Center for Judicial Accountability, Inc.

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FAX COVER SHEET

This fax transmission consists of a total of 12 pages including this cover page. If you have not received all the pages, please call (914) 421-1200.

DATE: 1/2/96 TIME: 1 pm

TO: Don Van Natta, Jr TITLE: NYT

FAX #: 212 962-7213 RE: Opening the Judicial Selection Process

FROM: Elena Sassower

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MESSAGE: The public can have no confidence in a so-called "merit selection" process that takes place behind closed-doors. Please read the three questions on page 4 of my ltr to M. Koch. I encourage yr to ask them to those involved in the process — since there is no justification for excluding the public from the process

Thanks!

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Box 69, Gedney Station
White Plains, New York 10605

By Fax: 212-541-4630

January 2, 1996

Edward I. Koch, Esq.
Robinson, Silverman, Pearce, Aronsohn & Berman
1290 Avenue of Americas, 30th Floor
New York, New York 10104

RE: Your December 29th Radio Show

Dear Mr. Koch:

This letter is a protest against your vicious and wholly unwarranted public character assassination of me when I called up on your talk show last Friday, December 29th. You did not give me a chance to be heard in response to your maligning comments, which I believe you twice repeated. Those remarks were that, based upon what you had been told by a reporter--whose name you did not identify--I was not someone who was credible. My impression is that you silenced the audio when I responded by asking you to identify the unnamed reporter and that you silenced it again when I requested an opportunity to be heard in my own defense. Presumably, the purpose of such silencing was to mislead the audience into believing that I had accepted your unwarranted attack upon my good name.

It was unclear to me whether there was any connection between your malignment of me and your surprising inquiry immediately prior thereto as to whether my mother was a judge. Had I not been cut off by you, what I would have said about my mother is that she is an expert on judicial selection. In 1971, she served as a member of the first judicial screening panel established by the Reform Democrats of New York County to pass upon the qualifications of all candidates for judicial vacancies on the Supreme Court in the First Judicial Department. An article she wrote about her experience was published on the front-page of the October 22, 1971 New York Law Journal--a copy of which I enclose. Thereafter, she was appointed to the Judicial Selection Committee of the New York State Bar Association--the first woman so appointed. She served for eight years, from 1972 to 1980, interviewing candidates for the New York State Court of Appeals, the Appellate Divisions, and the Court of Claims.

However, because you had mentioned the prevalent practice of judicial cross-endorsement on your radio show the preceding day, I began by describing my mother as a lawyer who had been "run out of the profession for judicial whistle-blowing against judicial

cross-endorsement". It was my impression that you "spoke over" my remarks so as to prevent the listening audience from hearing about her legal challenge to "judicial cross-endorsement". A description of that historic challenge and the vicious judicial retaliation to which my mother has been subjected was published as an Op-Ed ad in the October 26, 1994 New York Times, reprinted on November 1, 1994 in the New York Law Journal. For your information, Jay Diamond of WABC Radio found the story so important and compelling that he interviewed my mother on his radio show the very night the Times' advertisement appeared.

It was right after my brief response to your inquiry about my mother that--out of the blue--you announced that there had been a reporter with you when I had called in on the Dick Oliver show the previous day (Thursday). According to you, this unnamed reporter told you that you should not believe anything I said.

By contrast to the maliciousness of this unnamed reporter, whose identity I demand to know, it must be stated that the WABC Radio staff was so impressed by my remarks on Thursday's Dick Oliver show that they invited me to be interviewed by Curtis Sliwa the next day, Friday, December 29th. Indeed, not only did Mr. Sliwa interview me in the 7:17 a.m. time slot, but he thought enough of the work of the work of our Center--which advocates opening the judicial screening process to the public--that he asked me to recite the Center's phone number for the listening audience.

Ironically, about an hour before I called the Dick Oliver show on Thursday, relating what had taken place at the previous day's "public" hearing of the Mayor's Advisory Committee on the Judiciary, I telephoned your law office. I did so in the belief--plainly mistaken--that you would be interested in the "sham" nature of the "public" hearing conducted by the Mayor's Advisory Committee on the Judiciary. In addition to leaving my name, I left a message identifying myself as having been the only member of the public to have given testimony at that "public" hearing.

