

A CALL FOR CONCERTED ACTION

Last Saturday, The New York Times printed our Letter to the Editor, "On Choosing Judges, Pataki Creates Problems", about the Governor's manipulation of appointive judgeships. Meanwhile, the New York Law Journal has failed to print the following Letter to the Editor, which we submitted last month, and ignored our repeated inquiries. We think you should see it.

In his candid Perspective piece "*The Importance of Being Critical*" (10/17/96), Richard Kuh expresses concern that the Committee to Preserve the Independence of the Judiciary, in its rush to defend judges from personal attack, will ignore legitimate criticism against judges. He therefore suggests that the now seven-month old Committee be countered by formation of "an up-front, outspoken, courageous group...to publicly attack bench shortcomings".

In fact, such "up-front, outspoken, courageous group" already exists and has not only challenged "bench shortcomings", but the rhetorical posturing of the Committee to Preserve the Independence of the Judiciary.

The group is the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit organization of lawyers and laypeople. For the past seven years, CJA has documented the dysfunction and politicization of judicial selection and discipline processes on local, state, and national levels and has been on the front-lines in taking action to protect the public. Two years ago, we ran an ad on the Op-Ed page of *The New York Times* entitled, "*Where Do You Go When Judges Break the Law?*", about our in-the-trenches formative background in battling political manipulation of judicial elections in this state and about judicial retaliation against a judicial whistleblower. On November 1, 1994, we ran that ad in this newspaper.

CJA's work has received growing media attention: in an A&E cable television Investigative Report on the American justice system, in *Reader's Digest* and, most recently, in an article entitled "*Playing Politics with Justice*" in the November issue of *Penthouse*.

Both this year and last, the *New York Law Journal* has printed Letters to the Editor from us. In "*No Justification for Process's Secrecy*" (1/24/96), we recounted our testimony at the so-called "public" hearing of Mayor Giuliani's Advisory Committee on the Judiciary, protesting the public's exclusion from the Mayor's behind-closed-doors judicial selection process and demonstrating that such secrecy makes "merit selection" impossible. In "*Commission Abandons Investigative Mandate*" (8/14/95), we described our ground-breaking litigation against the New York State Commission on Judicial Conduct, challenging the constitutionality of its self-promulgated rule (22 NYCRR §7000.3) by which it has unlawfully converted its statutory duty to investigate facially-meritorious complaints (Judiciary Law §44.1) into a discretionary option, unbounded by any standard. Our published Letter invited the legal community to review the New York County Clerk's file (#95-109141) to verify the evidentiary proof therein that the Commission protects politically-connected, powerful judges from disciplinary investigation and that it survived our legal challenge *only* because of a judge's fraudulent dismissal decision.

Back in February of this year, at a time when bar leaders were hemming and hawing on the sidelines as Mayor Giuliani and Governor Pataki were calling for the removal of Judge Lorin Duckman based on their selected readings of transcript excerpts from hearings at which Judge Duckman lowered bail for Benito Oliver, CJA had already obtained the full transcript. We wasted no time in publicly rising to the defense of Judge Duckman. We wrote to the Mayor, the Governor, and the Brooklyn

District Attorney, charging them with inciting the public by deliberately misrepresenting and distorting the transcript. Indeed, because of Mayor Giuliani's professed concern in protecting New Yorkers from "unfit judges", we delivered to him a copy of the file of our case against the Commission on Judicial Conduct so that he could take action against it for endangering the public by its demonstrable cover-up of judicial misconduct and corruption.

It was against this dazzling record of *pro bono* civic activism by CJA, protecting the public from self-serving politicians, no less than from unfit judges, that bar leaders and law schools formed the Committee to Preserve the Independence of the Judiciary in early March. Prior to its organizational meeting at the New York County Lawyers Association, CJA requested the opportunity to be present. We made known to the Committee's organizers our public defense of Judge Duckman, as well as the significance of our case against the Commission on Judicial Conduct -- the file of which we had provided six weeks earlier to the City Bar. Nevertheless, when we arrived for the Committee meeting, with yet another copy of the file of our case against the Commission, the room was *literally* locked with a key to bar our entry. Meantime, Judge Duckman's attorney was ushered in to address the assembled bar leaders and law school deans and was present while the Committee reviewed its draft Statement. This Statement, of course, included rhetorical support for "the independent functioning of the constitutionally created New York State Commission on Judicial Conduct".

Since then, the Committee to Preserve the Independence of the Judiciary has continued to shut us out and ignore the file evidence in its possession that the Commission is "not merely dysfunctional, but corrupt". Likewise, the politicians to whom we have given copies of the court file, including Governor Pataki, have ignored it. Indeed, we cannot find anyone in a leadership position willing even to comment on the Commission file.

Such conduct by bar leaders, law school deans, and public officials only further reinforces the conclusion that if the real and pressing issues of judicial independence and accountability are to be addressed, including protection for judicial "whistleblowers", it will require the participation of those outside the circles of power in the legal establishment.

CJA invites lawyers who care about the integrity of the judicial process -- and the quality of judges around which the process pivots -- to join us for *concerted action*. Requests for anonymity are respected.

CENTER *for*
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ACCOUNTABILITY, Inc.

Box 69, Gedney Station, White Plains, NY 10605

Tel: 914-421-1200 Fax: 914-684-6554

E-Mail: judgewatch@aol.com

On the Web: <http://www.judgewatch.org>

If you share CJA's view that our reply to Mr. Kuh's Perspective piece is an important one and deserved to be seen by the legal community, help defray the cost of this ad. It cost us \$1,648.36. All donations are tax-deductible. Better still, join CJA as a member. Your participation, up-front or behind-the-scenes, will make change happen.