

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554

E-Mail: probono@delphi.com

Box 69, Gedney Station

White Plains, New York 10605

By Fax and Mail: 212-556-3717
11 pages

March 25, 1996

Metro Section, 6th Floor
The New York Times
229 West 43rd Street
New York, New York 10036-3959

Att: Joyce Purnick
Jan Hoffman

A propos of the March 1st panel discussion on New York One about Judge Lorin Duckman and about the New York State Commission on Judicial Conduct--to which we were invited to participate and then, disinvited--and the numerous Times' articles that have been published over the past month on both those subjects, this is to reiterate what we believe you know, to wit, that we have a great deal of powerful and important information to contribute.

Enclosed is a copy of our March 18, 1996 letter to City Bar President Barbara Robinson, with cc's to pivotal bar and political leaders. By that letter, we challenged President Robinson's endorsement of the Commission on Judicial Conduct, published on the Op-Ed page of the March 14th New York Times. We also set forth facts bearing adversely upon the integrity of the "Committee to Preserve the Independence of the Judiciary"--whose formation was described in a March 9th Times piece by Joseph Fried.

We would greatly appreciate the opportunity to present to you the irrefutable documentary proof, described in our March 18th letter, that the Commission on Judicial Conduct is "not merely dysfunctional, but corrupt".

Both the Post and the Daily News have run articles, quoting us about the Commission on Judicial Conduct. The Daily News' story appears today--and we enclose a copy for your convenience. It bears emphasizing, however, that Professor Gillers' claim that "the secrecy makes it impossible to know if the commission is doing a good job" IS NOT TRUE. The Commission's subversion of its statutory mandate is readily verifiable by comparing Judiciary Law §44.1 with the Commission's self-promulgated rule (22 NYCRR §7000.3). Moreover, the Center for Judicial Accountability has pierced the secrecy by its archive of duplicate copies of judicial misconduct complaints, filed with the Commission.

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These facts were explicitly and publicly pointed out by us in our Letter to the Editor "Commission Abandons Investigative Mandate", published in the August 14, 1995 New York Law Journal--a copy of which is also enclosed.

Finally--and because Professor Gillers seems to "pop up" over and over again as a "reputable" source for stories about the Commission, including in the March 7th "Metro Matters" column, "Low Priority For the Judging of Judges", I believe you should see a copy of my March 18, 1996 letter to him. This is quite apart from our extensive correspondence with the Commission on Judicial Conduct--including its Chairman, Henry Berger, quoted in that column.

We look forward to follow-up by the Times of what is an easily-verifiable and dynamite story that can and, rightfully, should, bring down the Commission on Judicial Conduct.

Yours for a quality judiciary,



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

Enclosures

cc: Professor Stephen Gillers

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554

Box 69, Gedney Station
White Plains, New York 10605

By Fax and Mail: 212-995-4030

6 pages

March 18, 1996

Professor Stephen Gillers
New York University School of Law
40 Washington Square South, Room 308
New York, New York 10012

Dear Professor Gillers:

This letter memorializes our most memorable conversation last Tuesday, March 12th, immediately following your oral presentation at Hofstra University's Conference on "Legal Ethics: The Core Issues". It also reiterates what I told you then--which you, as a leading expert on ethics, should know without my having to tell you---to wit, that it is absolutely unethical for you to favorably comment to the press about the functioning of the New York State Commission on Judicial Conduct when, as you candidly admitted to me:

- (1) you have never seen copies of any of the judicial misconduct complaints which the Commission on Judicial Conduct has dismissed, without investigation; and
- (2) you have never compared the self-promulgated rule (22 NYCRR §7000.3) under which the Commission has been dismissing, rather than investigating, judicial misconduct complaints, with the statute which created and empowered the Commission (Judiciary Law §44.1).

An example of the favorable comment given by you to the press, in response to queries about the Commission on Judicial Conduct, may be gleaned from the enclosed article, "Judicial Hearings Are Rare", by Letta Taylor, which appeared in Long Island Newsday, on or about September 18, 1995 (Exhibit "A"). In pertinent part, it reads as follows:

"The Westchester-based Center for Judicial Accountability has accused the commission of targeting lower court jurists while 'covering up for powerful and politically-connected judges.'

But Gillers said he had seen no evidence of that..."

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It seems clear that the reason you have "seen no evidence" is because you have deliberately chosen not to see it.

