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Letters to the Editor
The New York Times
229 West 43rd Street
New York, New York 10036

New Year's Resolve: Open the Judicial Selection Process

To the Editor:

Your editorial "The Mayor Ruins His Own Case" (12/29/95) rightly asks "Why can't all our judges be the very best?" However, you wrongly convey the impression that Mayor Giuliani has blocked that goal by failing to follow the tradition of former Mayors Koch and Dinkins, who automatically reappointed sitting judges recommended by the Mayor's screening committee. On the unsupported premise that such automatic reappointment promotes judicial independence, you argue that there should be lower standards for reappointment of incumbent judges than for appointments of new judges. Exactly how much lower do you believe they should go?

From the after-the-fact revelations now appearing in The Times as to the credentials of the Mayor's judicial appointees, it is painfully clear that--both as to new appointees and incumbent judges--the Mayor's Advisory Committee on the Judiciary does not operate on "merit selection" principles which

would ensure "the very best" judges. This is likewise true of the City Bar's Judiciary Committee, which also makes recommendations on judicial candidates under consideration by the Mayor's screening panel.

Thus, the Chairman of the Mayor's Advisory Committee is quoted in news reports as conceding that his recommendation for reappointment of Judge Schwartzwald was an act of "human kindness" and a member of the City Bar's Judiciary Committee has acknowledged that even though the Committee knew that Judge Schwartzwald and Judge Kay were weak candidates, they recommended them nonetheless because neither had done anything egregiously wrong.

As to Judges Posner and Torres, whom the Mayor chose to replace incumbent Judges Schwartzwald and Kay, it is obvious from this newspaper's reports that the two committees had no higher standards in recommending these plainly less than "the-very-best" individuals for their initial interim judicial positions last June. That these screening committees--at the mayor's behest--would, just six months later, approve them for promotion to ten-year terms suggests that these committees are merely "rubber-stamping" intended mayoral appointments. Certainly, in the private sector, no first-class law firm would hire--at a salary of over \$100,000 a year, plus "perks"--a lawyer, as Mr. Posner, who worked six years in the D.A.'s office, yet never tried a case on his own, or, as Mr. Torres, who twice

flunked out of law school and never succeeded in getting a law degree.

Unreported by the press is the fact that the public is not allowed to see the very applications filed by the Mayor's appointees with either screening committee. They are kept secret, as are the applications of those persons not appointed by the mayor, although recommended by his Advisory Committee, and the applications of those not recommended by the Mayor's Committee. Indeed, the public is denied not only information as to their credentials, but even their names. The consequence is that the public--and the press--are unable to verify either the absolute or relative merit of the 15 nominees Mayor Guiliani has appointed to be our judges.

It is time for you and your reporters to stop pretending that what we now have is "merit selection". Our New Year's resolution must be to put an end to the secrecy that shrouds and skews our judicial selection process, preventing the public from knowing what's going on. If we truly want "merit selection", the process must be opened up to public scrutiny and participation. There is no legitimate reason for not doing so.



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The writer is Director of the Center for Judicial Accountability, Inc. and was the first woman to serve on the Selection Committee of the New York State Bar Association, on which she served from 1972 to 1980.