

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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December 14, 1998

Mr. Matt Fleischer
The New York Observer
54 East 64th Street
New York, New York 10021

RE: Governor Pataki's nomination of Albert Rosenblatt to the Court of Appeals -- touted by Saturday's New York Times as a "Wise Choice" (editorial, 12/12/98) (Exhibit "A")

Dear Matt:

Following our phone conversation on Friday -- and hopefully arriving in today's mail -- are *primary source*, evidentiary materials which, in one fell swoop, will enable you to expose the unfitness of Appellate Division, Second Department Justice Rosenblatt for *any* judicial office AND the fraudulent "merit selection" process that resulted in his nomination to the Court of Appeals.

Indeed, the materials not only expose the corruption of the State Commission on Judicial Nomination -- concealed from public view by the confidentiality of its proceedings -- but, additionally, the corruption of the New York State Commission on Judicial Conduct -- likewise concealed by the confidentiality of its proceedings. On top of this, they expose the complicity of the bar associations in the corruption of these two state commissions -- as well as the complicity of Governor Pataki.

The New York Observer already has an edge on this extraordinary story of systemic governmental corruption. Four years ago, it devoted its October 31, 1994 Court Circular (Exhibit "B") to the story of judicial corruption that forms the backdrop to CJA's opposition to Justice Rosenblatt. The Circular described what happened when judicial whistle-blowing attorney Doris L. Sassower sued the Appellate Division, Second Department for retaliating against her by suspending her law license in June 1991 *without* a hearing and *without* reasons: they decided the case themselves, in their own favor. This perversion of the most elementary rule of judicial disqualification to cover up their criminal judicial conduct was the subject of CJA's September 19, 1994 misconduct complaint against Justice Rosenblatt, as a member of the Second Department panel which dismissed the case. As reflected by the Circular, it was also the basis upon which Doris Sassower also sued the Second Department justices in a §1983 federal civil rights action, *Sassower v. Mangano, et al.*

A copy of the September 19, 1994 judicial misconduct complaint and pertinent pages of the verified complaint in the §1983 federal action¹ were supplied to the Circular's author, Warren St. John. We also supplied him an advance copy of CJA's \$20,000 public interest ad, "*Where Do You Go When Judges Break the Law?*", printed in the October 26, 1994 New York Times (Op-Ed page) and, on November 1, 1994, in the New York Law Journal (at p. 9) (Exhibit "C-1") -- an ad which highlighted the key judicial corruption issues.

On October 26, 1994, the same day as "*Where Do You Go When Judges Break the Law?*" appeared in the Times, we hand-delivered a copy of the ad to the Commission on Judicial Conduct, supplementing the September 19, 1994 misconduct complaint pending before it. At the same time, we filed another judicial misconduct complaint against Justice Rosenblatt -- this one based on his conduct in an unrelated case consolidating seven appeals involving Doris Sassower's law firm. Six weeks later, on December 5, 1994, we filed yet another complaint against Justice Rosenblatt, arising from those consolidated appeals.

Examining for yourself these three judicial misconduct complaints against Justice Rosenblatt will enable you to READILY verify that each complaint is facially-meritorious -- the standard for investigation by the Commission on Judicial Conduct, set forth in Judiciary Law §44.1². That standard was publicly acknowledged, twice, in an August 20, 1998 New York Law Journal column written by the Commission's Administrator, Gerald Stern, in defense of its investigation of Judge Lorin Duckman. A copy of that column is annexed to CJA's current complaint against Justice Rosenblatt, filed on October 6, 1998. Such complaint, based on Justice Rosenblatt's collusion and complicity in the fraudulent defense of the *Sassower v. Mangano* federal action and our belief, for reasons particularized, that he PERJURED HIMSELF in his answers to specific questions on the Commission on Judicial Nomination's written questionnaire and on -- is still pending before the Commission on Judicial Conduct

Each of CJA's three 1994 misconduct complaints against Justice Rosenblatt were unlawfully dismissed by the Commission on Judicial Conduct, *without* investigation and *without* any determination that they were facially lacking in merit -- in direct violation of Judiciary Law §44.1. Consequently, in 1995, we sued the Commission on Judicial Conduct for its unlawful dismissals -- dismissals which protected high-ranking, politically-connected judges -- Justice Rosenblatt, among them -- from the disciplinary consequences of their corrupt acts. The Commission survived that case ONLY by fraud, as

¹ The *Sassower v. Mangano* verified complaint is reprinted IN FULL in the appendix to the cert petition at A-49-100.

