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February 12, 1998

Arthur Ochs Sulzberger, Jr., Publisher
The New York Times
229 West 43rd Street, 14th floor
New York, New York 10036

RE: Suppression of important, time-sensitive, and electorally-significant stories

Dear Mr. Sulzberger:

Since *The New York Times* has no news ombudsman to handle complaints, this letter formally requests your review of this complaint and a meeting with you. At issue is the wilful suppression of stories which not only meet *any* reasonable definition of the *Times* standard of "news fit to print", but present the kind of critically important information which citizens in a democracy must have if they are to preserve governmental integrity and exercise an informed vote. *Times* editors, who have suppressed these stories, have refused to explain why they have done so.

You may recall that last May 8th, when you addressed an audience at the 92nd Street Y, I publicly asked you why the *Times* has no news ombudsman. I inquired whether this reflected your view that there could be *no* legitimate complaints against the *Times*. Charlie Rose, the moderator, called it a very good question.

Your answer was that you believed that having a news ombudsman lets editors "off the hook" and that it is the responsibility of *Times* editors to handle complaints. After the program, I went up to you and told you that *Times* editors were not meeting that responsibility and that your confidence in them was misplaced. To prove this, I handed you an envelope containing a copy of the 23-page submission to Project Censored, which our non-partisan, non-profit citizens organization, the Center for Judicial Accountability, Inc. (CJA), had filed with the *Times* as a complaint against it on October 21, 1996 (Exhibit "A-1"). The complaint documented, by seven compendia of exhibits, the refusal of *Times* editors, as well as high-ranking management, such as yourself, to define its "news fit to print" standard or to address legitimate previous complaints that the *Times* was suppressing, over a seven-year period, important, electorally-significant stories about the dysfunction and politicization of the judicial selection and discipline processes. This, in addition to black-balling CJA and denying the public a stunning model

of citizen action. The envelope I gave you also contained a December 2, 1996 supplement, detailing the vicious and depraved manner in which a *Times* editor had addressed that October 1996 complaint -- unrestrained by higher editors.

Although you promised to read these materials, we never heard from you. Nor did we get a meeting with you, which is what our complaint had requested (Exhibit "A-1"). Instead, the *only* discernible result was that less than 2-1/2 weeks later, on May 24, 1997¹, the *Times* announced the promotion of two of the worst offenders whose misconduct had been particularized by our complaint and supplement: Joyce Purnick² and Michael Oreskes. (Exhibit "A-3": "*Times Names 4 to Senior Positions on the News Staff*"). The pattern of *Times* suppression and black-balling remained unchanged.

This past December and January, as an electorally-significant and time-sensitive story developed about Governor Pataki's manipulation of the judicial appointments process and the complicity of the State Senate -- both up for re-election this year -- *Times* suppression reached critical proportions. For that reason, I called your office on January 8th and summarized the relevant background for your secretary, Joanne Ficaró. I told her that two *Times* editors, Jerry Gray, the Metro Desk political editor, and Ms. Purnick, his superior, were refusing to return phone calls and messages about the story. Ms. Ficaró told me that you were traveling around the country throughout January. In your absence, I turned to *Times* Executive Editor, Joseph Lelyveld. However, Mr. Lelyveld's response was precisely what our 1996 complaint and supplement chronicled to be the *modus operandi* of *Times* editors and upper management when presented with legitimate and substantial complaints: he ignored it³.

¹ The week earlier, on May 16th, the *Times* reported that Ms. Purnick had received the 1997 Meyer Berger award from the Columbia School of Journalism for "distinguished reporting" (Exhibit "A-2").

² Ms. Purnick's prior promotion to Metro's Deputy Editor was announced less than a month after we filed our October 21, 1996 complaint. Pages 12-22 of that complaint had featured a "blow-by-blow" description of her misconduct as a Metro reporter/columnist.

³ Our October 21, 1996 coverletter (Exhibit "A-1") specifically requested that the complaint it enclosed be brought to Mr. Lelyveld's attention. Pages 5-6 of that complaint recounted Mr. Lelyveld's non-response to our prior complaint against the *Times*: a November 27, 1994 letter to Hilton Kramer, which we had sent him -- and you -- by certified mail/return receipt [Compendium IV: Doc. 1] and which had expressly requested a meeting with you, Mr. Lelyveld, or your representatives. The letter chronicled the background of *Times* suppression that had necessitated CJA spending \$16,770 to run its October 26, 1994 *Times* Op-Ed page ad, "*Where Do You Go When Judges Break the Law?*" about unaddressed corruption issues bearing on that year's upcoming gubernatorial and Attorney General elections. You also did not respond.

Mr. Lelyveld's failure to professionally discharge his duties as Executive Editor was the subject of my January 14th and January 15th telephone calls to your office. In my January 15th conversation, I spoke with Tim Cummings, who identified himself as an assistant to your assistant. Among the things I told him was that I was standing in the lobby of the *Times*, having unsuccessfully attempted to arrange a meeting with Ms. Purnick and Mr. Gray. I also stated that I had just spoken with Mr. Lelyveld's secretary, Barbara Laverty, who told me that there was nothing Mr. Lelyveld could do because he had "utmost confidence" in *Times* editors and that we had to deal with the Metro editors. This, notwithstanding that all the documentation which should then have been before Mr. Lelyveld established, resoundingly, that these two *Times* Metro editors -- who have no superiors other than Mr. Lelyveld and yourself -- were refusing to respond to our reasonable telephone messages and written communications and were deliberately suppressing an important newstory, involving the integrity of an essential government process.

