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Elena Ruth Sassower, Coordinator

BY HAND

December 6, 2000

Laura Mansnerus
The New York Times
Metro Section
New York, New York

RE: Evaluating the "Experiment" of "Merit Selection" to
New York's Highest State Court

Dear Ms. Mansnerus:

Thank you for your return calls both on Friday (12/1) and on Monday (12/4) and your willingness to listen to what I had to say. I'm glad we agree that your article, "*A New Judge is Welcomed to Top Court in Albany*" (11/30/00), presents two UNCONNECTED stories: one on Justice Graffeo's confirmation and the other on "merit selection" to the Court of Appeals, which you state "is still viewed as something of an experiment".

Frankly, I do not understand why you did not CONNECT these two stories -- as I was the bridge between them. This should have been obvious to you on November 29th when you stood with other reporters in the Senate Judiciary Committee hearing room, listening to what I had to say about "merit selection" in the context of Justice Graffeo's appointment and confirmation. Nor does it make sense to me that you did not introduce yourself to me and ask me questions -- as did such other reporters as Michael Gormley of Associated Press and James Odato of the Albany Times Union -- neither of whom I had previously met and each of whom saw fit to approach me, with notebook in hand, to ask about the nature of the opposition I had attempted to offer as Chairman Lack was closing the "hearing". Both Mr. Gormley and Mr. Odato, as likewise Jay Gallagher of Gannett, whose story about the "by-invitation-only" confirmation "hearing" appeared in that day's Gannett newspapers, thereafter wrote stories reflecting my role in raising the "merit selection" issue. Copies of their stories are enclosed, as likewise, John Caher's front-page, "Behind the Scenes" story in the November 29th New York Law Journal, "*Support Grows for*

*Open Confirmation Hearings*¹.

I might point out that the day before the confirmation "hearing" I telephoned the Times Albany Bureau [518-463-7399] at 11:30 a.m., leaving a message with Kay Shatrow for Ray Hernandez that stories about the Senate Judiciary Committee's refusal to permit opposition testimony at its "by-invitation-only" confirmation "hearing" were going to be appearing in the next day's Law Journal and Gannett newspapers².

As you know, Mr. Hernandez wrote the Times' November 3rd story, "*Pataki Selects Judge for Appeals Court He Sees as Lenient*". Unlike yourself, Mr. Hernandez has *not* seen fit to favor me with a return call in response to my many phone messages for him, left with both Ms. Shatrow and the Albany Bureau's voice mail, on the subject of "merit selection" and Justice Graffeo's appointment. Those messages, requesting his return call, were on November 1st (at 1:10 p.m. and 2:30 p.m.), November 3rd (4:32 p.m.); November 16th (11:50 a.m.), November 21st (3:00 p.m.), and December 1st (3:25 p.m.). In conjunction therewith, I also sent faxed communications to the Albany Bureau [518-436-7109], including faxes for his attention – on November 1st, November 2nd, November 17th and November 21st.

Nor have Times editors, Tony Marcano and John Landman, seen fit, over the past many weeks, to return my urgent phone calls [212-556-7000] or respond to my faxes [212-556-3717], urging that the Times undertake an investigative examination of "merit selection, rooted in the then unfolding events pertaining to the Commission on Judicial Nomination's October 4th report of recommendees and, thereafter, Justice Graffeo's appointment and confirmation.

Inasmuch as you stated you were *unaware* of my attempts to pitch a story on "merit selection" to Times editors – and to Times reporter David Rohde – before writing your November 30th story which, in so many respects, bears the imprint of my written entreaties to them, enclosed are copies of these entreaties. They consist of:

1. CJA's October 20th fax to David Rohde
2. CJA's hand-delivered October 24th letter to David Rohde

¹ The internet version of the article was more aptly titled, "*Court of Appeals Nomination Hearings: Confirmation or Coronation?*"

² Little did I then know that the next day – the same day as your article which said NOTHING about the Senate Judiciary Committee's "by-invitation-only" confirmation "hearing" at which opposition testimony was NOT permitted -- the Times would be running an editorial, "*Shine the Light on Albany*". For your convenience, a copy is enclosed.

