

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

Doris L. Sassower, Director
Elena Ruth Sassower, Coordinator

TESTIMONY OF ELENA RUTH SASSOWER, COORDINATOR CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA)

In Opposition to Senate Confirmation of Court of Claims Presiding Judge Susan P. Read to the New York Court of Appeals. Presented at the Public Hearing of the New York State Senate Judiciary Committee, Wednesday, January 22, 2003, Albany, New York

My name is Elena Ruth Sassower and I am the coordinator and cofounder of the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization, dedicated to safeguarding the public interest in judicial selection and discipline. It is now more than 13 years that we have been examining how these essential processes work – which is to say, documenting how dysfunctional, politicized, and corrupted they are.

I appear today -- with substantiating documentation – in strong opposition to Senate confirmation of Governor Pataki's appointment of Court of Claims Presiding Judge Susan P. Read to the New York Court of Appeals. The basis for such opposition is two-fold: (1) Judge Read's appointment is the product of a corrupted "merit selection" process, such that her appointment is not even properly before this Committee, *as a matter of law*; and (2) Judge Read's official misconduct as Governor Pataki's Deputy Counsel. These grounds of opposition were identified to the Senate Judiciary Committee in advance of this hearing, including by letters to Chairman DeFrancisco, dated and faxed January 14th and January 17th [A-1, A-7]¹, as to which there has been NO investigative response, including NO inquiry by Committee counsel. Consequently, this Committee's duty, upon conclusion of my testimony, is to call upon Judge Read to publicly respond, including as to whether she would agree that any vote on her confirmation must properly be deferred until the Committee examines the substantiating documentation on which this opposition is based.

¹ Because of their importance, full copies of these two letters are annexed as an Appendix for inclusion in the record. Likewise, CJA's January 14th, January 16th, and January 20th letters to the Governor's Counsel, James McGuire – referred to herein. To permit convenient cross-reference, their pages have been sequentially numbered at the bottom [A-].

CJA's January 17th letter to Chairman DeFrancisco objected to this hearing as premature and requested that it be postponed [A-7]. As stated therein, Judge Read is already sitting as an interim appointee to the Court of Appeals (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 rules of procedure for confirmations -- including for verifying the legitimacy and gravity of citizen opposition.

In a 1997 report on nomination and confirmation of Court of Claims judges, the Association of the Bar of the City of New York stated 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 input². Its recommendation was for a minimum of 30 days between the Governor's nomination and the beginning of Senate confirmation proceedings. Our January 17th letter enclosed a copy of that City Bar report [A-23] and asserted that no less time is needed when the judicial confirmation is to our State's highest Court [A-8]. We would expect Judge Read to agree.

This confirmation hearing -- as to which the public has had a scant five days notice -- is 12 days after the Governor's appointment of Judge Read and with no meaningful information about Judge Read having been made publicly available.

CJA's January 17th letter urged [A-9], as a matter of procedure, that the Committee require Judge Read -- and all the Governor's judicial nominees -- to complete a questionnaire similar to that which the U.S. Senate Judiciary Committee requires the President's judicial nominees to complete, including nominees to the U.S. Supreme Court. Such questionnaires are completed *before* their confirmation hearings and, indeed, form the basis for that Committee's investigation. With the exception of a small "confidential" portion, these completed questionnaires are publicly available. A blank copy of the U.S. Senate Judiciary Committee's questionnaire was enclosed with our letter to enable Chairman DeFrancisco to see the kind of substantial information it affords the public about federal judicial nominee prior to their

² The report cites legislative history directly pertaining to confirmation of judicial appointees to the Court of Appeals:

"... 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 to the appointive method of judicial selection." [A-24].

confirmations [A-34].

Have the Committee members seen this questionnaire? In any event – and for the benefit of the press and public here present -- it is worth taking a moment to run through a few of its questions as they expose the abject inadequacy of the two-page resume and one-page biographic summary of Judge Read, which is the sum total of what I obtained from Chairman DeFrancisco's Chief of Staff on January 17th [A-10] three days after CJA's January 14th letter request [A-1, 3] and after two additional telephone calls.

