

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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By Certified Mail/RRR: P-624-546-600

April 15, 1996

Professor Alan M. Dershowitz
Harvard Law School
Holmes Field Building, #520
1575 Massachusetts Avenue
Cambridge, Massachusetts 02138

Dear Professor Dershowitz:

This letter follows up on your "Perspective" column appearing in the New York Law Journal of April 11, 1996 about Judge Baer's reversal of his original decision in the Bayless case. A copy is annexed, for your convenience. You state, flat out,:

"Judge Baer has committed the cardinal sin of a federal judge: capitulating to political pressure...".

Like yourself, we have also read the press reports about Judge Baer's about-face--including the April 3, 1996 Times' editorial, to which your column specifically refers. The April 3, 1996 "news analysis" by Don Van Natta of the Times plainly makes it appear that Judge Baer, in order to arrive at the pre-determined reversal result dictated by "political pressure", knowingly and deliberately obliterated from his reversal decision the discrepancies in the second officer's testimony--although such discrepancies were focal issues developed at the rehearing by Ramon Pagan, Esq., counsel for Carol Bayless. A copy of Mr. Van Natta's analysis and the Times' editorial are annexed.

To verify the facts for ourselves, we have contacted Mr. Pagan and asked him to send us copies of Judge Baer's original and reversal decisions, the transcript of the rehearing, and any other materials he deems relevant.

Inasmuch as deciding a case for political reasons unrelated to the merits constitutes judicial misconduct, it occurs to us that a complaint of judicial misconduct against Judge Baer could be filed under 28 U.S.C. §372(c).

The justiciability of misconduct complaints under §372(c) based on knowingly dishonest judicial decisions was made the subject of testimony by me last November before the Second Circuit's Task Force on Gender, Racial, and Ethnic Fairness in the Courts. A copy of my testimony--in which I mention you at page 3--is

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enclosed¹.

Mr. Pagan was unaware of the §372(c) complaint mechanism and was excited by the prospect that it might be possible to file a complaint thereunder against Judge Baer. He was also enthusiastic about my offer to inquire as to whether you--as a pre-eminent and courageous spokesman on these issues--would consider filing the §372(c) complaint against Judge Baer.

We have no illusions about the §372(c) remedy--and have direct personal knowledge that justiciable and fully documented complaints filed thereunder are dismissed as not justiciable and unsupported. We know that you yourself, having previously filed a §372(c) complaint against Judge Lagueux, have no illusions either. However, you, rather than we, have the best chance of succeeding with a meritorious complaint under §372(c) or, alternatively, exposing what a facade the §372(c) mechanism is.

Please let us know whether--and to what extent--we can count on your skilled and expert assistance in this important matter.

Yours for a quality judiciary,



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

Enclosures

cc: Ramon Pagan, Esq.

¹ You may recall that in preparing my testimony, I telephoned you and we spoke briefly on the subject of the National Commission on Judicial Discipline and Removal.

4/11/96

PERSPECTIVE

Judge Baer's Judicial Capitulation

BY ALAN M. DERSHOWITZ

FEDERAL JUDGE Harold Baer Jr.'s apparent capitulation to political pressure and his reversal of his controversial decision suppressing a questionable police search does grave damage to the independence of the judiciary. Judge Baer made headlines in January when he suppressed 80 pounds of cocaine seized from the trunk of a car driven by a woman who subsequently confessed to being a drug courier. He also suppressed the confessions as a fruit of the poisonous tree. Now he has again raised eyebrows for reversing himself in the face of threats and pressure.

Judge Baer's original decision was based on his conclusion that the arresting officer did not tell the truth regarding the circumstances of the search and that on the basis of what Judge Baer believed to be the facts, the search violated the Fourth Amendment. That was the holding of his decision, the binding legal conclusion. He also added a bit of dictum, which he subsequently characterized as "hyperbole," to the effect that it was not necessarily suspicious for innocent people in certain parts of New York City to run from the police.