3. CJA's October 26th fax to Tony Marcano
4. CJA's October 27th fax to Tony Marcano
5. CJA's November 1st fax to Jane Gross, enclosing CJA's fax to the Albany Bureau
6. CJA's November 2nd fax to Tony Marcano and David Rohde
7. CJA's November 17th fax to John Landman, enclosing CJA's proposed November 6th Letter to the Editor
8. CJA's November 21st fax to John Landman and Tony Marcano
9. CJA's November 21st coversheet to David Rohde

As for my phone messages for Mr. Marcano and Mr. Landman, they were on November 1st (11:30 voice mail for Mr. Marcano; 1:10 p.m. message with Sam Lanckton for Jane Gross, filling in for him); November 3rd (10:30 a.m. message with Mr. Lanckton for Mr. Marcano; 4:25 p.m. message with Eric Smith for Mr. Marcano); November 16th (11:55 a.m. message with Mr. Lanckton for Mr. Marcano); November 17th (9:45 a.m. voice mail for Mr. Landman, to whose line I was shunted after being placed on hold for Mr. Marcano); November 21st (2:50 p.m. message with Julie for Mr. Landman)

You should know that the unprofessional conduct of Times editors and reporters, reflected by their wilful failure to respond to my phone calls and faxes, is nothing new. Rather, it is part of a pattern of misconduct wherein the Times has either written CJA out of major stories in which we are integral players or scrapped those stories entirely. These stories are about the processes of judicial selection and discipline, for which CJA both provided and proffered *readily-verifiable* documentary evidence of corruption.

Some of this documentary evidence may have already been transmitted to you by David Rohde, with whom I spoke yesterday. For immediate purposes, the most important of this evidence is:

- (1) CJA's October 16th report to the bar associations evaluating the Commission on Judicial Nomination's October 4th report of recommendees, Justice Graffeo among them – hand-delivered to the Times on October 17, 2000; and
- (2) Verified Petition in the Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* (NY Co. #99-108551)– hand-delivered to the Times on September 7, 1999.

As discussed, this Article 78 proceeding is based on the Commission's dismissal, *without* investigation, of a *facially-meritorious* judicial misconduct complaint against then Appellate Division, Second Department Justice Albert Rosenblatt and is based, *inter alia*, on his believed perjury on his *publicly-inaccessible* application to the Commission on Judicial Nomination in connection with his 1998 Court of Appeals candidacy. Consequently, the Article 78 proceeding serves to expose not only the corruption of the Commission on Judicial Conduct, but of the Commission on Judicial Nomination – and the knowledge and complicity of a whole host of others, including Governor Pataki, Senate Judiciary Committee Chairman Lack, and Attorney General Spitzer.

Frankly, I do not believe that David reviewed either CJA's October 16th report or the Verified Petition in my Article 78 proceeding³. Nor do I believe that David reviewed *any* of the other materials I transmitted to him over the course of 15 months in which I presented him with innumerable angles for stories about the *readily-verifiable* corruption of these two critical Commissions on which so much of the quality of justice and rule of law in this State depends. Had he done so, he would not have pretended, *always without elaboration*, that CJA had not proven the corruption at issue. Despite my proffers of yet additional evidence, David never asked to see it and declined my repeated requests for a meeting at which we could sit down together and go through the evidence so that he could understand its dispositive nature. Nor would he arrange for a meeting with his editors.

