

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").

EX "D"

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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

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.

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.

March 18, 1996

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.

NYT 3/14/96

Protect Judges From Politicians

By Barbara Paul Robinson

We all know about places like China and Peru, where the courts are a Government-controlled sham. Americans justifiably feel that our legal system with its independent judiciary is superior. But recent events in New York show that not even our state's system is impervious to political pressure.

Gov. George Pataki has called for the removal of Lorin Duckman, a Criminal Court judge in Brooklyn, for lowering the bail of a defendant who later killed his former girlfriend. The Governor has asked the State Senate to remove Judge Duckman if the state's Commission on Judicial Conduct does not.

The Governor's actions are part of a growing trend of political attacks on the judicial system. Judge Phoebe Greenbaum of Family Court and Acting Justice David Friedman, of the State Supreme Court, were also recently unfairly savaged by political leaders.

It is easy to attack judges and the

Barbara Paul Robinson is president of the New York City Bar Association.

courts. Judges are not allowed to speak out in their own defense. But politicians should not use the judiciary system for political purposes. They should know that an independent judiciary is essential to our system of justice.

New York has a good system for disciplining or even removing a judge for misconduct: the Commission on Judicial Conduct.

This independent 11-member group includes judges, lawyers and nonlawyers, who are appointed by the Governor, the Legislature and the state's Chief Judge. It has removed more than 100 judges from the bench since it was created two decades ago.

Unfortunately, the New York State Constitution contains provisions — relics of a prior age — that provide for unseating judges. In one, the State Assembly presses charges; then a trial follows in the Senate, where a two-thirds majority can vote to remove the judge.

Another method, which is applicable to all but State Supreme Court justices, allows the Governor to recommend to the Senate that a judge be removed "for cause" — though no standard is given as to what constitutes cause, and there are no procedures to follow. A two-thirds vote is sufficient for removal. This is the procedure Governor Pataki said he would call for if the commission does

**Pataki attacks,
and the court
system suffers.**

not remove Judge Duckman.

The last time the Senate removed a judge was in 1872. Since then, the Legislature and the executive branch have properly recognized that judges must be able to decide cases without fear of political retribution.

There are judges who deserve to be disciplined. And it turns out sometimes that judges make the wrong decisions. They work in crumbling buildings, under enormous pressure, with huge caseloads. It is astonishing that they do so well.

A judge's error can be appealed. Judges who behave improperly should be disciplined by the proper authority, the Commission on Judicial Conduct. But no judge should worry that a politically unpalatable decision could lead to removal.

Our officials must stop their vitriolic attacks on individual judges. This intimidates all judges and threatens the system of justice that protects us all. □

Ex "A-1"

LETTERS

To the Editor

Wednesday, March 6, 1996

Rush to Judgment By Pataki Criticized

Governor Pataki's recent call for the impeachment and removal of Judge Lorin Duckman, regardless of the findings of the Commission on Judicial Conduct, threatens the independence of the entire judiciary.

The Association of the Bar of the City of New York was formed 125 years ago to fight rampant corruption in the judiciary; indeed we led the charge the last time a New York judge was successfully removed by executive and legislative action — over a century ago in 1872. That action followed an exhaustive investigation and a finding that the judge was corrupt, made rulings after hearing only one side and completely disregarded basic judicial rules and safeguards; and occurred at a time when no other appropriate procedures were in place.

The very fact that those extraordinary powers of impeachment have not successfully been utilized in more than 100 years underscores the exceptional nature of that process and reaffirms that only in response to the most outrageous cases of corruption should one branch of government seek to remove a member of a separate, independent branch.

The New York State Legislature wisely proposed, and the people overwhelmingly approved, the creation of the Commission on Judicial Conduct. This independent, impartial body — which includes nonlawyers, lawyers and judges — has removed over 100 judges from the bench, and is the appropriate forum to prosecute complaints against judges. That Commission makes its decision on the basis of a thorough investigation and an examination of a full record. It should be allowed to continue to review the complaint against Judge Duckman, without being rushed to judgment.

The only protection that any of us has against overreaching by the legislative or executive branches of government lies in the independence of the judicial branch. It is precisely that separation that distinguishes our legal system and defines us as a nation.

Our public officials, particularly those who are lawyers, should realize that vitriolic attacks on individuals and specific court decisions intimidate all judges, not only those few that deserve scrutiny and, in doing so, undermine our system of justice.

Barbara Paul Robinson
New York, N.Y.

The author is president of The Association of The Bar of The City of New York.

Ex "A-2"

2/29/96 NYLW

Ethics Opinion Allows Criticism Of Trial Judge

BY DANIEL WISE

A LAWYER MAY criticize a judge's handling of a trial, but only "in a temperate and dignified manner," the Association of the Bar of the City of New York has concluded in an advisory opinion.

The ruling was issued by the association's Committee on Professional and Judicial Ethics in response to an

TEXT OF OPINION — PAGE 2

inquiry from a lawyer, not identified in the opinion.

The attorney asked if he could express his views in a professional publication that a judge, in overseeing a trial involving one of the lawyer's clients, had been "hostile, belligerent, aggressive, abusive, intimidating and generally intemperate."

The committee's advice comes in the midst of harsh attacks on several judges by two of the state's best known lawyers, Governor Pataki and Mayor Giuliani. Yesterday, for instance, Governor Pataki called for the impeachment of Brooklyn Criminal Court Judge Lorin Duckman if the State Commission on Judicial Conduct should not act to remove him within 60 days. Judge Duckman has been under fire for reducing the bail of a sus-

Continued on page 2, column 3

EX "B"

Lawyer's Criticism of Judge Permitted

Continued from page 1, column 3

pect, who after being released, killed his girlfriend, and for remarks he made during the hearing that were said to suggest a cavalier attitude toward spousal abuse.

