

# CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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September 3, 1997

Gary Brown, Executive Director  
Fund/Committee for Modern Courts  
19 West 44th Street  
New York, New York 10036

RE: Question #1 on the November Ballet: NYS Constitutional Convention

Dear Gary:

This letter follows up my brief telephone conversation earlier today with Nick Herman, in which he responded to my question as to the Fund's position on the constitutional convention by stating that the Fund "doesn't have one". This, despite the fact that a constitutional convention would necessarily reform judicial selection and a panoply of court issues long decried by the Fund as in need of reform.

Indeed, on the "merit selection" issue, which has been the Fund's hallmark, Citizens Union has recognized the futility of any expectation that "merit selection" can be achieved through the Legislature. In pertinent part, its July 1997 issue of "Searchlight" states: "...this important reform has had little chance of acceptance by members of the Legislature, who are beholden to those political leaders, and many of whom hope to use their position to secure nomination for a judgeship." Does the Fund have any basis to differ with this assessment?

We, therefore, ask that you elaborate upon the Fund's non-position on the constitutional convention -- which it surely understands to be tantamount to advocating a "No" vote on Question #1 on November's ballot. We would also appreciate copies of any written materials that the Fund has generated about the constitutional convention, including materials pertaining to the recommendations of the Temporary Commission on Constitutional Revision. Did the Fund engage in any advocacy to the Governor and Legislature on those recommendations?

We would also appreciate information concerning the Fund's activity in connection with the 1967 constitutional convention. It is our impression that the Fund advocated a "Yes" vote in favor of convening that convention.

On a different, but nonetheless complementary subject, we enclose a copy of CJA's \$3,000 ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", which appeared in the August 27, 1997 New York Law Journal. It describes the Attorney General's litigation misconduct in defending against our Article 78 proceeding against the New York State Commission on Judicial Conduct -- and the complicity of a state court judge. As you know, a copy of the Article 78 litigation file has been in the Fund's possession since before you became the Fund's Executive Director -- a position to which you were appointed after a 20-year tenure with the Attorney General's office. Indeed, two years ago, when we brought the file's significance to the attention of John Feerick, Chairman of the Fund/Committee for Modern Courts, after the Law Journal published our Letter to the Editor, "*Commission Abandons Investigative Mandate*" on August 14, 1995, his written response was that he would "discuss the subject with our next executive director".

In all this time and notwithstanding CJA's November 20, 1996 Law Journal ad "*A Call for Concerted Action*" and our May 5, 1997 letter challenge to the Fund to testify about our Article 78 proceeding at the City Bar's May 14th hearing, as summarized in our August 27th ad, we have not heard "a peep" from you about this important case. Please advise as to whether the Fund intends to continue to "stick its head in the sand".

Should the Fund share the Attorney General's fraudulent pretense that the Commission on Judicial Conduct has discretion to dismiss, *without* investigation, judicial misconduct complaints such as those annexed to the Article 78 petition -- complaints which are not only facially-meritorious, but documented as to criminal conduct by sitting judges -- Article VI, §22 of the State Constitution must be amended to make even more explicit the Commission's mandatory investigative duty. Such mandatory investigative duty is expressed in the language of Judiciary Law §44.1, which preceded the present constitutional provision<sup>1</sup>.

Yours for a quality judiciary,



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

Enclosure

cc: John Feerick, Chairman  
Fund/Committee for Modern Courts  
Jeannette Kahlenberg, Executive Director  
Citizens Union  
Robert Schulz, Chairman *Pro Tem*  
We the People Congress

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<sup>1</sup> See Point II to our June 8, 1995 Memorandum of Law in the Article 78 proceeding, providing legislative and constitutional history.