

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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By Fax: 212-541-4630

January 2, 1996

Edward I. Koch, Esq.  
Robinson, Silverman, Pearce, Aronsohn & Berman  
1290 Avenue of Americas, 30th Floor  
New York, New York 10104

RE: Your December 29th Radio Show

Dear Mr. Koch:

This letter is a protest against your vicious and wholly unwarranted public character assassination of me when I called up on your talk show last Friday, December 29th. You did not give me a chance to be heard in response to your maligning comments, which I believe you twice repeated. Those remarks were that, based upon what you had been told by a reporter--whose name you did not identify--I was not someone who was credible. My impression is that you silenced the audio when I responded by asking you to identify the unnamed reporter and that you silenced it again when I requested an opportunity to be heard in my own defense. Presumably, the purpose of such silencing was to mislead the audience into believing that I had accepted your unwarranted attack upon my good name.

It was unclear to me whether there was any connection between your malignment of me and your surprising inquiry immediately prior thereto as to whether my mother was a judge. Had I not been cut off by you, what I would have said about my mother is that she is an expert on judicial selection. In 1971, she served as a member of the first judicial screening panel established by the Reform Democrats of New York County to pass upon the qualifications of all candidates for judicial vacancies on the Supreme Court in the First Judicial Department. An article she wrote about her experience was published on the front-page of the October 22, 1971 New York Law Journal--a copy of which I enclose. Thereafter, she was appointed to the Judicial Selection Committee of the New York State Bar Association--the first woman so appointed. She served for eight years, from 1972 to 1980, interviewing candidates for the New York State Court of Appeals, the Appellate Divisions, and the Court of Claims.

However, because you had mentioned the prevalent practice of judicial cross-endorsement on your radio show the preceding day, I began by describing my mother as a lawyer who had been "run out of the profession for judicial whistle-blowing against judicial

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cross-endorsement". It was my impression that you "spoke over" my remarks so as to prevent the listening audience from hearing about her legal challenge to "judicial cross-endorsement". A description of that historic challenge and the vicious judicial retaliation to which my mother has been subjected was published as an Op-Ed ad in the October 26, 1994 New York Times, reprinted on November 1, 1994 in the New York Law Journal. For your information, Jay Diamond of WABC Radio found the story so important and compelling that he interviewed my mother on his radio show the very night the Times' advertisement appeared.

It was right after my brief response to your inquiry about my mother that--out of the blue--you announced that there had been a reporter with you when I had called in on the Dick Oliver show the previous day (Thursday). According to you, this unnamed reporter told you that you should not believe anything I said.

By contrast to the maliciousness of this unnamed reporter, whose identity I demand to know, it must be stated that the WABC Radio staff was so impressed by my remarks on Thursday's Dick Oliver show that they invited me to be interviewed by Curtis Sliwa the next day, Friday, December 29th. Indeed, not only did Mr. Sliwa interview me in the 7:17 a.m. time slot, but he thought enough of the work of the work of our Center--which advocates opening the judicial screening process to the public--that he asked me to recite the Center's phone number for the listening audience.

Ironically, about an hour before I called the Dick Oliver show on Thursday, relating what had taken place at the previous day's "public" hearing of the Mayor's Advisory Committee on the Judiciary, I telephoned your law office. I did so in the belief--plainly mistaken--that you would be interested in the "sham" nature of the "public" hearing conducted by the Mayor's Advisory Committee on the Judiciary. In addition to leaving my name, I left a message identifying myself as having been the only member of the public to have given testimony at that "public" hearing.

I do not know whether you were aware of that telephone message when you heard my call on the Dick Oliver show. However, because you began your own radio program by responding critically to the comments I had just made on the Dick Oliver show<sup>1</sup>, referring to

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<sup>1</sup> In response to my remark that "John and Jane Q. Public" did not know about the "public" hearing because the Mayor's Advisory Committee did not place a notice of it in The New York Times, the New York Post, or the Daily News--newspapers of general circulation--but, rather in the New York Law Journal, you commented that Law Journal readers were "the only people who have anything worthwhile to say". At the same time, you also

me as "that woman", I tried to telephone in to your Thursday show. When your show ended, I had been "on hold" for nearly an hour.

