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AIRBORNE EXPRESS: 674-9070

November 12, 1999

Jack Sirica, Investigative Reporter
Newsday
235 Pinelawn Road
Melville, New York 11747-4250

RE: Proposed Investigative Series:
(1) "Merit Selection"; (2) NYS Commission on Judicial Conduct

Dear Mr. Sirica:

Congratulations again to you and your fellow Newsday reporters on your superlative investigative series about the politicized processes of judicial elections and court appointments in Nassau and Suffolk Counties. You have rendered an important public service by demonstrating that nothing has changed in the more than ten years since the New York State Commission on Government Integrity issued its 1988 report, "*Becoming a Judge: Report on the Failings of Judicial Elections in New York State*". Inasmuch as the Newsday series does not mention this report, you and the other reporters at Newsday may be unfamiliar with it, as well as the Commission's other 19 reports, collected in a single volume, under the hopeful title, Government Ethics Reform for the 1990's (Fordham University Press, New York, New York 1991)¹.

A copy of "*Becoming a Judge...*" is enclosed. You will note that the Commission on Government Integrity advocated scrapping judicial elections in favor of "merit selection". This is the view espoused by Newsday's November 8th editorial, "*Injudicious*", which, like the Commission on Government Integrity, does not identify or recognize that without specific safeguards "merit selection" is also vulnerable to political machinations and that "merit selection" can exist within an elective framework, not just an appointive one.

¹ In the likely possibility that Newsday will be doing "retrospectives" of the decade, perhaps you will pass along a suggestion to your editors that they examine what progress has been made on the agenda for ethics reform presented by those reports. This, so as to focus on the unfinished ethics reforms for the new millenium.

In light of this uncritical editorial advocacy, our non-partisan, non-profit citizens' organization, the Center for Judicial Accountability, Inc. (CJA), believes that Newsday should provide readers with an examination of the *actual* workings of "merit selection" comparable to its series on judicial elections. This includes examining "merit selection" in the *only* two venues it exists in New York: (1) the appointment by the Governor of Court of Appeals judges; and (2) the appointment by New York City's Mayor of family, criminal, and interim civil court judges.

As detailed by CJA's enclosed informational brochure, CJA's birth lay in an attempt to free judicial elections from the machinations of party leaders. This is reflected, as well, by our first public interest ad, "*Where Do You Go When Judges Break the Law?*" (NYT, 10/26/94, Exhibit "A-1"). However, CJA takes NO *a priori* position as to the superiority of judicial elections or appointment. Rather, over the past decade, we have been building an archive of PRIMARY SOURCE materials relating to the dysfunction and politicization of both these selection processes. This includes evidence pertaining to "merit selection" in New York – as may be seen from CJA's two Letters to the Editor, "*No Justification for Process's Secrecy*" (Exhibit "B-1": NYLJ, 1/24/96) and "*An Appeal to Fairness: Revisit the Court of Appeals*" (Exhibit "B-2": NY Post, 12/28/98).

The hoax of "merit selection" to our state's highest court is exposed by an Article 78 proceeding against the Commission on Judicial Conduct, currently pending in New York Supreme Court (NY Co. #99-108551). That politicized appointment process, involving the State Commission on Judicial Nomination, the Governor, the Senate Judiciary Committee chairman, and this state's leading bar associations is chronicled at ¶¶SIXTEENTH – THIRTY-SECOND of the Verified Petition therein, with substantiating exhibits annexed as Exhibit "C-1", "C-2", and "E". It is further particularized at pages 20-27 of CJA's March 26, 1999 ethics complaint against the Governor², the Commission on Judicial Nomination, and the Commission on Judicial Conduct and supplemented by a supplementary ethics complaint dated September 15, 1999³. These documents, together with the substantiating primary source materials pertaining to "merit selection" to which these documents refer, are enclosed⁴.

² The Governor's corruption of the judicial appointments process to the lower state courts is detailed at pp. 15-20 of the March 26, 1999 ethics complaint and at p. 3 of the September 15, 1999 supplement.