Thus, the U.S. Senate Judiciary Committee questionnaire asks the nominee to identify "**Published Writings**" [A-34], including speeches – and supply copies. If the nominee has been a judge – such as Judge Read – 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 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.

By holding today's confirmation hearing in this committee meeting room where "hearings" to confirm lower court nominees take place – something which, upon information and belief, was *not* done before the unprecedented no-notice, "by-invitation-only" December 1998 "hearing" on Justice Albert Rosenblatt's confirmation to the Court of Appeals, at which CJA was, without reasons, not permitted to testify³ -- the Senate Judiciary Committee is fostering the illusion that

³ Thus, for example, the January 1997 Committee hearing on Justice Richard Wesley's confirmation to the Court of Appeals was held in Hearing Room A of the Legislative Office Building. The Committee's previous two hearings to confirm Court of Appeals appointees, *to wit*, its December 1993 hearing on Justice Carmen Ciparick's confirmation and its September 1993 hearing on Justice Howard Levine's confirmation -- at which CJA testified -- were also in Legislative Office Building Hearing Rooms.

confirmations to our State's highest Court are, and should be, like those to our lower state courts. Yet, there is a huge difference – even beyond the transcending importance of the Court of Appeals as the final state judicial arbiter of our legal rights. That difference rests on the fact that until 1977 the People of this State had the constitutional right to elect their Court of Appeals judges, which they relinquished only because they were led to believe they would be getting something better -- “merit selection”. Consequently, it is this Committee's first duty to the People of this State to examine whether the Commission on Judicial Nomination, set up by the 1977 constitutional amendment to screen and recommend only “well qualified” candidates for the Court of Appeals, has adhered to fundamental “merit selection” principles.

Two years ago, in conjunction with CJA's request to testify in opposition to Justice Victoria Graffeo's confirmation to the Court of Appeals – which was denied, without reasons -- we submitted two reports to this Committee's then Chairman – now Court of Claims Judge – James Lack [A-4]. The first, dated October 16, 2000, chronicled the Commission on Judicial Nomination's corruption of “merit selection”, including by its wilful refusal to pursue credible sources of adverse information about the candidates it purports to screen – a failure compounded by its knowledge of the corruption of its key information source about its mostly judicial candidates, the New York State Commission on Judicial Conduct⁴ [see Judiciary Law §§64.3, 45.2]. The second, dated November 13, 2000, chronicled the complicity of the bar associations and the Governor in this corruption. Before proceeding further, may I ask whether Committee members have read these fact-specific, comprehensively documented reports?

The result of the Committee's failure and refusal to confront the shocking evidence presented by these two reports as to the corruption of “merit selection” in the context of Justice Graffeo's confirmation – or at any time thereafter -- is that this demonstrably corrupted process has now produced Judge Read's appointment. Such evidence, being equally germane to our opposition to Judge Read's appointment on procedural “merit selection” grounds, is properly before the Committee. Indeed, the same violations have been repeated.

Let me give an important example – the one which, *as a matter of law*, makes Judge Read's appointment not properly before the Committee for confirmation. The Commission's

⁴ As particularized, the corruption of the Commission on Judicial Conduct necessarily corrupts the “merit selection” process. The most definitive evidence of the Commission on Judicial Conduct's corruption – and the judicial lawlessness that “protects” it -- is presented by the case file 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* (S.Ct/NY Co. #108551/99) – physically incorporating the record of the lawsuit, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* (S.Ct/NY Co. #109141/94), *infra*. Both lawsuits are detailed by CJA's October 16, 2000 report. However, at the time of that report, the appeal in *E.R. Sassower v. Commission* had yet to be perfected. The case has since reached the New York Court of Appeals – and the brazen official misconduct of the sitting judges will be the subject of a formal impeachment complaint, which CJA will be presenting to the Committee. [See A-3; A-17].

December 2, 2002 report to the Governor nominating Judge Read and six other candidates is NON-CONFORMING with the findings requirement of Judiciary Law §63.3. Indeed, it is as identically NON-CONFORMING as the Commission's October 4, 2000 report to the Governor nominating seven candidates, Judge Read among them.

