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Elena Ruth Sassower, Coordinator

BY HAND

December 23, 1999

Bruce Golding
Gannett: The Journal News
White Plains, New York

RE: Article 78 Proceeding against NYS Commission on Judicial Conduct: WILL WILLIAM WETZEL BE RECUSAL #6?

Dear Bruce:

Following our phone coversation on Tuesday afternoon, enclosed are my December 2nd, 9th, and 17th letters to Justice Wetzel in my Article 78 proceeding against the NYS Commission on Judicial Conduct.

The December 2nd letter details the basis upon which I am seeking Justice Wetzel's disqualification, summarized to you by phone. Among its pertinent exhibits:

Exhibit "D": Governor Pataki's June 12, 1995 certificate of nomination for Justice Wetzel to the Court of Claims for a term expiring June 30, 1999;

Exhibit "E": picture of then gubernatorial candidate Pataki and then Briarcliff Manor Judge Wetzel, believed to be taken at the fundraiser Judge Wetzel held at his home for Mr. Pataki in 1994;

Exhibit "F": Clay Tiffany's facially-meritorious May 21, 1999 judicial misconduct complaint against Justice Wetzel, dismissed, *without* investigation by the Commission, by letter dated September 14, 1999 (*see* Exhibit "G");

Exhibit "H": Clay Tiffany's "Guest Editorial" in the November 4, 1999 issue of Martinelli Publications;

Exhibit "I": CJA's December 2, 1999 letter to Governor Pataki seeking, ***inter alia***, the Governor's judicial screening committee report from 1995 on Judge Wetzel's

> qualifications, as well as information as to "why the Governor has maintained Justice Wetzel as a 'hold over' these past five months, rather than either reappointing him to the Court of Claims or appointing a successor."[1]

The Attorney General's response to my December 2nd letter is annexed as Exhibits "A" and "B" to my December 9th letter. The fraudulence of this response is particularized by the December 9th letter. The Attorney General's response to this particularization is annexed as Exhibit "A" to my December 17th letter, detailing the respects in which this second response of the Attorney General is fraudulent.

These three letters thus afford you a WINDOW onto the fraudulent defense tactics of New York's highest law enforcement officer, long a subject of CJA's advocacy, as reflected by CJA's public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4). Moreover, they do so an issue that can be readily understood by Gannett readers: the appearance and actuality of Justice Wetzel's disqualifying bias and self-interest.

In the context of your question to me about the recent Senate Judiciary Committee confirmations involving area residents – as to which I enclose a copy of Tuesday's Law Journal -- you certainly should follow up with a Journal News "investigation" as to why Justice Wetzel, an area resident, remains on the bench as a "hold over" – six months after his appointive Court of Claims term expired. This would include getting a response from Governor Pataki, another area resident, to my December 2nd letter to him (NO response having been yet received by us) and contacting the Senate Judiciary Committee as to how many Court of Claims "holdovers" there are – and the dates on which their appointive terms expired.

As you know, CJA has long documented Governor Pataki's manipulation of appointive lower state court judgeships, including his refusal to release ANY of the publicly-accessible judicial screening committee reports on the qualifications of his appointees. This manipulation, as well as the Governor's knowledge of, and complicity in, the corruption of the "merit selection process" to the Court of Appeals in connection with Albert Rosenblatt's nomination and confirmation to our state's highest court, are among the bases for CJA's March 26, 1999 ethics complaint against the Governor (at pp. 1-2, 14-22), filed with the New York State Ethics Commission – a copy of which was transmitted to you under my November 24th coverletter -- as well as CJA's September 7, 1999 criminal complaint against the Governor, filed with the U.S. Attorney for the Eastern District of New York[2] – a copy of which is herein transmitted.

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[1] Also requested (at p. 3) is "the reason, as well as the number and identities of other Court of Claims judges who the Governor is maintaining on the bench as 'hold overs'."

[2] My September 7th complaint highlighted that there was a mountain of evidence of the Governor's

Both documents are part of the record of my instant Article 78 proceeding against the Commission on Judical Conduct.

In view of The Journal News' forceful September 26, 1999 editorial, "*Remove Politics From the System that Nominates State Justices*"—which, like its previous editorials, promotes an appointive "merit selection" process over politically-controlled, money-tainted judicial elections – you should not delay in presenting these two complaints to your editor, John Elcott, with whom I spoke immediately following our conversation together on Tuesday, so that The Journal News can follow through with an investigative expose about judicial appointments in this state, including so called "merit selection". Needless to say, we will be pleased to provide The Journal News with ALL the corroborative supporting documentation for such expose.

Mr. Elcott repeatedly told me that I should "work through [you]" on the story. In so doing, he did NOT indicate any "problem" with your covering the Commission case other than that you are busy with stories about other cases, among them, cases involving millions of dollars. However, after I pointed out that Journal News columns and editorials have consistently recognized the Commission's importance to safeguarding the People of this State from judicial misconduct, Mr. Elcott conceded the importance of a lawsuit challenging it as corrupt. This, notwithstanding he seemed unaware of the significance of the underlying judicial misconduct complaint which is the subject of the suit and its tie to the "merit selection process" to the Court of Appeals. Mr. Elcott also responded affirmatively to my statement that this case also exposes the hoax of the Attorney General's "public integrity unit" – publicized in a September 8, 1999 editorial in The Journal News less than three weeks before its editorial espousing "merit selection".

