

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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White Plains, New York 10605

By Priority Mail

January 9, 1996

Daniel F. Kolb, Chairman of the Judiciary Committee  
Association of the Bar of the City of New York  
c/o Davis, Polk & Wardwell  
450 Lexington Avenue  
New York, New York 10019

Dear Mr. Kolb:

This letter follows up our lengthy telephone conversation of December 28th in which you expressed great interest in seeing our critique of the "screening" procedures employed by the City Bar's Committee on the Judiciary.

As discussed, the context of that critique was President Bush's nomination of Andrew O'Rourke to a district court judgeship in the Southern District of New York in November 1991. We showed, by irrefutable documentary proof, that the City Bar not only failed to "screen" Mr. O'Rourke by properly investigating his qualifications, but actually "screened out" information adverse to Mr. O'Rourke--which it refused to even accept. This refusal was based on the City Bar's position that review of Mr. O'Rourke's qualifications by its judiciary committee--which it refused to even confirm--was "confidential".

The City Bar's absurd and extreme interpretation of its self-imposed "confidentiality" was the genesis of our critique--since it left us with no choice but to ourselves present to the Senate Judiciary Committee the very information which the City Bar had refused to receive. It also jolted us into the realization that there is, in fact, no legitimate justification for shrouding the judicial screening process in confidentiality and that it skews the results. As I mentioned, I testified at the so-called "public" hearing of the Mayor's Advisory Committee on the Judiciary on December 27, 1995 as to the public's right to scrutinize the integrity of the judicial selection process--and to input into it.

I have arranged with Alan Rothstein, the City Bar's counsel, to forward you a copy of our critique, which we submitted to the Senate Judiciary Committee and Senate leadership as our 1992 "Law Day" contribution. Such critique was, thereafter, updated and supplemented by a June 2, 1992 letter addressed to former Senate Majority Leader George Mitchell, which discussed and enclosed our May 26, 1992 letter to then City Bar President John Feerick.



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Our May 26, 1992 letter to President Feerick called upon the City Bar to repudiate its indefensible "approval" rating and to take immediate corrective steps to protect the public from a screening process which was palpably deficient at all levels. That letter is also part of an extensive correspondence with President Feerick and the City Bar, which we have collected in a compendium--a copy of which I herewith enclose. As your review will establish, the City Bar--rather than taking the immediate and decisive action warranted by our critique--took no constructive action whatever.

We hope you will distinguish yourself from your predecessors, who--as the documents you will be reviewing show--shamelessly rebuffed us and pretended that the City Bar had no duty to rescind its indefensible "approval" of Mr. O'Rourke and that it could ignore, with impunity, demonstrably deficient judicial "screening" procedures.

I reiterate that we would be most pleased to work with you in reviewing and revising the Judiciary Committee's "screening" procedures. As our critique demonstrates--and as I believe was obvious from the numerous observations I made in our phone conversation about judicial screening procedures, city, state, and federal--the Center has much to contribute, if the process is to be improved.

A copy of our Center's brochure, describing our critique and reflecting our profoundly negative experiences with the City Bar, is enclosed for your information.

Yours for a quality judiciary,



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

cc: Alan Rothstein, Esq.

Enclosures: (a) 6/2/92 ltr to Senate Majority Leader Mitchell  
(b) Compendium III: Correspondence with City Bar and  
Federal Bar Council  
(c) CJA brochure with enclosures  
(d) 8/14/95 NYLJ "Commission Abandons Investigative  
Mandate"



P.S. Per your request, I am transmitting the application forms used by the Mayor's Advisory Committee on the Judiciary--together with the Executive Order creating the Advisory Committee and the Committee's procedural rules.

As discussed, the Advisory Committee's reappointment application nowhere requests from sitting judges the kind of essential information that is requested at #43-45 of the City Bar's "Uniform Judicial Questionnaire".

Also, I would point out that the Advisory Committee's question (#19) as to whether the sitting judge has been the subject of misconduct complaint is comparable to #22(b) of the City Bar's "Uniform Judicial Questionnaire". As discussed, because of the procedures employed by the Commission on Judicial Conduct, a judge is not informed of complaints filed against him which do not result in investigations being authorized and, because of the confidentiality of Judiciary Law 2-A, the Commission on Judicial Conduct cannot supply judicial screening panels with that information. This presents a significant problem to screening panels since, as we can readily demonstrate for you, the Commission on Judicial Conduct is summarily dismissing judicial misconduct complaints which are not only facially meritorious, but which provide probable cause and even prima facie evidence of the misconduct. On this subject, I enclose a copy of my Letter to the Editor, "Commission Abandons Investigative Mandate", published in the August 14, 1995 New York Law Journal.

At the very least, the judicial incumbents should be required to furnish a waiver of confidentiality.