

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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TO: Recipients of CJA's June 2, 1997 letter to Governor George Pataki

FROM: Elena Ruth Sassower, Coordinator

RE: Ensuring the public's right to *basic* information about the Governor's judicial appointments process and protecting it from unfit judicial appointees

DATE: June 12, 1997

Enclosed is a copy of CJA's June 2, 1997 letter to Governor Pataki. It is furnished to you because, as members of the Governor's Judicial Screening Committees -- Temporary and Permanent -- and as leaders of prestigious bar associations and good government organizations, you have an obligation to ensure the integrity of the Governor's judicial appointments process and the fitness of appointees resulting therefrom. For your convenience, the extensive correspondence referred to in that letter may be accessed from our web-site: www.judgewatch.org.

First and foremost, we hope you will share CJA's view that the public is entitled to *basic* information about the Governor's judicial appointments process. At present, even the bar associations have no idea as to the procedures employed by the Temporary Judicial Screening Committee throughout the first half of the Governor's administration -- a period in which approximately 100 judges were appointed by Governor Pataki. Nor do they know the status of the permanent Committees.

Based upon our past experience with the Governor's office, we do not believe the Governor will provide the information requested by our letter -- including the written reports to which Executive Order #10 and #11 *expressly* entitle the public -- *unless* the legal community shows its support. We, therefore, request that you make your support known to the Governor, privately and publicly. In the event you disagree with us as to the public's right to *basic* information about the Governor's judicial appointments process, we would appreciate if you would set forth your position, in writing, so that we can initiate a discussion within the legal community as to the parameters of confidentiality.

Secondly, we call upon you to meet your ethical obligation under EC 8-6 of both the ABA's Model Code of Professional Responsibility and New York's Code of Professional Responsibility, which state:

"It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those unsuited for the bench..."

EX "F"

To that end, we ask that you examine *documentary evidence* that the Governor's office used the Temporary Judicial Screening Committee as a "front" to reward politically-connected, but unfit, individuals with judicial appointments. That evidence, as outlined by our within letter, indicates that the Governor's office rigged the Temporary Committee's ratings by (1) insulating the Temporary Committee, so that it had no phone number, address, or designated staff through which the public could reach it directly and provide it with unfiltered information; (2) withholding from the Temporary Committee information that would interfere with its giving a "highly qualified" rating to an applicant favored by the Governor; (3) failing to conduct and provide the resources for the "thorough inquiry", requisite for the Temporary Committee's "highly qualified" ratings; and (4) shrouding every aspect of the Temporary Committee's procedures in secrecy and refusing to provide any substantiation for the Committee's alleged "highly qualified" ratings to the questioning public.

You may be sure that we will speedily provide you with *all* documentary materials, referred to in our within letter, so as to enable you to verify that the Governor's office subverted the integrity of the judicial appointments process and knowingly substituted "political considerations" for "judicial fitness" in reappointing Court of Claims Judge Juanita Bing Newton in May 1996 and in elevating Westchester Supreme Court Justice Nicholas Colabella to the Appellate Division, First Department last month. And, lest there be confusion as to the "political considerations" here at issue, they were not about political ideology, but, whether the applicant could be counted on to protect vested political interests by obliterating legal and ethical standards, if necessary. You have only to examine the transcripts of Justice Colabella's deliberately depraved and viciously retaliatory on-the-bench misconduct and the record of his legally insupportable and factually fabricated decisions, as documented in *two* Article 78 proceedings and *two* perfected appeals, to be convinced that the Governor's elevation of Justice Colabella to the Appellate bench was not in spite of such utterly lawless conduct, in the service of powerful political interests -- but because of it.

Such documentation will leave no doubt but that the public and the rule of law are profoundly endangered by such appointed judges -- and that action must be taken, consistent with the letter and spirit of Rule 8.4 of the ABA's Model Rules of Professional Conduct, "A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authorities". This includes taking appropriate steps to ensure that the New York State Commission on Judicial Conduct is meeting its constitutional and statutory duty to investigate facially-meritorious, documented complaints of judicial misconduct. Unfortunately, thanks to Judge Newton, a judicial member of the Commission, it is not.

Finally, it must be stated that had the legal community acted earlier, Governor Pataki's politically-motivated and manipulated appointment of judges, such as Justice Colabella, could have been prevented. Indeed, the Association of the Bar of the City of New York covered up for the Governor by its dishonest and superficial February 7, 1997 report on his continued use of the Temporary Judicial Screening Committee. That report focused exclusively on the "appearance of impropriety", omitting any mention that *actual* impropriety was already the subject of evidentiary proof. This was because City Bar President Michael Cardozo, to whom we had given that proof, in-hand, months earlier, *withheld* it from the report's author, who knew *nothing* about it. We stated as much in a March 7, 1997 letter to President Cardozo, with a request that the City Bar examine such proof and

issue a supplemental report. A copy of that letter was sent to the Governor, to City Bar leadership, as well as to the Erie and Onondaga County Bar Associations, which had expressed themselves publicly on the subject of the Governor's Temporary Committee. We received *no* response from anyone.

The bar associations' *non*-response to our profoundly serious March 7, 1997 letter gave the Governor a further signal that they would let him get away with just about anything. Indeed, *two full months after* naming the members of the Department Judicial Screening Committees, the Governor cared nothing about the "appearance of impropriety" in making his out-of-the-blue appointment of Justice Colabella to the Appellate Division, First Department, based on a purported "highly qualified" rating from his Temporary Committee. To our knowledge, there hasn't been a peep of protest from the bar associations or legal community.



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

cc: Governor George Pataki