I do not know whether you were aware of that telephone message when you heard my call on the Dick Oliver show. However, because you began your own radio program by responding critically to the comments I had just made on the Dick Oliver show[1], referring to

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[1] In response to my remark that "John and Jane Q. Public" did not know about the "public" hearing because the Mayor's Advisory Committee did not place a notice of it in The New York Times, the New York Post, or the Daily News--newspapers of general circulation--but, rather in the New York Law Journal, you commented that Law Journal readers were "the only people who have anything worthwhile to say". At the same time, you also

the judicial selection process--and was going to question you as to your position on opening the judicial screening process to public scrutiny. This would have exposed as "sham" your posturing about the so-called "merit selection" of judges, which I believe rests on keeping the process "behind closed doors", with the public unable to verify what is taking place.

Indeed, before I went "on the air" with you on Friday, I outlined for the WABC Radio staffer who picked up the phone the questions I would ask you. Those questions I repeat now--and ask you to answer them publicly:

1. Since judges are public servants--who serve the public and are paid for by them--why should judicial screening be a "behind-closed-doors" process with the public given no opportunity to know the identity and qualifications of applicants for judicial office?

2. How can the public independently verify that a judicial screening panel is adhering to "merit selection" principles if it keeps confidential all information about the "pool" of applicants who have applied to it for judicial positions and all information about the recommendees it has forwarded to the mayor--even their names--and when the public is deprived of even the applications of the judicial nominees the mayor appoints?

3. What justification is there for denying the public access to the applications filed by Mayor Guiliani's judicial nominees with his screening committee--or the applications filed with screening panels by judicial nominees appointed by Mayor Dinkins and yourself?

Plainly the only way the public can even begin to sort out the accusations being made by you and Mayor Guiliani is to afford it access to the applications filed by Judge Scwartzwald and Kaye with the Mayor's Advisory Committee on the Judiciary, as well as those filed by Judges Posner and Mr. Torres.

These important points were more fully elaborated by me in my scathing testimony at the December 27th "public" hearing of the Mayor's Advisory Committee on the Judiciary. Since the Mayor's Advisory Committee arranged for the hearing to be recorded by a stenographer, I suggest you obtain a copy of the transcript so that you can better understand the significance of these issues.

Inasmuch as you purport to be the "voice of reason", we look forward to your responding--IF YOU CAN--on the air, giving me and my mother equal time to respond to your answers.

Yours for a quality judiciary,

Elena Ruth Sassower

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

P.S. As part of my testimony at the "public" hearing, I made the informational brochure of the Center for Judicial Accountability, Inc. part of the record--as well as our aforementioned New York Times-New York Law Journal ad[2] and my own "Letter to the Editor" published in the August 14, 1995 New York Law Journal. Copies are enclosed for your information.

Enclosures

cc: Ron Mitchel, WABC Morning Show Producer
Curtis Sliwa, WABC Radio
Jay Diamond, WABC Radio
Members of the local press
Mayor Rudolph Guiliani
Former Mayor David Dinkins

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[2] The reverse side of the ad reprints my mother's 1989 Martindale-Hubbell Law Directory listing.

New York Law Journal

OFFICIAL DAILY LAW NEWSPAPER DESIGNATED PURSUANT TO THE JUDICIARY LAW

NEW YORK, FRIDAY, OCTOBER 22, 1971

Notes and Views

Judicial-Selection Panels: An Exercise in Futility?

By Doris L. Sassower

Hopes were raised recently for improvement in the process of choosing our judges. In early September, readers of the NEW YORK LAW JOURNAL learned that a nine-member impartial panel had been formed by the Committee to Reform Judicial Selection to recommend the eight most qualified candidates for State Supreme Court in Manhattan and the Bronx. From these it was thought that three would emerge as the nominees at th Democratic Judicial Nominating Convention.

In retrospect, disappointment in the ultimate effect of the recommendations of this panel might have been anticipated. A prenomination screening panel under the chairmanship of Judge Bernard Botein was set up in 1968 in connection with the unprecedented number of new judgeships created by the New York State Legislature. Advance assurances were secured from the party leaders that nominations would be limited to those approved by the panel. This was not the case, however. As subsequent events proved, the party leaders failed to honor their bipartisan commitments.