I further told Mr. Cummings that I had just come from the Association of the Bar of the City of New York, where Steven Brill had given a presentation characterizing the lack of accountability in the media as "almost total". I stated to Mr. Cummings that I was sure that Mr. Brill, who had described his new magazine *Content* as an expose of the media's power, arrogance, and lack of accountability, would be most interested in examining how the *Times* handles legitimate complaints of journalistic misconduct by its reporters and editors, such as ours⁴. I left similar messages with Mr. Lelyveld's office and with the Metro Desk. Although I emphasized the necessity of your personal review of this matter, we have received no phone call or other communication from your office since you returned from your travels. Nor has anyone else from the *Times* contacted us.

The on-going and catastrophic consequence of the *Times* suppression of this most-recent manipulation of the judicial selection process by Governor Pataki-- like its suppression of past stories about his manipulation of that process -- may be seen from the self-serving claim of the Governor's office, reported on the front-page of the February 2nd *New York Law Journal*:

"Governor Pataki's appointments are based on merit and the Governor is proud of his record on appointments."

It is obvious to us that unless you, as publisher of the *Times*, examine the evidence presented by our past and present complaints showing that your reporters and editors -- and, especially, Ms. Purnick -- have been suppressing story after story about how this Governor: (1) denies the public *basic* information about his judicial appointments process; (2) denies the public *any* information to substantiate the supposedly "highly-qualified" ratings his judicial nominees have received from his judicial screening committees -- including the screening committee reports to which his own Executive Orders *expressly*

⁴ Coincidentally, I am sure, the *Times* ran an article about Mr. Brill's new magazine two weeks later (Exhibit "B").

entitles it -- and (3) ignores evidentiary proof that the ratings are "rigged" and are *not* the product of "thorough inquiry", as *expressly* required by those Executive Orders -- he will not only continue to shamelessly manipulate the judicial "screening" process, but will use his media-unexamined claims about his "merit" judicial appointments to sell his "re-election". **And he will be re-elected.**

To further assist you in recognizing the utmost importance of your intervention and the deliberate misconduct of *Times* staff, including those in whom you repose your greatest trust, CJA has gone to the time, effort, and expense of providing you with this summary of the recent stories for which we sought coverage, our communications with *Times* editors and reporters⁵, and their response.

The origin of the story for which CJA sought *Times* coverage from mid-December of last year through mid-January of this year lies in two stories featured by our 1996 complaint as having been suppressed by the *Times*. The first concerned our 1992 critique of the judicial qualifications of Westchester County Executive Andrew O'Rourke, who -- in 1991 -- had been nominated by President Bush for a federal judgeship. Our critique PROVED that Mr. O'Rourke was "thoroughly unfit" for *any* judicial office, let alone for a federal judgeship, by examining his qualifications, as he set them forth on a questionnaire he was required to fill out for the U.S. Senate Judiciary Committee. Additionally, the critique "pierced the veil of secrecy" which cloaks the federal judicial screening process and exposed its gross deficiencies. This included the screening of the ABA and City Bar, whose ratings approving Mr. O'Rourke we demonstrated were *not* the product of adequate investigation and were insupportable. Yet, despite the enormity of our achievement and our herculean attempts to obtain *Times* coverage -- including a complaint to you⁶ -- the *only* thing the *Times* published was our Letter to the Editor, in expurgated form, entitled, "*Untrustworthy Ratings?*" (7/17/92) (Exhibit "C-1"). Examination of our critique showed that instead of a question mark after the title, there belonged an exclamation point. The second story concerned Governor Pataki's unexplained failure to set up permanent judicial screening committee and his continued use, throughout the first half of his term, of a temporary judicial screening committee -- as to which the Governor withheld virtually *all* information from the public. Nor would the Governor divulge information about the qualifications of his judicial appointees, all alleged to have been found "highly qualified" by his temporary judicial screening committee. Evidence showed those ratings were being rigged by the Governor's office. As particularized by our 1996 complaint (pp. 17-21), despite the importance of this story and our similarly enormous efforts to obtain *Times* coverage, the only thing the

⁵ To reduce the volume of this voluminous presentation, we have omitted the substantiating enclosures to various exhibits. Those exhibits consist of materials we transmitted to *Times* editors and reporters. You should be able to obtain from them the substantiating enclosures. If not, we would be pleased to provide you copies. We have also omitted the receipts confirming the fax transmittals, which likewise we would be pleased to provide you.

⁶ See pp. 6-10 of our 1996 complaint for a description of our June 30, 1992 letter to you and our other attempts to obtain *Times* coverage for our ground-breaking critique.

Times published was our Letter to the Editor, in expurgated form, entitled, "*In Choosing Judges, Pataki Creates Problems*" (11/16/96) (Exhibits "C-2"). Expurgated from the Letter was that the ratings were being "rigged".

