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March 7, 1997

President Michael Cardozo
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036-6690

RE: Supplement to the City Bar's February 7, 1997 Report

Dear President Cardozo:

According to a front-page story in yesterday's New York Law Journal (Exhibit "E-2"), Governor Pataki has now, after nearly two years, finally implemented his Executive Order #10, setting up permanent judicial screening committees.

Bar associations, among them, the Association of the Bar of the City of New York, are being credited for this achievement, based on their criticism of the Governor for failing to implement such Executive Order. The Law Journal article specifically identifies the City Bar's Report, issued three weeks ago, as "scathing".

We regard the City Bar's Report as superficial, at best, because of its *exclusive* focus on the "appearance of impropriety" created by the Governor's prolonged use of a Temporary Judicial Screening Committee. A similar view was expressed by Jim McGuire, Assistant Counsel to the Governor, in responding to the release of the Report:

"The bar's report is a cynical document in that it raises questions about the appearance of political influence and doesn't trouble to determine whether there has been any influence brought to bear on [the Temporary Judicial Screening Committee]." New York Times, 2/13/97

More to the point, we regard the City Bar's February 7, 1997 Report, issued by its Council on Judicial Administration, as dishonest. Not only does it fail to give any credit or attribution to our citizens' organization for its ground-breaking work in exposing the Governor's manipulation of judicial appointments -- which we provided the City Bar nearly ten months before, at a time when no one gave any attention to what was going on -- but omits any mention of the documentary evidence I personally gave you two months before, establishing *actual* impropriety by the Governor's office in connection with the Temporary Judicial Screening Committee.

So that the record is clear, on December 7, 1996, before the start of the City Bar's program "How to Become a Judge", I spoke with you about CJA's Letter to the Editor in the November 16, 1996 New York Times, "*On Choosing Judges, Pataki Creates Problems*" (Exhibit "A-1") -- which you acknowledged having read. I stated that the situation was far, far worse than our published Letter described and urged that there be a follow-up inquiry by the City Bar. To support such follow-up, I gave you a copy of our June 11, 1996 letter, addressed to the Senators of the New York State Senate (Exhibit "B"). Annexed to that letter were two exhibits: an April 18, 1996 letter and an April 29, 1996 letter¹, whose receipt by the office of Michael Finnegan, counsel to the Governor, was confirmed by attached certified return mail receipts. Such materials chronicled Mr. Finnegan's wilful refusal, over a period of many, many months, to respond to citizen inquiries about the most basic aspects of the Governor's Temporary Judicial Screening Committee: its membership, its procedures, and its resources and presented evidentiary support for our assertion that the Governor's office had used the Temporary Judicial Screening Committee as "a front" to rig the undeserved "highly qualified" rating given at least one judicial candidate, incumbent Court of Claims Judge Juanita Bing Newton, whose unfitness for judicial office was a matter of documentary proof. I told you that the June 11, 1996 letter itself had been provided to the Governor's office. I may also have provided you with a copy of our June 12, 1996 letter to Mr. Finnegan, reflecting that fact (Exhibit "C").

I would note that Mr. Finnegan had been prominently billed as participant of the City Bar's December 7th "How to Become a Judge" program, specifically as a presenter on the topic of gubernatorial appointment to the Court of Claims (Exhibit "D"). He never showed up or sent a substitute from the Governor's office.

In the months that passed, we heard nothing from you or from anyone else from the City Bar about our direct, first-hand experience with Mr. Finnegan and the Governor's Temporary Committee. This "silent treatment" is standard operating procedure for the City Bar whenever we have presented it with documented evidence of political manipulation and corruption of the mechanisms of judicial selection and discipline.

Lo and behold, two months later, on February 7, 1997, the City Bar issued its Report, noting (at pp. 6-7) the concerns of bar associations and judges about the Governor's continued use of the Temporary Judicial Screening Committee. Conspicuously, it nowhere refers to our citizens' organization, our published November 16th New York Times Letter to the Editor (Exhibit "A-1"), or our June 11, 1996 letter and supporting materials on the subject (Exhibits "B" and "C").