Despite the sour experience of the Botein Committee, we agreed to serve believing that such panels perform a genuine service to the public and the Bar.

The candidates came to us, one by one, each the embodiment of the popular belief that "every lawyer wants to be a judge."

Doris L. Sassower is a former president of the New York Women's Bar Association and served on the nine-member judicial selection committee discussed in this article.

Meeting almost every night over a fifteen-day period, interviewing several dozen candidates, intensively reviewing and investigating their credentials, the panel faced the difficult decision of choosing among them eight who would carry the banner of "preferred." The Reform Democrats had pledged to endorse from that number those who would fill the three positions. Hours of evaluation, discussion and then, eureka—agreement!

The task done, we went our respective ways, satisfied we had done our conscientious best, gratified that those chosen reflected their own merit, not their party service; their outstanding qualifications, not their "connections."

Minorities Considered

There was some consideration given the idea of judicial representation for our disadvantaged—the blacks, Puerto Ricans and other minorities, as well as for a woefully under-represented majority—women. The panel after all, not unintentionally, reflected these divergent groups. True, too, that the social philosophy of the various applicants who came before us preoccupied us in some measure in our deliberations.

But competence pure and simple, sheer worth undiluted by political involvement remained our unalterable guideposts.

It must be said to their credit

(*Continued on page 3, column 5*)

Judicial-Selection Panels

(Continued)

that the Reform Democrats kept their commitment to the panel to endorse only those candidates the panel approved. As it became clear, no such commitment had been secured from the regulars. It would therefore be less than fair to condemn them for not following a similar course.

Yet, can they not be faulted for not having initiated a panel of their own or joined in the commitment to the one formed under the wing of the Reformers? The commonly understood purpose of such panels being to take the judiciary out of political hands, the inference is that the Regular Democrats had no wish to do so. The fact is that deals for the judicial plums were made before the Demooratic Judicial Nominating Convention which only ratified a foregone conclusion among those in the political know, as far as the contested vacancies were concerned.

The numerical division of votes among the delegates to the Democratic Judicial Nominating Convention strictly on intra-party political lines, Regulars v. Reformers, made it obvious that the Reformers' effort to change the course of judicial power politics on the state Supreme Court level was hopeless, at least this time around.

Is there a lesson to be learned from this experience? Does the judicial pre-selection panel offer a viable means of achieving a better judiciary?

Discourage the Hack

On the plus side is the fact that those who came before our panel were almost uniformly of the highest calibre, many of the most brilliant scholars of the profession, our respected judges, our more successful lawyers. If, then, our screening panel did no more than offer recognition and new status to those candidates it recommended, that would be enough to justify it, for, in time, this might lead to their ultimate elevation to the Bench. The inherent virtue of a well-constituted panel is its tendency to discourage the political hack, the mediocrity, or the lawyer whose sole asset is "friends in the right places."

The question is how those genuinely concerned with the improvement of our judicial process can assure the selection of the former over the latter. One might also query whether the device of a screening panel can be made functional. This assumes that one does not wish to do away with party-dominated judicial conventions altogether. There are those who contend that the federal system of appointment is the superior one and produces judges of higher quality.

This is a reasonable expectation where appointments are made by a public official accountable to the people. Yet the appointive hand may also be vulnerable to political pressure and not necessarily point to qualifications alone. Still it is better than a system which pretends that the public elects our judges when, in fact, the choice is preordained so that what we have is appointment by a clique of party leaders not directly responsible to the public.

Certainly, a better judiciary would result from wider use of screening panels and, concomitantly, adoption of their recommendations by those making the appointments.

Vital Factors

The experience of this panel indicates that the workability of a pre-selection panel depends on two basic factors:

(1) The composition of the panel should be as broad-based as possible, including representatives from major county Bar associations as well as community organizations;

(2) Advance public assurance by party leaders (read appointing authorities) that they will choose only from among the panel's recommendations.

In essence, this entails a relinquishment of power by those in power. Some people may feel it is unrealistic to expect this to take place. Perhaps the day when the judiciary is wholly divorced from political influence can be seen only in the eyes of visionaries. But unrelenting public interest and the glare of publicity focused on every judicial vacancy can make that day come sooner.