I might mention that Mr. Elcott remembered having met me some years ago at the diner in White Plains when The Journal News sponsored one of its "meet the public and get story ideas" sessions, stating that he had spoken to me and my mother for half an hour. Although I have no independent recollection of my conversation with Mr. Elcott, I believe the diner event took place on April 15, 1997. I remember this date because I had just faxed my April 15, 1997 letter to Governor Pataki about his subversion of the NYS Ethics Commission – and brought copies with me to the diner in a fruitless attempt to get press coverage. This was the first of several letters to the Governor about his subversion of the Ethics Commission, ultimately culminating in the March 26th ethics complaint against him, as well as the September 15th supplement

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participation in and knowledge of the systemic governmental corruption particularized by CJA's March 26, 1999 ethics complaint—contrasting to an August 19th New York Times article reporting that there was "no evidence that [Governor Pataki] had any involvement in the parole decisions" which were the subject of investigation by the U.S. Attorney. As discussed, on December 16th, a Times article reported that "no evidence had been uncovered" linking Governor Pataki to the parole decisions and, therefore, no indictments returned against him.

thereto, already in your possession.

As discussed, so complete is that subversion that – as reflected by CJA's September 15th supplement -- the Ethics Commission has not even acknowledged CJA's March 26th ethics complaint. This remains true to date. Ethics Commission's wilful failure to investigate CJA's March 26th complaint and September 15th supplement against the Governor, notwithstanding it presents a paper-trail of incontrovertible documentary proof of the Governor's long-time knowledge and complicity in the subversion of the Ethics Commission, as well as in the corruption of judicial selection and discipline processes, contrasts sharply with its swiftly announced investigation of the Governor based New York Times articles about monies contributed by Philip Morris, among others, to the Hungarian-American Chamber of Commerce which funded two of the Governor's trips – contributions as to which the Governor has denied any knowledge. Presumably, following its so-called "investigation", the Ethics Commission will find – much as the U.S. Attorney did in the matter of the parole decisions -- that there is no evidence of the Governor's involvement (*See* fn. 2, *infra*) as to that issue – while ignoring, without investigation, the voluminous evidence presented by CJA's complaints of the Governor's knowledge and participation in systemic governmental corruption.

Yours for a quality judiciary,

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

Enclosures:

(1) my December 2nd, 9th, and 17th letters to Justice Wetzel, with exhibits
(2) "*State Senate Confirms Four Judges to Bench*", NYLJ, 12/21/99
(3) CJA's September 7th criminal complaint to Andrew Weissmann, Deputy Chief, Criminal Division, U.S. Attorney for the Eastern District of New York
(4) "*Remove Politics from the System that Nominates State Judges*", Journal News, 9/26/99
(5) "*Cooperation Rather than Lawsuits Are Needed to Wipe Out Corruption*", Journal News, 9/8/99
(6) CJA's April 15, 1997 letter to Governor Pataki

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COURTS

Remove politics from the system that nominates state justices

The process of selecting state Supreme Court candidates is a sham, made evident by Westchester Republicans' rejection of a Family Court judge who was hoping for a Supreme Court nomination.

County GOP Chairman Nicholas Spano exposed the charade that passes for a nominating process last week when he said Republican Judge Bruce Tolbert would not be his party's candidate for Supreme Court this year, that recommendations for the nominations were made months ago.

That's odd. Judicial delegates, the people who nominate justice candidates at conventions, weren't even elected until Primary Day earlier this month. Delegates hadn't even gotten together when Spano spoke.

Here's convincing proof that candidates for Supreme Court in the 9th Judicial District are selected by, and only by, the party chairmen in the five counties comprising the district: Westchester, Putnam, Rockland, Dutchess and Orange. Delegates, hand-picked by the same leaders, are merely window dressing.

And the party chairmen don't always pick the candidates who would best serve the highest trial court in the state, often recommending to their rubber-stamp conventions candidates who will best serve their parties' interest. Republican and Conservative conventions did so on Thursday; Democratic and Right to Life delegates get their turns tomorrow.

Spano's decision about Tolbert's candidacy was particularly cynical.

Earlier this year, Spano indicated that one of the people he would recommend to run for five judge openings was Mark Dillon of Yorktown. Dillon is a former town justice who served briefly as a county judge by appointment two years ago. The Republicans indicated that Dillon's presence on the ballot in Yorktown would help turn out local Republican voters, who would then also vote for Rose Marie Panio, a GOP county legislator candidate.

Tolbert, who is from Yonkers, had asked his party to consider him for one of the nominations, mainly on the basis of his almost 12 years of experience in Family Court, in addition to prior service as a Yonkers city judge.

We cast no aspersions on Dillon's ability as a judge, nor do we make any comparisons to the validity of his candidacy or Tolbert's. The time for endorsements will come after the fields of candidates are set.