This combination of factors — freeing an apparently guilty drug defendant on the basis of a constitutional violation and commenting about the lack of trust even innocent New Yorkers have in police — led to a firestorm of criticism. But that is precisely why federal judges have life tenure, to permit them to resist criticism and stick to their constitutional rulings, no matter how unpopular.

JUDGE BAER did not measure up. Between the two decisions, President Clinton's press secretary issued an entirely inappropriate threat against Judge Baer. He suggested that if the judge did not reverse his original decision, the President, who appointed the judge and has the power to promote him, might ask for his resignation. Republican presidential candidate Robert Dole went even further. He said that if Judge Baer did not resign, he should be impeached, thus demonstrating ignorance of the constitutional criteria for impeachment.

Upon hearing these and other threats, Judge Baer caved in. He reversed his earlier ruling, citing new evidence that he said persuaded him that the police officer was telling the truth. What was this new evidence? The testimony of another police officer who allegedly corroborated the first one. But as *The New York Times* pointed out in an editorial critical of this pressured reversal: "The problem is that the second police officer's new testimony has inconsistencies when compared with a written account the same officer filled out just hours after the arrest took place."

This kind of convenient corroboration by one policeman of another policeman's lies is all too typical of police "testilying" — a phenomenon of which Judge Baer is intimately aware, since he served on the Mollen Commission, which concluded that police "testilying" in precisely these kinds of cases is common in certain New York precincts. Judge Baer also pointed to the fact that the defendant testified at the second hearing, which provided "a more complete and accurate picture of the events." But Judge Baer did not specify how this testimony, as contrasted with what the defendant said in her confessions, contributed to his strange reversal.

It is extraordinary for a judge to reconsider a ruling of this kind and then to reverse himself, especially on an issue of credibility. The second police officer could have been called as a witness for the prosecution at the first hearing. The entire matter smacks of a contrivance, calculated to give the judge an out from under the barrage of threats and criticism. The original police officer is no more credible today than he was when he first testified. The only change is that Judge Baer no longer has the courage to call it as he sees it.

JUDGE BAER has now become part of the problem of police "testilying." Indeed, he went out of his way to apologize to "the dedicated men in blue who patrol the streets of our great city." This sounds more like a politician pandering to public opinion than a judge sworn to uphold the Constitution.

The bottom line of this judicial fiasco is that judges like Baer will continue to tolerate police "testilying" as long as politicians continue to keep the pressure on them to do so. Indeed, judges are now on notice that if they believe a policeman to be lying, they will pay a heavy political, and career, price for making such a finding. An even more dangerous message is that presidents and politicians can influence judicial decisions by their threats. This will encourage opportunistic politicians to run against judges who take the Constitution seriously, thus further politicizing the judiciary.

Judge Baer has committed the cardinal sin of a federal judge: capitulating to political pressure. At the very least, he has created the appearance of capitulation. In my view, he has also fallen victim to the reality of capitulation. Judges must not be willing to tolerate police "testilying" because politicians do not care about the constitutional rights of suspected drug dealers. Judge Baer has made it harder for judges to enforce the Constitution against "testilying" police officers.

Alan M. Dershowitz is Felix Frankfurter Professor of Law at Harvard Law School.

Drug Case Reversal

Judge's New Ruling Puzzles Experts
Who Say Evidence Did Not Change

By DON VAN Natta Jr.

In January, when Judge Harold Baer Jr. threw out seized drugs as evidence against a confessed drug courier, he said he believed the suspect far more than the police officers who arrested her.

On Monday, the judge said he found the two officers more credible than the suspect.

But crucial evidence, a police report prepared by one officer, had not changed. That was conspicuously absent from the judge's explanation of why he changed his mind.

Legal experts say the omission is unusual, leading them to wonder whether Judge Baer was reaching for a way to change a decision that had made him a whipping boy for politicians.

