pataki; CJA's December 15, 1997 fax to you; CJA's December 23, 1997 letter to Mr. McGuire; CJA's March 30, 1999 F.O.I.L. request to Rosario Vizzie, Records Access Officer for the Governor; CJA's December 2, 1999 letter to Mr. McGuire.

⁶ See CJA's March 26, 1999 ethics complaint against the Governor (at pp. 16-19), filed with the New York State Ethics Commission, supplemented (at p. 3) by a September 15, 1999 letter to the Ethics Commission; CJA's September 7, 1999 criminal complaint against the Governor (at p. 2), filed with the U.S. Attorney for the Eastern District of New York.

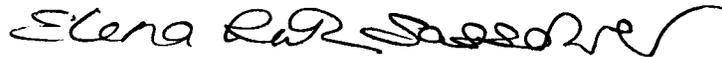
⁷ See, *inter alia*, CJA's December 12, 1997 letter to you; CJA's December 23, 1997 letter to Mr. McGuire; CJA's December 29, 1997 memorandum to the members of the Governor's

Mr. McGuire, or anyone else in the Governor's office. Please advise as to when copies of these questionnaire forms will be forthcoming and also furnish us with a copy of the judicial screening committees' most recent "Uniform Rules".

Finally, *a propos* of the Governor's March 16, 2001 press release announcing the formation of a "Federal Appointments Screening Committee" to "screen and review candidates for nomination by President George W. Bush to serve as U.S. Attorney and for federal judgeships", CJA requests information as to who, in addition to the Governor's appointed chairman, Court of Claims Judge John O'Mara, will be serving on the Committee. Please also provide information as to the new Committee's screening and review procedures, including a copy of the blank questionnaires, *if any*, that applicants will be required to complete, as well as a telephone number for the Committee so that we may communicate with it directly.

Thank you.

Yours for a quality judiciary,



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

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