In its advisory opinion, the committee found no bar to a lawyer's making remarks critical of a judge, but cautioned that the lawyers be sure of their facts and proceed in a dignified manner.

The committee, for instance, urged that lawyers avoid "petty criticisms" and be guided by a desire "to improve the quality of the judiciary and the legal system in general."

Worthy of Attention

The lawyer asking for guidance had informed the committee that he had filed a complaint with the State Commission on Judicial Conduct, which had decided against proceeding with an investigation.

The Conduct Commission's decision not to act on the complaint did not preclude the lawyer from going public with his charges, the committee wrote, because some conduct, even though not violating the Code of Judicial Conduct, is "worthy of the legal community's attention."

Nonetheless, the committee cautioned the lawyer to consider whether his complaints are "well founded" in view of the Conduct Commission's refusal to take up the matter.

The committee noted that it was required to balance two competing considerations in the Judicial Conduct Code. On the one hand, the code exhorts lawyers to "encourage respect for the law and the courts and the judges thereof" [Ethical Consideration (EC) 9-6].

A countervailing consideration is set forth in EC 8-1, which encourages lawyers to work to improve the legal system, and recognizes that attorneys are uniquely poised to recognize the system's deficiencies.

Following is the text of the opinion:

FORMAL OPINION 1996-1

TOPIC: Statements Concerning Judges.

DIGEST: A lawyer may make public statements critical of the conduct of a particular sitting judge, provided the criticisms are well-founded, and notwithstanding the fact that the Commission on Judicial Conduct declined to pursue the lawyer's complaint of alleged judicial misconduct against the judge. Any such statements should be intended to improve the legal system, and made in a dignified, temperate manner.

CODE: DR 8-102(B); ECs 8-1, 8-6, 9-6.

Question

May a lawyer ethically write an article for a professional journal criticizing a particular judge for abusive and intemperate judicial conduct during a trial, notwithstanding the fact that the New York State Commission on Judicial Conduct did not find a basis for

investigating the judge for that conduct?

Opinion

The inquirer is a highly experienced trial attorney. Recently, he represented the defendant in a personal injury case. The jury found the inquirer's client liable, but awarded no damages to the plaintiff. The case is now fully concluded and no appeals are pending. The inquirer believes that the judge committed serious acts of judicial misconduct during the trial, including hostile, belligerent, aggressive, abusive, intimidating and generally intemperate conduct directed at the inquirer and his co-counsel. The inquirer believes that the judge did so because of a combination of incompetence, animus and lack of judicial temperament, and has further reached the conclusion, upon speaking with other attorneys with experience before the judge, that his conduct in this case was typical of him.

The inquirer submitted a letter of complaint to the Commission, which did not find a sufficient indication of judicial misconduct to warrant an investigation. A request by the inquirer for reconsideration of the dismissal of his complaint was denied. The inquirer now wishes to write a letter for publication in a periodical regularly read by the legal community, in which he would discuss the conduct of the judge and of the Commission in declining to take action against the judge. The inquirer's professed motivation is to educate others and allow them to benefit from his experience, as well as to put public pressure on the judge to improve his conduct or face defeat in an upcoming re-election bid.

As a threshold matter, we note that ethical restrictions on criticizing the judiciary have been the subject of a number of cases that have evaluated such restrictions under the First Amendment. See, e.g., *Standing Comm. on Discipline of the U.S. Dist. Court v. Yagman*, 55 F3d 1430 (9th Cir. 1995); *In re Holtzman*, 78 NY2d 184 (1991), cert. denied, 502 U.S. 1009 (1992); cf. *United States v. Culler*, 58 F3d 825 (2d Cir. 1995) (contempt). See also Note, *Attorney Discipline and the First Amendment*, 49 NYU L. Rev. 922 (1974). Whether the letter the inquirer proposes to write would be protected under the First Amendment is a legal question this Committee cannot address.

The Code of Professional Responsibility requires a lawyer to balance two responsibilities. On the one hand, Canon 8 encourages lawyers to assist in improving the legal system. EC 8-1 specifically acknowledges that attorneys "are especially qualified to recognize deficiencies in the legal system." Thus, under the Code, attorneys are encouraged to assist in improving the legal system through initiating corrective measures in the selection of judges. EC 8-1, 8-6. This responsibility necessarily entails some independent analysis and criticism of the judiciary. At the same time, EC 9-6 exhorts attorneys "to uphold the integrity and honor of the profession; to encourage respect for the law and the courts and the judges

thereof..." This duty may at times conflict with the role an attorney takes as a leader in the criticism, reform, and change of the legal system.

EC 8-6 attempts to balance these competing concerns in the context of judicial elections. It provides, in part:

Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench... Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism. While a lawyer as a citizen has a right to criticize such officials publicly, the lawyer should be certain of the merit of the complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

Further, DR 8-102(B) admonishes lawyers not to "knowingly make false accusations against a judge or other adjudicatory officer."

Measured against these standards, we are of the view that an attorney may properly criticize a judge for conduct in an action that is no longer pending so long as the attorney is not knowingly making false accusations against the judge and strives to voice the criticisms in a temperate and dignified manner. The criticisms cannot, in any case, be part of a "general course of conduct... degrading to... the courts, and irrelevant or grossly excessive." *In re the Justices of the Appellate Division, First Dep't v. Erdmann*, 33 NY2d 559 (1973).