As you know, last summer, the New York Law Journal informed its readers of our legal challenge to the Commission on Judicial Conduct when, on July 31, 1995, it highlighted the Supreme Court's dismissal of our case, under its "Decisions of Interest", and thereafter, when it published our Letter to the Editor, "Commission Abandons Investigative Mandate", on August 14, 1995 (Exhibit "B").

I quoted from and enclosed a copy of our published Letter to the Editor in my December 1, 1995 fax letter to you (Exhibit "C"). That faxed letter inquired as to your willingness to serve as an "expert", independently evaluating the file of our case against the Commission for an A & E film documentary about judicial abuse and corruption. Yet, as you admitted to me, you neither responded to that letter to you--nor to my several follow-up telephone messages.

Moreover, when--during the course of our conversation last Tuesday--I asked whether you would now be willing to review the case file so that you could inform yourself as to the blatant unconstitutionality of the Commission's self-promulgated rule, as written and as applied--you rejected my proffer of the file--a copy of which I had in my hand.

If, in any respect, this letter does not accurately reflect our conversation last Tuesday, or if the Newsday reporter was inaccurate in the response she attributed to you, please let us know.

Please also let us know, should you decide to review the file of our ground-breaking public interest case against the Commission on Judicial Conduct.

We believe it is your ethical and professional duty to verify the documentary proof contained in that file, establishing that the New York State Commission on Judicial Conduct is corrupt and the beneficiary of a fraudulent judgment of dismissal--without which it could not have survived our legal challenge.

Yours for a quality judiciary,



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

Enclosures

CENTER for JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554

Box 69, Gedney Station
White Plains, New York 10605

By Fax and Mail: 212-768-8116

March 18, 1996

Barbara Paul Robinson, President
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036

RE: New York State Commission on Judicial Conduct

Dear President Robinson:

We take strong exception to your March 14th Op-Ed piece in The New York Times, endorsing the New York State Commission on Judicial Conduct as a "good system for disciplining or even removing a judge for misconduct", as well as your similar endorsement of the Commission, appearing in your Letter to the Editor, published in the New York Law Journal on March 6th (Exhibits "A-1" and "A-2").

We consider these endorsements by you, as President of the Association of the Bar of the City of New York, to be irresponsible and unethical in the extreme--in view of the irrefutable proof that the Commission on Judicial Conduct is not merely dysfunctional¹, but corrupt.

The irrefutable proof of such corruption was described in our own Letter to the Editor, "Commission Abandons Investigative Mandate", published in the August 14, 1995 New York Law Journal (Exhibit "C"). By that published Letter, we described how the Commission had subverted its statutory duty to investigate facially-meritorious complaints, that its long-rumored protection of powerful and politically-connected judges was a documented fact, and that the Commission had itself been protected in our legal challenge to it by a fraudulent Supreme Court judgment of dismissal (Cahn, J., NY Co.). We expressly encouraged the legal community to verify such facts by reviewing the file of our case against the Commission in the County Clerk's office--and gave the index number for such purpose.

¹ Such dysfunction may be gleaned from the experience of a "highly experienced trial lawyer", whose complaint of judicial conduct was summarily dismissed by the Commission on Judicial Conduct--as recounted in the Ethics Opinion of the City Bar's own Committee on Professional and Judicial Ethics, published in the New York Law Journal on February 29, 1996 (Exhibit "B").

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Despite that open invitation, not a peep was heard from the City Bar--nor, for that matter, from any other bar association.

Consequently, on January 25, 1996, a copy of the file in our case against the Commission was hand-delivered to the City Bar, together with a copy of our December 15, 1995 letter to the Assembly Judiciary Committee, delineating (at pages 1-3) the respects in which the Supreme Court judgment of dismissal was fraudulent--and known to be such by the Commission on Judicial Conduct. Our transmittal coverletter, dated January 26, 1996, explicitly requested that the matter be directed "to the appropriate City Bar committees for consideration and action on behalf of the otherwise unprotected public interest" (Exhibit "D").

On February 20th, I was told by Alan Rothstein, the City Bar's counsel who had taken charge of our January 25th letter request, that he had discussed the case with you and that you were fully familiar with it. He also told me that he had discussed it with various heads of City Bar committees--although he adamantly refused to identify who they were. Mr. Rothstein stated that your unanimous position was that the City Bar could not do anything. However, he said he was still waiting to hear from one other person, who--again--he refused to identify.