What is Judiciary Law §63.3? It is the small peephole into the workings of the Commission on Judicial Nomination which the Legislature gave to the People in 1978 when, without legitimate purpose, it veiled the Commission's proceedings in confidentiality. Being the *only* visible manifestation of the Commission's adherence to "merit selection" principles, it is thus more than some procedural nicety.

Judiciary Law §63.3 states that the Commission's recommendations to the Governor of nominees are to be transmitted to him in a "single written report", simultaneously "released to the public", and that it

"shall include the commission's findings relating to the character, temperament, professional aptitude, experience, qualifications and fitness for office of each candidate who is recommended to the governor" (emphases added).

Everything that I am now highlighting about the Commission's December 2, 2002 report appears, pretty *much verbatim*, in CJA's October 16, 2000 report relative to the Commission's October 4, 2000 report, which put forward Justice Graffeo's nomination.

Thus, the Commission's December 2, 2002 report, underlying Judge Read's appointment, contains NO "*findings*" as to "*each candidate*". Instead, there are only bald conclusory statements that "in the collective judgment of the Commission" all seven candidates are "well qualified by their character, temperament, professional aptitude, experience, qualifications and fitness for office" and that they "are considered the best qualified of those who filed applications for consideration". NO specificity is provided, such as citation of cases exemplifying their intellect, perspicacity, and courage, or any track record of affirmances and reversals, etc.

Although the report states that "the Commission caused an investigation to be conducted of the large number of applicants it determined to interview", NO information is provided as to either the total number of applicants, or the number interviewed. Nor is there ANY information as to the manner in which the Commission conducted its purported "investigations" of the applicant pool, let alone specifics of its investigations of the seven "best qualified" nominees. As to these critically important facts, this Committee, as the public, is left wholly in the dark.

The only "particulars" provided by the Commission's boiler-plate, completely uninformative December 2, 2002 report is by an attached "summary of the careers of the recommended candidates" – a distillation of resume-type biographic information, with NO qualitative assessment.

The career summary for Judge Read, attached to the Commission's December 2, 2002 report, consists of ten lines. This is two lines more than the career summary for Judge Read, annexed to the Commission's October 4, 2000 report – an expansion attributable to the added statement that Judge Read had been "previously recommended in 2000 by the Commission to the Governor for appointment to the office of Associate Judge of the Court of Appeals." Indeed, the only other difference in the career summary for Judge Read is a one-word insertion to the line pertaining to her having worked as "Deputy Counsel, Governor's Office, 1995-1997" – now reading, "Deputy Counsel, Governor's Counsel's Office, 1995-1997".

Before focusing on Judge Read's tenure as the Governor's Deputy Counsel, second-in-command to the Governor's former Counsel, Michael Finnegan, a member of the Commission on Judicial Nomination⁵ – thereby presenting serious and substantial conflict of interest issues NOT identified, let alone resolved, by the Commission's December 2, 2002 report – properly the subject of special inquiry -- mention must be made of John Caher's articles in the New York Law Journal revealing a powerful negative perception by would-be applicants of the process.

Thus, in his article about the Commission's seven nominees ("*Court of Appeals Candidates Are Named*", 12/3/02), essentially repeated in his article about the Governor's appointment of Judge Read ("*Judge Susan Read Is Tapped for Court of Appeals*", 1/7/03), Mr. Caher wrote,

"Meanwhile, there is growing concern among the bench and bar over an apparent decline in interest in serving on the Court, according to several

⁵ The pernicious effect of Mr. Finnegan's presence on the Commission is reflected in the last paragraph of CJA's October 5, 1998 letter to it, annexed to CJA's October 16, 2000 report on the Commission's corruption of "merit selection" (Exhibit "H"):

"Finally, and on the subject of the political deal-making and disrespect in Albany for judicial qualifications, CJA has extensive correspondence with Governor Pataki's office during Michael Finnegan's tenure as Governor Pataki's counsel. Such correspondence exposed not only the Governor's sham judicial screening procedures, but the flagrant misconduct of Mr. Finnegan and his subordinates in connection therewith. This is reflected by our Letter to the Editor, "*On Choosing Judges, Pataki Creates Problems*", published in the November 16, 1996 New York Times []. Mr. Finnegan is a member of the Commission on Judicial Nomination, by appointment of the Governor – a circumstance that bodes ill for the integrity of the process."

attorneys close to the selection process.

