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To the Editor

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No Justification For Process's Secrecy

Without detracting from Thomas Hoffman's excellent suggestion (*NYLJ*, Jan. 5) that the Mayor's Advisory Committee on the Judiciary hold public hearings on "the judicial selection process in general," I wish to make known that on Dec. 27 the Advisory Committee held a so-called "public" hearing on the Mayor's 15 appointees to the civil and criminal courts which became, de facto, a hearing on the judicial selection process.

As the only person to give testimony at that "public" hearing — I protested the exclusion of the public from the screening process, pointing out that the secrecy of the Committee's procedures makes it impossible for the public to verify whether — and to what extent — "merit selection" principles are being respected.

Most people — readers of the *Law Journal* included — have no idea how completely closed the judicial selection process is to public participation, let alone scrutiny, and how skewed the results are because of that. The public is entirely shut out — except at the very end of the process, after the Mayor's judicial appointments have been announced. At that point, the Mayor's Advisory Committee holds a so-called "public" hearing on the Mayor's new appointees — a hearing not even publicized in a manner designed to reach the general public. The consequence is that the public-at-large knows nothing about the "public" hearing — and misses out on what is literally its one and only opportunity to have a say as to who will be its judges.

The earlier stages of the process foreclose that right: The Mayor's Committee receives applications from candidates applying to be judges, but keeps their identities secret from the public. This effectively prevents the public from giving the Committee information about the applicants that would be useful to its evaluation and selection of the required three nominees for each judicial vacancy. As to those nominees selected by the Committee and passed on to the Mayor, their identities are also kept secret from the public — thus preventing the public from coming forward with information even at that late stage.

From the outcome of this defective process, the Mayor selects our soon-to-be-judges. Yet his announcement of their names is not accompanied by release of the applications they filed with the Mayor's Advisory Committee at the beginning of the process, setting forth their qualifications. Those applications remain secret to the end.

Consequently, the public is unable to verify the qualifications of the Mayor's judicial appointees — and whether they are, in fact, the "most qualified." It is precisely because the public has no access to the applications of the Mayor's appointees — or to those of the other Committee nominees and of the entire applicant pool — that we have been battered for the last three weeks by wildly divergent claims about the absolute and relative qualifications of the Mayor's promoted and demoted judges, which even press investigation has been unable to resolve.

As I testified before the Mayor's Advisory Committee, there is no justification for the secrecy that shrouds the judicial screening process. Judges are public officers, paid for by the taxpayers, and wield near absolute powers over our lives. By filing applications with the Mayor's Advisory Committee, those applying to be judges represent themselves as possessing requisite superior qualifications. As such, they must be willing, like other contenders for public office, to accept public scrutiny as the price.

Although some writers to this column of the *Law Journal* have despaired that "politics" can ever be divorced from judicial selection — the most powerful beginning is to remove the self-imposed secrecy of the judicial screening process. Until then, "merit selection" can only remain the charade that it is.

Elena Ruth Sassower
White Plains, N.Y.