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STATEMENT OF ELENA RUTH SASSOWER, DIRECTOR CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA)

In Opposition to Senate Confirmation of Brooklyn Supreme Court Justice Theodore T. Jones, Jr. as an Associate Judge to the New York Court of Appeals.

This written statement is submitted for the record of the Senate Judiciary Committee's February 12, 2007 "public" hearing on the confirmation of Governor Spitzer's nomination of Brooklyn Supreme Court Justice Theodore T. Jones, Jr. as Associate Judge of the New York Court of Appeals.¹ Its purpose is to oppose the nomination as not meeting the constitutionally-mandated "well qualified" standard and to protest the unconstitutional manner in which the Committee is proceeding, in further violation of the public's rights.

Our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA) has been denied the opportunity to testify in opposition by Chairman DeFrancisco, without any inquiry having been made by him or anyone else at the Committee as to the nature of our planned testimony.

We were not even informed of such denial until late in the morning on Friday, February 9, 2007, when I telephoned Chairman DeFrancisco's Chief of Staff, Carole Luther, in follow-up to my January 16, 2007 letter [A-1] to which I had received no response. That letter, memorializing my telephone conversation with Ms Luther on that date, reiterated my request to testify in opposition at the hearing. It further reiterated my request for "all publicly available documents" bearing on Justice Jones' qualifications and fitness and "any written procedures and standards governing the Senate Judiciary Committee's proceedings to confirm New York Court of Appeals" – including "criteria by which it evaluates requests by members of the public to testify in opposition at its confirmation hearings".

¹ This statement and its annexed appendix documents [A-] are also posted on CJA's website, www.judgewatch.org, most conveniently accessible via the top panel "Latest News", which – under the heading "The Corruption of 'Merit Selection' to New York's Highest State Court", links to a webpage for "Theodore T. Jones, Jr. – 2007".

When I asked Ms. Luther why Senator DeFrancisco would “not let [me] testify”, she told me that when I had testified at three previous hearings to confirm Court of Appeals judges I had “not abided by the rules”, which she stated required that I “speak only on qualifications of the judge”. By this, Ms. Luther meant that I had spoken additionally about the unconstitutionally-closed and corrupt “merit selection” process that had produced these prior nominees and which had been further manifested by the Committee’s confirmation proceedings.

I asked Ms. Luther when Chairman DeFrancisco had informed her that he would “not let [me] testify” in opposition at Justice Jones’ confirmation hearing. Her response was that she did not know and was “only passing on the message”. Although I requested that Chairman DeFrancisco put in writing his denial of my request to testify and the reason therefor – and thereafter sent a February 9, 2007 letter memorializing that request [A-4] – I have received nothing.

Examination of my written opposition testimony from which I was reading at the prior three confirmation hearings of Judges Susan Read, Robert Smith, and Eugene Pigott shows that my testimony was proper in every respect.² As for the transcripts of their confirmation hearings, they reveal the following:

- (1) At the January 22, 2003 hearing on Judge Read’s confirmation – the first hearing of Chairman DeFrancisco’s chairmanship – Chairman DeFrancisco halted my testimony because it exposed that the Committee could not properly proceed to confirm Judge Read without examining the evidence I was presenting at the hearing, as it had not examined the evidence prior to the hearing. Chairman DeFrancisco thereupon refused my entreaties to be permitted to testify as to Judge Read’s official misconduct as Governor Pataki’s Deputy Counsel;
- (2) At the January 12, 2004 hearing on Judge Smith’s confirmation, Chairman DeFrancisco allowed my testimony, in its entirety;
- (3) At the September 14, 2006 hearing on Judge Pigott’s confirmation, Chairman DeFrancisco halted my testimony on a false pretense that I was testifying about “process”, when, in fact – and as I so-stated – I was testifying as to Justice Pigott’s misconduct as a member of Governor Pataki’s so-called “Temporary Judicial Screening Committee”.

Since Chairman DeFrancisco is a lawyer, he and the other lawyer members of the Committee are presumed to know the importance of “process” – and that non-compliance with constitutional and other prerequisites of “merit selection” by the Commission on Judicial Nomination properly

² Clicking the heading “The Corruption of ‘Merit Selection’ to New York’s Highest State Court” on our webpage of “Latest News” will conveniently bring up a menu listing for these and other “merit selected” Court of Appeals nominees. The webpages for these nominees can also be accessed through the sidebar panel “Judicial Selection – State-NY”.

impugns, if not voids, the nominations. Each of the nominees would, if asked, assuredly concede the point – but Chairman DeFrancisco has not asked a single one as to their opinion as to whether “process” is irrelevant to the legitimacy of their nominations.

CJA’s analysis of the fatal deficiencies of the “merit selection” process is most comprehensively presented by our extensive October 16, 2000 and November 13, 2000 reports relating to the nomination and confirmation of Judge Victoria Graffeo, to which my subsequent written statements in opposition to Judges Read, Smith, and Pigott referred. Those same deficiencies taint Justice Jones’ nomination. Indeed, as to the slate of seven nominees which the Commission on Judicial Nomination recommended by its skimpy and non-conforming November 30, 2006 report [A-7], CJA has the documentary proof of, and can attest to, the corruption of three of them.

