CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Box 69, Gedney Station
White Plains, New York 10605

BY HAND

October 21, 1996

The New York Times
229 West 43rd Street
New York, New York 10036

ATT: Nancy Chan, Project Coordinator
Corporate Communications

RE: Complaint of Times' Suppression and Black-Balling

Dear Ms. Chan:

Transmitted herewith is a copy of our submission to Project Censored, which focuses our nomination of media censorship of major news stories on the censorship of *The New York Times*.

We ask that this submission be considered as a formal complaint against *The Times* in general and, in particular, against the following *Times* reporters: Joyce Purnick, Jan Hoffman, Jane Fritch, Joseph Berger, James Feron, and Bill Glaberson. Based on our direct, first-hand experience with them, as recounted in our submission and documented by the seven supporting evidentiary Compendia[1], they have not only engaged in censorship and suppression of objectively significant major news stories, but in knowing and deliberate black-balling of us.

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[1] As reflected by footnote 2 (p. 8), we have provided Project Censored a further folder of documents consisting of the Critique "material" we supplied former Executive Editor Max Frankel under our June 14, 1992 coverletter to him (Compendium II, Ex. "L"). Because of the expense to us of replicating yet another copy of our 1992 Critique and the Compendium of exhibits that accompanied it, we ask that you obtain such documents from Mr. Frankel's office or, alternatively, from the reporters and editors to whom we provided at least four additional copies--and who never returned them to us. These include: Joseph Berger, to whom a copy was personally given in March 1993 (*See* Compendium II, Ex. "OO", p. 2), as well as Jack McKenzie, who--since June 1992--has two copies (*See* Compendium II, Ex. "I", "N", "V"). Indeed, I met Mr. McKenzie on March 10, 1996 at a conference on "*Legal Ethics: The Core Issues*" and he acknowledged to me -- without my even asking -- that he still had the Critique. He practically recoiled in horror when I asked him whether he wouldn't consider pursuing a story about it.

Of course, should you be unsuccessful in obtaining the Critique and Compendium from them, we will provide you with a copy.

We specifically draw your attention to the last paragraph of our submission:

> "Because of the on-going cataclysmic consequences to the public resulting from *The Times* betrayal of the public trust and breach of its 'fundamental contract' with its readers, a copy of this recitation, including the substantiating Compendia, is being sent to *The Times* as a complaint so that curative measures may be immediately taken. These would include a meeting with the Publisher and Executive Editor of *The Times* -- or their representatives -- as requested by us so very long ago in our 1992 and 1994 letters." (at p. 23)

As discussed in our October 11th telephone conversation, we request that you bring this profoundly serious complaint to the attention of *Times* Publisher, Arthur Sulzberger, Jr., *Times* Executive Editor, Joseph Lelyveld, *Times* Managing Editor, Gene Roberts, and *Times* Metro Editor, Michael Oreskes.

You may be assured of our fullest assistance and cooperation.

Thank you very much.

Yours for a quality judiciary
and responsible journalism,

Elena Ruth Sassower

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

Enclosures

cc: Project Censored
Ralph Nader

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Box 69, Gedney Station
White Plains, New York 10605

TO: Project Censored

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

DATE: October 15, 1996

RE: 1996 Project Censored Nominations

The Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit, citizens' action organization. Since 1989, when we formed as a grass-roots citizens response to the collusive manipulation of elective judgeships by the Democratic and Republican parties in the Ninth Judicial District of New York, CJA has documented the dysfunction and corruption of the processes of judicial selection and discipline -- on local, state, and national levels. A copy of our informational brochure, containing our historical background, is enclosed.

Earlier this year, when Project Censored concluded its awards presentation to its 1995 "Top Censored" story winners by entertaining questions from the audience, I was among those asking questions. My question followed a discussion of tips to increase media attention and follow-up of stories. These included developing an "expertise", having a "letterhead", and employing a professional layout for written proposals, with "bullets" to highlight points.

Introducing myself as the coordinator of CJA, whose work I briefly described, I stated that we had an expertise, had a letterhead, and, in our professionally presented written presentations, had used "bullets". Nevertheless, year after year, the media had continued to shut us out, refusing to report -- let alone investigate -- the fully-documented stories we had provided them of political manipulation and corruption of the judicial selection and discipline processes, as well as of the judicial process itself. I described the media suppression as having been so total that the only way we had been able to "get the word out" to the public about the corruption of judicial elections in New York and the cover-up and complicity of New York's highest officials -- then running for re-election -- was by spending $17,000 of our own money for a paid advertisement on the Op-Ed page of *The New York Times* two weeks before the 1994 elections. I held up a copy of the October 26, 1994 ad, entitled, "*Where Do You Go When Judges Break the Law?*" (Exhibit "A"), reprinted on November 1, 1994 in *The New York Law Journal* -- at an added cost to us of $2,000.

