

BEFORE THE NEW YORK STATE SENATE
JUDICIARY COMMITTEE

In the Matter

- of -

A Hearing to Consider
the Nomination of:

the Honorable Eugene F. Pigott, Jr.
of Grand Island as an Associate Judge
of the Court of Appeals

The Capitol
Room 124

September 14, 2006
2:30 p.m.
Thursday

PRESIDING:

Senator John A. DeFrancisco
Chairman,
Judiciary Committee

PRESENT:

Senator John J. Marchi
Senator Dale M. Volker
Senator Hugh Farley
Senator Stephen Saland
Senator Michael Balboni
Senator Serphin Maltese

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COMMITTEE MEMBERS CONTINUED:

Senator John Bonacic
Senator Dean Skelos
Senator George Winner
Senator Malcolm Smith, Ranking
Senator Neil D. Breslin
Senator John Sampson
Senator Thomas Duane
Senator Eric Schneiderman
Senator Carl Andrews
Senator Martin Connor
Senator Martin Dilan
Senator Jeffrey Klein
Senator Diane J. Savino

1 most recent member, but Justice Jasen before him,
2 and in preparing my remarks, I came across a
3 wonderful statement about Judge Jasen in the Law
4 Review that said of him that he has long
5 occupied the seat of good sense on the
6 state's highest court. Speaking the voice of
7 reason and ordinary common sense, Judge Jasen
8 reassures the rest of us that law in this state
9 is still in a healthy relationship to life.

10 And I'm sure, Judge, that when your career on
11 the Court of Appeals comes to an end, the same
12 will be said of you.

13 Thank you.

14 CHAIRMAN DEFRANCISCO: I had a question.
15 What was the joke he told you?

16 MR. MCCARTHY: His wife and daughter are
17 here.

18 ✓ CHAIRMAN DEFRANCISCO: The last speaker is
19 Elena Ruth Sassower, who will speak on the
20 qualifications of Judge Pigott.

21 MS. SASSOWER: Not a lot of room for evidence
22 on this table. Would members of the committee
23 care for a copy of my statement?

24 CHAIRMAN DEFRANCISCO: Maybe after you make

1 it, so we can keep moving.

2 MS. SASSOWER: As you wish.

3 CHAIRMAN DEFRANCISCO: Thank you.

4 MS. SASSOWER: Good afternoon. My name is
5 Elena Ruth Sassower and I am director and
6 co-founder of the Center for Judicial
7 Accountability, Inc., (CJA), a non-partisan,
8 non-profit citizens' organization dedicated to
9 safeguarding the public interest in judicial
10 selection and discipline.

11 CJA opposes Senate confirmation of Governor
12 Pataki's appointment of Eugene F. Pigott, Jr. to
13 the New York Court of Appeals. We view it as the
14 Governor's latest manipulation of the judicial
15 appointments process, which we have documented
16 time, after time, after time involving
17 appointments at all levels of the judiciary. CJA's
18 website, www.judgewatch.org, posts the
19 substantiating documentary proof, accessible via
20 the sidebar panel "Judicial Selection-State/NY".

21 This committee did not require Justice Pigott
22 to complete a publicly available questionnaire
23 setting forth the specifics of his background,
24 his political activity, his legal, judicial and

1 other positions he has held, his most significant
2 decisions, his published writings and speeches,
3 or any other information as to what he views as
4 his qualifications. Nor, apparently, has the
5 Committee asked Justice Pigott to furnish other
6 documents bearing on his qualifications and
7 fitness to be publicly available. Consequently,
8 the public and the press, acting on its behalf,
9 are unable to investigate what Justice Pigott
10 purports to be his relevant background and
11 credentials.

12 From our Googling Justice Pigott's name on
13 the internet, we found the New York Court
14 system's online posting of his bio, the last
15 sentence of which caught our interest, "He served
16 as a member of the Governor's Temporary Judicial
17 Screening Committee between 1995 and 1996."

18 The Temporary Judicial Screening Committee,
19 established on April 25, 1995, by Governor
20 Pataki's Executive Order No. 11, was supposed to
21 be just that, temporary. It was to exist until
22 the permanent Judicial Screening Committees,
23 established by Governor Pataki's simultaneously
24 promulgated Executive Order No. 10, were "fully

1 operational".

2 CHAIRMAN DEFRANCISCO: Excuse me,
3 Ms. Sassower. You're talking about the process
4 now. The purpose of this hearing is to make the
5 determination upon the qualifications of this
6 individual to serve on the Court of Appeals. Do
7 you have any comment concerning that?

8 MS. SASSOWER: Absolutely.

9 CHAIRMAN DEFRANCISCO: Would you get to
10 those, please.

11 MS. SASSOWER: I am presenting as to Justice
12 Pigott's participation on the Temporary Judicial
13 Screening Committee.

14 CHAIRMAN DEFRANCISCO: I think you were
15 getting into your objections of the screening
16 committee process, not his appearance on it.

17 MS. SASSOWER: Is it your view, stated before
18 all, that you care not one wit of the process
19 that has produced him?

20 CHAIRMAN DEFRANCISCO: Ms. Sassower, we've
21 gone through this, and I'm giving you one more
22 opportunity to speak. This time it's the same
23 rules as last time, and that is about the
24 qualifications of this individual.