Now his reversal has caused some lawyers to ask whether the judge's about-face will be seen as an example of how political pressure can be brought to bear to influence a decision. "I think the whole thing is unfortunate," said Anthony E. Davis, an adjunct professor at Brooklyn Law School and the Benjamin N. Cardozo School of Law.

Only Judge Baer knows all the factors involved in his latest ruling, in which he said new testimony led him to conclude that the officers were more credible in March than in January. But some legal experts said that to reach his decision to reinstate the evidence, Judge Baer had to ignore a serious discrepancy in the material from the police.

The written police report was prepared by an one of the arresting officers hours after they had taken into custody a 41-year-old Detroit woman, Carol Bayless, and seized 80 pounds of cocaine and heroin from her car.

She was arrested shortly after 5 A.M. on April 21, 1995, on a Washington Heights block known for its drug trade. Officers said they had watched four men drop two duffel bags in her trunk and, upon seeing the police, at least one ran away.

But the memo, written by Sgt. Walter Bentley, did not mention that the men had run away. The issue of whether they did run is important to the issue of whether the evidence was seized legally because the officers had argued that the fleeing men had triggered their suspicions of Ms. Bayless enough to pull over her car.

In his January ruling, however, the judge said he was not convinced the men had run away either. He said he believed Ms. Bayless's videotaped confession, in which she said the men had walked away.

"Moreover," the judge wrote then, "even assuming that one or more of the males ran from the corner once they were aware of the officers' presence, it is hard to characterize this as evasive conduct." The judge added a passage about Washington Heights and the "corrupt, abusive and violent" officers who work there: "Had the men not run when the cops began to stare at them, it would have been unusual."

Sergeant Bentley's partner, Officer Richard Carroll, testified at the original hearing in January. In his original ruling, the judge said, "One can-

CLINTON DEFENDS STAND

President Clinton reiterated his right to criticize Judge Harold Baer Jr. and said Republicans had focused on him because their record on crime was weak. Page A12.

not keep from finding Carroll's story incredible." But Sergeant Bentley did not testify at the original hearing, leading the judge to assume the police had something to hide.

"Where, one may wonder, was the officer in charge, Sergeant Bentley?" Judge Baer asked in his original ruling. "While presumably available to corroborate this officer's statement, he was never called to testify."

Prosecutors were sure to change that at the rehearing on March 15. Sergeant Bentley was their only witness. And he told the judge that he, too, had seen at least one man run away, corroborating the version given by his partner in January.

But, on cross-examination of Sergeant Bentley, Ms. Bayless's lawyer, Ramon W. Pagan, made a lot of the

A new decision stirs concern about the impact of political pressure.

fact that he never wrote anything about seeing the men fleeing police in the report.

Yet in his about-face this week, the judge said nothing about that discrepancy. He said that he now believes the account of the officers. And he said he had fresh doubts about Ms. Bayless's credibility.

In his original ruling, one of the reasons Judge Baer gave for believing Ms. Bayless' side of the story over officer Carroll's was the timing both statements were given.

"The defendant's version of the events, recorded 12 hours or less after her arrest, is likely to be a more accurate statement of what occurred that morning than an officer's testimony offered more than eight months after the events took place," the judge wrote.

But in his ruling this week, he said nothing about the fact that Sgt. Bentley and Ms. Bayless had testified nearly 11 months after the arrest.

These lingering, unanswered questions will probably fuel the perception among some lawyers that Judge Baer bowed to political pressure.

"He doesn't explain that in the opinion, and I would have expected Judge Baer to do that," said Stephen Gillers, a professor at New York University Law School.

Other experts simply said that the judge may have ignored the contradiction because it was not easy to explain away.

"If there were such glaring inconsistencies, I don't know how he could reach a conclusion that these officers were credible," said Barry Kamins, a Brooklyn lawyer and an expert on search and seizure law.



