

# 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)

## BY FAX (12 pages), E-MAIL, & MAIL

DATE: January 26, 2004

TO: NYPIRG  
Blair Horner, Legislative Director  
Fax: 518-432-6178  
E-Mail: [hhorner106@aol.com](mailto:hhorner106@aol.com)

COMMON CAUSE  
Rachel Leon, Executive Director  
Fax: 212-807-1809  
E-Mail: [cocauseny@aol.com](mailto:cocauseny@aol.com)

LEAGUE OF WOMEN VOTERS  
Aimee Allaud, Off-Board Specialist for Government, etc.<sup>1</sup>  
Lenore Banks, Judicial Off-Board Specialist  
Fax: 518-465-0812 / 716-836-5240  
E-Mail: [85Aimee@nycap.rr.com](mailto:85Aimee@nycap.rr.com)  
[BLenorehbanks@cs.com](mailto:BLenorehbanks@cs.com)

FROM: Elena Ruth Sassower, Coordinator  
Center for Judicial Accountability, Inc. (CJA)

RE: Vindicating the Public's Right to Know:  
The Role of \$ in "Merit-Selection" to the NY Court of Appeals

Attached is my written testimony to the State Senate Judiciary Committee, which I read at its January 12, 2004 "hearing", in opposition to the confirmation of Robert S. Smith to the New York Court of Appeals<sup>2</sup>. The response of Republican Committee Chairman John DeFrancisco – as Republican and Democratic Committee members sat "idly by" -- was to threaten me that I

<sup>1</sup> I am advised that Ms. Allaud has taken over the responsibilities of the League's Legislative Director, Barbara Bartoletti, who is away until March, but for whose information I will nonetheless send this memo by e-mail: [abartole@nycap.rr.com](mailto:abartole@nycap.rr.com).

<sup>2</sup> The testimony WITH referred-to underlying documents are posted on CJA's website,

would never again be permitted to testify if I did not quietly return to my seat. This, because after I finished reading, I asked that Mr. Smith be called upon to respond to the specific questions my testimony had identified – beginning with the precise amount of his financial contributions to Governor Pataki and the Republican party.

It is now evident that beyond the non-monetary corruption of “merit selection” to our state’s highest court which CJA has repeatedly documented over the past ten years<sup>3</sup>, money has ALSO found its way in. The latest figure – tucked in a January 13th Buffalo News article<sup>4</sup> as if it were of no consequence – is reputed to be close to \$500,000 in political contributions given by Mr. Smith and his wife to Governor Pataki and Republicans over the last decade.

As all three of your organizations have been actively working to diminish the influence of money in government by public financing of elections (“*Civic Groups Find Albany and Manhattan Are Prime Sources of Political Contributions*”; New York Law Journal, 11/20/03) and for more open government (“*Reform Groups Push For More Transparency and Tougher Ethics Laws*”, New York Law Journal, 1/6/04), the public rightfully looks to you for response to Senate Minority Leader David Paterson’s outrageous remarks on Fred Dicker’s January 15<sup>th</sup> radio show on WROW – reflected by that day’s A.P. feed of Joel Stashenko, “*Why Democrats were mum on Pataki high court choice*”. In sum and substance, Senate Minority Leader Paterson purported that he was satisfied with Mr. Smith’s private explanation of his financial contributions, “took his answers in private to be the answers he would have given in public”, and, further, that it would be unfair to publicly probe the issue since “large contributions...is pretty much the way we conduct politics”. A copy of the A.P. feed is enclosed so that you can see for yourself the clear implication that Democratic reluctance to publicly question Mr. Smith was because other appointees “to important boards, the judiciary, and other places” have also been generous contributors – to both political parties.

---

www.judgewatch.org. See, sidebar: “*Testimony*”.

<sup>3</sup> See, documents posted on CJA’s website, *inter alia*: (1) sidebar: “*Testimony*”: (a) September 7, 1993 written statement in opposition to confirmation of Howard Levine to the NY Court of Appeals; (b) December 15, 1993 written statement in opposition to confirmation of Carmen Ciparick to the NY Court of Appeals; (c) January 22, 2003 written statement in opposition to confirmation of Susan Read to the NY Court of Appeals; (2) sidebar: “*Test Cases-state (Commission)*” – pertaining to Albert Rosenblatt’s appointment to the NY Court of Appeals; (3) sidebar: “*Judicial Selection- ‘merit’ selection*”: CJA’s October 16, 2000 and November 13, 2000 reports and related documents pertaining to Victoria Graffeo’s appointment to the NY Court of Appeals.

<sup>4</sup> “*Victim’s Sister Urges Death Penalty Revisions*” by Tom Precious.

Apart from the role of money in *other* governmental appointments -- which should be the subject of investigation, especially as relates to the lower state judiciary -- appointment to the New York Court of Appeals is of constitutional dimension. As you know, in 1977, New York voters relinquished their constitutional right to elect Court of Appeals judges on the premise that there was a "better way" -- one that would remove the influence of money and give them "merit selection". Such is embodied in Article VI, Section 2 of the New York State Constitution.

