

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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By Fax: 212-556-3690
and Certified Mail: RRR P-801-449-746

January 17, 1995

Gene Roberts, Managing Editor
The New York Times
229 West 43rd Street
New York, New York 10036

RE: News Fit to Print

Dear Mr. Roberts:

This letter follows up my telephone conversation yesterday afternoon with Ralph Nader. In that conversation, I described to Mr. Nader the background to the advertisement we placed on the Op-Ed page of the October 26, 1994 New York Times, namely, the Times' refusal to report on what that ad describes: political manipulation of judicial elections and judicial retaliation against a judicial whistleblower. A copy of our ad, for which we paid the Times \$16,770, is enclosed for your convenience, (Exhibit "1").

I further told Mr. Nader that we had had no response to a letter I had written over a month and a half ago detailing the suppression of that story by the Times. Said letter, addressed to Hilton Kramer of The New York Post, was sent to both the Times' Publisher, Arthur Ochs Sulzberger, Jr., and to its Executive Editor, Joseph Lelyveld, with a specific request for:

"...a personal meeting with them--or their representatives--so that they may clarify the Times' standard of news 'fit to print' and explore with us future coverage of unfolding developments of this story, which profoundly affect the public". (page 6, final paragraph)

Mr. Nader expressed complete confidence that if we brought this matter to your attention, we would get a response. Indeed, Mr. Nader mentioned your background as editor of The Philadelphia Inquirer--to which I immediately responded by commenting upon the fine article on whistleblowing, "Telling the Truth, Paying the Price", which the Inquirer ran in 1989 in its magazine section (Exhibit "2"). Mr. Nader, who--as you may know--long ago edited a book on whistleblowing¹, indicated that you were with

¹ Whistleblowing, Nader, Petkas, & Blackwell; Grossman Publishers, 302 pp., New York, 1972.

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the Inquirer in 1989.

I telephoned your office immediately following my conversation with Mr. Nader. Your secretary, Diane Ceribelli, requested that I send you a copy of the letter I had sent to Messrs. Sulzberger and Lelyveld. I offered to fax same, without the corroborative exhibits it annexed (Exhibit "3"). Pursuant to Ms. Ceribelli's authorization, I am faxing same herewith.

The full letter--with exhibits--should be in the possession of Messrs. Sulzberger and Lelyveld. As reflected by the certified return receipts (Exhibit "4"), the letter was received by their offices on November 30, 1994.

The 1994 elections are over. However, the issue of political manipulation of judgeships and judicial corruption are as relevant as ever. As you know, throughout the month of December, the Times ran a slew of pertinent articles, whose substance can be gleaned by their titles (Exhibit "5"): "Politics and Judgeships: Learning the Realities" (12/5/94); "New York City Faces Change Over Justices", (12/7/94); "A Question of Balance: Judges, Law and the Voting Rights Act" (12/7/94); "Judges, Patronage and Status Quo" (12/8/94); "Judge is Charged With Taking Bribes", (12/14/94); and "Federal Court Overturns Ruling on Judicial Selection" (12/23/94).

As you may know, but have not reported, the federal court's ruling is now the subject of a reargument motion by the Justice Department--failing which the Justice Department will be seeking review by the U.S Supreme Court.

Our story, therefore, remains extremely timely. Indeed, it may be noted that back in April of last year, the Justice Department received from us a great deal of information and documentation for its investigation of judicial elections then in progress. This included the court papers in the Election Law case described in our October 26, 1994 Times' advertisement (Exhibit "1")--which we had previously transmitted to Governor Cuomo's Task Force on Judicial Diversity under a March 20, 1992 coverletter. A copy of that coverletter, highlighting the significance of that case for minorities and women, is annexed for your review (Exhibit "6").

As you know, in December, the Times printed two pertinent editorials relating to the Justice Department's inquiry: "New York's Judicial Upheaval" (Exhibit "7a") and "New York's Courts, Still in Disarray" (Exhibit "7b"). Both editorials advocated that this State replace the election of judges with an appointive system, with the New York Court of Appeals being cited as an example.

We have a great deal to say to challenge the wisdom of such view as the Times has put forward. We are uniquely qualified to give first-hand personal testimony, inter alia, as to how the completely closed appointive process to the Court of Appeals actually--rather than theoretically--works, which is not consonant with "merit selection". Indeed, on December 15, 1993, we publicly put forward such position, describing the process as "unconstitutional" when we testified before the Senate Judiciary Committee in Albany in opposition to Justice Carmen Ciparick's nomination to the New York Court of Appeals. A copy of that testimony is annexed hereto as Exhibit "8".

Your Albany reporter was present in the audience on December 15, 1993 and had--in hand--copies of our testimony and supporting documentary compendium. Nevertheless, no report of it appeared in the Times. Likewise, the Times published no report of what took place at the September 7, 1993 confirmation "hearing" of Justice Howard Levine to the New York Court of Appeals, when our testimonial presentation--the only one in opposition to that nomination--was aborted by the Senators. Upon my telephone inquiry of your reporter, he told me it was cut from the copy he had sent in.