The *Times* publication of our Letter to the Editor about Governor Pataki's continued use of a temporary judicial screening committee shows how powerful the press can be as a conduit for essential information to the public. Even expurgated, that published Letter (Exhibit "C-2") set off a stir within the New York bar community, ultimately forcing the Governor to appoint his permanent judicial screening committees. Yet, the *Times* did not investigate why those permanent screening committees had not been previously set up or examine anything about the qualifications of the nearly 100 judges appointed by the Governor prior thereto. Nor did the *Times* examine whether -- and how well -- those permanent committees were thereafter functioning -- or inform the public that the Governor was continuing to disregard the public's rights to *basic* information, including to the screening committee reports on the qualifications of his judicial appointees. To no avail, we urged the *Times* to follow these stories, sending written communications to Ms. Purnick and other staff reporters (Exhibits "D-3"- "D-6")⁷. Likewise, to no avail, the *Times* ignored other and related breaking stories, bearing upon the integrity of government which we provided to its reporters and editors (Exhibits "F-1"- "F-6"⁸ and "G-2", "G-5"- "G-7"⁹).

In December 1997, the two separate stories -- of Mr. O'Rourke's *demonstrated* unfitness for judicial office and Governor Pataki's *demonstrated* manipulation of his judicial screening process -- came together when the Governor nominated Mr. O'Rourke to the State Court of Claims based on a representation that he had been rated "highly qualified" by the Governor's State Judicial Screening Committee. As with his prior judicial nominees, the Governor would not provide *any* substantiation of

⁷ I believe that the *Times* July 2, 1997 article, "*In a Candid Book, Lawyers Judge the Judges*" (Exhibit "E-1"), was prompted by information about the book contained in CJA's June 2, 1997 letter to Governor Pataki (Exhibit "D-5", p. 8). The article's author, James Barron, failed to return my several phone messages for him. CJA's Letter to the Editor, responding to the article and which we had titled "*In Choosing Judges: Part II*", was not published (Exhibit "E-2").

⁸ For the full text of CJA's \$3,000 public interest ad, "*Restraining Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97), which was provided to the *Times* by the faxes reflected by "F-3"- "F-5", see Exhibit "P-2". Also, there is no transmittal letter or fax for Exhibit "F-2", consisting of CJA's written testimony before the City Bar on May 14, 1997, which I hand-delivered to the *Times* on that date in an envelope addressed to Ms. Purnick and Jan Hoffman.

⁹ During this period, we also submitted several versions of a Letter to the Editor about the confirmation process to the federal judiciary (Exhibits "G-2", "G-5", "G-6"- "G-8") responding to a February 14, 1997 *Times* editorial, "*Too Many Federal Court Vacancies*" (Exhibit "G-1") and subsequent published Letter to the Editor of Senate Judiciary Chairman Hatch and article (Exhibits "G-3" and "G-4").

that rating -- even the screening committee report on Mr. O'Rourke's qualifications to which the public is *expressly* entitled by the Governor's own Executive Order #10, ¶2d. Since our 1992 critique was dispositive of Mr. O'Rourke's unfitness -- and the State Judicial Screening Committee had never contacted us -- we knew for a certainty that its rating was not the product of the required "thorough inquiry". Indeed, we suspected that Mr. O'Rourke had obtained that rating by fraudulent representations. This was the posture of the story on December 19, 1997 when I contacted Jack Kadden, an editor at the *Times* Metro Desk. By then, the *Times* had already recognized the public interest in Mr. O'Rourke's appointment to the Court of Claims by reporting on it on December 13, 1997, the day after it was announced (Exhibit "H-4": "*Westchester Chief Nominated for Judge, a Longtime Dream*"). However, neither in that article -- nor in its previous articles about Mr. O'Rourke's judicial aspirations, published during that year (Exhibit "H-1" and "H-3") -- had the *Times* reported anything about his judicial qualifications, with the exception of an article about *Gannett's* lawsuit to obtain the file of Mr. O'Rourke's divorce proceedings, based on its purported relevancy to his "suitability for a possible judgeship" (Exhibit "H-2").

The story for which we sought coverage was also a natural follow-up to the *Times* strongly-worded editorial, "*Governor Pataki's Message to Judges*" (Exhibit "I-3"), appearing just days earlier -- an editorial which questioned whether the Governor would "politicize the court system yet further by appointing an undeserving crony" to be presiding justice of the Appellate Division, First Department. I told Mr. Kadden that Mr. O'Rourke was the Governor's most recent "crony" to be appointed to the state bench, that we could prove it, and that CJA was going to be mounting a citizens' campaign to prevent confirmation. I then faxed him a short written summary (Exhibit "J-1"), which closed by emphasizing the important role of the press: "The *only* way Mr. O'Rourke will not be sitting on the state bench is if the press does its part." Notwithstanding Mr. Kadden's expressed interest during my phone conversation with him, we heard nothing from him thereafter.

