

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

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## FAX COVER SHEET

This fax transmission consists of a total of 4 page(s) including this cover page. If you have not received all the pages, please call (914) 421-1200.

DATE: 1/14/98 TIME: 2<sup>50</sup> pm FAX #: 215-977-2346

TO: Jerome Shestak, President  
ABA

RE: Response to Irene Emsekem

FROM: ELENA RUTH SASSOWER, Coordinator

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MESSAGE: \_\_\_\_\_

I was completely unaware of  
Ms Emsekem's ltr to you when we  
spoke last week.

Here's my response -  
enclosures to be mailed.

Please see, in particular, p. 3  
for business that should be on  
the ABA agenda.

Thanks.

CENTER for JUDICIAL ACCOUNTABILITY, INC. is a national, non-partisan, non-profit citizens' organization documenting how judges break the law and get away with it.

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## BY FAX AND MAIL

202-662-1762

January 14, 1998

Irene Emsellem, Staff Liaison  
ABA Standing Committee on Federal Judiciary  
Governmental Affairs Office  
740 Fifteenth Street, N.W.  
Washington, D.C. 20005-1009

RE: Finishing up last year's business and starting fresh in 1998

Dear Ms. Emsellem:

Returning from Albany, following the New York State Senate's predicted and predictable "rubber-stamp" confirmation of Andrew O'Rourke to the State Court of Claims, I found your January 13th fax on my desk -- which is where the fax machine sits. I have made this reply my "first order of business" on what is a very busy day.

If, as your fax states, you sent your December 22nd fax to "714-428-4994", then you know it *never* reached me because the area code for White Plains, New York where CJA is based, is 914. It has always been 914 -- throughout the years and years of our communications together. I, therefore, find it extremely hard to believe that "714-428-4994" is the "the number [I] left" on your voice mail -- which is what your fax states<sup>1</sup>.

Your enclosure of the December 22nd fax is the *first* that I have seen it. Indeed, had I gotten it earlier, I would have *immediately* responded to your attempt to justify your having hung up on me -- which, as I indicated by my December 22nd recorded message, I wished to make the subject of a complaint against you to your superiors<sup>2</sup>.

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<sup>1</sup> I have just looked up the "714" area code, which is Orange, California.

<sup>2</sup> I did call Robert Evans, with whom I have always had a friendly relationship since my first conversation with him in March 1992. I believe the recording on his machine indicated that he was on vacation until January 5th or 6th and when I tried to press other telephone options I got disconnected.

I was not "yelling at [you]" -- and I don't make it a practice, ever, of "yelling" at people with whom I have a professional relationship -- and certainly not over the telephone where there is no question of their hearing me. What I did do -- and what your December 22nd fax conveys -- is that I set forth the background events of the ABA's dishonest and unethical conduct leading up to the emergency situation of Andrew O'Rourke being nominated to the Court of Claims. This was something that, quite frankly, you did not want to listen to. It would have made no difference even had I been whispering.

Nor was I "harassing [you]" by my December 22nd call -- or at any time prior thereto. Although your December 22nd fax tries to emphasize that you "only handle administrative responsibilities" for the ABA's Standing Committee on Federal Judiciary, "administrative responsibilities" are extremely important. You are not some low-grade paper-shuffler. The ABA is assuredly paying you a substantial salary with the expectation that you will make appropriate judgement calls so that those who do occupy decision-making positions can be alerted to legitimate and important issues. I am not in a position to evaluate what responsibility you bear for the ABA's dishonest responses to our 1992 critique or, for example, its non-response to our May 27, 1996 letter addressed to Chairman Hatch in the context of the Senate Judiciary Committee's hearing on "The Role of the American Bar Association in the Judicial Selection Process". To date, however, *none* of the extremely serious issues we have presented about the federal judicial screening-nomination-confirmation processes has been accorded anything resembling proper respect or treatment by the ABA. This is evident from the most cursory review of the massive file of our communications with the ABA over these years -- which I ask be provided to President Shestack for his personal examination, as well as to the Standing Committee on Federal Judiciary's current Chairman, Blake Tartt.

The ABA's refusal to recognize ANY of the serious issues *expressly* identified by our critique and correspondence, including by our June 28, 1996 letter to Chairman Hatch, to whom you alone at the ABA were sent a copy<sup>3</sup>, can only be seen as a demonstration of profound dysfunction and self-interest by the ABA -- disqualifying it from ANY role in the federal judicial screening process. If President Shestack or Chairman Tartt disagree, let them address, WITH SPECIFICITY, the issues raised by that critique and correspondence.

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<sup>3</sup> I believe I subsequently gave a copy of that June 28, 1996 letter to Bob Evans at the August 1996 Annual ABA meeting in Orlando, Florida -- the last ABA meeting which my mother and I attended before her long-standing ABA membership was unceremoniously and unjustly terminated. The ABA's vicious and unethical conduct by that termination and prior thereto by the dishonest and depraved behavior of its various ethics, professional responsibility, and attorney discipline committees, as well as by its Center for Professional Responsibility and its affiliate Association of Professional Responsibility Lawyers are fully chronicled by a file of correspondence, which will be transmitted to President Shestack.

January 14, 1998

When I spoke with President Shestack last week, he told me that the ABA has *no* mechanism for retracting a rating of its Standing Committee on Federal Judiciary, particularly when the specific members of the Committee which voted on the rating are no longer among its membership. It is long past time that such mechanism was established, just as it is long past time that the ABA's obligations in such situations were clarified by an advisory opinion from its Committee on Ethics and Professional Responsibility. The ABA's duty to retract insupportable judicial ratings will undoubtedly arise in the future since the ABA has yet to even acknowledge the slightest inadequacy of its screening procedures -- although documented by our 1992 critique of Mr. O'Rourke and by our May 27, 1996 letter to Chairman Hatch about ABA screening of Lawrence Kahn. Despite our offers to provide the ABA with the benefit of our expertise and experience, the ABA has still not seen fit to explore with us avenues for improving its deficient screening procedures. Nor has its Standing Committee on Federal Judiciary seen fit to include us among those "persons likely to have information" whom it contacts when it "investigates" qualifications of judicial candidates -- even for those in the Second Circuit, where CJA is located. On that subject, I enclose another copy of CJA's December 2, 1997 letter to Patricia Hynes, the Second Circuit representative on the Standing Committee -- to which you were an indicated recipient.

As to our documents request, to which your yesterday's fax responds, I can appreciate that you do not have the referred-to Guidelines and Standards of the ABA's Judicial Administration Division and Standing Committee on Judicial Selection, Tenure and Compensation because they are "not within the scope of [your] responsibilities". However, it would expedite matters if you would be good enough to provide me with the names and telephone/fax numbers for the ABA's staff liaisons charged with responsibilities for that Division and Committee.

I look forward to making 1998 a year in which CJA and the ABA constructively work *together* in ensuring the integrity of the federal judicial appointments process. As the file of our communications demonstrates, there is much work to be done.

Thank you.

Yours for a quality judiciary,



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

Enclosure

cc: Jerome J. Shestack, ABA President

Blake Tartt, Chairman, ABA Standing Committee on Federal Judiciary

Robert Evans, Director, ABA Governmental Affairs Office