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October 4, 1989

Honorable John W. Keegan
Chairman, Judiciary Committee
Westchester County Bar Association
81 Main Street
White Plains, New York 10606

RE: Judge Sam Fredman

Dear Chairman Keegan:

information Thank you for inviting me to present to your Committee concerning the fitness for the bench of Judge Sam Fredman, whose qualifications, I understand, you have been asked to review for your endorsement. I regret that due to my present medical condition which has caused me to be on leave from my office for the past several weeks, I am unable to appear personally before you to offer this written presentation.

Having myself served as a member of the Judiciary Committee of the New York State Bar Association for seven years and as a member of the first Pre-Nomination Judicial Screening Panel set up in 1971, which enunciated guidelines for judicial selection, I know how essential it is to a proper evaluation that your Committee be in possession of more than the data supplied by the candidate. A copy of an article I wrote nearly twenty years ago about my experience as a member of such panel and the enormous value of the pre-nomination screening concept is annexed (Exhibit "1") as well as my listing in Martindale-Hubbell's Law Directory 1989 Edition (Exhibit "2") confirming the foregoing facts. Also annexed, for your further information, is a copy of the panel's written guidelines as they are in current use together with the panel's questionnaire to judicial candidates (Exhibit "3").

Since I have recently been exposed first-hand to this candidate's actual performance on the bench, I consider it not only my duty to report my experience for your consideration, but also, as a senior member of the bar, to express my opinion concerning his fitness for such a profoundly life-determining position.

Apart from Judge Fredman's injudicious judicial performance, hereinafter detailed, a candidate, such as he, who was Chairman of a political party --a position predicated on a lifetime of accumulated I.O.U.s -- must be viewed with particular scrutiny and concern. Such a candidate can hardly be expected to take the judiciary out of politics -- even when he is the product of a bipartisan endorsement. The kind of deal orchestrated -- prior to his appointment and while he was already a sitting judge--which resulted in his becoming a de facto party to a publicly-proclaimed contract of political party leaders, should receive the strongest condemnation. Among the election law specialists and law professors with whom I have spoken, there appears to be consensus that it is against public policy for a sitting judge to bind himself in advance to anyone--especially to a political leader or political party. Such illegal contract, as is represented by the identical Resolution (Exhibit "4") adopted at both Democratic and Republican judicial nominating conventions--both of which were conducted from an identical written script--deprives the electorate of its constitutional rights and must surely be viewed as a legal nullity. The participants thereto, as lawyers and judges, are chargeable with that knowledge.

My own recent direct encounter with His Honor demonstrates additional reason why a long-time political party leader should not be the candidate of choice for a judgeship, since the nature of the political animal is incompatible with the kind of detached impartiality and integrity essential to the judicial temperament. That you and members of the Committee are doubtless aware of the fact that I was involved in a case before Judge Fredman is due to his deliberate use of his judicial office to manipulate the local press. In a flagrant attempt to capitalize on my prominence so as to obtain free pre-election publicity at my expense, Judge Fredman demonstrated his total disregard for the rules of judicial conduct by prejudging facts without having heard both sides and then releasing such prejudgment in decision form for publication in The New York Law Journal. Because of his connections in the political arena, he was able to maximize to my detriment the ensuing slanted coverage in the Gannett newspapers, which I was precluded from addressing publicly by reason of my lawyer's observance of ethical restraints. As the minutes of the proceedings show, he actually used the presence of the Press to make political speeches from the bench so as to enhance his candidacy. Since his injudicious comments at several of the court appearances have been transcribed, the Committee should render no evaluation without availing itself the opportunity to read the transcripts. Those transcripts are annexed as exhibits to my Recusal Motion, included as an exhibit to my Order to Show Cause to the Appellate Division seeking leave to appeal from Judge Fredman's denial of my recusal motion (Exhibit "5").

Furthermore, it should be borne in mind that time expended by Judge Fredman on these court appearances was unprecedented and wasteful -- except to serve his own ulterior political motives. Considering the vast number of pressing cases before him awaiting hearing and the fact that, even without any contempt adjudication, I had already more than complied with the underlying Order, Judge Fredman nevertheless directed contempt hearings to proceed. The fact that my adversary also happened to be the Chairman of the Westchester County-Scarsdale Democratic Committee was surely not overlooked by his Honor.

While I will attempt to particularize the serious impropriety of Judge Fredman's conduct, in view of the gravity of this matter and its necessary evaluation by your Committee, I am willing to be personally interviewed and to repeat my statements under oath at any formal hearings that the Committee may decide to hold in the matter.

As confirmed by the annexed documentation, the misconduct complained is illustrated by the following:

(1) engaging in ex parte conversations with my adversary over my objection (Exhibit "6");

(2) denying equal treatment to that accorded my adversary (Exhibit "6");

(3) contrary to settled law and local practice, denying me any adjournment of a motion on for the first time, after having been apprised weeks in advance that I was scheduled to be out of the country on the return date. Such trip had been arranged more than six months earlier and was taken on medical advice. Even after providing His Honor with documentation of the hotel bookings and medical affidavits, he refused to acknowledge that as reasonable excuse for my non-appearance on the return date, which he had characterized in his widely-published July 24, 1989 Law Journal decision as a "capricious disappearance" (Exhibit "7");

(4) failing to accord me my asserted right to counsel (Exhibit "6"), and with knowledge of such intention, issuing an adverse decision as if I had deliberately defaulted (Exhibit "7");

(5) condemning me for my absence on the motion return date --without so much as a call being placed to my office to determine if there were some extenuating factors -- at variance with standard and customary local practice and in contrast to the practice followed when my adversary was absent on the return date of a previous motion made by me (Exhibit "6");