On March 5th, Mr. Rothstein reiterated this "can't do anything" position when I telephoned. He not only told me that the City Bar would not do anything through its committees, but that it would not refer us or provide us with assistance in locating individual attorneys to pursue the case on a pro bono basis. Mr. Rothstein also refused to transmit the file to you so that you could bring it to that evening's "kick-off" meeting at the New York County Lawyers' Association of bar associations and law schools forming a "Committee for an Independent Judiciary".

Mr. Rothstein agreed to transfer my call to your office so that I could speak with you directly. Because I was told that you were not in, I left a lengthy message about the Commission case and about the need to bring it to the attention of the "Committee for an Independent Judiciary".

In the nearly two weeks that have since elapsed, we have received no return call from you, presumably because you are busy writing letters and articles endorsing the Commission. Nor have we received any letter from Mr. Rothstein confirming the City Bar's "can't do anything" position. This is notwithstanding I expressly requested such confirmation in writing, with a statement as to the City Bar's view of the constitutionality, as written and as applied, of the self-promulgated rule of the

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Commission, challenged by our case, as well as of our contention² that the Supreme Court's dismissal of the case is a fraud. We hereby repeat and reiterate such reasonable request.

Because it is anticipated that this letter will be circulated among the bar associations and law schools which, as part of the "Committee to Preserve the Independence of the Judiciary"--were signators to its Statement, published in the New York Law Journal on March 8, 1996 (Exhibit "E"), some comments are in order as to the March 5th meeting at which a draft of that Statement was reviewed by those present.

Unlike Ronald Russo, attorney for Judge Lorin Duckman, who was invited to participate and be present throughout the two-hour closed-door meeting--including during the discussion of the Committee's Statement, then in draft--we were not invited to either participate or be present at any point. Indeed, Irwin Davidson, Executive Director of the New York County Lawyers' Association, who was coordinating the March 5th meeting, did not return my several telephone messages to him about the March 5th meeting--beginning on Friday, March 1st, with two messages on Monday, March 4th. Only late in the morning on March 5th, after I had left yet another telephone message for him, did Mr. Davidson return my call. At that point, Mr. Davidson informed me that the meeting, scheduled for 5:30 that afternoon, would be closed to us.

I informed Mr. Davidson that we had a great deal to contribute to the meeting and briefly described our two recent letters to Mayor Giuliani--the latter, dated February 27, 1996, accusing the Mayor of having unfairly maligned Judge Duckman by deliberately misrepresenting the transcript of the proceeding in which Judge Duckman had reduced the bail of Benito Oliver (Exhibit "G"). I told Mr. Davidson that we were perhaps the only ones--from among the bar leaders and law school deans--who had actually read the transcript. As to our earlier letter to the Mayor, dated February 20, 1996, I informed Mr. Davidson that that letter had transmitted a copy of the file of our case against the Commission on Judicial Conduct and that it called upon the Mayor to refer the Commission for criminal investigation (Exhibit "F"). None of this seemed to make any difference to Mr. Davidson--who, by the end of our brief phone conversation, seemed resigned to the fact that we planned to travel to the meeting site to make such letters known to the Committee members.

We believe that had it not been for Mr. Davidson's advance knowledge that we planned to arrive, monitors would not have been

² As detailed at pages 1-3 of our December 15, 1995 letter to the Assembly Judiciary Committee.

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assigned to regulate entry into the fourth floor meeting room, which was actually locked from the outside, requiring a key for entry.

Following our arrival, which was only minutes after the 5:30 p.m. meeting began, I gave to one of the monitors, for delivery to Mr. Davidson, copies of our two letters to the Mayor (Exhibits "F" and "G"), with the enclosures indicated by those letters, including the file of our case against the Commission. Mr. Davidson, thereafter, came out to acknowledge receipt, but was non-committal about giving us even five minutes to make a presentation to the Committee members about them. And he refused to permit us to sit in at the meeting as spectators--while, at the same time, ushering Mr. Russo into the meeting--explaining to us that Mr. Russo had been "invited". Mr. Davidson would not respond to my inquiry as to why we couldn't also be "invited" inasmuch as our two letters to the Mayor showed that we deserved a place at that meeting because we had important information to contribute (Exhibits "F" and "G").