Assuming that the inquirer's criticisms are well-founded, he should be permitted to bring his criticisms to the attention of the legal community. The inquirer is not precluded from doing so solely because the Commission on Judicial Conduct determined not to pursue his complaint. There is judicial misconduct that does not warrant an investigation by the Commission, that is, conduct that does not rise to the level of a violation of the Code of Judicial Conduct, but that is nonetheless of sufficient magnitude — particularly when viewed in the aggregate — to be worthy of the legal community's attention. However, while the Commission's failure to act in this case is not, in and of itself, a sufficient basis to preclude a lawyer from publicly criticizing a sitting judge, the lawyer should take into account the fact that the Commission did not proceed with his complaint in assessing whether his criticisms are well-founded. In addition, we urge the inquirer to avoid petty criticisms, and to make critical statements only when motivated by a desire to improve the quality of the judiciary and the legal system in general, and then to present his views only in a temperate, dignified manner.

Conclusion

Subject to the limitations expressed in the foregoing opinion, the question presented is answered in the affirmative.

Monday, August 14, 1995

LETTERS

*To the Editor***Comm'n Abandons
Investigative Mandate**

Your front-page article, "Funding Cut Seen Curbing Disciplining of Judges," (NYLJ, Aug. 1) quotes the chairman of the New York State Commission on Judicial Conduct as saying that budget cuts are compromising the commission's ability to carry out "its constitutional mandate." That mandate, delineated in Article 2-A of the Judiciary Law, is to "investigate" each complaint against judges and judicial candidates, the only exception being where the commission "determines that the complaint on its face lacks merit" (§44.1).

Yet, long ago, in the very period when your article shows the commission had more than ample resources — and indeed, was, thereafter, requesting less funding — the commission jettisoned such investigative mandate by promulgating a rule (22 NYCRR §7000.3) converting its mandatory duty to an optional one so that, unbounded by any standard and without investigation, it could arbitrarily dismiss judicial misconduct complaints. The unconstitutional result of such rule which, as written, cannot be reconciled with the statute, is that, by the commission's own statistics, it dismisses, without investigation, over 100 complaints a month.

For years, the commission has been accused of going after small town justices to the virtual exclusion of those sitting on this state's higher courts. Yet, until now, the confidentiality of the commission's procedures has prevented researchers and the media from glimpsing the kind of facially-meritorious complaints the commission dismisses and the protectionism it practices when the complained-of judge is powerful and politically-con-

nected. However, the Center for Judicial Accountability Inc., a not-for-profit, non-partisan citizens' organization, has been developing an archive of duplicate copies of such complaints. Earlier this year, we undertook a constitutional challenge to the commission's self-promulgated rule, as written and applied. Our Article 78 petition annexed copies of eight facially-meritorious complaints against high-ranking judges filed with the commission since 1989, all summarily dismissed by the commission, with no finding that the complaints were facially without merit.

In "round one" of the litigation, Manhattan Supreme Court Justice Herman Cahn dismissed the Article 78 proceeding in a decision reported on the second-front-page of the July 31 *Law Journal* and reprinted in full. By his decision, Justice Cahn, ignoring the fact that the commission was in default, held the commission's self-promulgated rule constitutional. He did this by ignoring the commission's own explicit definition of the term "investigation" and by advancing an argument never put forward by the commission. As to the unconstitutionality of the rule, as applied, demonstrated by the commission's summary dismissals of the eight facially-meritorious complaints, Justice Cahn held, without any law to support such ruling and by misrepresenting the factual record before him, that "the issue is not before the court."

The public and legal community are encouraged to access the papers in the Article 78 proceeding from the New York County Clerk's office (*Sassower v. Commission*, #95-109141) — including the many motions by citizen intervenors. What those papers unmistakably show is that the commission protects judges from the consequences of their judicial misconduct — and, in turn, is protected by them.

Elena Ruth Sassower
White Plains, N.Y.

Ex "C"

CENTER for JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554

Box 69, Gedney Station
White Plains, New York 10605

BY HAND

January 25, 1996

Legal Referral Service
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036-6690

ATT: Milagros Arzuaga, Esq.

RE: Legal Assistance for Public Interest Case

Dear Ms. Arzuaga:

Per our telephone conversation on Tuesday, transmitted herewith, at your request, are the legal papers in our Article 78 proceeding against the Commission on Judicial Conduct of the State of New York, as inventoried on the accompanying page.

A brief description of the Article 78 proceeding, its significance, and the decision of Supreme Court Justice Herman Cahn--which dismissed it--is provided by the enclosed copy of my Letter to the Editor, "Commission Abandons Investigative Mandate", published in the New York Law Journal on August 14, 1995.

As reflected by that Letter to the Editor, Justice Cahn's decision is legally insupportable and factually fabricated. This is more fully particularized at pages 1-3 of our December 15, 1995 letter to the Assembly Judiciary Committee, a copy of which is also enclosed.

It is our view that the Commission on Judicial Conduct cannot permit itself to be the beneficiary of a decision it knows to be legally and factually indefensible and that it and its counsel, the New York State Attorney General, have an affirmative duty to take corrective steps. For that reason, over the past many months we have been engaged in correspondence with the Commission on Judicial Conduct and the Attorney General's office and have filed a complaint against them with the New York State Ethics Commission for their litigation misconduct¹. We have also sought the intervention of the Ethics Commission at this juncture.

¹ See Exhibits "C", "D", and "E" to our December 15, 1995 letter to the Assembly Judiciary Committee.

Ex "D"

January 25, 1996

Unfortunately, the state agencies charged with protecting the public have refused to do anything. As a result, it falls to us to either reargue the decision, make a motion to have it vacated for fraud, or to appeal.

As discussed, we would expect this case to be of particular concern to the Association of the Bar of the City of New York, which prints a widely-distributed guide "How to Complain About Lawyers and Judges in New York City". That guide informs readers that "judges in New York State courts are held to high standards of ethics" and that the Commission on Judicial Conduct is the agency to which complaints against state court judges are properly addressed. It describes "Improper Demeanor", "Bias", "Conflict of Interest" and "Ex Parte Communications" as constituting the "Kinds of Complaints" that may be filed, and recommends that complaints be "in as much specific detail as possible". A copy of the pertinent pages of the City Bar's guide are annexed hereto.