² In pertinent part, Judiciary Law §44.1 reads as follows:

"Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit."

particularized by CJA's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4) (Exhibit "C-2"). As reflected by that ad -- and by CJA's predecessor \$1,600 public interest ad, "*A Call for Concerted Action*" (NYLJ, 11/20/96) (Exhibit "C-3"), which described our public defense of Judge Duckman -- we long ago provided copies of the file of our suit against the Commission to the Governor, to other state officials and agencies, and to bar associations. This, so that they could verify, for themselves, that the Commission had survived our litigation challenge only by fraud -- and take action to protect the public. Their response, as recounted in the ads, was non-response.

By letter dated October 5, 1998 to the Commission on Judicial Nomination, CJA opposed the reported candidacy of Justice Rosenblatt, supplying copies of its three judicial misconduct complaints from 1994 and information about their unlawful dismissal, including the aforesaid ads. Additionally, we provided it with the *unopposed* cert petition and supplemental brief in *Sassower v. Mangano, et al.* -- wherein Justice Rosenblatt is a defendant -- as well as a free-standing copy, with exhibits, of a July 27, 1997 criminal complaint we had filed with the U.S. Justice Department's Public Integrity Section, seeking criminal investigation and prosecution, *inter alia*, of the *Sassower v. Mangano* defendants.

Examining for yourself such fact-specific evidentiary materials of corruption and complicity in corruption by Justice Rosenblatt should readily convince you that they are dispositive of Justice Rosenblatt's unfitness for ANY judicial office and that he should rightfully be removed from the Appellate Division office, Second Department office he occupies. The question then becomes how the Commission on Judicial Nomination could simply IGNORE those materials and, *without* interviewing us or soliciting from us the underlying substantiating documentation, recommend Justice Rosenblatt as "well qualified" to sit on our state's highest court. And how could the bar associations, who, thereafter, purported to "screen" the Commission's recommendations, then give its imprimatur in the face of CJA's November 18th letter to them, alerting them to the Commission's dysfunction and corruption, as to which it provided the substantiating evidentiary proof. Finally, how could the Governor -- who, in addition to having been notified by phone, was sent a copy of that November 18th letter -- with a request (at p. 2) that he access the materials we had supplied to the Commission -- nonetheless nominate Justice Rosenblatt.

The fact that the Governor nominated Justice Rosenblatt while our October 6, 1998 *facially-meritorious* judicial misconduct against him remains pending before the Commission on Judicial Conduct reflects his arrogant confidence that it will "dump" that complaint, just as it dumped our three 1994 complaints -- and that just as the Justice Department took no previous action on our prior complaints of state judicial corruption, as detailed in our July 27, 1998 complaint, so it will take none on the July 27, 1998 complaint.

December 14, 1998

This an explosive story of systemic governmental corruption -- one which should bring down some of the most powerful state figures -- including Governor Pataki. CJA has full documentary proof of the Governor's corrupt conduct and betrayal of the public trust. This includes a three-year correspondence with him, protesting his violation of *express* procedures laid out in his own Executive Orders #10 and #11 for making judicial appointments to the Court of Claims and interim Supreme Court and county court judgeships -- and wholesale violation of the public's *express* rights relative thereto³ -- his disregard for the evidentiary file, provided to him, that the Commission on Judicial Conduct is corrupt and that it survived our litigation challenge only by fraud, and his subversion of the State Ethics Commission by his appointments and prolonged non-appointments to it.

We look forward to your enthusiastic response to this important, prize-winning story.

Yours for a quality judiciary,



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

Enclosures

P.S. In the event -- unlikely we hope -- that you are not interested in pursuing this extraordinary story, we ask that you return the substantiating evidentiary materials to us. They are costly and time-consuming for our unfunded citizens' organization to reproduce and assemble, and we would appreciate being able to make them available to other journalists.

³ See CJA's Letter to the Editor, "*In Choosing Judges, Pataki Creates Problems*", New York Times, 11/16/96 (Exhibit "C-4").

CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA)
INVENTORY OF TRANSMITTAL

Correspondence:

Commission on Judicial Nomination (CJN)

CJA's 10/5/98 ltr

CJN's 11/25/98 ltr

CJA's 12/1/98 ltr

Commission on Judicial Conduct (CJC)

CJA's 10/6/98 complaint

CJA's 11/3/98 ltr

CJC's 11/3/98 acknowledgment

CJC's 12/2/98 acknowledgment

CJA's 12/10/98 ltr

Bar Leaders -- Governor Pataki

CJA's 11/18/98 ltr to Executive Committee of the City Bar,
with fax and certified mail receipts to Governor Pataki

CJA's 1994 Judicial Misconduct Complaints against Justice Rosenblatt:

CJA's 9/19/94 misconduct complaint

CJA's 10/26/94 misconduct complaint

CJA's 12/5/94 misconduct complaint

CJC's ltrs of acknowledgment and dismissal:

9/28/94; 11/4/94; 12/13/94; 12/14/94; 1/24/95

Sassower v. Mangano, et al. #98-106

unopposed cert petition

supplemental brief

errata sheets

Criminal Complaint: U.S. Department of Justice

8/27/98 letter to Lee Radek, Chief, Public Integrity Section
U.S. Department of Justice, Criminal Division

NY Times editorial 12/12/98

Governor Pataki's Wise Choice

The choice of a judge for the state's highest court is among the most important decisions a governor makes. This week Gov. George Pataki chose well, nominating Albert Rosenblatt, a widely respected New York State Appellate Division judge to a seat on the state's Court of Appeals.

Mr. Pataki's harsh attacks on the court during his first term for decisions he viewed as too sympathetic to the rights of criminal defendants raised concern he would appoint blindly pro-prosecution judges. But in selecting Justice Rosenblatt as his second appointment to the seven-member bench, Governor Pataki opted for a moderate whose background includes stints as a Dutchess County prosecutor and as the state's chief administrative judge.

Though more conservative than Justice Vito

Titone, the fierce defender of civil liberties he is to replace, Justice Rosenblatt has produced a string of well-written opinions that suggest a thoughtful approach not captive to any rigid ideology. Justice Rosenblatt's imposition of the death penalty in 1983 under provisions of the state's old capital punishment statute no doubt helped him gain favor with Mr. Pataki, an ardent death penalty supporter. But the judge's regrettable ruling in that case does not necessarily foretell how he will vote 15 years later on issues concerning the state's new death penalty law or other criminal justice matters.

While Justice Titone's principled voice will be missed, the selection of Justice Rosenblatt adds a fair and capable jurist to a court that decides the vast majority of its cases by unanimous decision.

Court Circular

—By Warren St. John—

I FOUGHT THE LAW AND... : Doris L. Sassower, a 62-year-old New York attorney and former president of the New York Women's Bar Association, had always taken pride in being a whistle-blower who loudly opposed politically appointed judgeships in New York. But ever since she was suspended in 1991 without a hearing, she has been embroiled in a baffling, Kafkaesque tangle. When she sued judges for reinstatement, they decided the case themselves. Guess what? She lost.

Ms. Sassower, who lives in Westchester, contends she is being victimized by the State Attorney General's Office and judges from the Appellate Division, Second Department, in Brooklyn. After three years of unsuccessfully seeking reinstatement to the bar, Ms. Sassower has retained a civil liberties lawyer, Jeremiah Gutman, to bring a separate Federal action against the Attorney General and judges of the Appellate Division, among others. She is seeking reinstatement to the bar and both compensatory and punitive damages.

In 1993, Ms. Sassower formed a watchdog group, the Center for Judicial Accountability. The group has made her ordeal a cause célèbre, raising more than \$16,000 to buy ad space in *The New York Times* to sway public opinion to their side.

Ms. Sassower's detractors claim that she is a frivolous litigator, with a questionable record before the bar, who flouted a court order and deserved her suspension. Her allies, on the other hand, say that Ms. Sassower has been blacklisted for vigorously opposing the judicial status quo. And even if she is guilty of mis-

conduct, they say, she should have at least been granted a hearing—as procedure dictates.

"If a lawyer pulls out a gun and shoots a juror in the courtroom, even that person gets a hearing before suspension. But in this case there was no hearing," said Eric Coppolino, the communications director for Ms. Sassower's watchdog group.

For years, Ms. Sassower, a noted matrimonial and family lawyer, dedicated herself to exposing judicial corruption and lobbying for change of certain judicial nominating procedures. That work, Ms. Sassower's allies claim, has inspired the wrath of local judges and officials, including State Supreme Court Justice Samuel Fredman and Attorney General G. Oliver Koppell.