I then asked the panelists directly whether they were aware of a taboo surrounding coverage of issues of judicial selection and misconduct and the reason for such media reluctance. Although there appeared to be a kind of implicit recognition among panel members of such problem, discussion was disappointingly limited and inconclusive. Frankly, it seemed as if it were taboo to discuss the taboo.

After the program was over, I approached panel members and provided them with a copy of CJA's informational brochure, containing -- as an insert -- a reprint of the *Times* Op-Ed ad, as well as reprints of our two Letters to the Editor, "*Commission Abandons Investigative Mandate*" (Exhibit "B") and "*No Justification for Process's Secrecy*" (Exhibit "C"), published in *The New York Law Journal* on August 14, 1995 and January 24, 1996, respectively. Like our Op-Ed ad, these letters were written by us in an attempt to "get the word out" after the media had failed and refused to report on the corruption and perversion of mechanisms for judicial discipline and selection. I also approached Peter Phillips, who gave me his card and encouraged me to send the Op-Ed ad and other materials to Project Censored as a nomination.

Consequently, CJA nominates our *New York Times* Op-Ed ad, "*Where Do You Go When Judges Break the Law?*", and the long-line of completely unreported or virtually unreported stories we have presented to the media ever since, including this year, which have been knowingly and deliberately censored from coverage. Individually and collectively, they demonstrate that when powerful, politically-connected judges or judicial candidates break the law, the media doesn't want the public to know about it.

Each of these long-line of stories presented the kind of information that the public not only has a right to know, but needs to know if the integrity of our democratic system is to be preserved. They were powerful "David and Goliath" stories about citizens battling and persevering against political manipulation of elective and appointive judgeships, the complicity of public officials and agencies of government charged with oversight, and the corruption of the judicial process, including the use of judicial office for ulterior, retaliatory purposes. They were stories that came complete with supporting documentary proof, which -- at every turn -- we either provided the media or proffered to them. Indeed, CJA had itself done the hard work of investigation and analysis and was presenting these dynamite stories to the media "on a silver platter". What was left for the media was the "gravy" -- to use their power as journalists to get the high-ranking political and civic leaders involved and complicitous in scandalous perversion of the rule of law and fundamental standards of integrity and accountability to answer the *simple straight-forward questions* that we had asked them -- but to which, for us, they had refused to respond. No wonder. These were the "jugular" questions, exposing the corruption of the system and the rank hypocrisy of posturing political and civic leaders.

The devastating result of the media "black-out" of these critical stories is that corruption of governmental processes and safeguards has been able to continue unabated, vicious retaliation against judicial whistle-blowing citizens has been able to continue unabated, and the uninformed public has, unknowingly, continued to re-elect and put their trust in complicitous government officials. The consequence has been both to perpetuate the reality of "government that doesn't work" and to feed public cynicism that nothing can be done. Indeed, the media has done a truly excellent job of depriving the public of the inspiring example of citizen action, represented by our watch-dog organization and its ground-breaking, unfunded, and completely *pro bono* work.

From the "postscript" instructions for "How to Nominate a Censored Story", appearing in your 1996 Yearbook, it is unclear to us precisely what the criteria for consideration are. You state:

> "The story should be current and of national or international significance. It may have received no media attention at all, appeared in your local newspaper or some special interest trade magazine, or been the subject of a radio or television documentary, which received little exposure or follow-up." (at p. 335)

We e-mailed you to clarify whether these instructions meant that Project Censored was not interested in censorship of stories which were statewide or regional in scope. Your response did not provide us with the answer to the question we asked and left us confused as to aspects about which we had not asked. Thus, you informed us that "current" was actually time-restricted -- relating to stories which had received media coverage since October 15, 1995 -- the deadline for last year's Project Censored nominations. This restriction plainly contradicts that portion of the instructions as relate to stories which "have received no media attention at all", which we had assumed implemented the fine suggestion of one of Project Censored's 1995 judges, Professor Sut Jhally, whose comments appeared in the 1996 Yearbook as follows:

> "As invaluable as the focus of Project Censored is, I think it may be a good time to expand the notion of what constitutes a 'censored' story. As it presently stands, to qualify requires that a story or report *exist* in the first place -- that it have some visibility, however slight. The question then becomes one of its under-reporting. But there are other stories, so under-reported that they fail even to materialize as one small story -- so censored as to be rendered invisible. Perhaps in addition to the list of the 10 most censored stories, a procedure could be established for highlighting every year one story that remained invisible but that should have been discussed by the media." (at p. 115).

