Untrustworthy Ratings?

To the Editor:

"We have good, quality judges. I think I'd take that as a significant accomplishment." You quote that comment by President Bush in the sixth article of "The Bush Record" (July 1), about his appointment of conservative judges. The reality behind this is that one of every six of President Bush's judicial nominees has been rated "not qualified" by a minority vote of the American Bar Association's evaluating panel.

We believe the real story is not the conservative court built by President Bush but the mediocrities he has nominated for lifetime Federal judgeships. Our grass-roots citizen group recently submitted a critique to the Senate Judiciary Committee documenting the unfitness of one of President Bush's nominees to the Southern District of New York. That nominee also received a "not qualified" minority rating by the Bar Association panel.

You state that "in no case has a majority of the evaluating panel found a Bush nominee unqualified." Yet our critique, based on six months of investigation, found no basis for the Bar Association's majority rating of "qualified" for the nominee we studied. The evidence strongly suggests that the rating of that nominee was not the result of any meaningful investigation at all.

Because of the danger of Senate confirmation of unfit nominees to lifetime Federal judgeships, we have called on the Senate leadership to halt all judicial confirmations pending investigation and the setting up of safeguards.

ELENA RUTH SASSOWER

White Plains, July 10, 1992

The writer is coordinator of the Ninth Judicial Committee, a nonpartisan citizen group.

Ex "D"

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To the Editor

WEDNESDAY, JANUARY 24, 1996

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.

The New York Times

EDITORIALS/LETTERS *SATURDAY, NOVEMBER 16, 1996*

On Choosing Judges, Pataki Creates Problems

To the Editor:

Our citizens' organization shares your position that Gov. George E. Pataki should take the lead in protecting the public from processes of judicial selection that do not foster a quality and independent judiciary ("No Way to Choose Judges," editorial, Nov. 11). However, the Governor is the problem — not the solution.

A Sept. 14 news article described how Governor Pataki had politicized "merit selection" to New York's highest court by appointing his own counsel, Michael Finnegan, to the Commission on Judicial Nomination, the supposedly independent body that is to furnish him the names of "well qualified" candidates for that court.

More egregious is how Governor Pataki has handled judicial appointment to the state's lower courts. Over a year and a half ago, the Governor promulgated an executive order to establish screening committees to evaluate candidates for appointive judgeships. Not one of these committees has been established. Instead, the Governor — now almost halfway through his term — purports to use a temporary judicial screening committee. Virtually no information about that committee is publicly available.

Indeed, the Governor's temporary committee has no telephone number, and all inquiries about it must be directed to Mr. Finnegan, the Governor's counsel. Mr. Finnegan refuses to divulge any information about the temporary committee's membership, its procedures or even the qualifications of the judicial candidates Governor Pataki appoints, based on its recommendation to him that they are "highly qualified."

Six months ago we asked to meet with Governor Pataki to present him with petitions, signed by 1,500 New Yorkers, for an investigation and public hearings on "the political manipulation of judgeships in the State of New York." Governor Pataki's response? We're still waiting.

ELENA RUTH SASSOWER
Coordinator, Center for Judicial Accountability Inc.
White Plains, Nov. 13, 1996

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An Appeal to Fairness: Revisit the Court of Appeals

•Your editorial "Reclaiming the Court of Appeals" (Dec. 18) asserts that Albert Rosenblatt will be judged by how well he upholds the democratic process "from those who would seek to short-circuit" it.

On that score, it is not too early to judge him. He permitted the state Senate to make a mockery of the democratic process and the public's rights when it confirmed him last Thursday.

The Senate Judiciary Committee's hearing on Justice Rosenblatt's confirmation to our state's highest court was by invitation only.

The Committee denied invitations to citizens wishing to testify in opposition and prevented them from even attending the hearing by withholding information of its date, which was never publicly announced.

Even reporters at the Capitol did not know when the confirmation hearing would be held until last Thursday, the very day of the hearing.

The result was worthy of the former Soviet Union: a rubber-stamp confirmation "hearing," with no opposition testimony — followed by unanimous Senate approval.

In the 20 years since elections to the Court of Appeals were scrapped in favor of what was purported to be "merit selection," we do not believe the Senate Judiciary Committee ever — until last Thursday — conducted a confirmation hearing to the Court of Appeals without notice to the public and opportunity for it to be heard in opposition.

That it did so in confirming Justice Rosenblatt reflects its conscious knowledge — and that of Justice Rosenblatt — that his confirmation would not survive publicly presented opposition testimony. It certainly would not have survived the testimony of our non-partisan citizens' organization.

This is why we will be calling upon our new state attorney general as the "People's lawyer," to launch an official investigation. **Elena Ruth Sassower**
Center for Judicial Accountability
White Plains