On December 23rd, I again called the *Times*. I learned that the Metro Desk had a political editor, Jerry Gray and that, rather than contacting the Albany Bureau separately about the story, I could go through him. I spoke with Mr. Gray several times that day, getting through on his direct line or when he called me back. He could not have been more enthusiastic and interested. By then, a front-page *Gannett* newstory had appeared, "*O'Rourke Could Be Wearing Judge's Robes in January*", which described that the State Judicial Screening Committee had been concerned that Mr. O'Rourke had not practiced law since 1983, but that Mr. O'Rourke had reminded it that the ABA and City Bar had approved him for his federal judgeship. I told Mr. Gray that Mr. O'Rourke knew from our critique that those ABA-City Bar ratings were insupportable, but was using them to bootstrap the real issue of his qualifications. Although I discussed with Mr. Gray many aspects of the story -- including CJA's view that because Senate confirmation was a sham, rubber-stamp, Mr. O'Rourke's confirmation was going to have to be stopped *before* it reached the Senate -- he repeatedly brought the discussions back to the critique: urging me to provide him with a copy and offering to have a messenger pick it up from us so that he

could have it as soon as possible. Indeed, based on what I told him about the dispositive nature of our critique, Mr. Gray stated that he not only wanted to review it, but that he would present it to Albany reporters, with whom he was going to meet that Friday. This is reflected by the fax I sent to him, a copy of the fax I had sent to Mr. Kadden, on which I wrote "Thanks! Will call back with info about getting you the critique ASAP" (Exhibit "J-1"). We spoke once or twice after he got that fax and in our last very pleasant phone conversation on December 23rd, which was shortly before 2:00 p.m., Mr. Gray was going to reserve a messenger, so that there would be no delay once I had the critique ready for pick up, which I told him would be within the following hour or so. Yet, ten minutes later, when I called to tell him I had the critique in-hand, I got his answering machine. All afternoon long, I got his answering machine -- and likewise the following day, December 24th. With each call, I left a recorded message for him, including messages that stated that I was waiting for his call, even though I had to go out (which was true). It seemed fairly obvious that someone on the *Times* staff had "reached" Mr. Gray, telling him to forget about the critique -- and ignore us.

Nevertheless -- and undeterred -- on Christmas eve, I hand-delivered the critique to the *Times* under a coverletter for Mr. Gray (Exhibit "J-2"), which recited the foregoing facts, summarized the significance of the story, and outlined our strategy of citizen opposition: to keep Mr. O'Rourke's nomination from reaching the Senate, we were going to be calling upon the Governor to retract it and upon the State Judicial Screening Committee to withdraw its "highly qualified" rating of Mr. O'Rourke. In closing my coverletter to him stated,

"Our citizen opposition to this nomination -- and the extraordinary documentation on which that opposition rests -- is a big story. The *Times* needs to report what is happening. If it doesn't, you can be sure that Mr. O'Rourke's nomination is going to be rubber-stamped through, just as they all are.

1998 is a gubernatorial election year¹⁰. It's not too soon to let the voting public see what Governor Pataki has been doing with his enormous power over judicial appointments: manipulating the selection process to install party hacks on the state court bench." (Exhibit "J-2").

On Friday, December 26th, as our citizen opposition became a reality, I faxed Mr. Gray a copy of our correspondence (Exhibits "J-3", and "J-4"): our letter to Mr. O'Rourke calling upon him to substantiate his "highly qualified" rating and to deny or dispute the findings of our critique as to his unfitness for

¹⁰ A footnote pointed out that 1998 was also a year when the Attorney-General would be up for re-election and that CJA had "much to contribute to the *Times* coverage of 'the Vacco Record' -- as we have on 'the Pataki Record'." referring to CJA's \$3,000 public interest ad in the August 27, 1997 *New York Law Journal*, "Restraining 'Liars in the Courtroom' and on the Public Paryoll". (See Exhibit "P-2" and fn.16, *infra*.)

judicial office, our letter to the Governor's office to withdraw the nomination, and a draft first-page of our letter to the State Judicial Screening Committee to withdraw Mr. O'Rourke's "highly qualified rating". I also informed him that *Gannett* was going to be writing a story (Exhibit "J-4"). I asked that he get back to us by Monday, December 26th.

On Monday, December 26th, I hand-delivered to the *Times* hard copies of all those letters (Exhibits "J-5", "J-6", and "J-7"). By then *Gannett* had run an article about our citizen opposition and our demand for the screening committee report on Mr. O'Rourke's qualifications, which had not been produced. Included in that story was a comment by the Governor's press spokesman that he didn't think there was a screening committee report. The consequence of there being no committee report was that Mr. O'Rourke's nomination was a nullity -- and there was nothing for the Senate to confirm. From the lobby, I also left a telephone message for Mr. Gray. There was no return call, either the next day or the day after.

Finally, on Wednesday, December 31st, after leaving yet another message on Mr. Gray's voice mail, I was able to reach him through the Metro Desk, rather than by his direct line -- on which there was always a machine. In answer to my queries, Mr. Gray confirmed that he had gotten all our materials and stated affirmatively that the *Times* would be writing a story. Again, he told me that he was going to meet with the Albany reporters about it and that he would get back to us by Tuesday, January 6th -- if not by Friday, January 2nd.