Shortly after our arrival, the monitors went inside the meeting room, leaving us outside the locked-door. Nevertheless, we overheard small bits of what was being said inside--including that portion of the Statement as has been published in the Law Journal as endorsed principle, number 3:

"We support the independent functioning of the constitutionally created New York State Commission on Judicial Conduct." (Exhibit "E")

Because of this explicitly endorsed principle, we would have expected Mr. Davidson to have ensured that we had some opportunity to make a presentation to the Committee about the documentary proof, contained in the file of our case against the Commission, that the Commission is neither "independent" nor functioning within the framework of the constitutional amendment that created it. However, not only did Mr. Davidson not do this, but he was ready to return the file to us when the Committee adjourned at 7:30 p.m. Indeed, he actually proffered it back to us.

In response, I reiterated to Mr. Davidson--and, thereafter, to Klaus Eppler, President of the New York County Lawyers' Association, who remained in the then nearly empty meeting room--that the organized bar has an ethical duty to take steps to protect the public from a Commission which, as documented by the file, is corrupt.

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Yet, the Committee's Statement, published in full three days later in the New York Law Journal (Exhibit "E"), is entirely silent about that ethical duty.

Your March 6, 1996 Letter to the Editor in the Law Journal traces the founding of the City Bar to a commitment to "fight rampant corruption in the judiciary" (Exhibit "A-2"). As reflected by the file in our case against the Commission--showing the Commission's summary dismissal of eight facially-meritorious, documented complaints of criminal acts by high-ranking, politically-connected judges³--the Commission is a complicitous contributor to resurgent corruption and political manipulation of the judiciary.

We, therefore, request that you and President Eppler circulate this letter to all the members of the Committee to Preserve the Independence of the Judiciary. We further request that the serious issues raised herein be placed on the agenda of its next meeting, to which we again ask to be invited.

Yours for a quality judiciary,



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

cc: Assembly Judiciary Committee
Mayor Rudolph Giuliani
Governor George Pataki
Alan Rothstein, Counsel
Association of the Bar of the City of New York
New York County Lawyers' Association
Irwin Davidson, Executive Director
Klaus Eppler, President
Ronald Russo, Esq., Attorney for Judge Lorin Duckman
New York State Bar Association
Maxwell Pfeifer, President
New York media

³ See Exhibits "C"- "J", and "M", annexed to the Article 78 Petition.

Panel hunting Duckman targeted

By **KIMBERLY SCHAYE**

Daily News Albany Bureau

ALBANY — The future of embattled Brooklyn Judge Lorin Duckman is being weighed by a state panel that is itself under attack.

The state Commission on Judicial Conduct has been repeatedly criticized for being too secretive, too slow to act and too quick to dismiss cases — often after cursory reviews.

Elena Sassower, coordinator of the Center for Judicial Accountability, said the 11-member panel “throws out complaints which are documented and detailed in all respects.”

“The secrecy makes it impossible to know if the commission is doing a good job and ... if judges who misbehave are appropriately sanctioned — except for the very small number

whose sanctions become public,” said Stephen Gillers, a New York University Law School specialist in legal ethics.

The cloak of secrecy that shields the commission's proceedings is lifted only if the panel formally accuses a judge of misconduct and recommends action by the state's highest court.

But that rarely happens.

Since the commission's creation in 1978, the panel investigated just 3,203 of the 17,221 complaints it received.

The proceedings — which can take up to two years — resulted in ouster recommendations against 112 judges and lesser sanctions against 294 others.

Last year, the panel investigated only 176 of the 1,361 complaints, or just 13% of the total.

The rest were dismissed.

New York is one of 17 states that do not allow public review of complaints against judges.

The Duckman case is unusual for the commission because state officials filed a highly public complaint against the Brooklyn Criminal Court judge.

They called on the commission to investigate whether Duckman improperly lowered the bail for a convicted rapist accused of stalking a former girlfriend.

After making bail, suspect Benito Oliver killed ex-girlfriend Galina Komar, then killed himself.

Gov. Pataki said last month that he would ask the state Senate to impeach Duckman unless the commission recommended removal of the judge within 60 days.

But it's unlikely that the panel will recommend removal — or any other sanction — because bail rulings and other legal decisions rarely constitute grounds for action by the commission.

Indeed, Gerald Stern, the commission's administrator, said most of the complaints the panel receives are dismissed because they are either unbelievable or involve allegations over which the commission has no authority.

Stern also said the commission has been handcuffed by state budget cuts that reduced the panel's funding from \$2.3 million in 1991 to \$1.6 million now.

Although Pataki has recommended a \$100,000 increase, the new funding would do little to expand a staff that's been halved since 1991.