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BY CERTIFIED MAIL/RRR: Z-471-036-403

February 5, 1999

State of New York Commission on Judicial Nomination
666 Fifth Avenue
New York, New York 10103-0084

ATT: Stuart A. Summit, Counsel

RE: The Public's Access Rights under Judiciary Law §63.3

Dear Mr. Summit:

On November 17, 1998, in our one and only conversation together following the Commission on Judicial Nomination's announcement of "well qualified" recommendees for the Court of Appeals, you refused to divulge the Commission's post-recommendation procedures. This refusal was pointed out in my November 18, 1998 letter to the Executive Committee of the Association of the Bar of the City of New York -- a copy of which I sent you. The pertinent paragraph of that letter was, thereafter, specifically quoted and reiterated in my December 1, 1998 letter to you¹ -- which additionally noted that you had been "quite adamant that you would not provide any information as to how the Commission interprets the language of Judiciary Law, Article 3A, §66(2)."

I draw your attention to the third sentence of Judiciary Law §66.2:

"All information that is not publicly disclosed in accordance with subdivisions three and four of section sixty-three of this article², or disclosed in connection with the senate's confirmation of the appointment, shall remain confidential and privileged, except for the purposes of article two hundred ten of the penal law." [emphasis added]

¹ My December 1, 1998 letter (Exhibit "A-2"), to which I received no response from you, responded to your November 25, 1998 letter to me (Exhibit "A-1").

² "...the public will have the opportunity to observe and to participate in the selection process once recommendations are made to the Governor", Chapter Law Memorandum, New York State Legislative Annual, 1978, at p. 135.

EX "F"

Judiciary Law §63.3 imposes four distinct duties on the Commission on Judicial Nomination in connection with its recommendations of "well qualified" candidates to the Governor:

"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." [emphases added]

Request is hereby made for a copy of that "single written report", setting forth, "in writing", "findings" as to the qualifications of the recommendees, which the Commission was required to "release to the public" simultaneous with its transmittal to the Governor³. Please advise: (1) in what manner you made that required simultaneous "release" to the public; (2) why you never informed me of such "release"; (3), and why the Commission's informational brochure conceals the existence of such publicly-available "written report" by its blanket assertion that "[a]ll proceedings and records of the Commission are confidential".

Judiciary Law §63.4 requires that the Commission transmit to the Governor the "financial statements" filed by each of its recommendees, thereafter requiring the Governor to "make available to the public the financial statement filed by the person who is appointed to fill a vacancy". By copy of this letter to Governor Pataki, request is made to him, pursuant to Judiciary Law §63.4, for a copy of the financial statement filed by Appellate Division, Second Department Justice Albert Rosenblatt, the Governor's appointee to the Court of Appeals.

The Governor's appointment of Justice Rosenblatt was in the face of notice that the Commission had "shamelessly abandoned 'merit selection' principles" by its recommendation of Justice Rosenblatt as a "well qualified" candidate -- and that he should obtain from the Commission our submissions establishing Justice Rosenblatt's unfitness. As set forth in my November 18th letter, a copy of which was sent the Governor, you refused to identify whether the Commission would be automatically forwarding our submissions to the Governor -- or only at his request, pursuant to the ambiguously-worded first sentence of Judiciary Law §66.2, "the governor shall have access to all papers and information relating to persons recommended to him by the Commission".

A similar ambiguity appears in the second sentence of Judiciary Law §66.2, "The senate shall have access to all papers and information relating to the person appointed by the governor to fill a vacancy"

³ For comparison and other research purposes, we additionally request copies of ALL the Commission's prior "single written report[s]" transmitted to Governors, pursuant to Judiciary Law §63.3, since the Commission's inception twenty years ago.

as to whether "all papers and information" are automatically transmitted -- or must be requested. By copy of this letter to the Senate Judiciary Committee, we hereby request that its Chairman, James Lack, clarify procedures relative to that portion of Judiciary Law §66.2 that pertains to the Senate. As to Justice Rosenblatt's confirmation, in particular, did the Committee automatically receive CJA's submissions to the Commission and Governor, as part of "all papers and information" or did they have to be requested. As reflected by CJA's December 16, 1998 faxed letter to David Gruenberg, the Committee's Senior Counsel (Exhibit "B"), *immediately* upon the Governor's appointment of Justice Rosenblatt, we notified the Committee, *repeatedly*, to ensure that it had "or would request from the Commission on Judicial Nomination -- the documentary materials we had provided it, establishing Justice Rosenblatt's unfitness".

The third sentence of Judiciary Law §66.2 plainly anticipates that inherent in Senate "access" to "all papers and information" is "disclos[ure]" in connection with the senate's confirmation of the appointment. "Disclos[ure]" plainly increases with the number of Senators having such "access" and seeing for themselves the "papers and information" on which the Commission based its recommendation and the Governor his appointment. In the context of Justice Rosenblatt's confirmation, we ask Chairman Lack to inform us as to how many Senators availed themselves of such "access", as opposed to relying on him and/or Mr. Gruenberg.

In the event you are unaware of the fraud committed by Chairman Lack and Mr. Gruenberg in preventing the Senators on the Judiciary Committee -- and any media present at its no-notice, "by invitation only" December 17, 1998 confirmation "hearing" -- from hearing CJA publicly testify about the "papers and information" we had supplied to the Commission and Governor in opposition to Justice Rosenblatt, enclosed is a copy of our published Letter to the Editor, "*An Appeal to Fairness: Revisit the Court of Appeals*" (New York Post, 12/28/98) on the subject (Exhibit "C").

As yet, the Senate Judiciary Committee has not provided us with a transcript of the December 17, 1998 confirmation "hearing" and information pertinent thereto -- although we formally requested same by letter, dated January 13, 1999 (Exhibit "D"). Nor has the Committee yet provided us with any "publicly available" information about Justice Rosenblatt's nomination -- which, as reflected by our December 16, 1998 letter, we have repeatedly requested. This "publicly-available" information should have included, AT MINIMUM, the "single written report" and "financial statement", referred to in Judiciary Law §63.3 and §63.4 -- the originals of which, presumably, were among the "papers and information" to which the Senate Judiciary Committee had "access". Indeed, pursuant to Article VI, §2(e) of the State Constitution, the Governor was required to transmit the "written report" to the Senate⁴.

⁴ In pertinent part, Article VI, §2(e) reads "The governor *shall* transmit to the senate the written report of the commission on judicial nomination relating to the nominee." [emphasis added]. Such reference to the Commission's "written report" is the THIRD that appears in the relatively brief Article VI, §2. See, Article VI, §2(c), which also provides that "The legislature shall provide by law for the organization and procedure of the

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Needless to say, by this letter we reiterate to Chairman Lack our request for copies of the materials specified in CJA's December 16, 1998 and January 13, 1999 letters (Exhibits "B" and "D").

Yours for a quality judiciary,



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

Enclosures

cc: Governor George Pataki

ATT: James McGuire, Counsel

Richard Platkin, Senior Assistant

[certified mail/rrr: Z-471-036-404]

Senate Judiciary Committee Chairman James Lack

ATT: David Gruenberg, Senior Counsel

[certified mail/rrr: Z-471-036-405]

New York State Attorney General Eliot Spitzer

[certified mail/rrr: Z-471-036-406]

New York State Ethics Commission

[certified mail/rrr: Z-471-036-407]

New York media

judicial nominating commission", as well as Article VI, §2(d)(4).