That Mr. Gray had promised to call by January 6th is reflected by my faxes to him, sent on January 5th and then on January 8th (Exhibits "J-8" and "J-9"). These provided him with yet more of our correspondence: our letter to the Senate Judiciary Committee as to its failure to contact us about our citizen opposition and the basis therefor in advance of its scheduled January 13th meeting on Mr. O'Rourke's confirmation -- at which no public testimony was to be allowed (Exhibit "J-8") -- and our letter to Chief Judge Judith Kaye, seeking her intervention (Exhibit "J-9"). My urgent phone messages for Mr. Gray on January 7th and January 8th were not returned. Likewise, Ms. Purnick, who supervises Mr. Gray, did not return my urgent phone messages: two on January 8th, and one on January 9th -- which apprised her that Mr. Gray had not gotten back to us and was not returning our calls. It was several hours after my first unreturned message for Ms. Purnick on January 8th that I first called your office. The following day, after my third unreturned message for Ms. Purnick, which I then followed by a fax to her¹¹, enclosing our most recent letter to the Senate Judiciary Committee (Exhibit "J-10"),

¹¹ In pertinent part the fax to Ms. Purnick stated: "I know you are busy -- but this is URGENT, involving the integrity of the Governor's judicial appointments 'process' and the State Senate's 'process' of confirmation. Mr. Gray has not gotten back to us, as he promised to do. Especially in a year when the Gov. is up for re-election, doesn't the *Times* recognize its obligation to report on his manipulation of the judicial appointments process and complete disregard of the public's rights?" (Exhibit "J-10").

I contacted Mr. Lelyveld's office. By that time, only four days remained until the January 13th Senate confirmation.

The substance of my conversation with Mr. Lelyveld's secretary, Barbara Lavery, is reflected by the letter I immediately wrote and faxed to her (Exhibit "K-1"). It not only specifically requested that Mr. Lelyveld obtain the documentation substantiating our instant complaint of misconduct by Mr. Gray and Ms. Purnick, but that he obtain our 1996 complaint. I pointed out that among the reporters whose misconduct had been particularized by that earlier complaint were Ms. Purnick, then a Metro reporter. In addition to sending a copy of that fax to your office (Exhibit "K-3"), I sent it to the Metro Desk, with an express request to Ms. Purnick (Exhibit "K-2") that she provide Mr. Lelyveld with the materials we had sent her over the past year -- most relating to judicial selection issues -- all of which she had suppressed (Exhibits "D-3", "D-5"- "D-6", "F-2", "F-4"). Because of the imminence of Mr. O'Rourke's Senate confirmation, we invited Mr. Lelyveld to call over the weekend. Neither he nor anyone on his behalf called.

Consequently, at about 10:30 a.m. on Monday, January 12th, after I had verified that Senate confirmation was, in fact, going to proceed the next day, I called Mr. Lelyveld's office. Again, I spoke with Ms. Lavery, again I emphasized the urgency of the situation, and, thereafter, again followed up by sending a fax letter (Exhibit "L-1") reiterating the exigency involved. I stated that I was available until 3:15 p.m. "to answer any questions" and that the following day, January 13th, would be at the Senate confirmation in Albany. I faxed copies of that letter to the Metro Desk, as well as to your office (Exhibits "L-2" and "L-3"). No one ever contacted us -- although Ms. Lavery had assured me that an editor would.

Apparently, the *Times* saw Mr. O'Rourke's Senate confirmation as having sufficient public interest to have made *advance* arrangements for it to be covered. Indeed, when I went to the *Times* Albany Bureau on January 13th, following the anticipated sham Senate Judiciary Committee meeting on the confirmation, Ray Hernandez told me that the story was being handled by Deborah West of the Westchester Bureau -- whose Westchester number he wrote on a piece of paper and gave me (Exhibit "M-1"). I told Mr. Hernandez that I had voiced citizen opposition at the meeting and had given the Senators a two-page hand-out. He eagerly took the copy I gave him (Exhibit "M-2"), stating that he would fax it to Ms. West.

In my brief conversation with Mr. Hernandez, I specifically asked whether he was familiar with our citizen opposition and whether Mr. Gray had shown him the materials we had provided him about it, including our 1992 critique of Mr. O'Rourke's judicial qualifications. Without answering, Mr. Hernandez picked up the telephone and called Mr. Gray, to whom he began speaking in my presence. I left after I asked Mr. Hernandez whether Mr. Gray wished to speak with me -- to which he indicated -- without asking Mr. Gray -- that the answer was no.

I subsequently spoke with Ms. West. She confirmed that she had written the *Times* January 14th article, "*Westchester Leader is Confirmed For Seat on State Court of Claims*" (Exhibit "H-6"), the unedited version of which she stated was twice the size. Ms. West would not reveal whether her original included my statements at the Senate Judiciary Committee. She did concede, however, that the A.P. wire had described it¹². Aside from the A.P. wire and what she had read in *Gannett*, she stated she knew *nothing* about our opposition or our efforts over the preceding weeks to obtain *Times* coverage. Even the two-page summary of our opposition, which I left with Mr. Hernandez, she stated she had not received -- from him or from the *Times* Metro Desk.¹⁴ Ms. West also suggested that our mistake had been in not contacting the Westchester Bureau directly -- a particularly ironic suggestion inasmuch as I did initially call the Westchester Bureau Chief Joe Berger¹⁵ -- and got his machine instructing callers

¹² Donna Liquori, the A.P. reporter who had been at the Senate Judiciary Committee meeting, confirmed for me that her story contained a description of my statements to the Senators at the Committee meeting, but could not provide me a copy because it is only available to A.P. subscribers, such as the *Times* (Cf. 10/21/96 complaint, fn. 5). See following footnote.

