

Subject: **What Took Place "Behind the Scenes" at Today's Senate Judiciary Committee Hearing to Confirm Justice Jones to the NY Court of Appeals**

Date: 2/12/2007, 3:33 PM

From: Ctr for Judicial Accountability <judgewatchers@aol.com>

To: whammond@nydailynews.com

cc: jmahoney@nydailynews.com, mahojog@aol.com

Organization: Center for Judicial Accountability, Inc.

TO: NEW YORK DAILY NEWS  
Bill Hammond

Following up our brief conversation, attached is CJA's written statement as to what took place "behind the scenes" at today's Senate Judiciary Committee hearing to confirm Justice Jones to the NY Court of Appeals. The confirmation was NOT unopposed, as it appeared from the hearing.

This statement of opposition (4+ pages, plus appendix documents) is also conveniently posted on our website, [www.judgewatch.org](http://www.judgewatch.org), most conveniently accessible via the top panel "Latest News".

Thanks -- and I will be in touch with you about the upcoming hearing to confirm Chief Judge Kaye's reappointment.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
914-421-1200  
Direct-E-Mail: [judgewatchers@aol.com](mailto:judgewatchers@aol.com)

 [2-12-07-statement-appendix.pdf \(1160KB\)](#)

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8220  
White Plains, New York 10602

Tel. (914) 421-1200  
Fax (914) 428-4994

E-Mail: [judgewatch@aol.com](mailto:judgewatch@aol.com)  
Web site: [www.judgewatch.org](http://www.judgewatch.org)

Elena Ruth Sassower, Director  
Doris L. Sassower, Administrator

## **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.<sup>1</sup> 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".

---

<sup>1</sup> This statement and its annexed appendix documents [A-] are also posted on CJA's website, [www.judgewatch.org](http://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.<sup>2</sup> 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

---

<sup>2</sup> 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]<sup>3</sup>, 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

<sup>3</sup> 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.<sup>4</sup>

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.

---

<sup>4</sup> 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](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. ...*  
*Narrower*

## 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

**CENTER for JUDICIAL ACCOUNTABILITY, INC.**

Post Office Box 8220

White Plains, New York 10602

Tel. (914) 421-1200

Fax (914) 428-4994

E-Mail: [judgewatch@aol.com](mailto:judgewatch@aol.com)

Web site: [www.judgewatch.org](http://www.judgewatch.org)

Elena Ruth Sassower, Director

Direct E-Mail: [judgewatchers@aol.com](mailto:judgewatchers@aol.com)

BY FAX: 518-426-6952 (3 pages)

BY E-MAIL: [jdefranc@senate.state.ny.us](mailto:jdefranc@senate.state.ny.us)

[luther@senate.state.ny.us](mailto:luther@senate.state.ny.us)

January 16, 2007

Chairman John A. DeFrancisco  
New York State Senate Judiciary Committee  
Albany, New York 12247

ATT: Carole Luther, Chief of Staff

RE: Senate Judiciary Committee Procedures:

- (1) transcripts of confirmation hearings to NY Court of Appeals;
- (2) confirmation of Supreme Court Justice Theodore T. Jones, Jr. to NY Court of Appeals, request for publicly-available documents, & request to testify in opposition

Dear Ms. Luther:

This letter follows up our telephone conversation shortly after 3:00 p.m. pertaining to old and new business.

As to the old – the Senate Judiciary Committee's procedures pertaining to the transcripts of its confirmation hearings to the New York Court of Appeals – enclosed is my November 1, 2006 letter to you, to which I have received no response. Please advise so that I may be guided accordingly.

As to the new – the confirmation of Brooklyn Supreme Court Justice Theodore T. Jones, Jr. to the New York Court of Appeals – you stated that Chairman DeFrancisco was speaking with the Governor about the appointment earlier today – and that no materials pertaining to Justice Jones' qualifications and fitness had yet been received and no date set for the confirmation hearing.

