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TO: Project Censored

FROM: Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc.

DATE: December 2, 1996

RE: 1996 Project Censored Nominations

This submission supplements, updates, and reinforces our nomination of objectively-significant, documented news stories about the dysfunction and politicization of the processes of judicial selection and discipline, suppressed by *The New York Times*, whose arrogant and unaccountable behavior, including by its upper management echelons, we chronicled.

We don't know what your reaction was when you received our nomination, supported by 15 pounds of substantiating documentation -- all meticulously organized and cross-referenced. However, we believe you should know what *The Times'* reaction has been.

The final paragraph of our nomination (at p. 23) stated that we were going to provide a copy to *The Times* as a complaint so that it could take immediate "curative measures" to rectify the "on-going cataclysmic consequences to the public". In a footnote to that paragraph, we stated that *The Times* had a less than formally-titled "News Ombudsman" and that we had already requested that Nancy Chan, associated with an office at *The Times* functioning in an ombudsman capacity, bring our complaint to the attention of *Times* publisher, Arthur Sulzberger, Jr., its Executive Editor, Joseph Lelyveld, its Magaging Editor, Gene Roberts, and its Metro Editor, Michael Oreskes.

On October 21st, we hand-delivered to *The Times* a copy of our nomination and its seven substantiating Compendia of exhibits. Our coverletter, addressed to Ms. Chan (Exhibit "A"), identified our transmittal "as a formal complaint against *The Times* in general" and against specific reporters who, additionally, had engaged "in knowing and deliberate black-balling of us". We quoted in full the final paragraph of our nomination and reiterated our request that our complaint be brought to the attention of Mr. Sulzberger and the above-named *Times* editors.

The next day, October 22nd, I telephoned Ms. Chan, who confirmed that she had received our complaint. She told me it was going to be handled by Bill Borders, a news editor. Yet as the weeks passed, we heard nothing from Mr. Borders or from anyone else at *The Times* about our complaint. We received no letter acknowledging the complaint, nor informing us of its disposition.

Consequently, on November 27th, more than five weeks after delivering our complaint, I telephoned Ms. Chan. She knew nothing about what had become of it -- other than that it had been directed to Mr. Borders, whom she suggested I call. I immediately did so.

Any thought on my part that Mr. Borders would express some appreciation for the enormous time and effort it took us to bring to the attention of *Times* management a serious problem affecting its news coverage and editorial positions and that he would apologize for *The Times* record of mistreatment of us was instantly dispelled. Mr. Borders wasted no words in telling me, bluntly and without elaboration, that he doesn't "share [our] viewpoint on things", that he has no further interest in [our] case against *The Times*", and that he regards as "bizarre" our complaint that *The Times* had "engaged in a cover-up". Indeed, Mr. Borders made plain that he did not consider our complaint worth his even responding to and that, had I not called, he was not intending to contact us about it. Such behavior is consistent with the pattern of unprofessional conduct, described by our nomination in connection with our previous correspondence to upper echelon management (pp. 3, 5-8).

When I attempted to discuss with Mr. Borders our complaint and its documentary substantiation, he assaulted me with a blizzard of *ad hominem* insulting remarks. These included:

"Why don't you get a job and do something?"

"Why don't you stop calling people here and leave us alone?"

"We would like you to stop calling us and stop sending us these things"

"We want you to terminate your relationship with *The Times*"

"You are bothering a lot of people".

Mr. Borders would not disclose who the "we" were who allegedly wanted us "to stop calling...and sending...things" and wanted us to "terminate [our] relationship with *The Times*". Nor would he identify the "people" we were allegedly bothering. He refused to tell me whether Mr. Sulzberger, Mr. Lelyveld, Mr. Roberts, and Mr. Oreskes had seen our complaint and refused to state whether he had contacted the specific reporters identified by our October 21st coverletter (Exhibit "A", ¶2) for their comment in connection therewith.

Mr. Borders did not confine his boorish remarks to me. He also stated that he doesn't know what Project Censored is -- and that he is "not especially interested".

Indeed, in my less than ten minute conversation with Mr. Borders, there was very little that he was interested in -- including my answer to his shockingly peculiar question: "What do you really want?" My answer reiterated precisely what is clearly set forth in our Project Censored nomination (pp. 1-2, 5, 22-3): We want to ensure that objectively significant and electorally-relevant stories about the

dysfunction and corruption of *essential* governmental processes are reported by *The Times*, rather than -- as we have documented -- deliberately suppressed.