(7) after my office called the Judge's Chambers to request the opportunity to be heard, although it is likewise standard and customary practice in our court (Exhibit "8"), such request was denied;

(8) issuing a Decision excoriating me before he had ever received any opposition papers from me, viewing my absence as "a gross insult" which he later judicially announced was intended to offend him personally, rather than the Court;

(9) denying the request for the amount of time deemed necessary by my newly-retained, distinguished counsel, former federal judge, Marvin E. Frankel, to fully acquaint himself with the facts of my case and properly prepare for the court-mandated hearing. This abnormal curtailment of my rights is clearly attributable to the fact that the judicial nominating convention was to be held August 30th and therefore a postponement beyond that date would have diminished Judge Fredman's advantage in grandstanding to the Press on this matter from the bench (see attached recusal motion - Exhibit 5);

10) his failure to grant my recusal motion based upon his demonstrated personal antagonism and toward me in his private prior practice in which I was his competitor as well as his adversary (see Recusal Motion annexed to Appellate Division application, as well as my supplemental reply affidavit (not filed) which further details same;

(11) his refusal to grant leave to have appellate review of such recusal denial, after representing in the presence of the Press that he would fully cooperate in the prompt obtaining of such review;

(12) his blatantly improper attempt to re-write the transcript of Court proceedings (after acknowledging that a certain statement made by him would constitute ground for recusal) so as to contradict the court reporter's transcription and the recollection of those present;

(13) taking an excessively active and adversarial role from the bench, which included intruding himself into the actual interrogation of witnesses and interposing objections not made by counsel, as well as striking out proper answers in the absence of any motions to strike and knowingly admitting evidence he himself acknowledged to be inadmissable--only because it was so highly prejudicial and damaging to me;

(14) his failure to extend me common courtesy and consideration and treating me in an imperious, insulting, and intimidating manner from the bench;

(15) expressing prejudgments as to law and fact both prior to and during the hearing, together with a predisposition to overreact and jump to erroneous conclusions without <u>any</u> investigation and deliberation;

(16) explicitly rejecting in advance even the <u>possibility</u> that any proof that might be offered could change his mind on a particular issue that was critical to the matter before him;

(17) white-washing his unjustified rulings with repeated false factual statements and descriptions;

(18) peremptorily finding me guilty of contempt and imposing a monetary fine for no more than unwittingly answering a question which, according to His Honor, he had addressed to my counsel. This was after the case had already been adjourned and while there was an informal interchange as both counsel was packing their papers -- not coincidentally at a point when the Press had re-entered the courtroom, after having been gone for some hours during which time no such judicial grandstanding occurred.

Items (16) through (18) above deserve special highlighting, with reference to an Article 78 proceeding I have been forced to initiate so as to correct damage needlessly inflicted on me by Judge Fredman's incredibly injudicious behavior. I refer particularly to the Article 78 Petition annexed hereto as Exhibit "9", wherein the contempt finding and related fine are detailed, showing not only Judge Fredman's injudicious behavior (including seeming total ignorance of basic legal points) but also the flat-out violation of the law as to summary contempt findings. I might add that, in nearly 35 years of active litigation practice, appearing before hundreds of judges, this is the first time I have ever been ruled in contempt, or fined, or treated in such a grossly abusive manner.

Such irresponsible and arrogant behavior has caused me incalculable injury and suffering -- not to mention the enormous cost in engaging legal counsel to represent me in the contempt proceedings as well as other related proceedings to vindicate myself of his improper adjudication.

It is the height of hypocrisy that Judge Fredman should have made a mountain out of my non-appearance on the return date of a motion which did not even call for my <u>personal</u> appearance, when, according to information sent to me by a reader of one of the Gannett news stories about my matter, her life was destroyed

because of Mr. Fredman's non-appearance at an actual scheduled hearing, which he told her he had "forgotten" about (Exhibit "10").

I have also been contacted by a man whose father had recently appeared before his Honor and, according to him, subjected to judicial coercion which resulted in his father making an onerous agreement, which, almost immediately he sought to set aside as impossible to comply with.

Lest it be overlooked, the fact that Judge Fredman is sitting on the bench does not put him in the category of an incumbent judge. Under the recognized policy of judicial screening panels set up in Manhattan, no sitting judge who is an appointee rates extra consideration as an incumbent, unless he has gone through the electoral process and completed his full term. In addition, I would mention that the policy of the New York State Bar Association Judiciary Committee in all the years I served on it was to deny a "qualified" rating to any candidate who could not serve out more than half of the term to which he was being elected, something that is true of Judge Fredman, since he is age 65 and subject to mandatory retirement at age 70.

Considering the scandalously improper manner in which these nominations were made, this candidate certainly merits no "rubber stamp" of approval, nor any stamp of any degree of approval whatsoever.

Very truly yours,

DORIS L. SASSOWER

DLS/hd
Enclosures

cc: Commission on Judicial Conduct

INDEX OF EXHIBITS:

1. Article on Pre-nominating Screening Panels by Doris L. Sassower

2. Martindale-Hubbell Listing For Doris L. Sassower

3. Judicial Screening Panel's Guidelines and Questionnaire

4. Resolution Adopted at Democratic and Republican Judicial Nominating Conventions - 8/30/89 and 9/1/89

5. Order to Show Cause to the Appellate Division for Leave To Appeal The Denial of the Doris L. Sassower Recusal Motion

6. Letter From Doris L. Sassower to Judge Fredman Dated 7/5/89

7. Law Journal Decision Dated 7/24/89

8. Letter From Muriel Goldberg to Judge Fredman Dated 7/10/89

9. Article 78 Petition - To Be Filed

10. Letter From Margaret Hall McCray Dated 8/28/89