As you know, my first request to you was for a meeting so that I could provide you an overview of the empirical evidence CJA has to offer about the "experiment" of "merit selection" to New York's Court of Appeals. You declined and further told me that you didn't think you would be doing another story on "merit selection" until there was another vacancy on the Court of Appeals – two years from now. However, I believe that by the end of our conversation you may have changed your mind – especially as I discussed with you Bob Schulz' lawsuit against the Commission on Judicial Nomination and my soon-to-be-perfected appeal of my

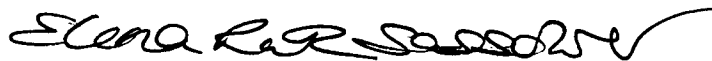
³ Both of these documents are also in the possession of the Fund for Modern Courts. This is reflected by CJA's November 1st letter to Executive Director, Steven Zeidman, a copy of which is enclosed. Inasmuch as you turned to Mr. Zeidman for comment about "merit selection" for your November 30th article, you should ask him to comment about these two documents, as, likewise, about CJA's November 13th report on "The Complicitous Role of the Bar Associations in the Corruption of 'Merit Selection' Appointment to the NY Court of Appeals", transmitted to him under a November 17th letter, which is also enclosed. A copy of that November 13th report, proffered to the Times in the weeks preceding Justice Graffeo's confirmation, is transmitted herewith, along with CJA's November 14th letter to the First Department Disciplinary Committee.

December 6, 2000

Article 78 proceeding against the Commission on Judicial Conduct.

Transmitted herewith is a copy of the Summons and Petition-Complaint in Bob's lawsuit, which you expressed interest in seeing. I will transmit to you a copy of my appeal within the next two weeks, after which time I will call you – hopefully so that we can set a date for a meeting sometime at the beginning of next year

Yours for a quality judiciary,



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

Enclosures

cc: [w/o enclosures]

Albany Bureau: Ray Hernandez [518-436-7109]

Tony Marcano, Day Assignment Editor

John Landman, Metro Editor

David Rohde

Ny Times November 30, 2000

Shine the Light on Albany

New York's State Assembly startled even seasoned observers of Albany's strange political culture in May by staging an open revolt against Speaker Sheldon Silver. The revolt failed, but the rancorous scene left its mark, not only on Mr. Silver, the Democrat who runs the Assembly, but also on Joseph Bruno, Mr. Silver's Republican colleague who runs the State Senate. The legislators' main complaint was that Mr. Silver, along with Mr. Bruno and Gov. George Pataki, maintains a stranglehold on lawmaking in New York State. Members have little more than cheerleading rights — a simple task for which they are rewarded by the legislative leadership with stipends, more staff, bigger offices and benefits for their district.

Chastened by the rebellion, Mr. Silver quickly formed a group of Democratic Assembly members to come up with suggestions for improvement. Their proposals, completed a few weeks ago, offer concrete and important ways to open the system and redistribute some of the power. Many of their recommendations are designed to make it easier for a sole legislator to have more impact. But the proposal that would easily shed the most direct light on much of Albany's mysterious underworld would be to put the entire legislative process on television.

Televising New York's lawmaking, from floor action to committee meetings and hearings, might not win hefty ratings. But it would air the place out considerably. Mr. Silver and Mr. Bruno have said they endorse the concept, but so far naysayers have managed to keep this bit of progress at bay. New York needs an independent, nonpartisan television service much like C-Span to cover floor debate and to choose which hearings should be broadcast. The very idea of such public exposure apparently terri-

fies some of Albany's denizens — all the more reason that the enlightened among them should push for it.

Over all, these Assembly members are protesting that they want to be heard, not only by the public but by their leaders as well. They want more conference committees to thrash out legislation — an important reform that could help limit efforts by the triad of leaders working behind closed doors. The members want their bills to be printed on time. They want their amendments to be considered promptly. In short, these legislators want to legislate rather than follow orders, a reasonable request for anyone serious about the job of public servant.

Other proposals from these two dozen Democrats deserve support, especially a suggestion that the speaker announce how much state money is available for "member items," a form of legislative pork that is generally distributed as the leader advises. Albany's powerful trio controls millions of dollars tucked away in the state budget and passed out for such improvements as libraries or ballparks that benefit legislators who are in their favor or who might be challenged in the next election. The information about what is really available has too long been part of a state leader's secret larder.

Mr. Silver, who calls the report "a good product," says he will ask other Assembly Democrats meeting this week in Saratoga to give their views on how best to open the shutters on at least one side of the State Capitol. There are plenty of ways to do that, as this report explains, but a good start would be to add more conference committees, reveal the secret funds and open the doors to the television cameras.