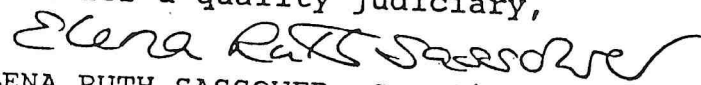
Examination of the judicial misconduct complaints annexed to the Article 78 petition show that they fall within the categories delineated by the City Bar's guide, were detailed and, indeed documented, to support the allegations of misconduct being made--and that the pleaded misconduct went beyond ethical violations to include distinct criminal acts. Nevertheless, the Commission summarily dismissed, without investigation, each and every one of these complaints--although prima facie they provided a "basis for beginning an investigation".

Plainly, if the City Bar's guide is to have meaning, the City Bar cannot ignore the indisputable evidence presented herein that the Commission on Judicial Conduct is summarily dismissing facially-meritorious complaints, in violation of its statutory mandate (Judiciary Law §44.1)--which by a self-promulgated rule (22 NYCRR §7000.3) has been subverted. We, therefore, respectfully request that you direct this matter to the appropriate City Bar committees for consideration and action on behalf of the otherwise unprotected public interest.

I would note that the posture of the case is that Justice Cahn's July 13, 1995 decision has not been served upon us. Nor has the judgment been filed (See enclosed copy of court file jacket).

We look forward to hearing from you soon.

Yours for a quality judiciary,


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

Enclosures: As indicated plus Center brochure

How to
Complain
About Lawyers
and Judges in
New York City



The Association of the Bar
of the City of New York

42 West 44th Street
New York, NY 10036-6690
(212) 382-6695

April 1995

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ASSOCIATION OF THE BAR OF
THE CITY OF NEW YORK
DEI
TONMEN
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CAP
INOM
TANT.

COMPLAINTS AGAINST COURT PERSONNEL

COMPLAINTS AGAINST STATE COURT JUDGES

If you have been involved in a lawsuit you may have disliked certain actions taken by the judge. This may be particularly true if you have lost the case! In general, the remedy in such an instance is to appeal the judge's decision to a higher court or seek other review in court. Your lawyer will advise you on what may be done.

However, judges in New York State courts are held to high standards of ethics, both on and off the bench, and if you think the judge may have violated these standards, you may complain to a state agency which has the power to discipline judges.

Kinds of Complaints

Improper Demeanor

The judge should maintain order and decorum in the courtroom. The judge should be patient, dignified and courteous to all people with whom he or she deals in an official capacity.

Bias

The judge should not convey the impression, nor permit others to convey the impression, that anyone is in a special position to influence him or her.

Conflict of Interest

The judge should not allow family or social or other relationships to influence him or her.

Ex Parte Communications

Except in special instances authorized by law, the judge should not initiate or participate in *ex parte* communications. That means that the judge should not communicate with only one side.

The Complaint Process

There is no form for complaining about a judge. Instead, you must write your complaint yourself. Be sure to include:

- The name of the judge;
- The complaint in as much specific detail as possible. (For example, don't simply say, "The judge insulted me." Instead, for example, say, "The judge insulted me by calling me a liar.");
- Your signature.

Mail the complaint to:

New York State Commission
on Judicial Conduct
801 Second Avenue
New York, NY 10017
(212) 949-8860

The Commission on Judicial Conduct is composed of judges, lawyers and non-lawyers. The Commission reviews every complaint and decides whether to investigate. If the Commission decides there is no basis for beginning an investigation, it will send you a letter within two months.

If the Commission decides there may be a violation of ethical standards it will investigate. Typically, the Commission's investigation may include reviewing relevant records, interviewing witnesses, and obtaining a response from the judge. Ultimately, if the judge is found to have violated the applicable standards, he or she may be disciplined. However, you should know that any action by the Commission will not change the outcome of your case if it is over, nor will the Commission transfer your case to another judge if it is still pending. If you are dissatisfied with the judge's action or decision in your case, your lawyer will have to take whatever steps are available to appeal the decision or to have the case transferred to another judge.

INVENTORY OF FILE:

Doris L. Sassower v. Commission on Judicial Conduct of the State of New York

Index # 95-109141

1. DLS' Article 78 Petition, with Notice of Petition and Notice of Right to Seek Intervention
2. DLS' Order to Show Cause for Preliminary Injunction, Default
3. A.G. Affidavit in Opposition to Preliminary Injunction
4. A.G. Dismissal Motion
5. DLS' Affidavit in Opposition to Dismissal Motion and in Further Support of Verified Petition, Motion for Injunction and Default, and for Sanctions
6. DLS' Memorandum of Law in Opposition to Dismissal Motion and in Further Support of Verified Petition, Motion for Injunction and Default, and for Sanctions
7. DLS' Notice to Furnish Record to the Court Pursuant to CPLR §§409, 7804(e), and 2214(c)
8. DLS' Affidavit in Support of Proposed Intervenors
9. Supreme Court Memorandum Decision, per Herman Cahn

Also transmitted:

Letter to the Editor, "Commission Abandons Investigative Mandate", New York Law Journal, August 14, 1995

Publication of Justice Cahn's Decision in New York Law Journal, July 31, 1995

December 15, 1995 letter to Assembly Judiciary Committee

Sassower v. Commission court file jacket reflecting unfiled judgment

NEW YORK, FRIDAY, MARCH 8, 1996

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Excerpts From the Joint Resolution

"To utilize the threat of sanction or removal solely to punish a judicial decision which is unpopular or, in retrospect, turns out to have been unwise, is unacceptable and incompatible with the preservation of a co-equal judicial branch of government."

"Efforts by either the executive or the legislative branches of government to intimidate judges and thereby diminish the independence of the judiciary must not be permitted. Enhanced vigilance is particularly necessary under the New York State governmental structure wherein judges do not enjoy life tenure during good behavior, but rather must periodically submit to a process of reappointment or reelection."

