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Elena Ruth Sassower, Coordinator

BY FAX: 212-643-7828 (9 pages)

TO: Richard Schwartz, Editorial Page Editor
New York Daily News

FROM: Elena Ruth Sassower, Coordinator

RE: "Judging the Judges" editorial series

DATE: December 10, 2002

Enclosed is a copy of the front-page story, "*Politics is Key to Judgeships, Panel Advises*", appearing in today's New York Law Journal about last Saturday's "*How to Become a Judge*" program at the Association of the Bar of the City of New York. Its focus is on the panel discussion with Democratic party leaders John Lavelle, Thomas Manton, and Clarence Norman and includes Mr. Norman's criticism of the Daily News editorials.

This is not the first time that the Law Journal has included reference to the Daily News editorials in its reportage. Nearly a year ago, on December 20, 2001, the Law Journal ran a front-page story, "*Judges Rebut Claims Made in Editorials*", about the meeting scheduled to take place that day between you and a delegation of judges. This was followed by a front-page item four days later that a two-hour meeting had been had.

Please recall that when we spoke together at the City Bar on Saturday, I did NOT ask for an "equal-time" two-hour meeting with you and/or editorial board members and investigative reporters. Rather, I asked *only for a single hour*, which I stated was sufficient for me to PROVE that the Commission on Judicial Conduct – the sole state agency charged with the duty of "judging the judges"—is NOT simply "ineffectual" and "toothless", as your editorials have claimed, but that it is CORRUPT – and the beneficiary of FIVE fraudulent judicial decisions without which it would NOT have survived three separate legal challenges – including my public interest lawsuit against the Commission, NOW at the Court of Appeals. As you now have a copy of my motion for leave to appeal, you can see for yourself that this is the extraordinary issue squarely before the Court¹.

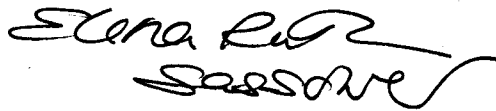
¹ Supplementing my "Question Presented for Review", which I pointed out to you (at p. 3), is the section entitled "Why the Question Presented Merits Review", which begins at page 6. Its opening paragraph reads:

I again reiterate that IF the Daily News is truly committed to reform of judicial discipline and selection – for the benefit of the People of this State – my public interest lawsuit against the Commission is a “catalyst like none other”. An hour’s meeting will suffice to convince you of that.

As next Friday, December 20, 2002 will be the year anniversary of your meeting with the judges, it would be appropriate to schedule our meeting together *on or before that date*. Please let me know if that would be possible so that I may plan accordingly.

Finally, I take this opportunity to remind you that the forum, “Judging the Judges: the New York State Commission on Judicial Conduct”, co-sponsored by the Fund for Modern Courts and the NYS Bar Association, is taking place tomorrow in Albany. For your convenience, I again enclose the program so that you may make arrangements for a Daily News editor or reporter to be present. I will, in any event, be there.

Thank you.



“This appeal presents the Court with five judicial decisions arising from three separate Article 78 proceedings against the Commission, all involving its mandatory duty under Judiciary Law §44.1 to investigate *facially-meritorious* judicial misconduct complaints. No provision is more important to a complainant of judicial misconduct that Judiciary Law §44.1.” (emphasis added)

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Politics Is Key To Judgeships, Panel Advises

By Daniel Wise
New York Law Journal

Three Democratic Party county leaders participating Saturday in a program on "How to Become a Judge" may have stated the obvious, yet the thought they articulated is rarely spoken out loud, at least not so explicitly.

The three leaders, along with five other panelists, told about 80 lawyers attending a session at The Association of the Bar of the City of New York that political involvement is key to winning an elective judgeship.

Boiled down to its essentials, the panelists' message was join a political club, become known to political party leaders, develop mentors, and make yourself indispensable.

Staten Island Assemblyman John W. Lavelle, the chairman of the Richmond County Democratic Party, encouraged lawyers to volunteer to help his organization deal with the arcana of election law. The work of volunteers is "appreciated," and party leaders are "very, very aware" of the contributions volunteer lawyers make, he said.

At another point during the session, after a question arose about some district attorney's offices having a policy prohibiting their prosecutors from joining political clubs, Mr. Lavelle interjected that if a prosecutor's wife were an active club member, there would be "credit in that context."

The session on how to negotiate the political process necessary to obtain an elective judgeship was one of six panel discussions during the day-long program. All together, 240 lawyers who are at least entertaining the thought of seeking a judgeship attended the program.

Among the speakers were Chief Judge Judith S. Kaye, who delivered the keynote address, and New York City Deputy Mayor Carol Robles-Roman, whose remarks on the Mayor's Advisory Committee on the Judiciary opened the day's proceeding.

Joining Mr. Lavelle on the panel were Queens Democratic leader and former U.S. Congressman Thomas J. Manton, and state

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Assemblyman Clarence Norman Jr., the leader of the Brooklyn Democratic Party.