³ Both the March 26, 1999 ethics complaint and September 15, 1999 supplement thereto are part of the record in the current Article 78 proceeding.

⁴ These primary source materials pertaining to the Court of Appeals "merit selection" process are listed on an inventory, appended to this letter.

It is fitting that a lawsuit exposing the corruption of the Commission on Judicial Conduct should also expose the corruption of the Commission on Judicial Nomination – since these two agencies were born together, appearing on the ballot in the same years as amendments to the State Constitution. That was a quarter of a century ago.

In light of your upcoming series on the effect on judicial quality and integrity of judicial elections dominated by party leaders, a logical follow-up would be a series on the Commission on Judicial Conduct. It is, after all, “the only show in town” when it comes to disciplining New York’s judges. This includes the unfit judicial products of the state’s politicized judicial selection processes.

As for other government agencies and public officers from which victims of politicized judicial selection processes might logically seek redress, their usefulness is vitiated by relationships with the very political forces that have corrupted those processes or been complicitous therewith. This is also demonstrated by the current Article 78 proceeding against the Commission on Judicial Conduct, where the proposed intervenors, the New York State Attorney General, the State Ethics Commission, the Manhattan District Attorney, and the U.S. Justice Department have received detailed ethics and criminal complaints against the Commission on Judicial Conduct, particularizing their multiple conflicts of interest⁵. Their wilful nonfeasance and misfeasance in connection with those formal complaints, as likewise on the intervention issue, establish their shameful complicity in the depredations of a politicized judiciary upon the citizens of this state.

The consequence of politicized judicial selection are judges⁶ who will use their power for ulterior political purpose, including fraudulent judicial decisions “throwing” cases. The phenomenon of fraudulent judicial decisions is described by my article, “*Without Merit: The Empty Promise of Judicial Discipline*” (Exhibit “C”: The Long Term View (Massachusetts School of Law) Vol 4, No. 1 (summer 1997)). As reflected by CJA’s Letter to the Editor, “*Commission Abandons Investigative Mandate*” (Exhibit “A-2”: NYLJ, 8/14/95, p. 2) and

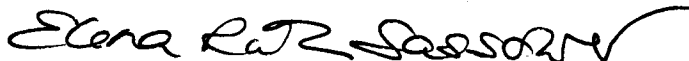
⁵ CJA’s criminal complaints to the Manhattan District Attorney and to the U.S. Attorney for the Southern District of New York are annexed as Exhibits “G” and “H”, respectively, to my enclosed November 5th letter to Justice Barbara Kapnick. The conflict of interest issues are particularized at pages 5-7 of Exhibit “G” and pages 2-3, 18-20 of Exhibit “H”. The conflict of interest issues presented by CJA’s ethics complaints to the State Ethics Commission are particularized at pages 4-11 of the March 26, 1999 complaint and pages 6-10 of the September 15, 1999 supplement. The conflict of interest issues relating to the Attorney General are presented, *inter alia*, at pp. 5-7 and 27-29 of CJA’s March 26, 1999 ethics complaint and at p. 5 of the September 15, 1999 ethics complaint.

⁶ In your research for the upcoming series, you may find the lawyers’ comments about the various judges in New York Judge Reviews by Benedene Cannata (James Publishing, Mesa California 1997) to be useful for purposes of comparison.

public interest ads, "*A Call for Concerted Action*" (Exhibit "A-3": NYLJ, 11/20/96, p. 3) and "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "A-4": NYLJ, 8/27/97, pp. 3-4), as well as ¶¶NINTH - FOURTEENTH of the Verified Petition in the current Article 78 proceeding, a fraudulent judicial decision saved the Commission on Judicial Conduct, when sued for corruption in a prior Article 78 proceeding.