Apart from whether the Commission on Judicial Nomination’s failure to comply with the “findings” requirements of Judiciary Law §63.3 in rendering its November 30, 2006 report of nominees to the Governor means that Justice Jones’ nomination is not properly before the Committee, *as a matter of law* – which is CJA’s position – the 11 lines the Commission devotes to Justice Jones [A-10] deprives the public of meaningful information with which to assess his qualifications. The Committee then compounds this wrongful deprivation by not making public any documents pertaining to Justice Jones, other than the Governor’s January 14, 2007 notice of his nomination, consisting of a single sentence. Although the Committee could have easily required Justice Jones to complete a questionnaire as to his qualifications which would then be publicly available, as the U.S. Senate Judiciary Committee requires of federal judicial nominees before it schedules a hearing on their confirmation, this Committee has chosen not to facilitate the public’s assessment of the nominee’s qualifications.

As illustrative of the meaningful information provided by the publicly-available U.S. Senate Judiciary Committee questionnaire:

“the U.S. Senate Judiciary Committee questionnaire asks the nominee to identify ‘**Published Writings**’ [A-34]³, including speeches – and supply copies. If the nominee has been a judge...he is asked to provide ‘**Citations**’ [A-35], including ‘a short summary and citations to the ten (10) most significant opinions you have written’; ‘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 ‘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’. There is a comparable question as to ‘**Litigation**’ [A-19], requiring the nominee to ‘Describe the ten (10) most significant litigated matters which you personally handled’. As to these, the particulars that must be supplied include ‘the citations, if the cases were reported, and the

³ The citation references are to the appendix of my January 22, 2003 written testimony in opposition to Judge Read’s confirmation – with this quoted description of the Senate Judiciary Committee’s questionnaire being from the testimony (at p. 3).

docket number and date if unreported', 'a detailed summary of the substance of each case outlining briefly the factual and legal issues involved', a description 'in detail of the nature of your participation in the litigation and the final disposition of the case'. Among the further questions about the nominee's 'Legal Career' [A-35] are the frequency of court appearances, whether in state or federal courts; the percentage of civil and criminal proceedings in which he had appeared, the number of cases he had tried to verdict or judgment, rather than settled – whether he was sole counsel, chief counsel, or associate counsel – and what percentage were decided by a jury. He is also asked to describe legal services he provided to disadvantaged persons or on a *pro bono* basis.”

Consequently, the public has no knowledge of what Justice Jones deems to be his most significant decisions, his published writings, speeches, and such other relevant information as the nature of his private practice before being elected to the bench, and his judicial track record, as measured by affirmances on appeals of his decisions. It is noteworthy that Justice Jones – by comparison to the summary of various other nominees in the Commission’s report – did not graduate with scholastic distinction or from one of the recognized ten top-tier law schools in the country, as rated annually by the U.S. News and World Report.⁴

Justice Jones has NO appellate experience. His entire judicial career is limited to being a justice on the scandal-ridden Brooklyn Supreme Court. Notice must be taken of the front-page tabloid headlines about “judgeships for sale” in that court, not to mention the unsavory news leading to the prosecution and conviction of Brooklyn Democratic boss, Clarence Norman, now facing jail time. It would be useful to know his relationship to Mr. Norman before he fell from grace and how Justice Jones got his Supreme Court “anointment”, when he ran for his first judicial office in 1990, with no prior judicial experience whatever.

⁴ In a January 3, 2007 profile of Justice Jones in Judicial Reports by the Director of the Institute for Judicial Studies, Dirk Olin, the following appeared:

“Another member of the defense bar, who has served on the New York City Bar Association's Judiciary Committee and screened more than 200 applicants, voiced concern about Judge Jones’s understanding of the law. ‘Of all the judges that came through the panel, I’d put him in the bottom quarter,’ said the litigator, who has appeared before Judge Jones at least 20 times on motion hearings.

‘His demeanor is fine — he’s not one of these guys who’s gonna hold you in contempt — but that’s beside the point. If you’re going to be a Court of Appeals judge, you should be brighter. Jones isn’t the sharpest knife in the drawer. He’s okay for a sitting judge, but for somebody’s who’s supposed to be cerebral, making law, he’s just not that caliber.

‘It’s not the bias towards plaintiffs that bothers me,’ continued the attorney. ‘Presumably, he’d lose that at the Court of Appeals, where they just deal with law and not with deciding the facts. Simply put: he’s not a bright guy. He’s not an intellectual leader.’” (http://www.judicialreports.com/archives/2007/01/transit_stop_1.php).

From the little of Justice Jones' qualifications revealed and from the intense political pressure to have a black judge on the Court of Appeals, we believe his inclusion among the Commission's nominees and his selection by Governor Spitzer is not because he actually is "well qualified", the constitutionally-mandated requisite for nomination, but because of his skin color.

CJA, therefore, submits that Senate confirmation of this unmerited judicial nomination must be withheld.

Elena R. R.
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APPENDIX DOCUMENTS

- A-1 CJA's January 16, 2007 letter to NYS Senate Judiciary Committee Chairman John A. DeFrancisco – ATT: Carole Luther, Chief of Staff
- A-4 CJA's February 9, 2007 letter to Chairman DeFrancisco – ATT: Ms. Luther
- A-7 Commission on Judicial Nomination's November 30, 2006 report to Governor Eliot Spitzer
- A-12 CJA's February 12, 2007 letter to Chairman DeFrancisco – ATT: Ms. Luther