As briefly discussed – and as herewith set in writing – I request, pursuant to the Freedom of Information Law or such other law and rules as may be applicable:

A-1



January 16, 2007

(a) all publicly-available documents the Committee receives bearing upon Justice Jones' qualifications and fitness to be an associate judge of the New York Court of Appeals;

(b) any written procedures and standards governing the Senate Judiciary Committee's proceedings to confirm New York Court of Appeals judges. This would presumably reflect whether the Committee now requires nominees to our state's highest court to complete a publicly-available questionnaire, such as the U.S. Senate Judiciary Committee requires in its proceedings to confirm federal judges<sup>1</sup> – and whether it has developed any criteria by which it evaluates requests by members of the public to testify in opposition at its confirmation hearings.

Additionally, by this letter, the Center for Judicial Accountability requests to testify in opposition at the Senate Judiciary Committee's upcoming hearing on Justice Jones' confirmation.

Thank you.

Yours for a quality judiciary,



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

---

<sup>1</sup> A blank copy of the U.S. Senate Judiciary Committee questionnaire was annexed to CJA's January 17, 2003 letter to you relating to the New York State Senate Judiciary Committee's procedures in confirming Presiding Court of Claims Judge Susan P. Read to the New York Court of Appeals. It is included in the appendix to CJA's January 22, 2003 written testimony in opposition to her confirmation [A-34-40]. IF the State Senate Judiciary Committee is preserving the records of its proceedings to confirm Court of Appeals judges – as was requested by CJA's February 10, 2003 letter to you – all such documents should be readily accessible to you.

**CENTER for JUDICIAL ACCOUNTABILITY, INC.**

Post Office Box 8220  
White Plains, New York 10602

Tel. (914) 421-1200  
Fax (914) 428-4994

E-Mail: [judgewatch@aol.com](mailto:judgewatch@aol.com)  
Web site: [www.judgewatch.org](http://www.judgewatch.org)

*Elena Ruth Sassower, Director*  
Direct E-Mail: [judgewatchers@aol.com](mailto:judgewatchers@aol.com)

BY FAX: 518-426-6952 (1 page)  
BY E-MAIL: [jdefranc@senate.state.ny.us](mailto:jdefranc@senate.state.ny.us)

November 1, 2006

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

ATT: Carole Luther, Chief of Staff

RE: The Senate Judiciary Committee's Procedures:  
Transcripts of Confirmation "Hearings" to the New York Court of Appeals

Dear Ms. Luther:

This responds to your October 24, 2006 letter, advising that my paying \$.25 per page for the stenographic transcript of the Senate Judiciary Committee's September 14, 2006 hearing to confirm Justice Pigott's nomination to the New York Court of Appeals is "consistent with Senate Rule XIV and Article VI of the Public Officers Law".

Does this mean that the Senate Judiciary Committee does not provide free copies of the transcript to witnesses who testify – or at least the pages of their testimony – in recognition of the public service they rendered the Committee by testifying?

Before forwarding the indicated \$20.25 for the 81 transcript pages, please confirm that the Committee is also charging \$.25 per page to the other witnesses who testified at the September 14, 2006 hearing, as well as to Justice Pigott – and not providing the transcript to them, either whole or in part, free of charge.

To avoid further delay, please respond by fax and/or e-mail. Thank you.

Yours for a quality judiciary,



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

**CENTER for JUDICIAL ACCOUNTABILITY, INC.**

Post Office Box 8220

White Plains, New York 10602

Tel. (914) 421-1200

Fax (914) 428-4994

E-Mail: [judgewatch@aol.com](mailto:judgewatch@aol.com)

Web site: [www.judgewatch.org](http://www.judgewatch.org)

*Elena Ruth Sassower, Director*

Direct E-Mail: [judgewatchers@aol.com](mailto:judgewatchers@aol.com)

BY FAX: 518-426-6952 (3 pages)

BY E-MAIL: [jdefranc@senate.state.ny.us](mailto:jdefranc@senate.state.ny.us)

[luther@senate.state.ny.us](mailto:luther@senate.state.ny.us)

February 9, 2007

Chairman John A. DeFrancisco  
New York State Senate Judiciary Committee  
Albany, New York 12247

ATT: Carole Luther, Chief of Staff

- RE:
- (1) CJA's January 16, 2007 letter pertaining to Senate Judiciary Committee procedures & request to testify in opposition to Senate confirmation of Brooklyn Supreme Court Justice Theodore T. Jones, Jr. to the New York Court of Appeals:
  - (2) CJA's opposition to Senate confirmation of the reappointment of New York Court of Appeals Chief Judge Judith Kaye & request to testify in opposition

Dear Ms. Luther:

This letter follows up my telephone call to you today, Friday, February 9<sup>th</sup>, at 11:00 a.m., which you returned approximately 15 minutes later. I then followed up with a further phone call to you shortly thereafter.

