

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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By Priority Mail

August 23, 1996

John Carr, Albany Times Union
345 Albany County Courthouse
Albany, New York 12207

Dear John:

This letter follows up our recent telephone conversation regarding the classified ad which appeared in the Sunday, August 11th issue of the Albany Times Union. A copy of that ad, giving a mere three days' notice to applicants for the Supreme Court judgeship made vacant by Justice Lawrence Kahn's elevation to the federal bench, is enclosed, as is the Times Union's "write-up" about the ad in its August 13th issue.

Also enclosed is a copy of last year's Times Union editorial "What A Way to Pick Judges" (8/13/95), which used Justice Kahn's anticipated appointment to the federal bench to describe "a system, or systems, in disarray". I draw your attention to its statement:

"Meanwhile, politicians are already in deal-making mode as they contemplate filling Justice Kahn's seat, and several others, in state court. Republican and Democratic party leaders are intent on coming to an agreement that will keep the same political mix. One hand, in short, washes the other."

John, you would be doing a real public service by a journalistic expose of how Governor Pataki has been filling interim Supreme Court judgeships, as well as vacancies on the Court of Claims. That "process" completely flies in the face of the needed standard which the Times Union editorial enunciated:

"a selection process that invites public participation and not only allows, but encourages, the citizenry to take part".

So as to graphically demonstrate for you how secretive, fraudulent, and utterly contemptuous of the public the Governor's judicial selection process is, I enclose a copy of our June 11, 1996 letter to the New York State Senate, describing how it operates and annexing documentation. The Governor's Chambers also received a hand-delivered copy of that letter.

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Indeed, the day following, by letter dated June 12, 1996, we expressly invited the Governor's counsel to comment upon "the public's right to basic information about how the Governor chooses our state court judges". To date, 2-1/2 months later, we have received no response.

We would hope that an expose of the "process" by which Governor Pataki is filling the vacancy created by Justice Kahn will embrace an expose about how that vacancy on the state Supreme Court was created--in other words, the "process" by which New York's Northern District has gotten its newest judge.

That the federal judicial selection process is no less sham, fraudulent, and utterly contemptuous of the public may be seen from another letter of ours--our June 28, 1996 letter to U.S. Senate Judiciary Chairman Hatch. That letter describes how all the players in the process--the American Bar Association, the Justice Department, and the Senate Judiciary Committee--suppressed and disregarded our documentary showing that Lawrence Kahn had engaged in on-the-bench misconduct on the State Supreme Court by dumping a politically-explosive case. You are personally familiar with that case, Castracan v. Colavita, since you were there "at the beginning" when it was before Justice Kahn in October 1990. As you know, Castracan challenged the manipulation of state court judgeships by party leaders and the practice of judicial cross-endorsement¹.

Although copies of our June 28, 1996 letter were sent to both the Republican and Democratic Senate leadership, they went ahead with an "agreement" to confirm Lawrence Kahn to a district court judgeship. As a result of that "agreement" (read: cross-endorsement), Lawrence Kahn was confirmed in Executive Session on July 16, 1996--without debate on the floor of the Senate and without even the formality of a Senate vote.

In describing the election of New York state judges and the appointment of federal judges, last year's Times Union editorial stated that

"Both systems tend to treat the citizenry as an unnecessary appendage to the selection process."

¹ The particulars of Justice Kahn's misconduct in the Castracan case are detailed in the second of two letters that are appended as Exhibit "F" to our June 28, 1996 letter to Chairman Hatch. Dated October 31, 1995, it is addressed to the ABA's Second Circuit representative.

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As our uncontroverted June 28, 1996 letter demonstrates, that is an understatement. Moreover, regarding gubernatorial appointments to the state bench, the situation is similarly undemocratic and sham

Finally, you also have an important opportunity to set the record straight--and to correct the Times Union's editorial absolution of Justice Kahn of responsibility and taint for the deal-making that is behind judgeships--as to which it extends "all due respect". The fact is that by dumping Castracan v. Colavita, it is Justice Kahn who, single-handedly and with an eye to his 1993 (cross-endorsed) re-election and onward to the federal bench, perpetuated the political manipulation of New York's judicial elections and the practice of cross-endorsement.

I am sure I don't need to tell you that aside from the important public service represented by such expose journalism and its potential to bring about essential change, there are journalism prizes to be won. Enclosed, for your information, is the brochure from this year's Silver Gavel Award presentation.

In the event you do not intend to pursue the within important stories about judicial selection, we would appreciate your passing them on to a journalist who will. Otherwise, we ask that you return the enclosed materials to us. They are costly to reproduce and assemble, and we need to send them on to other journalists.

We look forward to hearing from you.

Yours for a quality judiciary,



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

Enclosures:

- (a) CJA brochure, with inserts
- (b) "What A Way To Pick Judges", Times Union, 8/13/95
- (c) 6/11/96 ltr to New York State Senators
- (d) 6/12/96 ltr to Governor Pataki's counsel
- (e) 6/28/96 ltr to U.S. Senate Judiciary Chairman Hatch
- (f) Silver Gavel Awards, 1996