¹³ My quoted statements to the Senate Judiciary Committee were reported by *Gannett* as follows: "No! There is citizen opposition to this nomination". "This nomination is not properly before the Senate, and this committee has not interviewed the citizen opposition nor received the proper evidence". "There is no committee report on Mr. O'Rourke's qualifications". "It is required as a matter of law. It must be available to the public for public inspection. This nomination is a nullity." (Exhibit "M-3": "*O'Rourke Confirmed as Judge*", 1/14/98).

¹⁴ Ms. West declined to give me the fax number of the *Times* Westchester Bureau so that I could fax her the two-page summary (Exhibit "M-2"). Consequently, within 20 minutes of our phone conversation on January 19th, which was shortly before noon, I hand-delivered a copy to the *Times* Bureau, sliding it under its locked door. With it was CJA's informational brochure, since Ms. West had stated she was unfamiliar with our citizens organization. Although I left a follow-up message for Ms. West confirming delivery, we received no subsequent response from her.

¹⁵ As reflected by our October 21, 1996 coverletter to our complaint (Exhibit "A-1" and footnote), Joseph Berger was among those responsible for *Times* suppression and black-balling of us. On March 8, 1993, just two days after Mr. Berger had written a front-page Metro story about Mr. O'Rourke's declining to seek appointment by President Clinton for a federal judgeship, "*O'Rourke Rejects Offer of Judicial Bid*", I contacted him about the REAL reason why: our critique of Mr. O'Rourke's qualifications. I met with him on that date, giving him in-hand a copy of the critique and a lengthy oral presentation about its significance. This was followed up by subsequent communications, including a March 8, 1993 letter [Compendium II: Exhibit "NN"], providing Mr. Berger with SIX different "angles" for a story about it. Nothing ever appeared -- and other vital, electorally-significant stories which we presented to him for coverage were, likewise, suppressed by him [Compendium II: Exhibit "OO"; Compendium IV, Doc. I, Exhibit "O"]. As indicated by our

to telephone Jack Kadden. This is why I had called Mr. Kadden on December 19th.

On Wednesday, January 14th, following my return from Albany and after reading the *Times* article on Mr. O'Rourke's confirmation (Exhibit "H-6"), I called Mr. Lelyveld's office. A different secretary, Deborah Hour answered the telephone. Stating that Ms. Laverty was not available, Ms. Hour insisted that there was nothing Mr. Lelyveld could do to assist us -- and that we had to speak with Mr. Gray. This, notwithstanding I told her, repeatedly, that we had turned to Mr. Lelyveld precisely because Mr. Gray was ignoring our phone calls and messages. Ms. Hour then connected me through to Metro and a male voice answered. I do not know if the voice which said, "hello" was Mr. Gray's, however this unidentified voice fell silent as I began to speak. Moments later the connection was severed. I immediately called Ms. Hour back to tell her what had happened and to reiterate that I wished to speak with an editor associated with Mr. Lelyveld's office. Her response was to hang up on me.

At that point, I called your office. This was now my second call to you. I conveyed what had taken place to the female voice who answered and was put through to Metro. Jessica Bagdorf, a Metro news assistant, picked up. I stated that Mr. Lelyveld's office had insisted that I speak with Mr. Gray and Ms. Purnick, although each of these editors had refused to speak with me, and that your office had now channeled me through. I told Ms. Bagdorf that I would be in Manhattan the next day, January 15th, and wished to arrange a meeting with Ms. Purnick and Mr. Gray, if possible. We agreed that I would call after 10:00 a.m. the following morning to confirm what arrangements had been made.

I did call shortly after 10 a.m. the next day, January 15th -- from the lobby of the *Times* -- and identified that fact to Eric Smith, a Metro news assistant, with whom I spoke. Mr. Smith told me that neither Ms. Purnick nor Mr. Gray were available and that they had not left any message for me. After discussing the seriousness of the matter with Mr. Smith, who stated he knew nothing about it and whose comments to me were uninformed, I told him I would call back at about 1:00 p.m. in the hope that a meeting could be arranged in the afternoon. I then telephoned Mr. Lelyveld's office. This time Ms. Laverty picked up the phone. Contradicting what she had told me on Monday, when she had stated that an editor would be getting back to us, Ms. Laverty asserted that there was nothing Mr. Lelyveld could do and that he had "utmost faith" in *Times* editors. Ms. Laverty repeated this mantra notwithstanding all that I had told her in our first conversation, on January 9th, that there was no basis upon which to repose trust in the editors -- a fact which our 1996 complaint had meticulously documented and which was documented, as well, by the materials relating to our instant complaint, all of which I had asked her to access for Mr. Lelyveld (Exhibit "K-1"). Ms. Laverty also denied that Ms. Hour had hung up the phone on me when I had called the day before -- which I protested was not only untrue but rather extraordinary if -- as Ms. Hour had claimed -- Ms. Laverty was not in when I called. It was immediately following this phone conversation with Ms. Laverty that I telephoned your office a third and final time, speaking with Mr. Cummings and requesting that, on your return from your travels, you personally review this

October 21, 1996 coverletter (Exhibit "A"), Mr. Berger never returned the critique to us.

matter.