¹ Among the indicated recipients of our April 29, 1996 letter was the then Chairman of the City Bar's Committee to Encourage Judicial Service, whose Committee plans and develops the City Bar's "How to Become a Judge" program.

In an attempt to obtain basic information about the Report -- not the least being whether the Council was aware of our June 11, 1996 letter I handed to you on December 7th -- I telephoned Robert Haig, the Council's Chairman. Mr. Haig refused to answer any of the few questions I asked him before he abruptly terminated our conversation. These included:

- (1) when the Council began to examine the issues addressed by its Report;
- (2) what had prompted it to examine these issues; and
- (3) whether he was aware of my New York Times Letter to the Editor on the subject.

Fortunately, the Report's author, William Dallas, in sharp contrast to the insolent Mr. Haig, was gracious and forthcoming. When, at the very outset, I asked Mr. Dallas if he knew who I was, he stated he knew I had written a Letter to the Editor in the Times. In response to my inquiries, Mr. Dallas told me that my Letter had come to his attention from a computerized media search and that he believed it was the first to expose the Governor's continued use of his Temporary Judicial Screening Committee. He further told me that it was not until January of this year that the Council on Judicial Administration had begun to study the issue -- which study, he stated, had resulted from your expressed concerns. Mr. Dallas informed me that your views were solicited as part of the preparation for the Report, but that you had not told him of our June 11, 1996 letter (Exhibit "B") -- whose existence he knew nothing about until my conversation with him.

Mr. Dallas was quite interested in what I had to say about our June 11, 1996 letter: that it exposed *actual* impropriety by the Governor's office in its use of the Temporary Judicial Screening Committee, not just the "appearance" issues, which, Mr. Dallas agreed, were the thrust of the City Bar's Report. He told me that were that the case, he would consider a supplement to the Report, but that he would have to obtain approval to do so.

Such supplement is certainly warranted. Yesterday's Law Journal (Exhibit "E-2"), noting that the Governor "has never explained his lengthy delay in getting the [permanent judicial screening] panels up and running", quoted from the City Bar's Report that the delay "might look like the Governor was waiting until 'political favors' had been paid with judicial appointments". It put the figure at "at least 83" judges that the Governor has thus far nominated or reappointed². As recently as three days ago, the Law Journal announced the Governor's nomination of five judges -- two of whom have powerful political patrons (Exhibit "E-1"). The most powerful is Senate Majority Leader Joseph Bruno, whose executive counsel is among the Governor's five "midnight" nominees. As reflected by the certified receipt, Senate Majority Leader Bruno's office received our April 18, 1996 letter, delineating the manipulations of the Governor's office in connection with the Temporary Judicial Screening

² As reflected by our April 18, 1996 letter (p. 2), we long ago requested information as to "how many judicial nominations were made by the Governor". We got *no* response to this or any of our other informational inquiries.

Committee and the corruption of the Commission on Judicial Conduct (Exhibit "B"). His response? Not even a peep.

It is CJA's position that the public is owed an investigation of the process that has produced such large number of state court judges so that it can make an informed choice to eliminate this unchecked gubernatorial power which, additionally, has been used for political pay-backs³. **It is CJA's view that appointments to the Court of Claims, Supreme Court, and Appellate Division are too easily politicized by this State's Governors and Senators to be left to "Executive Orders" and must be the subject of statutory and constitutional safeguards.** A supplement would give the City Bar the opportunity to explore this vital issue of essential legislative change so as to protect the public from the machinations and deal-making which are the *modus operandi* for nominations and appointments.

It is worthy of note that except for identifying the name of the Chairman of the Temporary Judicial Screening Committee, the City Bar's Report does *not* answer a single one of the critical questions we long ago asked of the Governor's office. Rather, the Report compares the Executive Orders of this and other governors and, only in its final two pages (pp. 5-7) goes beyond those orders to highlight "two other aspects": (1) that candidates apply directly to the Governor's office, which then passes them on the temporary screening committee; and (2) "the pervasive role played by the Counsel to the Governor and his staff the screening process." As to these, *neither* of which is presented in detail⁴, the Report does not recite what, if any, investigative interviews, were conducted to "flesh out" information and, in fact, none is "fleshed out". No explanation is given as to the meaning of the Report's cryptic footnote:

"we have been unable to determine whether every candidate who has expressed an interest in a judicial appointment has been considered by the temporary committee. Nor do we know what affirmative efforts have been made to encourage individuals to apply." (at p. 6).

