

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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BY PRIORITY MAIL

January 16, 1996

Manhattan Borough President Ruth Messinger
Municipal Building, 19th Floor South
1 Centre Street
New York, New York 10007

Dear Borough President Messinger:

Following up your request at our breakfast meeting last Friday, I am pleased to enclose a copy of our critique of the so-called "screening" procedures employed by the City Bar's Committee on the Judiciary. As discussed, the context of that critique was President Bush's nomination of Westchester County Executive Andrew O'Rourke to a district court judgeship in the Southern District of New York in November 1991.

Also enclosed is our June 2, 1992 letter to then Senate Majority Leader George Mitchell, constituting an "update and supplementation" to our critique. By the attachments thereto, we documented that the City Bar's approval of Mr. O'Rourke for that lifetime federal judgeship, rested on its knowing and deliberate screening out of information bearing adversely upon his qualifications--which it refused to even accept.

As established by our critique, the City Bar's refusal to receive such negative information was based on its position that its review of Mr. O'Rourke's qualifications was "confidential". Indeed, prior to the City Bar's public announcement of its approval of Mr. O'Rourke's nomination, it refused--on the alleged basis of "confidentiality"--to even confirm whether or not its Committee on the Judiciary was evaluating Mr. O'Rourke's qualifications.

The City Bar's absurd and extreme interpretation of its self-imposed "confidentiality" was the genesis of our critique--since it left us with no choice but to ourselves present to the Senate Judiciary Committee the very information which the City Bar had refused to receive. It also jolted us into the realization that there is, in fact, no legitimate justification for shrouding the judicial screening process in secrecy and that it skews the results.

As you will see, our critique demonstrates that candidates for judicial office cannot be depended upon to honestly and accurately present their qualifications to judicial screening panels. This means that judicial screening panels cannot accept judicial candidates at face value, but must--if they are to properly discharge their function--undertake meaningful investigations of their qualifications¹.

Such investigation of judicial candidates is additionally essential because once they sit on the bench, it is virtually impossible to discipline and remove them when, as judges, they reveal themselves to be incompetent, abusive, and corrupt. This fact is documented by our lawsuit against the New York State Commission on Judicial Conduct, showing how that state agency has subverted its statutory mandate to investigate facially meritorious complaints. Copies of the papers in that Article 78 proceeding were given to you when we met last Friday--to substantiate the serious allegations made in our Letter to the Editor, published in the August 14, 1995 New York Law Journal, more fully detailed in our conversation together².

The reality, however, is that judicial screening panels are comprised of volunteers, who lack the time and resources to adequately investigate the credentials of judicial candidates and, to the extent that such function is primarily reposed in an Executive Director--as is the case with the Mayor's Advisory Committee on the Judiciary--likewise have extremely limited time and resources for such purpose.

As reported by the press, the Mayor's Advisory Committee on the Judiciary and the City Bar are resting nominations on a "standard" of "adequacy", rather than "excellence", and will recommend reappointment of sitting judges so long as they have done nothing "egregiously wrong". This astonishing state of affairs is, I believe, a reflection of the fact that neither the

¹ The totally inadequate investigation of Mr. O'Rourke's credentials conducted by the City Bar and the American Bar Association is reflected by a news item based on our critique, which appeared in the June 22, 1992 issue of New York Magazine, entitled "Credentials Gap: Case of the Missing Cases". A copy of it and of our Letter to the Editor, published in the July 17, 1992 New York Times and entitled, "Untrustworthy Ratings?", are enclosed.

² As discussed, the Supreme Court's legally insupportable, factually fabricated decision of dismissal must be vacated for fraud--as more detailed in our December 15, 1995 letter to the Assembly Judiciary Committee, a copy of which I gave you.

Mayor's Advisory Committee nor the City Bar have the investigative capacity to verify "excellence" or to unearth anything but the most "egregious" misconduct of a sitting judge--by which they mean "misconduct" that has been publicized.

It is because the Mayor's Advisory Committee on the Judiciary and the City Bar are not in a position to meaningfully investigate judicial qualifications, that, ironically, their ability to perform screening requires the public to come forward with information bearing upon the qualifications of the candidates being screened. Yet, the self-imposed "confidentiality" of their judicial screening procedures prevents that from happening. Not only are the applications filed with them by judicial candidates kept secret--but likewise kept secret--are the candidates' very identities.

As we discussed--and as I testified on December 27, 1995 before the Mayor's Advisory Committee on the Judiciary--there is no justification for such secrecy. Judges are public officials, paid for by the taxpayers, and wield near absolute power over our lives. By filing applications with the screening panels, those applying to be judges represent themselves as possessing requisite superior qualifications. As such, they must be willing, like other contenders for public office, to accept public scrutiny as the price.

This is an important issue--behind which the people of New York will surely rally once they are informed about how the Mayor's judicial selection process excludes them from participation and the dangerous consequences of that exclusion.

As reflected by my correspondence with former Mayor Koch--copies of which I gave you last Friday--Mayor Giuliani has publicly expressed interest in following up on the issues we have identified. By contrast, Mr. Koch--who has publicly announced that he will not be endorsing you should you decide to run for Mayor of the City of New York--has refused to address the public's right to participate in the Mayor's selection of judicial appointees and to verify the "merit" of appointees chosen by the so-called "merit selection" process. A copy of Mr. Koch's most recent letter to me, dated January 9 1996, is enclosed for your information. May we suggest that you use this issue to show that what Mr. Koch means when he complains that you are "too left" to be Mayor is that, unlike he, you believe that in a democracy, the people should be permitted to participate in the process by which their Mayor chooses their judges.

January 16, 1996

Irrespective of whether or not you decide to enter the 1997 race for Mayor of the City of New York, we look to you now, as Manhattan Borough President, for leadership on the critical issues of judicial selection and discipline. The documentary materials we have supplied you provide a sound basis on which to demonstrate your courageous commitment to the People of this City--not to the politicians who have a vested interest in a palpably corrupted status quo.

Yours for a quality judiciary,



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

- Enclosures:
- (1) Critique of Andrew O'Rourke's nomination as a federal judge of the Southern District of New York, with Compendium of Exhibits
 - (2) "Credentials Gap: Case of the Missing Cases", New York Magazine, 6/22/92
 - (3) "Untrustworthy Ratings?", New York Times, 7/17/92
 - (4) Mr. Koch's 1/9/96 ltr