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DATE: 3/6/96 TIME: 2<sup>20</sup> pm

TO: OP-ED PAGE TITLE: \_\_\_\_\_

FAX #: 212 556-3690 RE: Duckman Transcripts

FROM: Elena Sassorin, Coordinator

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By Fax and By Hand  
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March 6, 1996

The Op-Ed Page  
The New York Times  
229 West 43rd Street  
New York 10036

RE: "THE DUCKMAN TRANSCRIPTS"

Dear Editors:

Today's New York Law Journal has reprinted, in full, the much publicized transcript of the bail hearings in which Judge Duckman reduced the bail of Benito Oliver. We believe such publication has resulted from its receipt of a copy of our February 27, 1996 letter to Mayor Giuliani about that transcript, with copious cross-referencing to the text. A copy of that letter is enclosed herewith.

We believe New York Times readers should--at minimum--be given a taste of that controversial transcript--to balance the deliberate and continuing misrepresentation of it by Mayor Giuliani, Governor Pataki, and Brooklyn District Attorney Hynes.

The following piece--which we ask be considered for publication on the Op-Ed page of The New York Times--is abstracted from our February 27, 1996 letter to Mayor Giuliani.

\* \* \*

Since the tragic death of Galina Komar at the hands of Benito Oliver, the Mayor of the City of New York has used the power and prestige of his 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, the Mayor has 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 again, the Mayor quoted from and referred to in press conferences, interviews, and on his radio show--has launched a media campaign of vilification of Judge Duckman and sparked a "witch hunt" search for anything and everything to substantiate his characterization of Judge Duckman as "a danger to the people of [New York] City", not fit to judge.

On February 16th, following the Mayor's weekly radio show in which he invited listeners to read the transcript, we called up City Hall and requested a copy. It took over a week to arrive. When it did and when we examined it, we were stunned to discover that the Mayor--a former U.S. Attorney--had misrepresented it. Any objective reading of that transcript--and certainly by one such as the Mayor, 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.

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--and objected to as such by Judge Duckman. 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 over 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. 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)

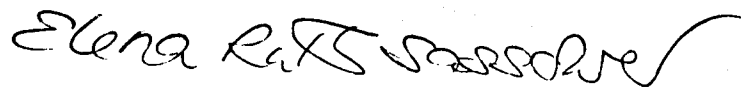
The transcript reflects Judge Duckman's belief that the Brooklyn District Attorney's office was not only unprepared, sloppy, and deficient in its procedures and presentment, and frivolous in its legal arguments, but--more seriously--that it had engaged in deliberate misrepresentation before other judges, causing them to raise Mr. Oliver's bail, without a proper basis.

As a former prosecutor--whose ethical duty is "to do justice"--the Mayor has, 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 he 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. Despite a transcript spanning three days, encompassing four separate appearances, 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 the Mayor has unfairly maligned Judge Duckman, covered-up for the Brooklyn District Attorney, and grossly misled the public, who had every reason to believe they could rely on the Mayor to honestly review the transcript and interpret its significance.

Based on that transcript, it is the Brooklyn District Attorney--and not Judge Duckman--whose investigation, if not

removal, the Mayor and the Governor should be calling for.



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

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organization, working to reform the processes  
of judicial selection and discipline.