

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 212-556-3717 (8 pages)

TO: John Landman, Editor, Metro Section
Tony Marcano, Assignment Editor, Metro Section

FROM: Elena Ruth Sassower, CJA Coordinator

RE: The Times' Duty to Report on the Destruction of the Public's Rights in Matters of
Judicial Selection and Discipline

DATE: November 21, 2000

This follows up my phone message earlier this afternoon with Julie, who, after putting me on hold, told me that IF you were interested in doing a story you would be calling me.

IF the Metro Section does not believe it has a duty to report on the *readily-verifiable* corruption of "merit selection" to our State's highest court – in the context of a judicial appointment that has just been made and will be confirmed next week – please *immediately* provide me with the names of your superiors so that I can contact them.

As may be seen from the enclosed front-page item from today's New York Law Journal, there is NO time to lose. 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".

"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 our 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.

On the different—yet related -- subject is the *readily-verifiable* corruption of the NYS Commission on Judicial Conduct, as evidenced from the case files of lawsuits against the Commission. This includes a lawsuit brought by a NY attorney, Michael Mantell, based on the

Commission's dismissal of a *facially-meritorious* misconduct complaint against Criminal Court Judge Donna Recant, about whom David Rohde had written in a August 28, 1999 column, "*If a Judge Gets Out of Line: Seeking a Cure*". Although David had NO knowledge as to whether Judge Recant had ever been the subject of a judicial misconduct complaint – let alone of how the Commission had addressed it – his column gratuitously quoted a court spokesman as referring to the Commission as "viable and efficient". Thereafter, despite my herculean attempts to get him to balance such self-serving comment by a story about Mr. Mantell's important lawsuit, covered-up by a decision of Supreme Court Justice Lehner, featured on the front-page of the October 5, 1999 Law Journal, which cited *his* column, he failed and refused to do anything.

Yesterday's Law Journal reported on the Appellate Division's "two-paragraph unsigned opinion" in Mr. Mantell's case – an opinion which is even more of an outrage and fraud than Justice Lehner's decision, which it not only upheld, but added to the public injury by ruling, in a single sentence and without any legal authority, that a complainant whose complaint is dismissed by the Commission has "NO STANDING" to seek judicial review. A copy is enclosed.

Let there be no doubt on the subject, the public is being raped of its most fundamental rights in matters involving judicial selection and discipline – and the Times doesn't see "news... fit to print" – even in the face of a mountain of *readily-verifiable* evidentiary proof that I long ago provided.

Please ADVISE as to the current whereabouts of that mountain of proof, which should go DIRECTLY to your superiors.

Enclosures



cc: Albany Bureau: ATT: Ray Hernandez [518-436-7109]
David Rohde, Metro Section [212-556-3717]

New York Law J

SERVING THE BENCH AND BAR SINCE 1888

VOLUME 22 —NO. 98

NEW YORK, TUESDAY, NOVEMBER 21, 2000

TODAY'S NEWS

Update

The State Senate Judiciary Committee has tentatively scheduled a confirmation hearing for Court of Appeals nominee Victoria A. Graffeo for 9:30 a.m. on Wednesday, Nov. 29. Justice Graffeo, now sitting in the Appellate Division, Third Department, was recently selected by Governor Pataki to succeed Judge Joseph W. Bellacosa, who left the Court to become dean of St. John's University School of Law. Testimony at the confirmation hearing is by invitation only. The full Senate is expected to vote on Justice Graffeo's nomination the afternoon of Nov. 29.

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BY CERTIFIED MAIL/RRR: 7099-3400-0001-2791-8523

November 21, 2000

Chairman James J. Lack
Senate Judiciary Committee
The Capitol, Room 413
Albany, New York 12247

RE: CJA's Requests for (1) an "Invitation" to the Senate Judiciary Committee's "By Invitation Only" Hearing on Justice Graffeo's Confirmation; (2) Publicly-Available Information on Justice Graffeo's Appointment

Dear Chairman Lack:

Today's New York Law Journal identifies that 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". (see enclosed copy).

Please advise what the requirements are for securing such "invitation", as CJA has yet to be "invited" in response to its requests to testify in opposition.