Following Mr. Borders' refusal to answer whether he would transmit our complaint to his superior, Mr. Roberts, and his refusal to transfer my call to Mr. Roberts' office, I telephoned Mr. Roberts' office myself, leaving a detailed message about our complaint and Mr. Borders' misconduct relative thereto. I also wrote a letter to Mr. Roberts (Exhibit "B"), reciting the foregoing and recalling to him that nearly two years earlier, I had written him a January 17, 1995 letter, with a copy to Mr. Oreskes -- based on a recommendation from Ralph Nader that both men would be "responsive". (See our nomination, pp. 10-11; Compendium IV, Doc. 2, pp. 1, 4)

In the concluding two paragraphs of my letter (Exhibit "B", p. 3), I drew Mr. Roberts' attention to the fact that Mr. Borders had expressly stated to me that he was uninterested in additional information bearing upon the kind of news stories we had been unsuccessfully trying to get *The Times* to report on and, in the last paragraph, referred to publication by *The Times* of my Letter to the Editor, "*On Choosing Judges, Pataki Creates Problems*" on Saturday, November 16, 1996 (Exhibit "C-1")¹. I annexed three subsequent letters to Mr. Oreskes, dated November 18th, November 20th, and November 22nd (Exhibits "D-1", "D-2", and "D-3"), reflecting our unsuccessful attempts to get follow-up coverage from the *Times* Metro Section for a:

"...dynamite story about how Governor Pataki -- aided and abetted by the State Senate -- has perverted the process by which state judges are appointed". (Exhibit "D-1", p. 2)

As noted in our November 18th letter to Mr. Oreskes (Exhibit "D-1", p. 2), it had taken *The Times'* Letters Department less than an hour to recognize the importance of our proposed November 13th Letter to the Editor (Exhibit "C-2") and to let us know that it was interested in publishing it. Indeed, the Letters Department had not only recognized our Letter's importance by publishing it, but had featured it as the *lead* Letter (Exhibit "C-1").

In view of the serious and scandalous information presented by our published Letter (Exhibit "C-1"), one would hardly have thought it necessary to flag Mr. Oreskes' attention to the fact that it offered a "big story", requiring follow-up. But we left nothing to chance, and our November 18th letter (Exhibit "D-1") further informed Mr. Oreskes of the explosive penultimate paragraph that had been deleted from our proposed November 13th Letter to the Editor (Exhibit "C-2")² to wit, that the

¹ A copy of *The Times'* November 11, 1996 editorial "*No Way to Choose Judges*", to which our Letter to the Editor responded, is annexed as Exhibit "C-3".

² Also deleted were the first two paragraphs from our proposed Letter (Exhibit "C-2"), which highlighted as flawed *The Times'* faith in appointive "merit selection". Additionally, in the third paragraph of the published Letter (Exhibit "C-1"), the opening words

Governor rigs the ratings of the judges he appoints by withholding from his temporary judicial screening committee information adverse to the candidates it reviews.

It is hard to imagine Mr. Oreskes not "sitting up and taking notice" of such information -- particularly when the Letters Department transmitted to him, at our request (Exhibit "E-1"), the substantiating documentary materials which we had voluntarily provided it (Exhibit "E-2")³, meticulously laying out this major story. All that Mr. Oreskes had to do was to assign a reporter to get answers from the Governor's office to the "jugular" questions, reflected by those materials, which it had refused to answer for us. This was precisely the kind of easily verifiable story described by our nomination (at p. 2, ¶3). Moreover, *The Times* not only has an Albany bureau, but, with the Legislature in recess, its reporters had time on their hands.

In attempting to obtain follow-up from Mr. Oreskes to our published Letter to the Editor, we did not mention our October 21st complaint (Exhibit "A") -- or the fact that our November 16th Letter (Exhibit "C-1") was the the first light on a story that *The Times* Metro Section had suppressed for six months -- with its reporters, Joyce Purnick and Jan Hoffman, most responsible for the cover-up, as particularized by our nomination (pp. 17-22). Our assumption was that if Mr. Oreskes had seen our complaint, we didn't have to remind him about it and, if he had not seen it, then we would find out how he'd approach our Letter to the Editor "fresh".

My "hunch" was that Mr. Oreskes had not seen our complaint, based on a brief conversation I had with Jan Hoffman the previous week. On Tuesday, November 12th, Ms. Hoffman had been a participant at a program sponsored by New York University Law School entitled "Judicial Independence Under Attack: The Limits of Fair Comment". I spoke with her after the program. When I mentioned the complaint we had filed against her three weeks earlier with *The Times*, she not only knew nothing about it, but, initially, reacted with the belief that I meant a legal action had been commenced against her. Inasmuch as our complaint against Ms. Hoffman was particularly serious -- embracing the possibility that she had an undisclosed personal conflict of interest (nomination, p. 21; Compendium VII, Ex. "T") -- if she knew nothing of our complaint, there was a reasonable possibility that her superior, Mr. Oreskes, knew nothing of it. As hereinabove described, Mr. Borders refused to state who at *The Times* has seen our complaint.

from our proposed Letter were omitted which identified that the Governor's handling of lower court appointments was "Completely unreported". As documented by our nomination (pp. 17-22), the reason the Governor's manipulation of lower court judgeships was "completely unreported" by *The Times* was because it had been deliberately suppressed by the Metro Section and, in particular, by Joyce Purnick and Jan Hoffman.