During these conversations, I reviewed with you the content of my January 16, 2007 letter, to which there had been no response. You stated as follows:

Senator DeFrancisco "will not let [me] testify" at the Senate Judiciary Committee's hearing to confirm the appointment of Justice Jones to the New York Court of Appeals. This, because, at the three previous hearings to confirm Court of Appeals judges at which I testified I had "not abided by the rules" – which you stated required me "to speak only on qualifications of the judge". In response to my question as to when Senator DeFrancisco had informed you that he would not let me testify in opposition to Justice Jones, you stated that you did not know and were "only passing on the

message”.

You further told me that Justice Jones’ confirmation hearing would be on Monday, February 12<sup>th</sup>, that the Committee does not have anything publicly available bearing upon his qualifications and fitness (except for Governor Spitzer’s notice of appointment, which you agreed to fax me – but which I have not yet received), and that there were no written procedures and standards governing the Senate Judiciary Committee’s proceedings to confirm New York Court of Appeals judges.

Additionally, you stated that the Committee has no policy with respect to providing witnesses who testify at Court of Appeals confirmation hearings with transcripts of their testimony, free of charge – and that I was the only witness who had ever requested their testimony. You agreed to ask Senator DeFrancisco if he would make such a policy so that I could have a free transcript of my testimony at the Committee’s September 14, 2006 hearing to confirm Justice Piggott’s appointment. I stated I would pay the \$.25 per page cost for the balance of the hearing, totally 81 pages altogether.

I also requested that you ask Chairman DeFrancisco to set forth, in writing, his denial of my request to testify in opposition to Justice Jones’ confirmation – and the reason therefor. I stated, in rebuttal, that: (1) my opposition testimony to the three previous Court of Appeals appointees – Judges Read, Smith, and Piggott – had each related to their qualifications and, moreover, that Chairman DeFrancisco had not cut me off from delivering my full testimony at Judge Smith’s January 12, 2004 confirmation hearing; and (2) that the Committee had not made ANY inquiry as to the basis of my intended testimony in opposition to Judge Jones’ confirmation – none having been identified by my January 16, 2007 letter requesting to testify.

Finally, in connection with Governor Spitzer’s just-announced reappointment of New York Court of Appeals Chief Judge Judith Kaye, who I identified to you as a corrupt judge, I gave you notice that the Center for Judicial Accountability, Inc. (CJA) strenuously opposes her confirmation and reiterated that the same information as my January 16, 2007 letter had requested in connection with Justice Jones’ confirmation, I was requesting with respect to Chief Judge Kaye’s:

- (a) all publicly-available documents the Committee receives bearing upon Chief Judge Kaye’s qualifications and fitness to be reappointed to the New York Court of Appeals;
- (b) any written procedures and standards governing the Senate Judiciary Committee’s proceedings to confirm New York Court of Appeals judges. This would presumably reflect whether the Committee now requires nominees to our state’s highest court to complete a publicly-available questionnaire, such as the U.S. Senate Judiciary Committee requires in its proceedings to confirm federal judges – and whether it has developed any criteria by which it evaluates requests by members of the public to testify in opposition at its confirmation hearings.

February 9, 2007

I also requested to testify in opposition to Chief Judge Kaye at the Committee's upcoming confirmation hearing. In that connection, I expressly requested that you tell Chairman DeFrancisco that to the extent that testimony is limited to 10 minutes, mine would be exclusively devoted to Judge Kaye's corruption in her judicial capacity as Chief Judge of the New York Court of Appeals, as well as in her administrative capacity as head of New York's court system. I specifically identified that I would be testifying about what she had done, both judicially and administratively, with respect to CJA's public interest lawsuit against the New York State Commission on Judicial Conduct – and that among the substantiating proof were my final two motions in the case, copies of which I had provided during my March 17, 2003 meeting with Chairman DeFrancisco and Ranking Member Malcolm Smith. I also stated that I would be testifying as to Chief Judge Kaye's role in the corruption of the state judicial appointments process.