From my telephone conversation with the Committee's Clerk, Susan Zimmer, with whom I spoke at 1:30 pm. on November 2nd – *the very day the Governor announced his appointment of Justice Graffeo* – it was my impression that CJA was the *first* to request to testify. Thereafter, I reiterated this request in phone messages left for Ms. Zimmer on November 8th, November 9th, and November 13th. When Ms. Zimmer returned my calls on November 13th, I stated that we had heard nothing from the Committee's counsel, David Gruenberg, and would welcome a call from him to discuss our opposition. I also stated that we were preparing to send you materials relating to that opposition.

November 21, 2000

Those materials, consisting of CJA's October 16, 2000 report on the Commission on Judicial Nomination's subversion of the "merit selection" process to the New York Court of Appeals and CJA's November 13, 2000 report on the bar associations' complicity therein, were sent to you – as likewise to Justice Graffeo – certified mail/return receipt, under a November 13th coverletter. For your convenience a copy is enclosed, as likewise the certified mail/return receipts.

So that CJA may make proper arrangements, please advise as to the status of our request to testify. Please also advise as to the status of our further request for all publicly-available information on Justice Graffeo's appointment. This further request was also made on November 2nd and reiterated thereafter.

Thank you.

Yours for a quality judiciary,



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

Enclosures



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VIA FACSIMILE (518) 426-6904

November 21, 2000

Mr. David Gruenberg
Counsel to the Senate Judiciary Committee
The Capitol, Room 413
Albany, New York 12247

RE: Confirmation Hearing: Victoria Graffeo

Dear Mr. Gruenberg:

This letter confirms your telephone call to me yesterday, in response to my prior telephone requests to testify in opposition to Justice Graffeo's confirmation to the Court of Appeals at the Senate Judiciary Committee hearing on her appointment. These telephone requests followed my October 30, 2000 letter to Chairman Lack, as well as to the Governor, and Senate Majority Leader Bruno, raising the question of the failure by the Commission on Judicial Nomination to include its findings in its October 4th report.

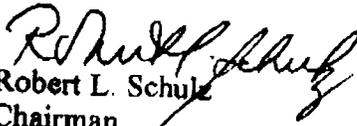
In yesterday's phone conversation, you stated that the Senate Judiciary Committee had scheduled the confirmation hearing for 9:30 a.m. on November 29th, but that testimony was restricted to those "invited" and that no "invitation" was being extended to me. You stated that the public could observe the hearing, but not participate.

In response to my question as to how I could present my opposition to Justice Graffeo's nomination, you suggested I contact each of the members of the Senate Judiciary Committee individually.

In the event the foregoing does not accurately reflect what you told me, please advise.

Thank you for your consideration of this matter.

Very truly yours,


Robert L. Schulz
Chairman



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SERVING THE BENCH AND BAR SINCE 1888

VOLUME 224—NO. 97

NEW YORK, MONDAY, NOVEMBER 20, 2000

TODAY'S NEWS

Update

The Appellate Division, First Department, has upheld a ruling that the State Commission on Judicial Conduct has the discretion to refuse to investigate charges brought to it by an attorney against a judge. In a two-paragraph unsigned opinion, a five-justice panel affirmed a September 1999 decision by Manhattan Supreme Court Justice Edward Lehner not to require the commission to investigate allegations that a Manhattan Criminal Court Judge changed a ruling based on personal animus against the complaining lawyer. The appeals court last week said that the lawyer who brought the charges lacks standing to assert that the commission is required to investigate all meritorious complaints of judicial misconduct. The case is *Mantell v. New York State Commission on Judicial Conduct*, 2291.

2291. MICHAEL MANTELL, pet-ap, v. NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, res-res QDS:12118527 — Judgment, Supreme Court, New York County (Edward Lehner, J.), entered on or about September 30, 1999, which, in a proceeding pursuant to CPLR article 78 to compel respondent Commission to investigate petitioner attorney's complaint of judicial misconduct, granted respondent's motion to dismiss the petition, unanimously affirmed, without costs.

Petitioner lacks standing to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially meritorious complaints of judicial misconduct. Respondent's determination whether or not a complaint on its face lacks merit involves an exercise of discretion that is not amenable to mandamus (*cf.*, *Matter of Dyno v. Rose*, 260 AD2d 694, 698, appeal dismissed 93 NY2d 998, lv denied 94 NY2d 753).

