

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

Elena Ruth Sassower, Coordinator

**BY FAX: 518-436-7109 (13 pages)**

November 1, 2000

The New York Times/Albany Bureau  
The Capitol  
Albany, New York

ATT: Kay Shatrow, Clerk

RE: Governor Pataki's imminent appointment to the NYS Court of Appeals versus the People's right to "merit selection"

Dear Ms. Shatrow:

The "buzz" is that the Governor is going to make his appointment to the Court of Appeals tomorrow morning. Since the Times' story on the appointment will presumably emanate from the Albany Bureau, reporters there should be aware of CJA's October 16, 2000 report – delivered to the Governor two weeks ago, detailing the Commission on Judicial Nomination's abandonment of "merit selection" principles. The report identifies that the Governor cannot lawfully appoint any of the Commission on Judicial Nomination's seven recommendees because its October 4, 2000 report is NON-CONFORMING with the requirement of Judiciary Law 63.3 that it make "findings" as to the qualifications of "each candidate" it recommends. The report makes NO such "findings" as to "each candidate".

The New York City office of the Times has had a copy of CJA's October 16, 2000 report for the past two weeks. It was delivered to David Rohde in further substantiation of CJA's story proposal, repeatedly presented to him over the course of more than a year, that the Times do an expose of the "merit selection" process to the Court of Appeals.

Tony Marcano, with whom I spoke at length on Friday, was supposed to review CJA's October 16, 2000 report, detailing the Commission's abandonment of "merit selection" principles. I have yet to hear back from him. When I called earlier, I was told that he is not in today and that Jane Gross is working in his stead. I left an urgent message for her, requesting that she follow up with Mr. Marcano as to what the Times is doing – and going to do -- with CJA's report.

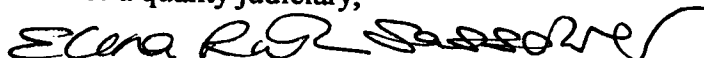
November 1, 2000

Faxed herewith are the Introduction and Point I of CJA's report, as well as its Conclusion. The Conclusion provides a thumbnail 1-page summary. CJA's Letter to the Editor, "An Appeal to Fairness: Revisit the Court of Appeals" (New York Post, 12/28/98) – which is the report's first exhibit, referred to on the first page – is also faxed herewith.

As discussed, I am also faxing Bob Schulz' October 30<sup>th</sup> letter to the Governor, Senator Bruno, and Senator Lack, based on CJA's Point I.

Thank you.

Yours for a quality judiciary,



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

Enclosures

cc: Jane Gross, New York Times, Metro editor  
[By Fax: 212-556-3717]  
Bob Schulz, Chairman, We The People Foundation  
[By Fax: 518-656-9724].

TRANSMISSION VERIFICATION REPORT

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TEL : 9144211200

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# We The People Foundation For Constitutional Education, Inc.

2458 Ridge Road, Queensbury, NY 12804  
Telephone: (518) 656-3578 Fax: (518) 656-9724  
www.givemeliberty.org E-mail: acta@capital.net

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E.P. Scharfenberger, Esq.

Lloyd F. Wright

October 30, 2000

**VIA FACSIMILE TRANSMISSION:**

Hon. George Pataki  
Governor of the State of New York  
The Capitol  
Albany, New York 12247  
Fax: (518) 486- 9652 and (212) 681- 4620

Hon. Joseph Bruno  
Senate Majority Leader  
The Capitol  
Albany, New York 12247  
Fax: (518) 455-2448

Hon. James Lack  
Chairman  
Senate Judiciary Committee  
The Capitol, Room 413  
Albany, New York 12247  
Fax: (518) 426-6904

Re: Report of the Commission on Judicial Nomination, dated October 4, 2000

Gentlemen,

As you undoubtedly know, in 1977, in the belief that they were de-politicizing the judicial branch and preserving and enhancing their individual freedoms, liberties and fundamental rights, the People of the State of New York decided to give up a little more of their power to the government. The People amended the Judiciary Article of the New York Constitution to provide for the "merit selection" of the judges of the Court of Appeals. This was a significant change from the 130 year old practice of selecting those judges by popular election.

Messrs. Pataki, Bruno and Lack

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The 1977 amendment states in relevant part: "There shall be a commission on judicial nomination to evaluate the qualifications of candidates for appointment to the court of appeals and to prepare a written report and recommend to the governor those persons who by their character, temperament, professional aptitude and experience are well qualified to hold such judicial office."

The 1977 amendment also states: "The legislature shall provide by law for the organization and procedure of the judicial nominating commission."

The legislature provided such a law. Judiciary Law Section 63 reads in relevant part: "The Commission shall consider and evaluate the qualifications of candidates for appointment to the offices of chief judge and associate judge of the court of appeals and as a vacancy occurs in any such office, shall recommend to the governor persons who by their character, temperament, professional aptitude and experience are well qualified to hold such judicial office... The recommendations to the governor shall be transmitted to the governor in a single written report which shall be released to the public by the commission at the time it is submitted to the governor. The report shall be in writing, signed only by the chairman, and 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."

Judiciary Law Section 64 reads in relevant part: "The Commission shall have the following functions, powers and duties... Conduct investigations, administer oaths or affirmations, subpoena witnesses, and compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents or other evidence that it may deem relevant or material to its evaluation of candidates."

On October 4, 2000, the Commission on Judicial Nomination transmitted a written report to the governor for the purpose of filling the vacancy on the court of appeals caused by the resignation of Joseph W. Bellacosa, Associate Judge. The Commission reported the names of seven candidates "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...."

However, the Commission's report failed to include the constitutionally and statutorily required "findings relating to the character, temperament, professional aptitude and experience for office of each candidate who is recommended to the governor."

Messrs. Pataki, Bruno and Lack


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The People have reason to doubt that the Commission did conduct investigations, administer oaths or affirmations, subpoena witnesses, and compel their attendance, examine them under oath or affirmation and require the production of books, records, documents or other evidence that it deemed relevant or material to its evaluation of the candidates. Unless the Commission includes in its report the requisite findings relating to the character, temperament, professional aptitude and experience of the candidates, the People have reason to believe that "merit selection" has taken a back seat to politics in the appointment of our appeals court judges, thereby undermining the judiciary as the independent, co-equal branch upon which our liberties and freedoms depend.

Based on the above, we respectfully request that you return the report to the Commission with the request that the Commission resubmit its report with said findings.

Very truly yours,

  
Robert L. Schulz, Chairman