

*superseded letter*

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BY FAX: 631-843-2953 (2 pages)

November 28, 2001

Robin Topping  
Newsday  
235 Pinelawn Road  
Melville, New York 11747-4250

RE: An Investigative Expose of the New York State Commission on  
Judicial Conduct - Based on Readily-Verifiable Case File Evidence

Dear Robin:

As discussed, enclosed is the Daily News editorial, "Disorder in the Courts - Judging the Judges", that appeared on Monday, November 26th.

Newsday, which has taken swipes at the New York State Commission on Judicial Conduct in articles and editorials, should not lag behind in finally undertaking an investigative expose of the Commission - perhaps the first in the Commission's 25-plus year history.

Such expose would not be time-consuming, in the least. All it requires is examination of the files of three lawsuits against the Commission, all brought in Supreme Court/New York County - to *readily verify*: (1) the Commission had NO legitimate defense to challenges to its unlawful dismissals, *without investigation*, of *facially-meritorious* judicial misconduct complaints; (2) it was defended by fraudulent defense tactics of its attorney, the New York State Attorney General; and (3) it was rewarded by fraudulent judicial decisions - without which it would *not* have survived.

As you know, my public interest lawsuit against the Commission PHYSICALLY incorporates copies of the record of these two other lawsuits.

Let me know by Monday if you would like to review the balance of the appellate papers in this explosive case. Tomorrow, I will fax you a copy of my November 21<sup>st</sup> oral argument, annotated to reflect the judges' response, along with a letter to the appellate panel that I will be hand-delivering.

Thank you.

*Elena*

DAILY NEWS

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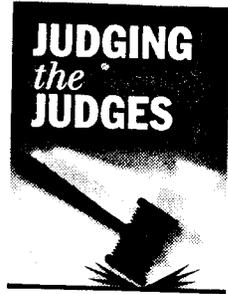
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Disorder in the courts

As every child learns in civics class, the judiciary is one-third of the government — but it's the quiet branch, cloaked in black robes and forbidding courthouses, confusing to outsiders and opaque to the public. Yet, in many ways, it is more powerful than its executive and legislative counterparts.

Judicial rulings govern the quality of our environment, our children's education, how police discharge their duties, the way business is conducted, what elected officials can and cannot do, how the guilty are punished, who is liable when people are injured. They can even decide who becomes President, as we saw last year. The judiciary is an overarching force in our lives. But in New York, it is in pitiful condition.

For starters, our court system is the most convoluted in the nation — with nine separate court categories or 11, depending on whom you ask. And in New York City, the elected judges serving on state Supreme Court are in many instances unqualified, with as many as half ranging from marginal to wholly unfit for the bench. This is a serious charge, but it is the independent conclusion reached by the



Daily News after an extensive analysis of the system.

The focus of this review is state Supreme Court, which is the basic district-level trial court, where everything from murders to election disputes to divorces are handled. In evaluating their qualifications, training, productivity, scholarship, understanding of the law, the quality of their rulings, their very behavior, it is evident that too many judges of this court do not make the grade. And that imperils fair and speedy justice for us all.

Although technically elected to 14-year terms, they often get their robes because of their political connections. Judicial elections are a sham. Most races are uncontested. Voters are instructed to "select three of the following" and are presented with only three candidates. Shades of hammer-and-sickle Kremlin elections.

In reality, these judges are selected by the Democratic Party county bosses in each of the boroughs. The rest of us are bystanders. What we end up with are some judges who are not even approved by the bar associations, who violate integrity rules, who distribute millions of dollars in legal work to politically connected law firms and who persist in inappropriate courtroom behavior. In this judiciary, competence and efficiency are too often absent.

It's gotten so bad state Chief Judge Judith Kaye ordered an inspector general probe into how judges award lucrative fiduciary appointments to handle estates, guardianships and trusteeships. The report is due out next week, and it most likely will not be pretty.

Regarding productivity, many judges are lagging. The time frame for disposing of criminal and civil cases has lengthened considerably and now falls well below the standard set by the state Office of Court Administration. It is not uncommon for elected judges to be absent from their chambers two, three or more months each year. In response, the courts have created in Manhattan the Commercial Division of state Supreme Court to placate the powerful corporate community and handle its major disputes. Only the most capable jurists are assigned to this bench. When it comes to justice, Big Business goes first-class; the rest of us are in steerage.

As for disciplining incompetent or unethical judges, it rarely happens. And when it does, there are no penalties — no loss of pay, no demotions, no suspensions — other than outright dismissal. Which is even rarer than disciplinary proceedings. In fact, no elected state Supreme Court justice has been removed from the bench in the city in recent memory.

The solutions to the abysmal state of the judiciary are many, including, but not limited to:

- Reorganizing courts into a simpler two- or three-tiered system.
Opening up the secretive, ineffective, disciplinary proceedings.
Ending fake elections and replacing politicians' handpicked candidates with highly qualified legal professionals, appointed by the governor, subject to legislative approval. (With that reform, the quality of justice would improve almost overnight.)

In coming weeks, this page will continue to explore the judiciary in detail, focusing on its overall poor performance, its lack of accountability and the shady mechanics of the political system's power over the courts.

Our spotlight will show how one-third of your government fails in so many ways to uphold its solemn public trust.