Additionally, I informed you that there were numerous other people who, likewise, were strenuously opposed to Chief Judge Kaye's confirmation and wished to testify in opposition at the Committee's hearing – all of them with testimony relating to Chief Judge Kaye's corruption in her judicial capacity, in her administrative capacity, or both. I stated that they would be contacting the Committee separately.

As you told me that the Committee had not as yet scheduled any date for its hearing on Chief Judge Kaye's confirmation, please advise promptly upon its scheduling so that all concerned may be guided accordingly.

Thank you.

Yours for a quality judiciary,



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

STATE OF NEW YORK  
COMMISSION ON JUDICIAL NOMINATION  
666 Fifth Avenue, 28th Floor  
New York, New York 10103-0084  
(212) 841-0715  
FAX (212) 262-5152

Comm  
Reports  
to Governor

John F. O'Mara, Chair  
Edward F. Cox  
Michael C. Finnegan  
Joseph R. Jampietro  
Janet M. Kassar  
Gerald B. Lefcourt  
Alan Mansfield  
E. Leo Milonas  
Margaret S. Morton  
Richard P. Nathan  
David M. Schwartz  
Edward A. Weinstein

Stuart A. Summit, Counsel  
Stephen P. Younger, Assistant Counsel  
Frederick B. Warder III, Assistant Counsel

November 30, 2006

The Honorable Eliot Spitzer  
Governor Elect of the State of New York  
120 Broadway  
New York, NY 10023

Dear Governor Elect Spitzer:

As Chair of the Commission on Judicial Nomination, I have the honor to report to you on behalf of the Commission, pursuant to Article 6, Section 2 of the Constitution, and Section 63(3) of Article 3-A of the Judiciary Law, the names of seven candidates for appointment to the office of Associate Judge of the Court of Appeals, who in the collective judgment of the Commission are "well-qualified," by their character, temperament, professional aptitude, experience, qualifications and fitness for office, to discharge the duties of that high office and are considered the best qualified of those who filed applications for consideration in accordance with the Commission's rules. The vacancy in that office will be the result of the expiration of the term of Associate Judge Albert M. Rosenblatt, as of December 31, 2006.

As in the past, the Commission took many steps to seek the largest possible number of qualified applicants for the position, including Statewide notification of the application procedure, and individual solicitation of applications.

Also as in the past, the Commission caused an investigation to be conducted of the qualifications of the large number of applicants it determined to interview. The result of each investigation was reported to the Commission and discussed before and after the interviews. The Commission sought by its investigations and interviews assurance of each candidate's integrity, sound judgment, judicial temperament and high intellectual quality and writing ability.

STATE OF NEW YORK COMMISSION ON JUDICIAL NOMINATION

The Honorable Eliot Spitzer  
November 30, 2006  
Page 2

The candidates thus nominated by the Commission for the office of Associate Judge, listed in alphabetical order, are:

Richard T. Andrias  
George F. Carpinello  
Steven W. Fisher  
Theodore T. Jones, Jr.  
Thomas E. Mercure  
Juanita Bing Newton  
James A. Yates

Each candidate recommended for the office of Associate Judge has been interviewed by the Commission and each has filed the financial statement required by law, being transmitted to you separately. A summary of the careers of the recommended candidates is attached.

Section 66(2) of the Judiciary Law provides that "the governor shall have access to all papers and information relating to persons recommended to him by the commission." The Commission, through its Chair, and its Counsel, Stuart A. Summit, stands ready to furnish you with any such material and to respond to your inquiries.

With warm greetings, and highest regard, always

Respectfully yours,

John F. O'Mara  
Chair

JFO/ic  
Enclosure

### **RICHARD T. ANDRIAS**

Currently serving as an Associate Justice of the Appellate Division, First Department, he was born in 1943 and admitted to the Bar in 1971. Received a B.A. degree from Bowdoin College, *cum laude*, and a J.D. degree from Columbia Law School, *cum laude*. Engaged in the private practice of law in New York City during 1970-71 and 1975-83. Became a Judge of the Criminal Court of the City of New York in 1983. Deputy Supervising Judge of that Court and Acting Supreme Court Justice in 1985. Became a Supreme Court Justice, New York County in 1988. Designated an Associate Justice of the Appellate Division in 1996. Chair, Task Force on Processing Civilian Complaints by the Criminal Court, 1988-89. Member, New York State AIDS Advisory Council's ESAP Subcommittee, 2000-2003. Adjunct Professor, Pace Law School, 1992 to date. Author and lecturer on various legal topics. Active in professional, community and educational affairs. Recommended previously in 1998, 2000 and 2006 by this Commission to the Governor for appointment to the office of Associate Judge of the Court of Appeals.