It is my recollection that following the conclusion of your Thursday show, I again telephoned your law office. I identified myself as not only the caller on the Dick Oliver show who you had referred to on the air as "that woman", but as the very person who had telephoned your law office earlier that morning. I also identified that I had "held on" for an hour trying to get through to your radio show.

In any event, in the late afternoon on Thursday, your law office called me back with a most peculiar message. It was that you had instructed that I be informed that there was nothing you could do and that I should file a criminal complaint with the Manhattan D.A.'s office. Why you told me that I should file a criminal complaint I don't know--and I said as much in response to such advice.

One final observation is in order. In a manner reminiscent of Clarence Thomas stating to the Senate Judiciary Committee that he had not heard the testimony of Anita Hill, you began your Friday radio show with the surprising announcement that you had not listened to Mayor Guiliani's radio show, which had just concluded. How convenient! Although you and the media have berated Mayor Guiliani for being "combative", he was--unlike yourself--receptive to what I had to say and a "voice of reason". In addition to asking me to recount what had taken place at the "public" hearing of his Advisory Committee on the Judiciary, he expressed his readiness--at least twice--to "work with [us]" on the issue addressed by my comments, to wit, opening the process of judicial selection to the public.

I am pleased to say that immediately following my radio conversation with Mayor Guiliani, I telephoned City Hall to arrange an appointment to discuss with his counsel how the very confidentiality of the judicial screening process utterly skews the process by creating a situation where the lay public and legal community are unable to provide the Mayor's Advisory Committee and the City Bar's Judiciary Committee with negative information about the qualifications of judicial applicants--there being no information available to them even as to the identity of the applicants seeking judicial office.

It is my belief that the reason you shut me off is not because I was not credible, but because you knew I was knowledgeable about

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took credit for having introduced the "public" hearing into your appointment process.

the judicial selection process--and was going to question you as to your position on opening the judicial screening process to public scrutiny. This would have exposed as "sham" your posturing about the so-called "merit selection" of judges, which I believe rests on keeping the process "behind closed doors", with the public unable to verify what is taking place.

Indeed, before I went "on the air" with you on Friday, I outlined for the WABC Radio staffer who picked up the phone the questions I would ask you. Those questions I repeat now--and ask you to answer them publicly:

1. Since judges are public servants--who serve the public and are paid for by them--why should judicial screening be a "behind-closed-doors" process with the public given no opportunity to know the identity and qualifications of applicants for judicial office?
2. How can the public independently verify that a judicial screening panel is adhering to "merit selection" principles if it keeps confidential all information about the "pool" of applicants who have applied to it for judicial positions and all information about the recommendees it has forwarded to the mayor--even their names--and when the public is deprived of even the applications of the judicial nominees the mayor appoints?
3. What justification is there for denying the public access to the applications filed by Mayor Guiliani's judicial nominees with his screening committee--or the applications filed with screening panels by judicial nominees appointed by Mayor Dinkins and yourself?

Plainly the only way the public can even begin to sort out the accusations being made by you and Mayor Guiliani is to afford it access to the applications filed by Judge Scwartzwald and Kaye with the Mayor's Advisory Committee on the Judiciary, as well as those filed by Judges Posner and Mr. Torres.

These important points were more fully elaborated by me in my scathing testimony at the December 27th "public" hearing of the Mayor's Advisory Committee on the Judiciary. Since the Mayor's Advisory Committee arranged for the hearing to be recorded by a stenographer, I suggest you obtain a copy of the transcript so that you can better understand the significance of these issues.

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Inasmuch as you purport to be the "voice of reason", we look forward to your responding--IF YOU CAN--on the air, giving me and my mother equal time to respond to your answers.

Yours for a quality judiciary,



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

P.S. As part of my testimony at the "public" hearing, I made the informational brochure of the Center for Judicial Accountability, Inc. part of the record--as well as our aforementioned New York Times-New York Law Journal ad<sup>2</sup> and my own "Letter to the Editor" published in the August 14, 1995 New York Law Journal. Copies are enclosed for your information.

Enclosures

cc: Ron Mitchel, WABC Morning Show Producer  
Curtis Sliwa, WABC Radio  
Jay Diamond, WABC Radio  
Members of the local press  
Mayor Rudolph Guiliani  
Former Mayor David Dinkins

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<sup>2</sup> The reverse side of the ad reprints my mother's 1989 Martindale-Hubbell Law Directory listing.