Mr. Manton reinforced the message that becoming politically active can help advance a lawyer's path to a judgeship by telling an anecdote about a law secretary who had gotten heavily involved as a volunteer in the former congressman's 1992 campaign. Mr. Manton said that during the campaign, which was particularly difficult because it followed the 1990 re-apportionment, he had gotten to know the law secretary well and admire his talents. The result, he said, was to "jump start" the young man's path to the judiciary.

Mr. Norman, who followed a panelist who stressed the importance of "getting to know the lay of the land" through political clubhouses, also acknowledged the importance of aspirants putting themselves "in a position to be judged."

Mr. Norman, however, lashed out at his critics, particularly the Daily News, which in a series of editorials has contended that the elective system has produced mediocre judges, and worse, in Brooklyn. He insisted that his party has a screening process that insures as a "prerequisite" that any candidate its leaders back is qualified.

Mr. Norman said the message of the Daily News' "crusade" that appointed judges are better than elected ones could not "be further from the truth." To pose the question as "merit" selection versus elections is "pejorative," he charged.

Kent Frydman, a spokesman for the Daily News, said the paper would let the editorials "speak for" themselves.

A False Dichotomy?

One theme that surfaced during the program in a less-overheated fashion was the debate over which method of selecting judges is better, appointive or elective.

Acting Justice Leslie G. Leach, the head of bar association's committee to encourage judicial service, noted at the opening plenary session that some refer to one system as "political and the other as merit." But, he added, both involve "politics" and "merit."

Comments made by two panelists - one talking about the elective process and the other about the appointive process - suggest that politics, with a small "p," plays a role in both.

Justice Joseph F. Bruno, who participated in the panel with the Democratic leaders, stressed the importance that knowing the party's 40 district leaders had in his quest for a Supreme Court judgeship in Brooklyn. Holding up a copy of the list, Justice Bruno said he had "worked the field" so that the district leaders "got a sense of who I am."

Criminal Court Judge Michael Sondberg, speaking at a session on how to negotiate the appointive process, similarly described the list of the members of the mayor's advisory committee, which screens applicants for the Family and Criminal Courts, as "the most important"

information in a booklet distributed by the City Bar at the program.

Judge Sondberg suggested that applicants search the list to see if they knew anyone with a personal relationship with any of the committee members. He also suggested as potentially helpful sending a discreet feeler to determine if a discussion about the applicant would be welcome.

Zachary Carter, the chairman of the Mayor's advisory committee, also noted the benefit of bar association committee work as a means of gaining "exposure to other well-regarded practitioners."

A lawyer could be a great litigator, he explained, but like "a tree falling in a forest" no one may recognize it.

At the plenary session on the appointive process, it became apparent that candidates applying to the bench for an appointive judgeship are subject to rigorous scrutiny.

Jeh C. Johnson, the chairman of the bar association's Judiciary Committee, said that the committee regularly conducts between 20 and 40 interviews with people familiar with a candidate's work in deciding whether to give the candidacy its endorsement.

Sources familiar with the work of the mayor's advisory committee said that panel conducts a similar number of inquiries in evaluating candidates' credentials.

Date Received: December 09, 2002

Judges Rebut Claims Made In Editorials

BY DANIEL WISE

THE STATE'S SUPREME Court judges are taking the offensive in challenging a *Daily News* editorial that charged that nearly half of the 180 Supreme Court justices and surrogates are "ill-chosen or unfit."

A delegation consisting of Justice Abraham G. Gerger, the president of the Association of Justices of the Supreme Court of the State of New York, Leland DeGrasse, the group's president-elect, and Stanley L. Sklar, the head of the New York County Board of Justices is scheduled to meet today with Richard J. Schwartz, the *News*' editorial page editor, several sources reported.

Justice Gerger yesterday confirmed the meeting, which he described as an opportunity to "open a dialogue" with the *News*' editors and show them that they drew the "wrong conclusion" from court statistics.

Mr. Schwartz, who at one time was a senior advisor to Mayor Giuliani, said that the paper would only comment through its editorials.

Separately, on Tuesday, about 40 Brooklyn justices passed a resolution calling on both the state and city Supreme Court justices' associations to ask Chief Judge Judith S. Kaye to publically rebut many of the contentions made in a series of four editorials, called "Judging the Judges," published by the *News* since Nov. 26.

Chief Judge Kaye's spokesman, David Bookstaver, said yesterday that the Chief Judge's "voice will absolutely be heard at the appropriate time in the near future." Mr. Bookstaver gave no indication of which side of the debate Chief Judge Kaye would come down on, limiting his comments to the assertion that she is "extremely concerned about the integrity of the court system and the public's trust and confidence in that system."

The Dec. 2 editorial, entitled "Voting No on Elected Judges," drew the most fire. After what it called a "comprehensive review," which involved an assessment of whether judges had met "OCA's yearly benchmarks," the editorial concluded that 89 of the state's 180 elected Supreme Court justices and Surrogate Court judges are "ill-chosen or unfit."