Judge Harold Baer Jr. of Federal District Court presided at a mock trial at the City Bar Association in New York yesterday, a day after he reversed himself and allowed key evidence to be used in a drug case.

4/3/96 NYT

Judge Baer's Mess

Federal District Judge Harold Baer Jr. has made a terrible mess. His original ruling that 80 pounds of confiscated drugs and a videotaped confession could not be admitted in a conspiracy trial was bizarrely unfair to police, prosecutors and public safety. But the clumsiness of his reversal provides an ugly picture of a Federal judge caving to politicians and eager to prevent his ruling from becoming a Republican attack issue in the 1996 election campaign.

It is good that Judge Baer's ruling will now allow prosecution of people plausibly accused of transporting \$4 million in drugs. Judge Baer was also right to apologize for what he now calls his hyperbolic comments condemning the police.

But the legal system will not be well served by such a flagrant sacrifice of judicial independence. Both the public and prosecutors, not to mention other judges and defense lawyers, have reason to worry about Judge Baer's legal reasoning. He says he was persuaded to reverse based on new evidence

presented at an extraordinary second hearing, which included testimony from a second arresting officer.

The problem is that the second officer's new testimony has inconsistencies when compared with a written account the same officer filed just hours after the arrest took place. Judge Baer could have reversed himself more convincingly by admitting that the defendant, Carol Bayless of Detroit, could have been reasonably detained based on behavior observed by the officers and admitted to by Ms. Bayless. The judge would still have had to deal with the question of whether the officers had a right to search her trunk.

Judge Baer's new ruling seems likely to be appealed on the basis of this new complication in the evidence. It is hard to imagine how a single jurist could have created a more frustrating collision of errors than did Judge Baer with his erroneous ruling, his badly reasoned reversal and his unseemly example of politicized judicial behavior.

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TESTIMONY OF ELENA RUTH SASSOWER, COORDINATOR OF THE CENTER FOR JUDICIAL ACCOUNTABILITY, INC. AT THE PUBLIC HEARING OF THE SECOND CIRCUIT TASK FORCE ON GENDER, RACIAL, AND ETHNIC FAIRNESS IN THE COURTS, NOVEMBER 28, 1995, NEW YORK CITY

Good afternoon. My name is Elena Ruth Sassower. I am the coordinator and co-founder of the Center for Judicial Accountability, Inc. The Center for Judicial Accountability is a national, non-partisan, not-for-profit citizens' organization focused on the twin issues of judicial selection and judicial discipline. In other words, how we get our judges--and how we get rid of them when they betray their oaths of office. The Center gathers "horror stories" from those with direct, personal experience in our federal and state courts. Over and again, these "horror stories" depict judges engaging in biased and abusive behavior and the ineffectiveness of the mechanisms designed to ensure ~~We the People~~ of our most basic constitutional right in our judicial system--our right to a fair and impartial tribunal. The empirical evidence being gathered by the Center establishes that judicial misconduct, including bias, is a serious, substantial, and unresolved problem--reaching the highest levels of our judicial system.

This evidence contradicts the key conclusion of the National Commission on Judicial Discipline and Removal in its August 1993 Report. That conclusion was that existing mechanisms of judicial discipline and removal in the federal system are adequate to deal with misconduct by federal judges, which the National Commission regarded as not pervasive. I already testified in Washington before the Long Range Planning Committee of the Judicial Conference of the United States in December of last year that the National Commission's Report is profoundly dishonest and methodologically flawed. The National Commission--in rendering its Report--disregarded the evidence of heinous unredressed judicial misconduct which it had before it. As will be more fully discussed in the testimony of my co-presenter, this evidence included a dispositive presentation by us to the National Commission in July 1993 establishing the complete failure of the appellate process to correct retaliatory Second Circuit decisions that were factually fabricated and legally insupportable--including one authored by now Chief Judge of the Second Circuit, Jon Newman himself. The National Commission also failed to solicit information about judicial misconduct and the inadequacy of existing mechanisms from obvious and available sources. Thus, it did not reach out to the consumers of judicial services, i.e. litigants--which it invariably tagged as "disgruntled". Nor did the Commission solicit testimony from lawyers and law professors with a known