Because Senate Minority Leader Paterson's remarks are a brazen affront to the public's rights and a further blow to the very concept of "merit selection", CJA respectfully requests that each of your organizations forcefully respond. Common Cause should be especially eager to do so, as Rachel Leon has already powerfully commented to the media about Mr. Smith's financial contributions<sup>5</sup>. Likewise, the League of Women Voters should be eager to add its voice, especially in light of Lenore Banks' already negative remarks about "merit selection" to the New York Law Journal<sup>6</sup>. As for NYPIRG, Blair Horner's comment about financial contributions to state legislative campaigns, reported by the New York Law Journal, is surely equally applicable to the situation at bar:

---

<sup>5</sup> Responding to a media report that Mr. Smith and his wife had contributed "at least \$146,000 over the last five years": "It's sort of business as usual for the governor in that it appears to be cash and connections' said Rachel Leon of Common Cause NY, noting few people contribute such large amounts. 'We see a lot of this. It doesn't mean (Smith) isn't qualified but it does mean that governor has a very close and powerful circle.'" "Pataki campaign contributor nominated to Court of Appeals", AP (Michael Gormley), 11/4/03;

Responding to a media report that Mr. Smith and his wife had contributed "more than \$140,000 to GOP campaigns since 1999, including \$30,700 in donations directly to Pataki": "Rachel Leon, director of the New York chapter of the government watchdog group Common Cause, said it was 'not at all surprising' Pataki would hand a plum job to a big donor. 'This says more about how the governor raises funds than it does about this individual,' she said." "Gov taps donor chum for spot on top bench", Daily News (Joe Mahoney), 11/5/03.

<sup>6</sup> "Today, the process is definitely politicized, and I am not quite sure how to fix it," said Lenore Banks, a judicial specialist with the League of Women Voters and member of a commission appointed by Chief Judge Judith S. Kaye that is studying ways to improve judicial elections. Ms. Banks said the Commission on Judicial Nomination does not function as a truly independent body, as evidenced by the fact that it nearly always delivers the candidate the governor prefers. She said the process should act as a check-and-balance -- a limitation on the powers of the appointing authority (the governor) -- but instead seems intent on ensuring that the governor gets his way. Ms. Banks said the secrecy of the commission also breeds skepticism and leads to the impression that members are accountable only to the public official who put them on the panel, or to no one at all. 'Certainly the process lacks openness,' Ms. Banks said. 'It was designed to shield the process from political influence, and it doesn't do that. We need to take a look at how the Commission is appointed. There is obviously a lack of checks and balances. I think we really need to take another look at the process.' ...Ms. Banks and others said that if the goal of merit selection is to remove the influence of politics, there is scant evidence that it has succeeded." "Model for Selecting Top Court Judges Reveals Its Flaws", NYLJ (John Caher), 11/13/03.

"Contributions do not come from people who are 'feeling charitable,' said Mr. Horner. 'They want something in return. You speak much louder in the political process if you show up with a checkbook.'"<sup>7</sup>

Of course, the most effective means of vindicating the public's rights to the reasonably-requested, specific information about Mr. Smith's financial contributions identified by my January 12<sup>th</sup> testimony – as well as for developing an agenda of essential legislative reform of an unconstitutionally closed and corrupted "merit selection" process, including the televising, in full, of future confirmation "hearings"<sup>8</sup> -- is by a strategy of concerted action. This is properly the subject of a meeting and I respectfully request that such be coordinated as soon as possible – by conference call, if necessary -- for such constructive purpose.

Please advise.

Thank you.



---

<sup>7</sup> "Civic Groups Find Albany and Manhattan Are Prime Sources of Political Contributions", NYLJ, (John Caher), 11/20/03.

<sup>8</sup> "Democracy is sick, and the illness stems from the closed secretiveness of Albany,' NYPIRG Legislative Director Blair Horner said.", "Coalition seeks rules changes to bring fairness in government", Legislative Gazette, 1/13/03. Among the joint proposals of NYPIRG, Common Cause, and the League : the creation of a NY C-SPAN, whose goal, summed up by Barbara Bartoletti, would be "educating the citizen about what is going on".

**Subject: The Public's Right to Know: The Role of \$ in "Merit Selection" to the NY Court of Appeals**

**Date:** 1/26/2004, 7:00 PM

**From:** Elena Ruth Sassower <judgewatchers@aol.com>

**To:** hhorner106@aol.com, cocauseny@aol.com, 85Aimee@nycap.rr.com,  
BLenorehbanks@cs.com, abartole@nycap.rr.com

**Organization:** Center for Judicial Accountability, Inc.

Attached is my memo of today's date, addressed to each of you, along with my January 12th testimony before the State Senate Judiciary Committee.

Please respond as soon as possible.

Thank you.

 1-26-04-citizenaction.doc (49KB)  1-12-04-testimony-e.doc (60KB)

Elena Ruth Sassower, Coordinator  
Center for Judicial Accountability, Inc. (CJA)  
Tel: (914) 421-1200  
Fax: (914) 428-4994

*NYPIR9*

TRANSMISSION VERIFICATION REPORT

TIME : 01/26/2004 18:55  
NAME : CJA  
FAX : 9144284994  
TEL : 9144211200

DATE, TIME	01/26 18:48
FAX NO./NAME	15184326178
DURATION	00:06:58
PAGE(S)	12
RESULT	OK
MODE	STANDARD ECM

*COMM Cause*

TRANSMISSION VERIFICATION REPORT

TIME : 01/26/2004 19:03  
NAME : CJA  
FAX : 9144284994  
TEL : 9144211200

DATE, TIME	01/26 18:56
FAX NO./NAME	12128071809
DURATION	00:06:54
PAGE(S)	12
RESULT	OK
MODE	STANDARD ECM

*League of  
Women Voters*

TRANSMISSION VERIFICATION REPORT

TIME : 01/26/2004 19:11

NAME : CJA

FAX : 9144284994

TEL : 9144211200

DATE, TIME	01/26 19:04
FAX NO./NAME	15184650812
DURATION	00:07:06
PAGE(S)	12
RESULT	OK
MODE	STANDARD ECM