The rift with Justice Fredman has its roots in 1980, according to Ms. Sassower, over the issue of matrimonial law reform. Ms. Sassower, then pro bono counsel to the National Organization for Women, and Mr. Fredman, then a State Assemblyman from White Plains, favored separate divorce law bills before the State Assembly in 1980. Mr. Fredman's side won, but Ms. Sassower called the debate "vicious," and now suggests that the bad blood never subsided.

Ms. Sassower also claims that her loud opposition to politicized judicial appointments in the Ninth Judicial District in Westchester County made her even less popular with local judges. In 1990, Ms. Sassower filed an election law case that opposed "cross-endorsing"—a practice whereby Republicans and Democrats tacitly agree to support each other's judicial nominations. According to Ms. Sassower, this process led to Gov. Mario Cuomo's appointment of Mr. Fredman—a man with no prior judicial experience—to the post of

Ninth District Supreme Court Justice.

In January 1988, an attorney named Harvey Landau succeeded Ms. Sassower as counsel in a divorce case. Ms. Sassower refused to turn over certain documents required by her former client in the case because, she claimed, "there were monies due." Mr. Landau asked the court, through Ms. Sassower's old enemy and now State Supreme Court Justice, Samuel Fredman, to hold Ms. Sassower in contempt.

When Ms. Sassower requested 30 days to retain counsel for the matter, Justice Fredman refused. Instead, he sent a letter to Ms. Sassower informing her that the contempt proceeding would occur in just three days. Ms. Sassower says she did not receive that letter because she was out of the country.

But Justice Fredman did not take kindly to Ms. Sassower's absence. He wrote a decision, published in *The New York Law Journal* and reported in the press at the time, excoriating Ms. Sassower for her "capricious disappearance," which he characterized as a "gross insult" to him. Ms. Sassower's troubles were only beginning.

A few months later, on Nov. 15, 1989, a local paper reported that Ms. Sassower had recently been released from a psychiatric hospital, which, according to her own court papers, "she had voluntarily entered following her collapse resulting from Justice Fredman's abusive treatment and public humiliation of her..."

In her court papers, Ms. Sassower claims that Justice Fredman, who had still not ruled on the initial contempt proceeding, called her psychiatrist in April 1990, without her knowledge. (Calls to Justice Fredman's chambers by *The Observer* were not returned.)

On April 13, 1990, over her attorney's objection, Justice Fredman interviewed the psychiatrist. One week after that interview, Justice Fredman issued a decision finding his old adversary Ms. Sassower to be mentally competent.

More trouble awaited Ms. Sassower, because a few weeks later, Gary Casella, a chief counsel to the grievance committee of the

Ninth Judicial District, sought a court-ordered medical examination of Ms. Sassower, despite Justice Fredman's initial findings. If she was found to be mentally incapacitated, the order asked that Ms. Sassower be suspended.

In January 1991, Mr. Casella asked the Appellate Division to find Ms. Sassower guilty of failing to comply with the court-ordered medical examination. She, in turn, claims that she did not "fail to comply" but had instead filed a motion seeking to protect herself from an unfair examination.

On June 14, 1991—just five days after *The New York Times* published a letter to the editor written by Ms. Sassower that decried judicial corruption in Westchester County—the Appellate Division, Second Department, which handles appeals from that area, suspended Ms. Sassower under an "interim" suspension order—one that still stands three years later. "Nothing I did rises to the level of any disciplinary infraction. There were no reasons stated and there was no hearing. That is all contrary to the law and to the court's own rules," Ms. Sassower said.

Nearly two years later, Ms. Sassower sued the Appellate Division judges claiming their suspension of her was illegal. The Attorney General's office—which represents judges when they are sued—moved to dismiss the case. The judges who decided that motion favorably were the very judges named as defendants in the case. "It was a fraud from start to finish," Ms. Sassower's daughter, Elena, said of the proceeding. A spokesman for the Attorney General's office said there were precedents for judges deciding their own cases.

In late September, the State Court of Appeals, New York's highest court, on the recommendation of the Attorney General, refused to hear Ms. Sassower's case. Neither the Attorney General's office nor Mr. Casella would comment on the specifics of the case, except to say they stood by their actions. Elena Sassower responded. "We can't both be right; one of us has to be a shameless liar."