26 Bar Groups Join To Defend Judiciary *Intemperate, Personal' Attacks Criticized*

BY DANIEL WISE

A GROUP OF 26 BAR associations and six law school deans yesterday condemned a series of recent "intemperate and personal" attacks by politicians on judges as having "corrosive effects" on the "judiciary and the society it serves."

"To utilize the threat of sanction or

removal solely to punish a judicial decision which is unpopular or, in retrospect, turns out to have been unwise, is unacceptable," the group stated.

Among the organizations subscribing to the statement were The Association of the Bar of the City of New York, the New York County Lawyers' Association, the New York State Association of Criminal Defense Lawyers and the New York State Trial Lawyers Association, as well as the Legal Aid Society.

The New York State Bar Association, however, did not join. State Bar President Maxwell S. Pfeiffer explained

TEXT OF STATEMENT — PAGE 2

that it felt it more appropriate for the group to form its own independent "blue-ribbon panel." He added, "we are in general sympathy" with the views expressed and "have great concern for the independence of the judiciary."

The statement did not single out any attacks on judges that in recent weeks have grabbed headlines around the state. But in twice criticizing efforts to "sanction or remove" judges because of their decisions, the groups appeared to be referring to Governor Pataki's call for the removal of Crimi-

ADDENDA

3/11/96

A list, supplied by the New York County Lawyers' Association, of signatories to a joint statement condemning attacks by politicians on the judiciary (NYLJ, March 8) omitted the Bronx County Bar Association and the New York Criminal Bar Association.

26 Bar Groups Criticize Attacks on Judiciary

Continued from page 1, column 6

nal Court Judge Lorin Duckman because of his decision to lower the bail of a suspect, who, after his release, killed his former girlfriend.

The Governor said that if the State Commission on Judicial Conduct did not act within 60 days to remove Judge Duckman, he would ask the State Senate to begin removal proceedings (NYLJ, Feb. 29). Senate Majority Leader Joseph Bruno also has called for Judge Duckman's removal.

With some commentators having criticized the Governor's approach as an effort to limit the Conduct Commission's options, the bar associations' statement underscored the importance of the Commission's "independent functioning."

With respect to Judge Duckman, Governor Pataki and other critics have focused as much on remarks that the judge made during the bail hearing, calling them insensitive to the plight of domestic violence victims, as the bail decision itself. The Governor also criticized Judge Duckman's remarks in other cases and his decision to give a sentence of probation to a defendant who five months later assaulted his former girlfriend.

Call for Civility

Another judge who recently drew heavy fire from politicians was U.S. District Judge Harold Baer Jr. for suppressing the use of 80 pounds of heroin and cocaine seized in the Washington Heights neighborhood.

Again much of the criticism was aimed at a remark in the decision in which Judge Baer observed that, because many residents of Washington Heights tend "to regard police officers as corrupt, abusive and violent," it was not suspicious for the suspects to have fled as the police approached.

Mayor Giuliani called the decision "mind-boggling in its effect," and Police Commissioner William J. Bratton derided Judge Baer as "living in a fantasy land." U.S. Senator Daniel P. Moynihan went so far as to say the opinion caused him to regret that he had recommended Judge Baer for appointment to the bench.

Yesterday U.S. House Speaker Newt Gingrich, with the backing of 150 representatives, called upon President Clinton to ask for Judge Baer's resignation. A day earlier Judge Baer said he would reconsider the suppression ruling at a hearing set for March 15 (NYLJ, March 6).

The bar associations and law school deans asked public officials to tone down their rhetoric and debate the "the issues of the day with civility."

The group also asserted as an essential principle that judges in New York should not be subject to fear of sanction or removal "solely upon the basis of a decision, ruling or opinion."

The group is forming a standing joint committee to respond quickly to "partisan" attacks on individual judges or the judicial system.

Following is the text of the organizations' statement:

Text of Statement

In recent weeks we have seen that the threat to an independent judiciary is no less prevalent today that it was when the federal Constitution adopted the important principle of separation

of powers.¹ Members of the executive and legislative branches of government, together with various organs of the modern media, have launched attacks upon federal and state judges with whose decisions they disagree. We believe that in a democratic society fair, open and vigorous debate and criticism of judges and judicial decisions is necessary and appropriate. But these recent attacks have gone well beyond the criticism from which no judicial decision or judge should ever be immune. Rather they have been both intemperate and personal in nature. The corrosive effects of these attacks upon the judicial system and the society it serves cannot be overstated.

The leaders of this profession must resist the propagation of misinformation concerning the law and the legal process. We must be no less vigilant in resisting efforts to undermine the independence of the judiciary. To utilize the threat of sanction or removal solely to punish a judicial decision which is unpopular or, in retrospect, turns out to have been unwise, is unacceptable and incompatible with the preservation of a co-equal judicial branch of government.

Efforts by either the executive or the legislative branches of government to intimidate judges and thereby diminish the independence of the judiciary must not be permitted. Enhanced vigilance is particularly necessary under the New York State governmental structure wherein judges do not enjoy life tenure during good behavior, but rather must periodically submit to a process of reappointment or reelection.

It is a responsibility of the members of this profession to act as guardians of those liberties which form the bedrock of a free society. We must, by our collective actions, show that liberty depends upon keeping separate the power of judging from the legislative and executive powers.

Accordingly, we hereby endorse and agree to the following principles and take the following action:

1. Judges in New York should not be subject to the fear of sanction or removal from office solely upon the basis of a decision, ruling or opinion, lawfully taken pursuant to the exercise of judicial discretion.
2. We call upon all public officials to debate the issues of the day with civility and in a responsible manner. We urge all members of the legislative and executive branches of government to respect our historic constitutional commitment to an independent judiciary.
3. We support the independent functioning of the constitutionally created New York State Commission on Judicial Conduct.