But we can say now that it is ludicrous that a political party would seek to use a judicial candidate as a stalking horse for a legislative candidate because it wants to recapture the county board it lost two years ago after 90 years of control. Treating judicial candidates that way denigrates the bench.

As for Tolbert, Spano said that he would be on the Supreme Court one day, "but not this year." Maybe he's waiting for a year when Tolbert's presence could turn out his supporters to help ensure the election of Republicans in Yonkers, where Spano is also a state senator.

Tolbert is said to be thinking of running on the Democratic line. Westchester Democratic Chairman David Alpert appears receptive, provided that the judge switch his enrollment. Democrats want something in return, it appears, even though they could nominate a Republican as their candidate. More politics?

And more politics: Westchester Conservative Chairman Vincent Natrella refused to support Tolbert because the judge's political finance committee had donated money to a Conservative party group opposed to Natrella. "He gave $4,000 to the enemy," Natrella said.

Citizens, we are sure, share our outrage over this politics-dominated system of nominating judge candidates. Judicial candidates should be nominated and elected on their ability to judge fairly and independently. Period.

We have long advocated some form of merit-selection system under which judges would be appointed by chief executive officers, similar to the way judges are chosen for the Court of Appeals, the state's highest court. A blue-ribbon panel screens candidates and recommends names to the governor. The governor must pick from that list.

That kind of screening process weeds out unqualified candidates and lessens the impact of politics and big money on courts. It takes tens of thousands of dollars to run a districtwide election for state Supreme Court. Much of it, unfortunately, is donated by lawyers who some day appear in court before the judges they help elect.

Obviously, there isn't enough support from the public to convince legislators to switch to a merit selection system. If we are going to keep judicial elections, they should be system devoid of extraneous partisanship.

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LAW ENFORCEMENT

Cooperation rather than lawsuits are needed to wipe out corruption

The Public Integrity Unit that state Attorney General Eliot Spitzer formed when he took office in January has reported finding more than 100 incidents of improper actions by state and local officials. Ten investigations have begun.

But Westchester District Attorney Jeanine Pirro, in her role as president of the state District Attorneys Association, claims that Spitzer is overstepping his legal authority by establishing the statewide unit. The responsibility for handling those cases, she said, rests with the local district attorneys, unless the governor asks the attorney general to step in.

Pirro told reporter Kyle Hughes of our Albany staff that Spitzer "has no statutory grant of authority to create a statewide office to prosecute state or local corruption."

She may be right, but the fact remains that official corruption is occurring in some counties, and something has to be done about it.

A compromise is in order. We suggest that Spitzer retain the unit, but that, once corruption is uncovered, his staff work cooperatively with a local district attorney, who would prosecute the case in court. If the district attorney fails to cooperate, the attorney general should pursue the case alone.

Over the years, attorneys general have sought to branch out, sometimes crossing into areas that were handled or were supposed to be handled by local prosecutors. Attorney General Robert Abrams made a name for himself as a consumer watchdog, bringing to justice many who ripped off the public. He was largely free to do so because many local prosecutors had stayed away from consumer fraud due to lack of personnel or expertise. Dennis Vacco, Spitzer's predecessor, sought to make a name for himself prosecuting criminals. On a number of occasions, courts sided with district attorneys when they sought to block Vacco's intrusion.

We agreed at times with the district attorneys, because criminal prosecution is and should continue to be under their jurisdiction. But if district attorneys are not on top of public corruption, the attorney general should fill any void.

Obviously, there are instances where such crime is not being uncovered and pursued. Spitzer is already probing improper fiscal practices of the Capital District Regional Off Track Betting Corp. that has resulted in a number of firings. His unit is looking into allegations of payroll double-dipping in the Orange County Sheriff's Department.

Spitzer claims that inquiries into misconduct by public officials often go nowhere unless the case is high-profile. Many prosecutors, especially in small counties, do lack resources to investigate because they are busy prosecuting street crimes. The attorney general says that he has no intention of opening investigations when others already are under way.

Spitzer's position has drawn the support of Barbara Bartoletti of the New York State League of Women Voters, which has been pressing for local lobbying and financial disclosure laws for public officials to prevent conflicts of interest when dealing, for instance, with developers and other business operators.

"District attorneys," she said, "are taken up with homicides and drug problems, street problems, and they are not looking at what's going on with the white-collar crime and who's giving money to whom in order to get what." Spitzer's unit would fill the gap, she said.

But Pirro said that local prosecutors have a number of options for pursuing anticorruption investigations, from calling upon state police to deputizing lawyers from the attorney general's office to come in as special assistant county prosecutors in grand jury probes. She warned that the state district attorneys' group was prepared to go to court to block Spitzer from prosecuting criminal cases. She said that if he did convene a grand jury, he would be liable for a civil-rights lawsuit based on lack of legal authority.

We would hate to see corrupt officials get away with their crimes because of legal technicalities or battles over jurisdiction. That could be avoided if Spitzer and the local district attorneys worked together, establishing joint task forces to uncover the crimes and leave the prosecution to the local district attorneys.