outspokenness on the subject. In the latter category, I include Professors Anthony D'Amato and Alan Dershowitz--each of whom had already written and spoken out about fabricated and dishonest decisions. Dishonest decision-making, as evidence of judicial bias, was not even identified by the National Commission as a form of misconduct. In that connection, I would strongly recommend that this Task Force read Professor D'Amato's law review article "The Ultimate Injustice: When the Court Misstates the Facts", *Cardozo Law Review*, Vol. 11: 1313 (1989) about dishonest federal court decisions in a case involving the murder conviction of a black defendant.

Unlike this Task Force, which is holding a series of regional hearings throughout the Second Circuit, the three hearings held by the National Commission prior to its Draft Report were *all* held in Washington and--to the best of my knowledge--not publicized to the general public or to the bar at large. I am sure that most of the people testifying here today before this Task Force were unaware of the National Commission's work and would have made an important contribution to it, as would the many, many more who are not here today testifying simply because the focus of this hearing is limited to *gender* bias--and they wish to address manifestations of judicial bias other than gender-based.

What are the mechanisms which--at least on paper--protect us from

federal judges who are biased and abusive? The National Commission identified the primary mechanism within the judicial branch as that enacted under 28 USC 372(c). Because it was passed by Congress in 1980, 28 USC 372(c) is popularly known as the 1980 Act. I will address that mechanism. My co-presenter will address the mechanism of appellate review--the efficacy of which the National Commission accepted without scrutiny--as well as discuss recusal and writs of mandamus. Among the questions both I and my co-presenter will raise--and which this Task Force should be expected to answer--is "Where do you go with a merits-related bias complaint against a federal judge?"

In rendering its Report, the National Commission made a series of recommendations. Among them was one that should be of particular importance to this Task Force. The National Commission recommended:

"that each circuit that has not already done so conduct a study (or studies) of judicial misconduct involving bias based on race, sex, sexual orientation, religion, or ethnic or national origin, including sexual harassment, and of the extent to which the 1980 Act and other existing mechanisms and programs...are adequate to deal with it." (Report, at 126).

This recommendation can only be seen as a concession by the National Commission that, notwithstanding the superficial impressiveness of its underlying studies of the 1980 Act, they failed to address basic bias issues. Indeed, such

underlying studies--which describe a range of complaints filed under the 1980 Act--are not organized according to categories of judicial misconduct--except for the category of complaints predicated on delay. Thus, the underlying studies do not segregate, and thereby analyze, complaints based on bias--either as to the Circuits cumulatively or as to the Second Circuit particularly--so that common principles governing their handling may be gleaned. The consequence is that it is difficult, if not impossible, to clearly delineate the boundaries of justiciability of complaints filed under the 1980 Act. Is a bias complaint which alleges that--by reason of his bias--a judge has rendered factually dishonest and legally insupportable rulings just as justiciable under the 1980 Act as a bias complaint which alleges that a judge has made derogatory sexual, ethic, or racial comments? We believe the former complaint is, by far, the more common--and credit most judges as sophisticated and clever enough to know today not to express their biases openly. Their biases, therefore, go "underground": The judge proclaims his "impartiality" and "fairness"--all the while "socking it" to the litigant.

The issue of justiciability under the 1980 Act is a particularly thorny one--since under the 1980 Act a complaint is dismissable that is "directly related to the merits of a decision or procedural ruling". Indeed, "merits-related" dismissals are the most common ground upon which 372(c) complaints are dismissed.

According to a statistic from the Administrative office appearing in one of the National Commission's underlying studies, in 1991, 83% of complaints filed under the 1980 Act were dismissed as "merits related" (Research Papers of the National Commission, Vol. I, p. 730).