Does this mean that Mr. Finnegan and those involved in the posting of judicial vacancies and the processing of candidates were not forthcoming with that information? If so, why does the Report not prominently identify that outrageous fact and protest?

³ As reflected by the June 11, 1996 and June 12, 1996 letters (Exhibits "B" and "C"), the Governor's office and the Senate refused to provide us with *any* information concerning the qualifications of judicial nominees in substantiation of the Temporary Judicial Screening Committee's purported "highly qualified" ratings.

⁴ The cursory and unimpressive nature of the City Bar's Report in this regard is obvious from comparison with the Erie Bar Association's November 26, 1996 letter to the Governor.

The devastating documentary record presented by our June 11, 1996 letter (Exhibit "B"), setting forth our direct-first-hand experience over a six-month period with the Governor's office as we attempted, unsuccessfully, to obtain information about and to contact the Temporary Judicial Screening Committee was plainly relevant to any report by the Council as to its "continued use" by the Governor.

We, therefore, call upon you to explain why -- as it now appears -- you withheld such letter from Mr. Dallas, rather than permitting him and the Council members to examine it for themselves, interview us, and come to their own conclusions. We submit that these conclusions would necessarily have required the Council to undertake a very different Report -- one examining corrupt and fraudulent conduct by the Governor's office and collusion by the Senate Judiciary Committee and Senate leadership. Such a Report, however, would have compromised the likelihood that City Bar's leadership would be appointed to positions of power and prestige by the Governor's administration and by those in his political orbit.

This is not the first time that you, your predecessor presidents, and others occupying leadership positions at the City Bar have withheld from one of its committees documentation relating to corruption and fraud by public officials so that it would render a white-washing report on a subject it purported to study. Ironically, on February 10, 1996 -- the day preceding press announcement of the City Bar's Report on the Temporary Judicial Screening Committee -- we wrote a letter to the City Bar's General Counsel, protesting the fact that you and others at the City Bar who knew of our Article 78 challenge to the Commission on Judicial Conduct concealed it from the City Bar Task Force which was examining the Commission on Judicial Conduct in the context of the political firestorm created by Governor Pataki and Mayor Giuliani over Judge Loren Duckman. A copy of that letter was sent to you (Exhibit "F"). To date, neither you nor any of the other recipients have denied or disputed the serious allegations therein -- much as you have not denied or disputed any of the facts set forth in our most public protest of the City Bar's cover-up of the dysfunctional and politicized Commission on Judicial Conduct, as set forth in CJA's November 20, 1996 ad in the New York Law Journal, "*A Call for Concerted Action*" (Exhibit "A-2").

It may be that your concealment of our June 11, 1996 letter (Exhibit "B") from Mr. Dallas was related to the fact that the evidence of Juanita Bing Newton's unfitness, which we sought to present to the Governor's Temporary Screening Committee and, thereafter, to the Senate Judiciary Committee, concerned her tenure as a judicial member of the Commission on Judicial Conduct. Specifically, she protected high-ranking, politically-connected judges, who were the subject of facially-meritorious, indeed, documentarily-established complaints of judicial misconduct, and failed and refused to take corrective steps in the face of actual knowledge that the Commission was the beneficiary of fraud: a legally and factually unsupported and insupportable decision dismissing our Article 78 challenge, without which it could not have survived.

You should disclose that you have a particular self-interest in covering up for the Commission: not the least reason being because you chaired a committee of the Fund for Modern Courts which gave it a clean bill of health *without* examining the self-promulgated rules under which the Commission operates -- specifically, 22 NYCRR §7000.3 in relation to Judiciary Law §44.1 -- and *without* examining any of the 85% of the complaints the Commission summarily dismisses each year. This was called to your attention in an August 22, 1995 letter (Exhibit "G"), as well as your own obligation to verify the facts relating to our Article 78 proceeding against the Commission, which you and the Fund ignored, notwithstanding the facts were readily verifiable from the copy of the litigation file we provided the Fund and, thereafter, to the City Bar.