### **GEORGE F. CARPINELLO**

Currently a partner of the law firm of Boies, Schiller & Flexner LLP in Albany, New York, he was born in 1950 and admitted to the Bar in 1976. Received a B.A. degree from Princeton University, *magna cum laude*, and a J.D. degree from Yale Law School. Engaged in the private practice of law in Washington, D.C. during 1977-79 and in Albany, New York from 1979 to date. Chair, New York State Advisory Committee on Civil Practice, 1985 to date. Director, Government Law Center, Albany Law School, 1990-92. Professor, Albany Law School, 1984-92. Member, Chief Judge's Commission on the Appointment of Fiduciaries in New York Courts, 2000-02. President, Legal Aid Society of Northeastern New York, 1986-88. Author and lecturer for professional organizations on ethics and New York practice. Active in professional, community and educational affairs.

### **STEVEN W. FISHER**

Currently serving as an Associate Justice of the Appellate Division, Second Department, he was born in 1946 and admitted to the Bar in 1973. Received a B.A. degree from Queens College and a J.D. degree *cum laude* from Brooklyn Law School. Assistant District Attorney, Kings County 1972-76. Engaged in private practice of law in New York City, 1977-79. Served as Principal Law Clerk to Presiding Justice, Appellate Division, Second Department, 1979-83. Became a Judge of the Criminal Court of the City of New York in 1983. Acting Supreme Court Justice, Kings County, 1986-89; Queens County, 1990-92. Became a Justice of the Supreme Court, Queens County in 1993 and Administrative Judge for the Eleventh Judicial District in 1998. Designated an Associate Justice of the Appellate Division in 2004. Co-Chair, Committee on Criminal Jury Instructions. Member, Capital Cases Judicial Resource Committee. Author and



lecturer for judicial and professional organizations on criminal law topics. Active in professional and community affairs. Recommended previously in 2000, 2002, 2003, and 2006 by this Commission to the Governor for appointment to the office of Associate Judge of the Court of Appeals.

**THEODORE T. JONES, JR.**

Currently serving as a Supreme Court Justice, Kings County, he was born in 1944 and admitted to the Bar in 1973. Received a B.A. degree from Hampton University and a J.D. from St. John's University School of Law. Served in the Criminal Defense Division of the Legal Aid Society, 1973-74. Confidential Law Secretary to Hon. Howard Jones, New York State Court of Claims, 1974-75. Engaged in the private practice of law in Brooklyn, New York, 1975-89. Became a Justice of the Supreme Court, Kings County in 1990. Became Administrative Judge, Civil Term, in 2006. Captain, United States Army, honorably discharged in 1975. Member, Appellate Division, Second Department, Committee on Character and Fitness to Practice Law, 1978-90. Adjunct Professor, City University of New York, 1991-98. Adjunct Professor, St. John's University School of Law 1997-2001. Active in professional and community affairs.

**THOMAS E. MERCURE**

Currently serving as an Associate Justice of the Appellate Division, Third Department, he was born in 1943 and admitted to the Bar in 1969. Received a B.A. degree *cum laude* from St. Michael College and a J.D. degree from Georgetown University Law Center. Engaged in the private practice of law in Fort Edward, New York, 1969-80. First Assistant District Attorney, Washington County, 1974-76. District Attorney of the Supreme Court, Fourth Judicial District, in 1982. Designated an Associate Justice of the Appellate Division, Third Department, in 1988. Member, Committee on Pattern Jury Instructions. Member, Advisory Committee on Judicial Ethics. Member, Federal-State Judicial Council. Active in community affairs. Recommended previously in 2006 by this Commission to the Governor for appointment to the office of Associate Judge of the Court of Appeals.