Obviously, cases which are politically sensitive and involve judicial self-interest are the most likely to be "thrown". The current Article 78 proceeding is in that category. The judge handling the proceeding can be expected to be subjected to intense political pressures. This is pointed out in my enclosed November 5th letter to Justice Barbara Kapnick, requesting her recusal as the presently assigned judge. It identifies that, as an elected judge, with a term expiring in 2001, she is vulnerable to the political forces that control re-election and reappointment to the bench. It further points out that two of the five judges previously assigned, with appointive terms expiring in 2001, had recused themselves -- in recognition of that political reality -- or the appearance thereof. You may be sure that had I read the Newsday series *before* I wrote the letter, I would have cited it as the latest authority supporting my assertion that political forces control the judicial elective process. This, to supplement my citation to "*Becoming a Judge: Report on the Failings of Judicial Elections in New York State*" in the letter's footnote 4.

Yours for a quality judiciary,



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

Enclosures:

- (1) CJA informational brochure
- (2) "*Becoming a Judge: Report on the Failings of Judicial Elections in NYS*" (1988)
- (3) Verified Petition in Article 78 proceeding
- (4) November 5, 1999 letter to Justice Kapnick
- (5) CJA's March 25, 1999 ethics complaint
- (6) CJA's September 15, 1999 supplement
- (7) materials pertaining to "merit selection" to NY Court of Appeals
(as inventoried on accompanying sheet)

DOCUMENTARY EVIDENCE SUBSTANTIATING CJA's MARCH 26, 1999 ETHICS COMPLAINT AND SEPTEMBER 15, 1999 SUPPLEMENTAL COMPLAINT AGAINST THE NYS COMMISSION ON JUDICIAL NOMINATION & GOVERNOR PATAKI PERTAINING TO THE FRAUDULENT NOMINATION & CONFIRMATION OF ALBERT ROSENBLATT TO THE COURT OF APPEALS

- (1) CJA's October 5, 1998 letter to the NYS Commission on Judicial Nomination (Stuart Summit, Counsel) [annexed as Exhibit "C-2" to the Verified Petition], with substantiating evidentiary proof:
 - A. CJA's three judicial misconduct complaints against Appellate Division, Second Department Justice Rosenblatt, dated September 19, 1994, October 26, 1994, and December 5, 1994, with Commission on Judicial Conduct's letters of acknowledgment and dismissal
 - B. *Uncontroverted* cert petition and supplemental brief in *Doris L. Sassower v. Hon. Guy Mangano, et al.* federal action (U.S. Supreme Court #98-106), filed with the Commission on Judicial Conduct in substantiation of CJA's October 6, 1998 judicial misconduct complaint [annexed as Exhibit "C-1" to the Verified Petition]
- (2) CJA's November 18, 1998 letter to the Executive Committee of the Association of the Bar of the City of New York [annexed as Exhibit "E" to the Verified Petition]
- (3) CJA's February 5, 1999 letter to NYS Commission on Judicial Nomination (to Mr. Summit)
- (4) NYS Commission on Judicial Nomination's February 24, 1999 letter to CJA, enclosing "the Commission's Report to the Governor,...delivered November 12, 1998" (from Mr. Summit)
- (5) CJA's March 12, 1999 letter to NYS Commission on Judicial Nomination (to Mr. Summit)
- (6) CJA's March 30, 1999 letter to Rosario Vizzie, Records Access Officer for the Governor
- (7) Mr. Vizzi's April 7, 1999 letter to CJA
- (8) April 26, 1999 letter to CJA from Committee on Open Government (Robert Freeman, Executive Director)
- (9) CJA's May 3, 1999 letter to NYS Commission on Judicial Nomination (to Mr. Summit)
- (10) Mr. Vizzi's May 6, 1999 letter to CJA

DOCUMENTARY PROOF PERTAINING TO THE FRAUDULENT SENATE CONFIRMATION OF ALBERT ROSENBLATT TO THE COURT OF APPEALS

- A. CJA's December 16, 1998 letter to David Gruenberg, Senior Counsel to Senate Judiciary Committee Chairman Lack
- B. Transcript of December 17, 1998 Senate confirmation (9:22 p.m.)
- C. CJA's January 13, 1999 letter to Susan Zimmer, Clerk of the Senate Judiciary Committee
- D. Transcript of December 17, 1998 Senate Judiciary Committee "hearing" (3:30 p.m.)