Among the OCA benchmarks cited by the editorial were the commencement of 40 trials a year, disposing 200 cases a year, devoting two-thirds of the work day to trying cases and meeting OCA time frames for pretrial pro-

Continued on page 2

Judges Rebut Editorial Claims

Continued from page 1

cessing of cases and processing cases from the time a note of issue is filed until final disposition.

The editorial also singled out five judges — Justices Richard D. Huttner and Edward W. Rappaport from Brooklyn; Justices Alexander W. Hunter Jr. and Paul A. Victor in the Bronx and Justice Luther V. Dye in Queens — as not “necessarily the worst,” but representative of the problems its examination had uncovered.

Justice Gerges said that he hoped that the delegation of “judges from the trenches” could give the *Daily News* editors a better understanding of what the statistics mean.

Standards and Goals

Other judges were much more pointed in their criticism, asserting that, aside from published “standards and goals” setting time frames for pre-trial and post-note handling of cases, OCA has never promulgated the other types of “benchmarks” referenced by the newspaper. “No one has ever heard of a requirement that judges must start 40 trials a year,” one justice said. Another justice said, “OCA never put any of those requirements, other than standards and goals, in a bulletin or newsletter — the first I heard of them was when the editorial appeared.”

Other judges also pointed out that even standards and goals can not be applied in a cookie-cutter fashion. A judge handling complex cases, such as medical malpractice suits which often take a month to try, cannot be judged by the same standard as a judge handling less complex matters, they said.

Mr. Bookstaver, OCA’s spokesman, said that the only formal rules used by the court system are the “standards and goals.” OCA’s standards and goals are calibrated, however, to set different deadlines for handling cases based on complexity.

As for the other benchmarks referred to in the editorial, Mr. Bookstaver said that court administrators use them as a starting point in assessing a judge’s performance. “They are indicators, not benchmarks,” he added, and must be interpreted in light of the types of cases a judge is handling.

Several of the judges who were singled out by name in the Dec. 2 editorial took sharp issue with the criticisms. Justice Huttner said the claim that he was out “12 weeks” in 2000 ignored the fact that he had missed four months because he had to undergo emergency colon surgery. Justice Rappaport said the assertion that 58 percent of his cases failed to meet “standards and goals” is “not true — I don’t know what statistics they used.”

Bronx Administrative Judge Luis Gonzalez said Justice Victor is “one of my best judges.” He is often at the courthouse before 8:30 a.m. and has published, either in print or on electronic databases, 20 opinions in only three years on the bench, Justice Gonzalez reported.

Several judges expressed skepticism that Judge Kaye would come to their defense, pointing out that the *News’* editorial had backed court merger, which has long been one of the Chief Judge’s priorities.

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NEW YORK, MONDAY, DECEMBER 24, 2001

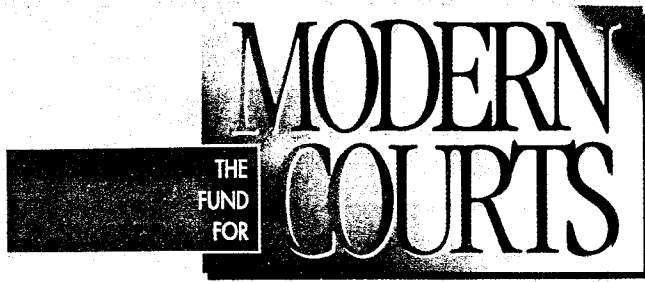
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A delegation from the State Supreme Court justices association made headway in "opening communications" with the *Daily News*' editorial board at a meeting last Thursday, reported Justice Abraham G. Gerges, the group's outgoing president. The judges' association had sought the meeting in response to a Dec. 2 editorial in the *News* that had asserted that "virtually half" of the state's 180 elected Supreme Court justices and Surrogates are "ill-chosen or unfit" (NYLJ, Dec. 20). Justice Gerges described as "very cordial" the two-hour meeting between the three-judge delegation, editorial board members, and Richard J. Schwartz, the *News*' editorial page editor.

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The Fund for Modern Courts and the New York State Bar Association
are pleased to present

Judging the Judges: *The New York State Commission on Judicial Conduct*

Wednesday, December 11, 2002
11:30 AM - 2:00 PM
New York State Bar Association
One Elk Street
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Moderator: Lorraine Power Tharp, Esq.
President
New York State Bar Association

Panelists: Hon. Juanita Bing Newton
Deputy Chief Administrative Judge for Justice Initiatives
Former Member, NYS Commission on Judicial Conduct

Robert H. Tembeckjian, Esq.
Deputy Administrator & Deputy Counsel
NYS Commission on Judicial Conduct

Stephen R. Coffey, Esq.
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Hon. John T. Racanelli
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Reservations must be received by December 9, 2002

Richard Schwartz =
editorial page editor
Daily News

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