³ See Compendium VII, Ex. "C" and Ex. "D", respectively, for our June 11, 1996 letter to the Senators of the New York State Senate and our June 12, 1996 letter to the Governor's counsel, Michael Finnegan.

From the Tuesday *before* our Letter to the Editor was printed to the Tuesday *after*, Jan Hoffman was not the only *Times* reporter participating in a panel discussion on judicial independence. On Tuesday, November 19th, Joyce Purnick participated in a program at Fordham Law School, sponsored by the Fund for Modern Courts, entitled "Courts on Trial: Maintaining an Independent Judiciary". The consensus on the panel was that key to the independence of the judiciary was keeping politics out of judicial selection and recognizing the role of the New York State Commission on Judicial Conduct as the proper venue for misconduct complaints. Ms. Purnick sat there -- knowing that we had long ago presented her with proof that these processes of judicial selection and discipline had been politicized and corrupted and that she, perhaps more than anyone else, had suppressed it from *Times* coverage (See our nomination, pp. 12-22).

After the program was over, I approached Ms. Purnick and asked her if she was intending to follow-up on our Letter to the Editor, which had appeared three days earlier. Her response was that she had been out-of-town and had only seen it the day before. I then imparted to her -- by way of emphasizing the urgency of follow-up -- that earlier that day I had received a call from an attorney from upstate New York, who was the consummate "insider": more than 45 years at the bar, with 20 years serving on various gubernatorial judicial screening committees -- including the Commission on Judicial Nomination to the Court of Appeals. I told her what he had said: that my published Letter was important, that based on his own experiences, he knew it was true, and that I should get the "press" to follow-up. I also told her that he had recounted to me that an acquaintance of his was a member of Governor Pataki's temporary judicial screening committee and had gone to "nine so-called final meetings, each supposed to be the last" and that the Governor was advertising upstate judicial vacancies downstate in the classified section of the downstate *New York Law Journal*, with resumes to be sent directly to the Governor's office.

We have not heard from Ms. Purnick since. Yet, more shameful than Ms. Purnick's continued dishonest, black-balling conduct -- daily depriving New Yorkers of important news to which they are entitled⁴ -- is that such conduct has not disqualified her from being appointed deputy Metro Editor. We do not know when the upper echelons of *Times* management decided on such appointment, whether it was before or after it saw our complaint against her -- if it ever did -- but when Ms. Purnick was introduced at the program on November 19th, it was announced that she would soon be assuming such significant decision-making position.

⁴ That important news includes the information summarized in our \$1,650 paid ad "A Call for Concerted Action", published on November 20, 1996 in the *New York Law Journal* (See Exhibit "D-2"). Such information was originally detailed in our March 18, 1996 letter to City Bar President Barbara Robinson -- which has been in Ms. Purnick's possession since it was transmitted to her under our March 25th coverletter (See, our nomination, pp. 15-16; Compendium VI, Ex. "H", annexed at Ex. "G").

December 2, 1996

From the foregoing may be seen how imperative it is that Project Censored turn its focus on *The New York Times*. The extraordinary "paper trail" of correspondence, provided by our nomination and this supplement, graphically shows *The Times*' continuing refusal -- *to the present* -- to define its standards for coverage and to engage in *any* dialogue as to why objectively-significant, documented, easily-verifiable news stories, affecting the public, its democratic rights, and the integrity of *essential* governmental processes, have been suppressed. Such documentation presents Project Censored an *unprecedented* opportunity to explore the "WHY" behind brazen censorship and black-balling by one of this country's preeminent newspapers -- an exploration consistent with the goal of Project Censored, recognized by its Yearbook title, "The News That Didn't Make The News AND WHY". It is up to Project Censored investigators to *directly* contact Mr. Sulzberger, as well as the editors and the reporters whose names appear herein, for the answers they have refused to give us, *Times* subscribers and members of the public who the newspaper purports to serve.

Yours for a quality judiciary
and responsible journalism,



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

cc: Gene Roberts, Managing Editor
The New York Times
Ralph Nader