M-5760. MANTELL v. NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT—Motion seeking leave to intervene and for other related relief denied.

This constitutes the decision and order of the Supreme Court, Appellate Division, First Department.

By Williams, J.P.; Mazzarelli, Lerner, Buckley and Friedman, JJ.

DAVID ROHDE

About New York

If a Judge Gets Out of Line: Seeking a Cure

OVER the decades, the spartan courtrooms of the sprawling Manhattan Criminal Courts Building have played host to a number of judges infamous for their eccentricity, despotism or breathtaking arrogance. Their reputations, whether deserved or not, became legendary among the prosecutors and defense lawyers who had to tiptoe in court to avoid the reverberations of the gavel.

Today, Judge Donna G. Recant is on her way to joining that group, according to critics who include defense lawyers, court employees, another judge and members of the Manhattan District Attorney's office.

There are the major things Judge Recant has done that intermittently draw public attention, they say, such as handcuffing a defense lawyer to a courtroom bench for being disrespectful and rude and sentencing a defendant to seven months in prison for cursing her. And there are the minor things, such as eating a bagel, a sandwich or popcorn while hearing cases.

Judge Recant, who is 42 and worked as an assistant district attorney for six years and as a criminal and civil lawyer for seven years, is one of the 36 Criminal Court appointments made by Mayor Rudolph W. Giuliani in his five years in office. All in all, those judges, appointed for up to 10 years, are recognized by courthouse veterans as a high-caliber and hard-working bunch.

But her critics say Judge Recant's demeanor on the bench belittles the judicial process. They also say Judge Recant, who was appointed to the bench in 1996, lacks the perspective her job demands.

A State Supreme Court Justice overruled Judge Recant's decision to sentence a defendant to one month in prison for each time he cursed her (it was seven), an embarrassment for a new judge. And her decision to handcuff a Legal Aid lawyer, Arnold Levine, to a bench this April and sentence him to 10 days in jail after she said he was

Those likely to gripe
about judges are those
likely to face them.

rude and disrespectful has been appealed to another State Supreme Court Justice.

In a more serious incident, she was accused by defense lawyers in a July 1998 trial of privately coaching prosecutors on how they could better handle a case she was presiding over. In a less serious one, she ordered everyone out of a courtroom because someone was popping gum.

Stephen P. Pokart, a Legal Aid lawyer who said he was speaking on his own behalf, said that in 25 years he has never seen a judge with "such a manifest lack of judicial temperament, disregard for fairness and impartiality, and shown such little respect for poor people."

Judge Recant said she could not comment while the appeal of the handcuffing incident is still pending. But four lawyers called a reporter on her behalf and said she is being attacked because she is tough on lawyers. "She holds lawyers to very high standards and is therefore often openly critical of them," said one of them, Richard D. Emery. "And as a consequence, this pattern of attacking her is to be expected."

Dennis Quirk, president of the court officers union, concurred. "They don't like her because she is a tough judge," he said.

The debate about Judge Recant's judicial temperament, or lack thereof, represents a far larger and long-running problem in city and state courts: the relative omnipotence of judges. Several defense lawyers who were critical of her would not agree to be quoted by name. They said they feared retribution in court if they attacked Judge Recant publicly. Officials from the Legal Aid Society said they would not comment until an appeal they have filed of Mr. Levine's jail sentence is completed.

THE situation is far from new. For decades, wise lawyers in New York have never publicly criticized judges or powerful prosecutors for fear it could come back to haunt them in future trials or plea bargain negotiations.

A mechanism to police judges does exist. The State Commission on Judicial Conduct consists of five lawyers, four judges and two lay people who can investigate complaints and censure or remove a judge. David Bookstaver, a spokesman for the Office of Court Administration, called the commission "viable and efficient."

But defense lawyers and some judges said filing a formal complaint to the committee is an enormous gamble for a lawyer. Anonymous complaints about courtroom incidents can be traced back to which lawyers were present. If the complaint fails, the lawyer and his or her clients then face the wrath of a vindicated judge. Until a better system is developed, critics will continue to have to whisper their complaints, instead of shouting them.

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