

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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BY HAND

February 20, 1996

Honorable Rudolph Giuliani
Mayor of the City of New York
City Hall
New York, New York 10007

ATT: Dennison Young, Jr.
Counsel to the Mayor

Dear Mr. Young:

Thank you for your prompt return call last Friday. We look forward to the meeting that you indicated you were setting up so that we may detail the deficiencies of the Mayor's judicial selection process--deficiencies we believe the Mayor inherited from his predecessors.

In response to my question to the Mayor on his WABC radio show last Friday about Judge Duckman's qualifications, the Mayor assured the public that "on paper", they looked fine.

However, the question is not Mr. Duckman's paper credentials--but what kind of investigation was conducted by former Mayor Dinkins' selection committee before it nominated him for a ten-year judicial appointment.

On the all important subject of the judicial selection process, I refer you to my January 16, 1996 letter to Paul Siegfried, Executive Director of the Mayor's Advisory Committee on the Judiciary--a copy of which is annexed for your convenience (Exhibit "A"). To date, neither Mr. Siegfried nor Paul Curran, the Advisory Committee's Chairman, have responded.

As described in my letter, at the December 27, 1995 so-called "public" hearing, I offered the Committee evidence, in the form of a written critique, documenting:

"...that judicial candidates cannot be counted upon to honestly and accurately set forth their qualifications on their applications to screening committees and highlighting the necessity of thorough investigation." (emphasis in the original)

It would appear that the Mayor's Advisory Committee is unequipped to undertake such thorough investigation inasmuch as its investigative responsibilities are primarily reposed in Mr. Siegfried, who says he is unassisted by any legal staff. It may be surmised that Mr. Siegfried's unwillingness to discuss with us the Committee's investigative procedures--as set forth in my January 16, 1996 letter--reflects his awareness of their superficial and inadequate nature.

Indeed, it may further be surmised that the reason the Mayor's Advisory Committee on the Judiciary and the City Bar's Committee on the Judiciary use a standard of "adequacy", rather than excellence, in recommending reappointment of sitting judges--by which they reportedly mean judges who have not done anything "egregiously wrong"--is because neither committee has the investigative capacity (or desire) to unearth anything but misconduct that is so egregious as to have been publicized.

Because the Mayor's Advisory Committee on the Judiciary and the City Bar are not in a position or willing to meaningfully investigate judicial qualifications, they need the public to come forward with information bearing upon the qualifications of candidates being screened. Yet, the self-imposed "confidentiality" of judicial selection procedures prevents that from happening. The public cannot come forward because the identities of the candidates being reviewed are kept secret. This is more fully described in my Letter to the Editor, "No Justification for Process's Secrecy", published in the New York Law Journal on January 24, 1996 (Exhibit "B").

Inevitably, deficient judicial selection processes produce judges who are incompetent, corrupt, and abusive--judges who abuse their discretion, flout controlling law, and engage in arbitrary, tyrannical, and otherwise wrongful on-the-bench conduct.

As I emphasized in my testimony at the December 27, 1995 "public" hearing, adequate pre-nomination screening of judicial candidates is absolutely critical since, once judges are appointed to the bench, it is all but impossible to remove them--no matter how unfit they are. This is because the public agency constitutionally created to monitor our judiciary, the New York State Commission on Judicial Conduct, has subverted its constitutional and statutory duty to investigate facially-meritorious complaints. Instead, it dismisses such complaints, without investigation--even where they are detailed, documented, and establish, prima facie, unethical and criminal conduct by sitting judges and would-be judges. In that regard, as part of my testimony, I incorporated by reference my Letter to the Editor, "Commission Abandons Investigative Mandate", published in the August 14, 1995 New York Law Journal (Exhibit "C").

We do not know if misconduct complaints against Judge Duckman were ever filed with the Commission on Judicial Conduct. However, the Commission routinely dismisses, without investigation, abuse of discretion complaints--as well as complaints alleging wilful disregard of black-letter law by judges. This, notwithstanding that such complaints are within the Commission's disciplinary jurisdiction--as may be seen from the enclosed Pace Law Review article written by the Commission's Administrator, Gerald Stern. (Vol 7, Number 2, Winter 1987, "Is Judicial Discipline in New York State a Threat to Judicial Independence?").

If, as appears, Judge Duckman has abused his discretion in the case that resulted in the tragic death of a young woman named Galina Komar, we commend Mayor Giuliani for calling for Judge Duckman's removal. However, the problem extends beyond Judge Duckman. There are other judges who are far, far worse than Judge Duckman. A "tip of the iceberg" sampling of what New Yorkers have been and are subjected to may be gleaned from Jack Newfield's series "New York's Ten Worst Judges". For your convenience, copies of the 1993 and 1995 series, which appeared in the New York Post, are annexed as Exhibits "D" and "F". You will note that the 1993 series ended with an article containing pertinent comment from then "mayoral hopeful" Rudolph Giuliani (Exhibit "E") and that the 1995 series closed with a Post editorial "Who Judges the Judges?" (Exhibit "F"), accusing the Commission of protectionism:

"To be sure, the commission is hell on wheels when it comes to disciplining rural justices of the peace and other small-town magistrates, many of whom are not lawyers. The next time it comes to New York City to do serious business, however, will be the first time it does so." (emphasis in the original).

The innocent victims of this City's run-a-muck judges, who have not suffered loss of life in a literal sense, expect Mayor Giuliani to come out against the judges who have destroyed their lives--as he is doing now in calling for Judge Duckman's impeachment. They expect the Mayor to take the lead in calling for decisive action against the Commission on Judicial Conduct when--as now--he is presented with prima facie evidence that it covers up criminal conduct by sitting judges, far more heinous and corrupt than anything contemplated by the Post's editorial or reported on in its "Ten Worst" series.

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We are, therefore, transmitting for the Mayor a copy of the court papers in our ground-breaking Article 78 proceeding against the Commission. The exhibits annexed to the petition document how the Commission has knowingly and deliberately permitted powerful, politically-connected judges to misuse their official office for ulterior, retaliatory purposes and to engage in palpably criminal and unethical acts.

Also transmitted are the initial pages of our December 15, 1996 letter to the Assembly Judiciary Committee, particularizing the respects in which the New York Supreme Court's judgment of dismissal of the Article 78 proceeding in the Commission's favor is fraudulent--being legally insupportable, factually fabricated, and rendered as a "pay back" to the Commission for its demonstrated years of service protecting judges from disciplinary investigation and prosecution. We would point out that annexed thereto, as Exhibits "C", "D", and "E", are our initial letters to the State Commission on Judicial Conduct, to the State Ethics Commission, and the State Attorney General to get those government agencies and officials to do what their duty to the public requires--i.e., to take steps to vacate for fraud the Supreme Court's decision of dismissal.

I understand from you that this file will be reviewed by the Criminal Justice Coordinator. How appropriate, since what the file documents is criminal conduct by the State Commission on Judicial Conduct--which we trust, the Mayor will, without delay, refer for criminal prosecution.

Yours for a quality judiciary,



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

Enclosures

cc: WABC Radio
New York Post