Prior to releasing its list, the Commission on Judicial Nomination interviewed about 18 applicants, but only after extending the application process because of a shortage of interested and suitable candidates. Three appellate jurists said there seems to be a sense that only one or two candidates close to the governor have any real chance to secure an appointment..."

For there to be a lack of "interested and suitable candidates" for our State's highest Court – when this State has over 130,000 lawyers – means something is radically wrong. Certainly, anyone objectively evaluating the seven career summaries annexed to the Commission's December 2, 2002 report would be hard put to conclude that Judge Read is superior to the other six in qualifications and range of experience. Rather, she personifies a candidate "close to the Governor" – one whose prior judicial positions as a Court of Claims judge since 1998 and as Presiding Judge of the Court of Claims since 1999 were each bestowed upon her by the Governor. This, following her service as the Governor's Deputy Counsel in "1995-1997".

By a faxed January 16th letter to James McGuire, the Governor's Counsel who succeeded Mr. Finnegan in that position [A-41], CJA requested the precise dates in "1995-1997" in which Judge Read served as Deputy Counsel – as well as information as to her duties in that capacity – neither disclosed by the Commission on Judicial Nomination's "career summary" for her.

Our letter made plain that Mr. McGuire could be presumed to know this information of his own personal knowledge since, prior to becoming the Governor's Counsel in October 1997, he was First Assistant Counsel. We asked Mr. McGuire to confirm that he was the sole First Assistant Counsel and that, in the "pecking order", he was directly below Deputy Counsel, of which there was one -- Ms. Read -- above whom there was Mr. Finnegan as the Governor's sole Counsel. In other words, that the Governor's three top attorneys were, respectively, Mr. Finnegan, Ms. Read, and Mr. McGuire.

We then stated:

"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." [A-42]

Here is a copy of CJA's extensive correspondence with the Governor's office during "1995-1997" – along with the lawsuit file and petition signatures. Chronicled is the Governor's manipulation of the judicial selection process to the lower courts, including by "rigged" ratings, his complicity in the corruption of the Commission on Judicial Conduct, and his subversion of the New York State Ethics Commission – the state agency with disciplinary jurisdiction over him. Our January 16th letter reminded Mr. McGuire that such official misconduct was embodied in a comprehensive March 26, 1999 ethics complaint against the Governor, which CJA had filed with the State Ethics Commission⁶ and stated that unless he contended that Ms. Read was "kept in the dark" as to CJA's 1996-7 correspondence 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) [A-50], and public interest ads, "*A Call for Concerted Action*" (New York Law Journal, 11/20/96, p. 3) [A-51] and "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (New York Law Journal, 8/27/97, pp. 3-4) [A-52], she was "chargeable with complicity in the official misconduct in the relevant time frame" the complaint outlined [A-42].

On January 20th – having received no response – and wanting to eliminate any doubt that Mr. McGuire knew that the Senate Judiciary Committee's confirmation was today and that I would be testifying in opposition, I faxed him yet another letter. Enclosed was CJA's *unresponded-to* January 16th letter [A-41], as well as CJA's prior January 14th letter to him [A-46], also *unresponded-to*, whose request for publicly-available documents pertaining to Judge Read's appointment, included, specifically, her financial statement, which the Governor is required to "make available to the public" pursuant to Judiciary Law §63.4. Still, no response.

Thus, it may be said that Mr. McGuire, by his silence, has knowingly conceded Ms. Read's knowledge and complicity in the official misconduct set forth in CJA's March 26, 1999 ethics complaint⁷.

To this date, nearly four years after that complaint was filed with the Ethics Commission, it remains pending, *uninvestigated*. Likewise, CJA's September 7, 1999 criminal complaint based thereon, filed with the U.S. Attorney for the Eastern District of New York. Each

⁶ The ethics complaint is annexed to CJA's October 16, 2000 report on the Commission on Judicial Nomination's corruption of "merit selection" (Exhibit "A-2").