Creation of a Joint Committee to Preserve the Independence of the Judiciary

4. In order to preserve and promote liberty, respect, and public understanding for the legal system and the rule of law, and to insure the preservation of an independent judiciary, we hereby undertake to create a "Joint Committee to Preserve the Independence of the Judiciary."

It shall be the mission of the Joint Committee to develop proposals for insuring the independence of the judiciary from partisan attack

and to coordinate timely responses to intemperate or misleading attacks upon individual judges or the judicial system.

Additionally, the Joint Committee shall initiate efforts to foster public awareness and understanding of the workings of the legal system and the importance of an independent judiciary.

In discharging its responsibilities, the Joint Committee shall seek input from all segments of the legal profession.

(1) At the dawn of our nation, in urging the People of the State of New York to ratify the Constitution, Alexander Hamilton wrote that, "The complete independence of the courts of justice is peculiarly essential in a limited Constitution." Recognizing that the judiciary "may be said to have neither FORCE NOR WILL, but merely judgment..." he argued that "there is no liberty, if the power of judging be not separated from the legislative and executive power." THE FEDERALIST, Number 78 (Hamilton, A.), 1788.

Committee to Preserve the Independence of the Judiciary*

Member Organizations

- Asian American Bar Association of New York
- Association of Black Women Attorneys Inc.
- The Association of the Bar of the City of New York
- Brooklyn Bar Association
- Brooklyn-Manhattan Trial Counsel
- Capital District Black Bar Association
- Eastchester Bar Association
- Kings County Criminal Bar Association
- Lawyers Torah Club
- Legal Aid Society
- Long Island City Lawyers Club
- Metropolitan Black Bar Association
- Middletown Bar Association
- Nassau Lawyers' Association of Long Island Inc.
- National Lawyers Guild, New York City Chapter
- New York Women's Bar Association
- New York Council of Defense Lawyers
- New York County Lawyers' Association
- New York State Association of Criminal Defense Lawyers
- New York State Defenders Association Inc.
- New York State Trial Lawyers Association
- Protestant Lawyers Association of New York
- Puerto Rican Bar Association
- Queens County Bar Association
- Suffolk County Bar Association
- Upstate Trial Lawyers Association
- Wyoming County Bar Association
- Howard A. Glickstein; Dean, Jacob D. Fuchsberg Law Center, Touro College
- Rudolph C. Hasl; Dean, St. John's University School of Law
- Lance Liebman; Dean, Columbia University School of Law
- Archibald R. Murray; Chair of the Board, Legal Aid Society
- Stuart Rabinowitz; Dean, Hofstra University School of Law
- Harry H. Wellington; Dean, New York Law School
- Joan G. Wexler; Dean, Brooklyn Law School

*Where an individual is listed, the organization has not agreed to join the committee.

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554

Box 69, Gedney Station
White Plains, New York 10605

BY HAND

February 20, 1996

Honorable Rudolph Giuliani
Mayor of the City of New York
City Hall
New York, New York 10007

ATT: Dennison Young, Jr.
Counsel to the Mayor

Dear Mr. Young:

Thank you for your prompt return call last Friday. We look forward to the meeting that you indicated you were setting up so that we may detail the deficiencies of the Mayor's judicial selection process--deficiencies we believe the Mayor inherited from his predecessors.

In response to my question to the Mayor on his WABC radio show last Friday about Judge Duckman's qualifications, the Mayor assured the public that "on paper", they looked fine.

However, the question is not Mr. Duckman's paper credentials--but what kind of investigation was conducted by former Mayor Dinkins' selection committee before it nominated him for a ten-year judicial appointment.

On the all important subject of the judicial selection process, I refer you to my January 16, 1996 letter to Paul Siegfried, Executive Director of the Mayor's Advisory Committee on the Judiciary--a copy of which is annexed for your convenience (Exhibit "A"). To date, neither Mr. Siegfried nor Paul Curran, the Advisory Committee's Chairman, have responded.

As described in my letter, at the December 27, 1995 so-called "public" hearing, I offered the Committee evidence, in the form of a written critique, documenting:

"...that judicial candidates cannot be counted upon to honestly and accurately set forth their qualifications on their applications to screening committees and highlighting the necessity of thorough investigation." (emphasis in the original)

EX "F"

It would appear that the Mayor's Advisory Committee is unequipped to undertake such thorough investigation inasmuch as its investigative responsibilities are primarily reposed in Mr. Siegfried, who says he is unassisted by any legal staff. It may be surmised that Mr. Siegfried's unwillingness to discuss with us the Committee's investigative procedures--as set forth in my January 16, 1996 letter--reflects his awareness of their superficial and inadequate nature.

Indeed, it may further be surmised that the reason the Mayor's Advisory Committee on the Judiciary and the City Bar's Committee on the Judiciary use a standard of "adequacy", rather than excellence, in recommending reappointment of sitting judges--by which they reportedly mean judges who have not done anything "egregiously wrong"--is because neither committee has the investigative capacity (or desire) to unearth anything but misconduct that is so egregious as to have been publicized.

Because the Mayor's Advisory Committee on the Judiciary and the City Bar are not in a position or willing to meaningfully investigate judicial qualifications, they need the public to come forward with information bearing upon the qualifications of candidates being screened. Yet, the self-imposed "confidentiality" of judicial selection procedures prevents that from happening. The public cannot come forward because the identities of the candidates being reviewed are kept secret. This is more fully described in my Letter to the Editor, "No Justification for Process's Secrecy", published in the New York Law Journal on January 24, 1996 (Exhibit "B").

Inevitably, deficient judicial selection processes produce judges who are incompetent, corrupt, and abusive--judges who abuse their discretion, flout controlling law, and engage in arbitrary, tyrannical, and otherwise wrongful on-the-bench conduct.