As reflected by our June 11, 1996 letter, a copy of the file of our Article 78 proceeding against the Commission was transmitted to the Governor. We believe you should see our May 6, 1996 transmittal letter (Exhibit "H"), since it was addressed to Mr. McGuire, whose comments about the "cynical" nature of the City Bar's Report are above-quoted. Based upon their knowledge of the file, Mr. McGuire -- and his boss, Mr. Finnegan -- have reason to laugh with contempt and glee at the City Bar's Report, which talks about "appearances" when there are damning, on-the-ground, concrete facts. Mr. McGuire and Mr. Finnegan well know that the file and the continuum of our correspondence with the Governor's office -- much of it indicating the City Bar as a recipient -- constitutes nothing less than an easy-to-follow "paper trail" of their misconduct -- wholly unexplored by the City Bar's Report. After all, what does it take to interview the members of the Temporary Judicial Screening Committee about whether they were informed by the Governor's office of our opposition to Judge Newton, the basis therefor, and were provided with the documentary substantiation of our claims?

This is not the first time you have covered up for Governor Pataki. Notwithstanding you have written and spoken on the subject of protecting judges from unwarranted attacks by politicians, suggesting that where those politicians are lawyers they should be subject to disciplinary penalties (Exhibit "I-1"), on October 7, 1996, you refused to respond to my inquiry to you as to whether the conduct of Governor Pataki and Mayor Giuliani in connection with their attacks on Judge Duckman did not rise to such level. Indeed, on that date, at the City Bar's program "Politicians on Judges: Fair Criticism or Intimidation?" (Exhibit "I-2") -- at which *no* questions from the audience were entertained -- you all but threatened to have me removed from the City Bar when I came up to you at the program's conclusion and merely attempted to discuss the subject with you.

In that connection, on December 7th, disgust at the cowardly self-interest of bar types, who fail to deliver on their rhetoric, was evident from the reaction of Chief Judge Judith Kaye, when, following her keynote presentation at the "How to Become a Judge" program, she was surrounded by a gaggle of self-promoting lawyers. One lawyer, trying to score points with the Chief Judge, identified herself as a member of the Committee to Preserve the Independence of the Judiciary. By words and gesture, Chief Judge Kaye dismissed such body as ineffectual.

However, as the Chief Judge was speaking, her gaze caught on the copy of my November 16th Times Letter to the Editor, which I was holding (Exhibit "A-1"). The Chief Judge interrupted her derisive remarks about the Committee to Preserve the Independence of the Judiciary to ask me if that was a copy of my Times Letter and could she have it. At least twice the Chief Judge commented that it was "very good" and that she "liked it". Because of her enthusiasm, I not only gave her the copy of my Times Letter she had requested -- on the reverse side of which was reprinted our November 20th Law Journal ad (Exhibit "A-2") -- but a copy of our June 11, 1996 letter to the Senators (Exhibit "B") -- the very letter I gave you hours earlier and which, apparently, you thereafter withheld from the Council.

So as to maximize the possibility that bar associations will act honestly and responsibly in addressing the evidence of official misconduct presented by our June 11, 1996 letter (Exhibit "B") and June 12, 1996 letter (Exhibit "C"), copies of this letter are being sent to the Bar Associations of Erie and Onondaga County. Upon information and belief that I am not at liberty to disclose, their November 26, 1996 letters to the Governor on the subject of the Governor's Temporary Judicial Screening Committee were prompted by our November 16, 1996 New York Times Letter to the Editor.

We await your response.

Yours for a quality judiciary,



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

cc: Governor George Pataki
Chief Judge Judith Kaye
William Dallas, Esq.
Robert Haig, Chairman, Council on Judicial Administration
Daniel Kolb, Chairman, Judiciary Committee
Robert Jossen, Chairman, Judicial Conduct Committee
David R. Pfalzgraf, President, Bar Association of Erie County
Helen B. Druce, Executive Director, Onondaga County Bar Association
Ron Russo, Esq. (attorney for Judge Loren Duckman)
New York Times
New York Law Journal