1 MS. SASSOWER: Exactly.

2 CHAIRMAN DEFRANCISCO: What observations do
3 you have as to the qualifications of this
4 individual?

5 MS. SASSOWER: Let me present.

6 Yet it took nearly two years before members
7 of the permanent committees were even appointed,
8 and then --

9 CHAIRMAN DEFRANCISCO: Excuse me,
10 Ms. Sassower. Again, I want to be pleasant, but
11 on the other hand, you are talking about the
12 process you're objecting to and the appointment
13 of members to a certain committee. That's not
14 what we're here for, and we're going to be very
15 close to --

16 MS. SASSOWER: I am presenting as to Justice
17 Pigott's participation in a hoax called the
18 Temporary Judicial Screening Committee.

19 CHAIRMAN DEFRANCISCO: Ms. Sassower --

20 MS. SASSOWER: And I am getting to the
21 details of that. Please let me present it in
22 some sequential fashion so they're
23 understandable.

24 CHAIRMAN DEFRANCISCO: Ms. Sassower, for the

1 last time, this is your last opportunity. There
2 is an individual here that's been nominated for a
3 specific position, and the question on this
4 group's mind right now is whether he's qualified.

5 MS. SASSOWER: He is not.

6 CHAIRMAN DEFRANCISCO: Well, tell me why and
7 don't tell me about process, but tell me about
8 this individual, otherwise your testimony is
9 over.

10 MS. SASSOWER: We do not know what month in
11 1996 Justice Piggott stepped down as a member of
12 the Temporary Judicial Screening Committee, but
13 our interaction with Mr. Finnegan, the Governor's
14 counsel, was in the spring of 1996.

15 CHAIRMAN DEFRANCISCO: Is there a motion to
16 terminate the testimony of this witness as being
17 non-germane to this hearing?

18 MS. SASSOWER: Perhaps they would like to
19 view my statement so they'll understand my --

20 CHAIRMAN DEFRANCISCO: So moved by Senator
21 Skelos, seconded by Senator Balboni. All in
22 favor? Opposed?

23 (Whereupon a vote is taken and the motion is
24 passed)

1 SENATOR VOLKER: Give us your statement, if
2 you have a copy.

3 CHAIRMAN DEFRANCISCO: You can give your
4 statement --

5 MS. SASSOWER: Your running from this is a
6 reflection on the Committee, because there
7 is no scrutiny of your --

8 CHAIRMAN DEFRANCISCO: Ms. Sassower --

9 MS. SASSOWER: And your conduct of this
10 committee --

11 CHAIRMAN DEFRANCISCO: Ms. Sassower --

12 MS. SASSOWER: -- standards which refer to
13 this as a --

14 CHAIRMAN DEFRANCISCO: You are embarrassing
15 yourself.

16 MS. SASSOWER: Why don't you ask him about
17 the Temporary Judicial Screening Committee?

18 CHAIRMAN DEFRANCISCO: Judge Pigott, would
19 you please come up as the members are going to
20 ask questions --

21 MS. SASSOWER: Well, you received the file on
22 the New York State Judicial Conduct which was
23 presented to the Temporary Judicial Screening
24 Committee --

1 CHAIRMAN DEFRANCISCO: We're all set. We're
2 going to start asking questions. Will you go
3 back to your seat, please, and give a copy of
4 your statement to Senator Saland.

5 MS. SASSOWER: This is supposed to be a
6 selection process.

7 CHAIRMAN DEFRANCISCO: That's correct.

8 MS. SASSOWER: There hasn't been any
9 compliance with merit --

10 CHAIRMAN DEFRANCISCO: You've been excused.

11 MS. SASSOWER: -- all the evidence to the
12 contrary, including --

13 CHAIRMAN DEFRANCISCO: Is there a way to turn
14 this mike off?

15 SENATOR SKELOS: Mr. Chairman, may we proceed
16 with the questions?

17 CHAIRMAN DEFRANCISCO: We are.

18 Are there any questions of Judge Pigott from
19 the members of the committee?

20 Senator Skelos.

21 SENATOR SKELOS: There's a number of
22 individuals who have mentioned separation of
23 power. You've been on the judicial committee and
24 heard a number of people indicate that. How do

1 you draw the line? How do you make the
2 determination? How do you make a determination
3 as to when you're encroaching upon what is really
4 a legislative process?

5 JUSTICE PIGOTT: My general philosophy with
6 respect to that, it's an old saying among some
7 judges, is, read the statute, read the statute,
8 read the statute. And I've found in my
9 experience, particularly as an appellate judge
10 where you have, in my case, four other jurists
11 working on a case with you, quite often the
12 litigant overlooks that and you find yourself in
13 a case where there's been a jump to a conclusion
14 or proposition that doesn't have a sound basis.
15 So I approach each case, I like to say, with a
16 great deal of humility, because I don't think I'm
17 much smarter than, for example, this body or the
18 governor or another court, frankly, and I
19 therefore like to start at the very basic statute
20 that is being interpreted and work from there and
21 see where the case goes, and that has led me, as
22 Judge Pine pointed out so well, I had forgotten
23 one or two of those cases, and not wander away
24 from it. Because what is your providence as