Upon leaving the *Times* at about 10:30 a.m., I brought to the delivery room copies of CJA's 2-page hand-out to the Senators on the O'Rourke confirmation (Exhibit "M-2") and *Gannett* January 14th newstory of Mr. O'Rourke's Senate confirmation (Exhibit "M-3"), which, unlike the *Times* article (Exhibit "G-6"), included my statements at the Senate Judiciary Committee meeting. I placed these in an envelope for Ms. Purnick and Mr. Gray, together with a copy of the "In Reply" column written by CJA's Director about our opposition to the O'Rourke nomination/confirmation that appeared in *Gannett* on January 12th (Exhibit "M-4") and the December 26th *Gannett* article to which it responded, highlighting the quote from the Governor's spokesman that he did not think there was a screening committee report on Mr. O'Rourke's qualifications (Exhibit "M-5"). I was told that it would be delivered within the next hour or so.

Three hours later, at 1:00 p.m., I again called the Metro Desk and spoke with Mr. Smith. There was no message for me and, according to him, Ms. Purnick had told him that she already spoke to me. I vigorously protested this outrageous lie. I told him that the last time I had spoken to her was in August. In fact, my last phone conversation with Ms. Purnick was *not* August 1997, but August 1996 -- as recounted at pages 19-20 of our October 1996 complaint. Aside from that, I spoke to Ms. Purnick on two further occasions, in person. The first occasion, on November 19, 1996, when Ms. Purnick participated on a panel on judicial independence, is recounted at page 5 of our supplement to our complaint. The second time, on April 17, 1997, was when Ms. Purnick's participated as a panelist in a program entitled, "What's Happening to Freedom of the Press" (Exhibit "N").

The consensus of the presenters at the April 17th program was that Governor Pataki's administration, as well as that of Mayor Giuliani, were extremely hostile to the press and had dramatically curtailed its access to stories about the government's functioning. According to Ms. Purnick, these restrictions had required the press to be "more aggressive" and to develop "different sources" -- among them, "whistle-blowers". Her view was that most of the information comes out through these various sources but that was "because we keep pushing". As demonstrative of this "pushing" and her own commitment to meet her journalistic obligation to get the news, Ms. Purnick related that when she had wanted information about the closing of shelters, she had urged the *Times* to sue for it -- which it did after unsuccessfully seeking to obtain disclosure through a Freedom of Information request.

During the portion of the program reserved for questions and comment, I presented a different answer to the question as to "What's Happening to Freedom of the Press": the press itself. I explained that notwithstanding Ms. Purnick's assertion about utilizing other channels to get information, including relying on "whistle-blowers", the experience of our whistle-blowing citizens organization was that she and the *Times*-- among other press -- was no better than the Administrations it purported to cover in its wilful suppression of stories about the closed-door processes of judicial selection and discipline. As proof, I lifted up a copy of our 1996 complaint together with its seven documentary compendia of exhibits, and the supplement to it, chronicling seven years of *Times* suppression. I also went from my

front-row seat to place those 15 pounds of documents on the dais in front of Ms. Purnick. To my recollection, neither she nor anyone else publicly responded to my charge as to press suppression of these kind of stories. When the program concluded immediately thereafter, I went up to Ms. Purnick. She stated that she would not discuss the complaint *with me*, albeit acknowledging that she had read it.

As you surely know from the copy of the complaint I gave you last May, there is a great deal for the *Times* to discuss with us about it. And there is a great deal for the *Times* to discuss with us about our current complaint -- and as soon as possible. The *Times* is NOW suppressing new stories related to those it had previously suppressed. Both this week and last, we have tried to get the Metro Desk to follow through on the item it reported on January 29th (Exhibit "H-7": "*Ex County Chief's Deal On Pension is Questioned*"): that Mr. O'Rourke will be collecting -- in addition to his \$113,000 judicial salary -- a \$80,000 annual government pension. Notwithstanding the *Times* there reported that Senators Dollinger and Leichter were seeking "more information about the O'Rourke payment plan" from the head of the Office of Court Administration, Administrative Judge Jonathan Lippman, the Metro Desk has refused to run any story about Judge Lippman's response to the Senators. As pointed out by our February 9th fax (Exhibit "O-3"), Judge Lippman lied to them, including by flagrantly misrepresenting §211 of the Retirement and Social Security Law. This was to cover up the fact that he violated the law in granting the "O'Rourke payment plan". Such fax -- and our other faxes on Mr. O'Rourke's waiver -- have particularized the law and Judge Lippman's violation of the public's rights. Here, too, we have given the Metro Desk another sterling example of citizen action by CJA, single-handedly protecting the public. Indeed, based on §211, we have called upon Judge Lippman to reconsider the waiver and to rescind it and have called upon Senators Dollinger and Leichter to investigate Judge Lippman for his demonstrated official misconduct (Exhibits "O-1", "O-3", "O-5"). Yet, there hasn't been a peep from Ms. Purnick, Mr. Gray, or anyone else at the Metro Desk to this important story which -- like the others we have presented -- is not just *independently-verifiable*, but easily so.

