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Elena Ruth Sassower, Coordinator

BY FAX: 518-426-6036 (13 pages)

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Jay Gallagher, Albany Bureau Chief
Gannett
150 State Street
Albany, New York 12224

RE: The Public's Right to "Hear" and "Be Heard" at the Senate Judiciary Committee Hearing on Justice Graffeo's Confirmation to the NY Court of Appeals: Wednesday, November 29th

Dear Jay:

As may be seen from the enclosed front-page item from yesterday's New York Law Journal, the Senate Judiciary Committee's confirmation hearing on Justice Graffeo's appointment to the New York Court of Appeals has been tentatively scheduled for 9:30 a.m. on Wednesday, November 29th and is "BY INVITATION ONLY".

As discussed, "BY INVITATION ONLY" is a euphemism for "ONLY FAVORABLE TESTIMONY ALLOWED". This may be gleaned from the Senate Judiciary Committee's failure to follow-up CJA's requests to testify in opposition -- reflected by CJA's November 21st letter to Chairman Lack, as well as by the Committee's denial of Bob Schulz' request to testify in opposition -- reflected by his November 21st letter to its counsel David Gruenberg. Copies of these two letters are enclosed as is CJA's December 16, 1998 letter to Mr. Gruenberg regarding the "by invitation only" "no public testimony" hearing on Justice Rosenblatt's confirmation.

Also enclosed is CJA's June 6, 1996 letter to Mr. Gruenberg, memorializing what he told me about the Senate Judiciary Committee's practice of not allowing public testimony for "lower court" confirmation hearing -- as contrasted to hearings of appointees to the Court of Appeals.

This brazen affront to the public's rights DESERVES a story -- as you can be sure this is NOT how New Yorkers believed "merit selection" would function when they relinquished their right to elect their Court of Appeals judges 23 years ago. The Senate Judiciary Committee "hearing" is now

even more of an unabashed "rubber stamp" than it was prior to Justice Rosenblatt's confirmation "hearing" when the Senate Judiciary Committee at least presented a façade of allowing opposition testimony.

May I suggest that you contact *knowledgeable* sources about how the Senate Judiciary Committee is supposed to perform its "advice and consent" function in the "merit selection" scheme, such as the Fund for Modern Courts and the Association of the Bar of the City of New York¹ – vocal advocates of "merit selection", who should also be asked what steps they will be taking to vindicate the public's right to a meaningful Senate Judiciary Committee "hearing" on Justice Graffeo's "merit selection" appointment. Please take the opportunity to also ask them to comment on CJA's October 16th and November 13th reports – copies of which CJA has supplied them.

Happy Thanksgiving.

Yours for a quality judiciary,



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

Enclosures

¹ I'm not certain of the State Bar Association's position, but I believe it also advocates "merit selection".