**JUANITA BING NEWTON**

Currently serving as a Judge of the Court of Claims, Deputy Chief Administrative Judge for Justice Initiatives, and Administrative Judge of the Criminal Court of the City of New York, she was born in 1950 and admitted to the Bar in 1976. Received a B.A. degree from Northwestern University and a J.D. degree from Catholic University's Columbus School of Law. Assistant District Attorney, Bronx County, 1975-84. Counsel, New York State Sentencing Guidelines Committee, 1984-85. Executive Assistant, Office of Court Administration, 1985-87. Became a Judge of the Court of Claims in 1987. Served as Administrative Judge of the Criminal Term of Supreme Court, New York County, 1995-99. Became Deputy Chief Administrative Judge in 1999. Member, New York State Commission on Judicial Conduct. Formerly Chair, Supreme Court, New York County, Anti-Bias Committee. Lecturer to judicial and professional

organizations on various topics. Active in professional, community and educational affairs. Recommended previously in 2000 by this Commission to the Governor for appointment to the office of Associate Judge of the Court of Appeals.

**JAMES A. YATES**

Currently serving as Justice of the Supreme Court, New York County, he was born in 1946 and admitted to the Bar in 1974. Received an A.B. degree *cum laude* from Princeton University in 1967 and a J.D. degree from Rutgers University School of Law in 1973. Served as a Staff Attorney in the Legal Aid Society during 1973-79. Served as Senior Counsel to the New York State Assembly Committee on Codes, 1979-86. Served as Counsel to the Majority, New York State Assembly, 1987-88. Served as Legislative Counsel to the Speaker of the New York State Assembly, 1989-92. Appointed to the Court of Claims in 1992 and served through 1997 when he became a Justice of the Supreme Court, New York County. Member, National Commission on Uniform State Laws, 1989-92. Chair, Criminal Law Committee of the Association of the Bar for the City of New York, 1995-98. Author and lecturer on diverse topics including criminal law, legislation and evidence. Active in professional, community and educational affairs. Recommended previously in 1998 and 2002 by this Commission to the Governor for appointment to the office of Associate Judge of the Court of Appeals.

**CENTER for JUDICIAL ACCOUNTABILITY, INC.**

Post Office Box 8220

White Plains, New York 10602

Tel. (914) 421-1200

Fax (914) 428-4994

E-Mail: [judgewatch@aol.com](mailto:judgewatch@aol.com)

Web site: [www.judgewatch.org](http://www.judgewatch.org)

Elena Ruth Sassower, Director

Direct E-Mail: [judgewatchers@aol.com](mailto:judgewatchers@aol.com)

BY FAX: 518-426-6952 (1 page) 10:35 a.m.

BY E-MAIL: [jdefranc@senate.state.ny.us](mailto:jdefranc@senate.state.ny.us)

[luther@senate.state.ny.us](mailto:luther@senate.state.ny.us)

February 12, 2007

Chairman John A. DeFrancisco  
New York State Senate Judiciary Committee  
Albany, New York 12247

ATT: Carole Luther, Chief of Staff

RE: Written Statement of Opposition for the Record of Today's Senate Judiciary Committee "Public" Hearing on the Confirmation of Supreme Court Justice Theodore T. Jones, Jr. to the New York Court of Appeals

Dear Ms. Luther:


This letter follows up my two phone calls to speak with you – at 9:40 a.m., when I left a message with Carrie, and at 10:11 a.m., when I left a message with Diana. On each occasion I was told you were on another phone.

Since Chairman DeFrancisco has denied CJA's request to testify in opposition at Justice Jones' confirmation hearing, scheduled for 11:00 a.m. today, we request that such be identified by him at the hearing – and that he further identify that we are submitting a written opposition statement for the record.

By way of precedent, at the September 7, 1993 hearing on Justice Howard Levine's confirmation to the New York Court of Appeals, the Senate Judiciary Committee's then counsel, Ned Cole, identified that Eli Vigliano had submitted a statement with a request that it "be submitted and put into the record" [Tr. 90-91]. Such was done – and the written statement is annexed to the official transcript of the hearing. I so stated to Diana in the message for you that I left with her.

Thank you.

Yours for a quality judiciary,

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

A-12