It must be noted that on September 9, 1993 we wrote a "Letter to the Editor" to the Times about the outrageous travesty committed by the Senate in connection with Justice Levine's confirmation. That letter, faxed and mailed to the Times on that date, was transmitted with a full copy of our aborted statement to document the serious and substantial nature of our opposition to that nominee. It is annexed hereto as Exhibit "9".

Plainly, the Times' failure and refusal to report the aforesaid two testimonial presentations demonstrates the fallacy of its editorial position of December 17, 1994 (Exhibit "7a") that the integrity of the appointive process for judgeships is safeguarded by "the accountability of the state's chief executive, chosen by all the people". Obviously, there can be no such "accountability" demanded by the people, where they are not even informed of what is taking place. This was, after all, the point of our October 26, 1994 Op-Ed ad which opened with the words:

"From the way the current electoral races are shaping up, you'd think judicial corruption isn't an issue in New York. Oh, really?"

and closed with the statement:

"There is still time in the closing days before the election to demand that candidates for Governor and Attorney General address the issue of judicial corruption..."

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Yet, in the two weeks that remained to the November 8, 1994 election following publication of our ad, there was no follow-up with us by the Times nor report in its pages of any inquiry of the candidates on this issue.

As examination of our written testimony makes evident, we have information of major public importance to share with the editors of the Times, who we would hope would wish to question us about our experience and opinion before writing further editorials advocating the extension of such demonstrably unsatisfactory appointment process to other judicial, presently elective, offices in this state.

Finally, I would add that our extraordinary critique of the appointments process to the federal judiciary, described at p. 8 of our December 15, 1993 statement to the Senate Judiciary Committee (Exhibit "8"), and submitted to it in support of our position that the public is ill served by a secret appointive process, is in the possession of The New York Times. Indeed, several copies of it were provided to the Times in the spring and summer of 1992, when in vain, we sought Times coverage of a six-month investigative project in which we documented the utter failure of the federal judicial screening process to screen out candidates lacking in fundamental judicial qualifications.

Mr. Nader already has a copy of our investigative critique. Notwithstanding herculean efforts on our part to secure coverage by the Times of what we had so meticulously exposed--including complaints to Mr. Sulzberger, and to Max Frankel, then Executive Editor of the Times--the only coverage the Times saw fit to provide was publication of my "Letter to the Editor" which, on July 17, 1992, it printed, without my consent, in sharply expurgated form (Exhibit "10").

At Mr. Nader's suggestion, I am also contacting the Times' Metro Editor, Michael Oreskes, who Mr. Nader believed would also be responsive to this matter. A duplicate of this letter is, therefore being sent to him.

We look forward to hearing from you and working with the Times so that it can meet its obligation to present to the public the important issues bearing upon the judicial selection process and the integrity of our third branch of government.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator

Enclosures

Mr. Roberts

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cc: Michael Oreskes, Editor, New York Times Metro Desk
Certified Mail, RRR: P-801-449-747
Ralph Nader, Center for the Study of Responsive Law
Hilton Kramer, The New York Post

P 801 449 746
RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

Sent to <i>Gene Roberts</i>	
Street and No. <i>New York Times</i>	
P.O., State and ZIP Code <i>229 West 43rd Street</i>	
<i>NY NY 10036</i>	
Postage	\$ <i>300</i>
Certified Fee	\$ <i>110</i>
Special Delivery Fee	\$ <i>110</i>
Restricted Delivery Fee	\$ <i>110</i>
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ <i>520</i>
Postmark or Date	

PS Form 3800, June 1985

P 801 449 747
RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

Sent to <i>Michael Oreskes</i>	
Street and No. <i>New York Times</i>	
P.O., State and ZIP Code <i>229 West 43rd Street</i>	
<i>NY NY 10036</i>	
Postage	\$ <i>300</i>
Certified Fee	\$ <i>110</i>
Special Delivery Fee	\$ <i>110</i>
Restricted Delivery Fee	\$ <i>110</i>
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ <i>520</i>
Postmark or Date	

PS Form 3800, June 1985

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number. The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:
GENE ROBERTS, MANAGING EDITOR
THE NEW YORK TIMES
229 WEST 43RD STREET
NEW YORK, NEW YORK 10036

5. Signature (Addressee)

6. Signature (Agent)

PS Form 3811, December 1991

4a. Article Number **P801 449 746**

4b. Service Type
 Registered
 Certified
 Express Mail
 COD

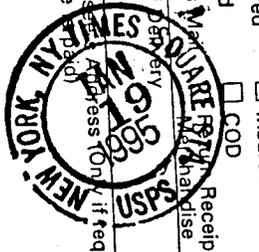
7. Date of Delivery

8. Address and fee if requested

1. Addressee's Address
 2. Restricted Delivery

1 also wish to receive the following services (for an extra fee):
 Addressee's Address
 Restricted Delivery

Thank you for using Return Receipt Service.



Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number. The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:
MICHAEL ORESKES, EDITOR,
METRO DESK
THE NEW YORK TIMES
229 WEST 43RD STREET
NEW YORK, NEW YORK 10036

5. Signature (Addressee)

6. Signature (Agent)

PS Form 3811, December 1991

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