As I emphasized in my testimony at the December 27, 1995 "public" hearing, adequate pre-nomination screening of judicial candidates is absolutely critical since, once judges are appointed to the bench, it is all but impossible to remove them--no matter how unfit they are. This is because the public agency constitutionally created to monitor our judiciary, the New York State Commission on Judicial Conduct, has subverted its constitutional and statutory duty to investigate facially-meritorious complaints. Instead, it dismisses such complaints, without investigation--even where they are detailed, documented, and establish, prima facie, unethical and criminal conduct by sitting judges and would-be judges. In that regard, as part of my testimony, I incorporated by reference my Letter to the Editor, "Commission Abandons Investigative Mandate", published in the August 14, 1995 New York Law Journal (Exhibit "C").

We do not know if misconduct complaints against Judge Duckman were ever filed with the Commission on Judicial Conduct. However, the Commission routinely dismisses, without investigation, abuse of discretion complaints--as well as complaints alleging wilful disregard of black-letter law by judges. This, notwithstanding that such complaints are within the Commission's disciplinary jurisdiction--as may be seen from the enclosed Pace Law Review article written by the Commission's Administrator, Gerald Stern. (Vol 7, Number 2, Winter 1987, "Is Judicial Discipline in New York State a Threat to Judicial Independence?").

If, as appears, Judge Duckman has abused his discretion in the case that resulted in the tragic death of a young woman named Galina Komar, we commend Mayor Giuliani for calling for Judge Duckman's removal. However, the problem extends beyond Judge Duckman. There are other judges who are far, far worse than Judge Duckman. A "tip of the iceberg" sampling of what New Yorkers have been and are subjected to may be gleaned from Jack Newfield's series "New York's Ten Worst Judges". For your convenience, copies of the 1993 and 1995 series, which appeared in the New York Post, are annexed as Exhibits "D" and "F". You will note that the 1993 series ended with an article containing pertinent comment from then "mayoral hopeful" Rudolph Giuliani (Exhibit "E") and that the 1995 series closed with a Post editorial "Who Judges the Judges?" (Exhibit "G"), accusing the Commission of protectionism:

"To be sure, the commission is hell on wheels when it comes to disciplining rural justices of the peace and other small-town magistrates, many of whom are not lawyers. The next time it comes to New York City to do serious business, however, will be the first time it does so." (emphasis in the original).

The innocent victims of this City's run-a-muck judges, who have not suffered loss of life in a literal sense, expect Mayor Giuliani to come out against the judges who have destroyed their lives--as he is doing now in calling for Judge Duckman's impeachment. They expect the Mayor to take the lead in calling for decisive action against the Commission on Judicial Conduct when--as now--he is presented with prima facie evidence that it covers up criminal conduct by sitting judges, far more heinous and corrupt than anything contemplated by the Post's editorial or reported on in its "Ten Worst" series.

February 20, 1996

We are, therefore, transmitting for the Mayor a copy of the court papers in our ground-breaking Article 78 proceeding against the Commission. The exhibits annexed to the petition document how the Commission has knowingly and deliberately permitted powerful, politically-connected judges to misuse their official office for ulterior, retaliatory purposes and to engage in palpably criminal and unethical acts.

Also transmitted are the initial pages of our December 15, 1996 letter to the Assembly Judiciary Committee, particularizing the respects in which the New York Supreme Court's judgment of dismissal of the Article 78 proceeding in the Commission's favor is fraudulent--being legally insupportable, factually fabricated, and rendered as a "pay back" to the Commission for its demonstrated years of service protecting judges from disciplinary investigation and prosecution. We would point out that annexed thereto, as Exhibits "C", "D", and "E", are our initial letters to the State Commission on Judicial Conduct, to the State Ethics Commission, and the State Attorney General to get those government agencies and officials to do what their duty to the public requires--i.e., to take steps to vacate for fraud the Supreme Court's decision of dismissal.

I understand from you that this file will be reviewed by the Criminal Justice Coordinator. How appropriate, since what the file documents is criminal conduct by the State Commission on Judicial Conduct--which we trust, the Mayor will, without delay, refer for criminal prosecution.

Yours for a quality judiciary,



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

Enclosures

cc: WABC Radio
New York Post

CENTER for JUDICIAL ACCOUNTABILITY, INC.

(914) 421-1200 • Fax (914) 684-6554

Box 69, Gedney Station
White Plains, New York 10605

By Fax: 212-788-0074
and Priority Mail

February 27, 1996

Honorable Rudolph Giuliani
Mayor of the City of New York
City Hall
New York, New York 10007

RE: Judge Lorin Duckman

Dear Mr. Mayor:

Since the tragic death of Galina Komar at the hands of Benito Oliver, you have used the power and prestige of your office to condemn and castigate Judge Lorin Duckman. Reading selected excerpts from the transcript of the proceedings in which Judge Duckman reduced Mr. Oliver's bail and released him from jail, you have incited the public to view Judge Duckman as having been impervious to the Brooklyn District Attorney's efforts to protect Ms. Komar, the complaining witness, from threatened injury by Mr. Oliver--and, thereby, responsible for her murder.

That transcript--which, over and over again, you quoted from and referred to in press conferences, interviews, and on your WABC radio talk show--launched a media campaign of vilification of Judge Duckman and sparked a "witch hunt" search for anything and everything to substantiate your characterization of Judge Duckman as "a danger to the people of [New York] City", because, in your opinion, he was not fit to judge.