To verify the facts, the *Times* does not have to interpose court papers, as it did in the federal case described in Saturday's front-page Metro article, "*State Lawyer Faces Queries About Résumé: Attorney General's Aide Repeatedly Failed Bar*" (Exhibit "P-1")¹⁶. All that it has to do is READ the plain

¹⁶ The CRITICAL issue in Attorney General Vacco's re-election campaign will be how he and his staff have performed on-the-job. Four years ago, the *Times* editorialized (9/17/94) that "the voters need to know how the candidates [for Attorney General] intend to handle the job's meat-and-potatoes work of defending the state against legal actions" (9/17/94). Attorney General Vacco's on-the-job performance in defending state officials and agencies in legal actions was the subject of CJA's \$3,000 ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", in the August 27, 1997 *New York Law Journal* (Exhibit "P-2"). Copies of the ad, with a coversheet, were faxed to the *Times* on that date (Exhibits "F-3"- "F-5"), as well as placed on the *Times* desk at the Federal Court in Foley Square on August 29th, also with a coversheet (Exhibit "F-6"). Back in 1994, the *Times* suppression of our attempt to follow through with its editorial and get the candidates for

language of §211 of the Retirement and Social Security Law, which we have sent it (Exhibit "O-1"), and send a one-line written request to the Office of Court Administration, asserting the public's *express* rights under §211(6), which *expressly* makes waiver applications, such as Mr. O'Rourke's, "a public record". Likewise, it has only to READ Executive Order #10, which we sent it (Exhibit "D-1"), *expressly* requiring screening committee reports on the Governor's judicial appointees to be made "available for public inspection" -- and send a one-line written request to Governor Pataki, asserting the public's unequivocal rights under its ¶2d. Such minimal action would be consistent with the standard that the *Times* purports to recognize, that "government officials are 'subject to scrutiny by the public'". It is certainly very little for the public to "expect" from the *Times*, from whom we are told to "Expect the World".

It seems to us that that *Times* new motto, "*The New York Times: Expect the World*" was introduced just about the same time we filed our October 1996 complaint. Yet, CJA has never "expect[ed] the world" from the *Times*. We have expected no more than basic professionalism and simple human decency from *Times* reporters -- and if not from them, from *Times* editors -- and if not from the lower ranked editors, then from their superiors -- and if not from them, then from you. With the exception of the Letters to the Editor Department, we have not found anything resembling professionalism and decency at the *Times*. As evidenced from our paper trail of complaints over the years, it is not for lack of trying.

It is our expectation that you will personally review both this complaint and our comprehensive 1996 complaint since all the *Times* editors to whom we have turned have either been part of the suppression and black-balling or have dishonestly refused to address the irrefutable proof that we have presented of such unconscionable and dangerous behavior. This includes the *Times* former Managing and Executive Editor, A.M. Rosenthal, to whom we sent a copy of our 1996 complaint and supplement under a coverletter dated April 30, 1997 (Exhibit "Q-2") -- a short nine days before I handed them to you at the 92nd Street Y. Mr. Rosenthal's May 7, 1997 letter response (Exhibit "Q-3") arrived a few days after I had presented those materials to you on May 8th. Without commenting on the complaint and supplement -- or returning them to us -- Mr. Rosenthal declined to become involved, stating, "I am no longer an editor at *The New York Times*. I suggest you address yourself to those who are." In view of Mr. Lelyveld's misconduct in refusing to address this complaint or, for that matter, our past complaints the responsibility falls to you.

Attorney General to respond to the "meat and potato issues" it had identified, and failure to cover key judicial issues relating to the gubernatorial race were the background to CJA's \$16,770 ad, "*Where Do You Go When Judges Break the Law?*", published on the October 26, 1994 Op-Ed page. This is recounted, in detail, in CJA's November 27, 1994 letter to Hilton Kramer [Compendium IV, Doc. 1], a copy of which we sent you and Mr. Lelyveld, certified mail, return receipt. (See fn. 3, *supra*).

Maybe, you'll decide that the *Times* does need a news ombudsman, after all.

Yours for a quality judiciary,



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

Enclosures

cc: Charlie Rose
Steven Brill, President, Chairman and Editor-in Chief, *Content*
Joseph Lelyveld, Executive Editor, *The New York Times*
Barbara Laverty, secretary
Deborah Hour, secretary
A.M. Rosenthal, *The New York Times*
Metro Desk: Joyce Purnick, Metropolitan Editor
Jerry Gray, Political Editor
Jack Kadden, Assistant to Metro Editor
Jessica Bagdorf, Metro clerk/news assistant
Eric Smith, Metro clerk/news assistant
Westchester Bureau: Joe Berger, Bureau Chief
Deborah West, *Times* reporter
Albany Bureau: Ray Hernandez, *Times* reporter
Sut Jhally, Executive Director Media Education Foundation
Blair Horner, Legislative Director/NYPIRG
Daniel Kolb, Judiciary Committee Chairman
Association of the Bar of the City of New York
Ralph Nader