

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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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).

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 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 (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.

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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