⁷ Indeed, Judge Read's resume indicates that as Deputy Counsel from "1995-1997", she was "responsible for assigned tasks and coordination of work of assistant counsel at the direction of Counsel to the Governor."

remains in limbo because these disciplinary and criminal authorities have collusively failed and refused to respect fundamental conflict of interest rules by referring the complaints to outside bodies, such as the Public Integrity Section of the U.S. Justice Department's Criminal Division, as expressly requested.

As set forth in our January 16th letter to Mr. McGuire – without contradiction from him:

“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.” [A-43, emphasis in the original].

Were this appointment to be “reported out of Committee” – while ethics and criminal complaints implicating Judge Read remain open and uninvestigated -- would be a further affront to the People of this State. Judge Read should be the first to agree.

**INVENTORY OF TRANSMITTAL
IN SUBSTANTIATION OF OPPOSITION TESTIMONY
TO SENATE CONFIRMATION OF SUSAN P. READ TO THE COURT OF APPEALS**

I. CJA's 11/13/00 letter to Chairman Lack, transmitting (1) CJA's 10/16/00 report on the Commission on Judicial Nomination's corruption of "merit selection", with File Folders A & B; and (2) CJA's 11/13/00 report on the complicity of the bar associations and Governor in the corruption of "merit selection"

II CJA's correspondence with the Governor's office, 1996-1997, during the period of Susan Read's tenure as Deputy Counsel

1996

1. CJA's 2/28/96 fax to Governor's office, transmitting a copy of CJA's 2/27/96 letter to Mayor Guiliani, to which the Governor was an indicated recipient
2. CJA's 3/18/96 letter to City Bar President Barbara Paul Robinson, to which the Governor was an indicated recipient
3. CJA's 3/29/96 letter to Michael Finnegan, with certified mail/rrr receipt
4. CJA's 4/12/96 letter to City Bar President Barbara Paul Robinson, to which the Governor was an indicated recipient
5. CJA's 4/18/96 letter to David Gruenberg, Counsel to Senate Judiciary Committee, to which Michael Finnegan was an indicated recipient, with certified mail/rrr receipt
6. CJA's 4/24/96 letter to Michael Finnegan, with certified mail/rrr receipt
7. CJA's 4/24/96 letter to Governor Pataki (Martha McHugh, Director of Scheduling), with certified mail/rrr receipt
8. CJA's 4/29/96 letter to Michael Finnegan, with certified mail/rrr receipt
9. CJA's 5/6/96 letter to James McGuire, hand-delivered to the Capitol on 5/7/96 with a copy of the litigation file of *Doris L. Sassower v. Commission on Judicial Conduct* (S.Ct/NY Co. #109141-95), petition signatures of 1,500 New Yorkers, and CJA's

12/15/95 to NYS Assembly Judiciary Committee

10. CJA's 6/11/96 letter to NYS Senators, copy hand-delivered to the Capitol for Michael Finnegan

11. CJA's 6/12/96 letter to Michael Finnegan, with certified mail/rrr receipt

1997

1. CJA's 3/7/97 letter to City Bar President Michael Cardozo, with copy to Governor

2. CJA's 4/15/97 letter to Governor Pataki, with certified mail/rrr

3. CJA's 5/5/97 memorandum to Governor Pataki, *et al*, hand-delivered to the Capitol on that date

4. CJA's 6/2/97 letter to Governor Pataki, with certified mail/rrr receipt

5. CJA's 6/9/97 letter to NYS Ethics Commission, with certified mail/rrr receipt for Governor Pataki's Appointments Secretary, James Dougherty

6. CJA's 6/12/97 letter to Screening Committee members, with copy to Governor

7. CJA's 12/15/97 letter to Paul Shechtman, Chairman, State Judicial Screening Committee, with copy sent to James Dougherty

8. CJA's 12/23/97 letter to James McGuire, with fax receipt (certified mail/rrr receipt?), reflecting mailing of Critique, Compendium, & Supplement

9. CJA's 12/26/97 fax to James McGuire, reflecting hard-copy transmittal as well

10. CJA's 12/29/97 letter to members of Governor Pataki's State Judicial Screening Committee, with handwritten acknowledgment for James McGuire

III CJA's 3/26/99 ethics complaint against Governor Pataki, et al., filed with the New York State Ethics Commission and 9/7/99 criminal complaint, based thereon, filed with the U.S. Attorney for the Eastern District of New York