The critical significance of this justiciability issue was articulated more than eight years ago by then Chief Judge of the Court of Appeals for the D.C. Circuit, Patricia Wald. In a memo to her judicial colleagues, the Chief Judge posed the question in clear, straightforward language:

"Since the vast majority of complaints we receive come out of judicial proceedings, some clarification in this area would be helpful. Is anything that arose in the course of a proceeding out of bounds for a complaint, or is behavior that might have been appealed as a fundamental deprivation of due process (i.e., the lack of an unbiased judge) still a permissible subject of a complaint?" (Research Papers, Vol. I, p. 524)

Yet the underlying studies of the National Commission do not offer any clear answer to Judge Wald's query--any more than they refer to any answer to such question having come from Judge Wald's colleagues on the bench.

Tellingly, the National Commission showed itself to be perfectly capable of refining the key elements relevant to justiciability when a 372(c) complaint is filed alleging delay by a federal judge in rendering a decision. It is justiciable if the delay is part of a "habitual practice", is motivated by "improper

animus or prejudice", or is "egregious...constituting a clear dereliction of judicial responsibilities" (Report, p. 95). Yet, conspicuously the National Commission did not--as it should have--articulate such standards as would make an otherwise "merits-related" complaint justiciable (cf., Report, p. 93). As a consequence, were members of the Task Force to go to the Clerk's office of the Circuit Court and request to see the dismissal orders of the Chief Judge and Circuit Counsel relating to 372 (c) complaints, you would find that the Second Circuit is tossing out as "merits-related" precisely these kind of bias complaints.

In contemplation of this Task Force's study of the 1980 Act, I draw your attention to the National Commission's comment that:

"A few of the troublesome dismissals [under the 1980 Act] involved allegations of bias on the basis of race, gender, or sexual orientation, although none of them was predicated on the ground that such allegations were outside the Act's jurisdiction." (Report, p. 99).

It is unclear to us precisely which complaints the National Commission is referring to. However, some bias complaints were "concluded" following so-called corrective action--which might be considered inadequate for the misconduct complained against. In other words, the judge got off with the proverbial "slap on the wrist".

In designing your examination of the 1980 Act, it is incumbent upon

the Task Force to communicate with those individuals who have filed 372(c) bias complaints in the Second Circuit. This was not done by the National Commission researchers--including those who were given access to the actual complaints filed under the 1980 Act. Instead, the researchers interviewed Chief Judges and Circuit Executives. Indeed, buried in one of the researchers' reports is the extraordinary admission "We know little about complainants and what they seek. We did not design this research to address those issues." (Research papers, Vol. I, p. 625). You may be sure that had the researchers bothered to interview complainants--and, additionally, to confront the "merits-related" justiciability issue--their conclusions about the effectiveness of the 1980 Act would have been very different.

One final comment is in order--and that relates to the constraints of confidentiality which hampered the National Commission's review of the 1980 Act. It is our position that this Task Force need not be stymied by the confidentiality that plagued the National Commission. Firstly, in enacting the 1980 Act, Congress did not require confidentiality of the filed complaints or any proceedings had on them--except at the level of the appointment of a special committee. This fact was noted by the National Commission's studies, which further noted that special committees have been appointed in only 40 out of over 2,400 complaints. Thus, statutory confidentiality, in fact, adheres to only 1.6% of the filed complaints (Research

Papers, Vol. I, pp. 443-4).

It is the judiciary, by its Illustrative Rules to the 1980 Act, adopted to varying degrees by the Circuits, that imposed confidentiality as to all aspects of the complaint process except for dismissal orders of the Chief Judge and dismissal orders of the Circuit Counsel--which it allowed to be released, albeit in generally expurgated form (Research Papers, Vol. I, pp. 443-4). The National Commission did not challenge the judiciary for having placed 372(c) complaints beyond public purview (Report, pp. 106-8)--yet at the same time recognizing that no proper evaluation of the dismissal orders of chief judges and the Circuits is possible without examination of those complaints (Report, p. 86). Placing the matter in its proper perspective, 95% of the complaints filed under the 1980 Act are disposed of by such dismissal orders--a statistic compiled by the Administrative Office based on the Circuits' own figures (Research Papers, Vol. I, p. 510).