On February 16th, following your WABC radio show in which you invited listeners to read the transcript, I called up City Hall and requested a copy, which arrived in yesterday's mail. In examining the transcript, we were stunned to discover the extent to which you--as Mayor of the City of New York and a former U.S. Attorney--have misrepresented it. Any objective reading of that transcript--and certainly by one such as yourself, trained and expert in the law, reveals that Judge Duckman did not abuse his discretion in freeing Mr. Oliver. On the contrary, it appears that Judge Duckman acted in accordance with the law and the facts in the record before him, trying to be fair to both Ms. Komar and Mr. Oliver, who was a defendant accused--but not yet convicted of any crime against Ms. Komar (pp. 17-18, 21, 26, 35, 37, 38, 49, 55, 65).

Ex "9"

February 27, 1996

The transcript shows Judge Duckman's concern for the fact that at the time of the proceedings then before him, Mr. Oliver had already been incarcerated in jail for 40 days and that the Brooklyn District Attorney was still not ready to go to trial. Moreover, the transcript reveals that the Brooklyn District Attorney's office was unable to provide Judge Duckman with basic facts as to the violent encounters that had allegedly taken place between Mr. Oliver and Ms. Komar and the nature and extent of Ms. Komar's injuries--let alone documentary substantiation thereof. This is highlighted at the outset of the transcript by Judge Duckman's statement:

"As of now, almost a month and a week later you don't have any corroborating affidavit of that; is that right?" (p. 10)

The transcript shows that the Assistant District Attorney's presentation before Judge Duckman consisted of unsupported, generalized, hearsay assertions--disputed by Mr. Oliver's defense counsel (pp. 10-13)--and objected to as such by Judge Duckman (p. 30). At another point, Judge Duckman rebuked the Assistant District Attorney for falsely and misleadingly representing to him that the People's allegations had been "corroborated":

"...You don't have a picture. You don't have a hospital record and you don't have an employee that corroborated any of the acts that you are talking about." (p. 48)

Over and again in the transcript, Judge Duckman takes the Assistant District Attorney to task for her vague, unspecified allegations:

"What are you talking about? Give me a time, date and place. Give me a time, date and place and give me some facts so that I can understand what it is that you mean." (p. 51)

Judge Duckman had to remind the Assistant District Attorney of her transcendent ethical and legal duties as a public prosecutor, as well as of the constitutional standards that must govern:

"...you don't have accurate information or reliable information and it is not fair...

What an Assistant District Attorney is supposed to do is bring accurate and reliable information before the Court before an action is taken which would unduly restrict the liberty of another person.

February 27, 1996

You have an obligation not only to be honest with the Court and to be fair and supportive to your complainant, but to be fair and supportive to the people that you are prosecuting, and before you start asking for more restrictive conditions and bail which doesn't seem to matter to you, since you don't seem to care that he was in jail for all those dates for those charges, you ought to investigate the case and know the time, dates, and places of these things.

Now, I am not suggesting that he is innocent. I am suggesting he is entitled to the protection of the Constitution..." (pp. 54-55)

The transcript reflects Judge Duckman's belief that the Brooklyn District Attorney's office was not only unprepared, sloppy, and deficient in its procedures and presentment (pp. 28, 38, 40-42, 63-4) and frivolous in its legal arguments (pp. 5-6, 25-6), but--more seriously--that it had engaged in deliberate misrepresentation before other judges, causing them to raise Mr. Oliver's bail, without a proper basis (pp. 50, 56).

As a former prosecutor--whose ethical duty is "to do justice"--you have, nonetheless, chosen to ignore and disregard what the transcript plainly shows: that the blame for Ms. Komar's death should be placed not at Judge Duckman's door--where you and a sensation-seeking press have been heaping it--but at the door of the Brooklyn District Attorney's office, which has gotten off "scott-free", notwithstanding its failure to meet elementary prosecutorial standards, even after being advised as to what was required by Judge Duckman, as explicitly as if he had drawn a road-map for it (pp. 10, 29-30, 48, 51, 53-5, 57, 63-4). Despite a transcript spanning three days (January 24-26, 1996), encompassing four separate appearances (pp. 2, 18, 36, 39) the Assistant District Attorney did not bring Ms. Komar, the complaining witness, or any other witness, photo, or document before Judge Duckman to corroborate her statements that Mr. Oliver was a serious and continuing menace, who required increased bail to keep him incarcerated.

Based on our reading of this transcript, we believe that you have unfairly maligned Judge Duckman, covered-up for the Brooklyn District Attorney, and grossly misled the public, including the undersigned, who had every reason to believe they could rely on you to honestly review the transcript and interpret its significance.

February 27, 1996

We do not know your motivation for what you have done. However, we can speculate that you and the Brooklyn District Attorney were not pleased with Judge Duckman's recent decision to exclude evidence--as reported on the front-page of the February 6, 1996 New York Law Journal, and reprinted in full the following day (Exhibit "A"). That was the very week before the tragic deaths of Ms. Komar and Mr. Oliver. We believe that Governor Pataki--who has also called for Judge Duckman's removal--was not pleased by that decision either.

Finally, in sharp contrast to the Brooklyn District Attorney's flurry of activity searching to compile a "dossier" on Judge Duckman to speed his removal from the bench--we enclose (Exhibit "B") a copy of the formal complaint we sent him--nearly a year ago--about the thoroughly dishonest and unprofessional manner in which our fully documented complaint of criminal conduct by high-ranking Brooklyn judges had been tossed out by his so-called "Corruption Investigation Division". As of this date, we have had no response whatever.

Based on the January 24-26, 1996 transcript, we believe it is the Brooklyn District Attorney--and not Judge Duckman--whose investigation, if not removal, you and the Governor should be calling for.

Yours for a quality judiciary,



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

Enclosures

cc: Governor George Pataki
Brooklyn District Attorney Charles Hynes
Manhattan Borough President Ruth Messinger
Congresswoman Nita Lowey
Congresswoman Susan Molinari
Ronald Russo, Esq.
Attorney for Judge Lorin Duckman
New York media