It may be noted that the National Commission recommended that the Illustrative Rules be amended to specifically "authorize a chief judge to release information, with appropriate safeguards, to government entities or properly accredited individuals engaged in the study or evaluation of experience under the 1980 Act." Chief Judge Newman should be the first to agree to authorizing the Task Force to examine the Second Circuit's handling of 372(c) bias complaints.

Indeed, when formation of the Task Force was announced, Chief Judge Newman stated "if any manifestations of bias are occurring in the courts of the Second Circuit, we want to know about it and take steps promptly to eliminate such occurrences." (1994 Second Circuit Report, p. 61).

In closing my remarks on the 1980 Act, two other recommendations made by the National Commission deserve comment. These relate to the National Commission's finding that only a portion of instances of judicial misconduct ever result in complaints being filed under the 1980 Act. The National Commission found that most people--federal litigators included--do not even know about the 1980 Act and, moreover, that there is a widespread fear of retaliation on the part of lawyers which prevents them from filing complaints (Report, pp. 70-1, 99-102).

The National Commission, therefore, recommended that steps be taken to increase awareness of the Act--including by "a reference to the 1980 Act and the circuit counsel's rules...in the local rules of each district court" (Report, p. 100). As to fears of retaliation, the National Commission recommended that:

"each circuit council charge a committee or committees, broadly representative of the bar but that may also include informed lay persons, with the responsibility to be available to assist in the presentation to the chief judge of serious complaints against federal judges." (Report, p. 101).

These two recommendations were reviewed by the Judicial Conference

of the United States in March 1994. As to the recommendation for increasing awareness about the 1980 Act, the Judicial Conference endorsed it--including the National Commission's suggestion about publicizing the 1980 Act through the district courts' local rules. As to the fear of retaliation, the Judicial Conference's recommendation was as follows:

"Agreed to recommend to the individual circuits and courts covered by the Act that they consider whether and what committee(s) or other structures or approaches, at the district or circuit level, might serve the purpose of assuring that justified complaints are brought to the attention of the judiciary without fear of retaliation." (March 15, 1994 Report of the Judicial Conference)

What has been the response of the Second Circuit to the aforesaid two recommendations of the National Commission, endorsed by the Judicial Conference? According to the Circuit Executive's office, there is *no* document from the Second Circuit reflecting action by it on these or, for that matter, any of the other recommendations made by the Judicial Conference in response to the recommendations of the National Commission.

We are unaware of whether, or how, the Second Circuit is publicizing the existence of the 1980 Act. Last month, I attended a program at the Association of the Bar of the City of New York on judicial misconduct entitled "Temper in the Court: A Forum on Judicial Civility"--and there was no mention at all of the 1980

Act. Moreover, in preparation for our testimony here today, I reviewed the local rules of the six district courts covered by the Second Circuit. Not one has included a reference to the 1980 Act or the Circuit's rules relating to it.

As to the creation of a committee to facilitate the filing of meritorious complaints and alleviate fears of retaliation, I was told by the Circuit Executive's office that it had been "considered and a decision was made not to establish a committee". No information was given to me about "other structures or approaches".

This is not surprising since, as Chief Judge Newman well knows, judicial retaliation--in the form of deliberately dishonest decision-making--is alive and well in the Second Circuit and he is one of its practitioners.

This Task Force has much important work ahead of it to ensure that ~~We the People~~ are protected from biased federal judges. I thank you for this opportunity to offer testimony and will gladly answer questions.

P 624 546 600

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