A time restriction of one year would also ignore situations where newsworthy media pieces, over a year old, but nonetheless current, are continuously and repeatedly placed before the media for "exposure or follow-up", with no results. This is certainly the case as to our *Times* Op-Ed ad and our two *New York Law Journal* Letters to the Editor (Exhibits "A", "B", "C"). Indeed, what surprises us particularly about the Project Censored criteria for nomination is its focus on whether a newsworthy story was "picked up" by the media, rather than requiring any showing that there was knowing and deliberate suppression.

Our nomination is not merely about "under-reporting", but about purposeful censorship by the media, whose arrogance and utter lack of integrity and accountability CJA has chronicled in correspondence. Our most extensive and on-going correspondence has been with *The New York Times* and *Gannett Suburban Newspapers*, reaching, in both cases, the highest echelons of editorial and managerial power.

For immediate purposes, we will focus on the censorship of *The New York Times* -- a nationally prominent, national circulation newspaper. As recognized by Project Censored's 1996 Yearbook (at p. 17), when *The Times* does not choose to "bless" a story with coverage, the impact is carried over to other newspapers and media as part of the "follow the leader" mentality. *The Times* has its National Section, which includes articles not necessarily about the national scene, but about noteworthy happenings anywhere in the country -- be they local, regional, or state. It also has a daily New York Metro Section covering news from the metropolitan New York region and New York State. To provide that coverage, it has separate bureaus staffed with full-time reporters -- including one in White Plains, the county seat of Westchester County, New York, where CJA is based. *The Times* also has separate weekly sections, exclusively devoted to the surrounding suburban counties, among them Westchester County. Additionally, for many years, *The Times* had a Friday "Law Page". Consequently, whether our stories are viewed as local, state, or national, *The Times* has many formats within which they might have appeared. All have been suppressed by it.

To facilitate your evaluation of this suppression, we have organized our six-year correspondence with *The Times* in seven Compendia (I-VII), categorized according to story or story groups. Although each compendium "stands on its own" in documenting *Times* suppression, they are meant to be read together. This is not only because of their cumulative impact, but because the stories in the different Compendia are closely interrelated, with later stories reinforcing and further validating the transcending significance of earlier ones.

Each Compendium contains, in addition to our correspondence indexed with alphabetical exhibit tabs ("A", "B", etc.), illustrative articles and editorials from *The Times* on similar or even identical subjects. Such published pieces demonstrate *The Times'* own recognition of the importance of the subject matter, as well as the fact that the stories we were presenting -- albeit of political deal-making, corruption, and retaliation -- were not "far-fetched" stories akin to our reporting a sighting of green men from Mars. Rather, they were a censored part of what *The Times* was otherwise reporting -- although to a lesser degree, and perhaps in other areas.

That *The Times* would censor the stories we presented which exposed the fallacies of its editorial positions is obvious (Compendium IV, Doc. 2, pp. 2-3; Compendium V, Ex. "C"). But that it would censor stories which accorded fully with its editorial positions -- and, indeed, were about citizens implementing valuable recommendations made in its editorials, is simply inexplicable (Compendium IV, Doc. 1, p. 3 -- Ex. "J", "K", "L", "P"; Compendium II, Ex. "B", "D", "E", "F", "H", "I", "J", "L"). And, as our correspondence with *The Times* shows, when we pressed *Times* reporters, editors, and its publisher, Arthur Sulzberger, Jr., for an explanation, they refused to explain.

We believe it would be particularly appropriate for Project Censored to turn its attention to *The New York Times* this year. As may be seen from another *Times* Op-Ed ad -- this one promoting the newspaper -- 1996 is the hundredth anniversary of the famed *Times* motto: "*All the News That's Fit to Print*" and the paper's ownership by Adolph S. Ochs, whose "goal was to build a newspaper with

a reputation for a fair and complete news report backed by honorable business practices" (Exhibit "D"). The present Sulzberger family, who own and publish *The Times*, are descendants of Mr. Ochs. Unlike our unfunded citizens' organization, they presumably did not have to reach into their own pockets to pay for their self-promoting April 5, 1996 Op-Ed ad (Exhibit "D").

Six years ago, when Arthur Sulzberger, Jr. took over from his father as publisher of *The Times*, he repeated -- on the editorial page (Exhibit "E", 1/17/92) -- the pledge made by Mr. Ochs 96 years earlier when he bought *The Times*:

> "To give the news impartially, without fear or favor, regardless of any party, sect or interest involved."

This year, *The Times* editorial page (Exhibit "F", 8/19/96) highlighted that phrase as "holding a place of honor at *The Times*". Under the title "Without Fear or Favor", the entirety of Mr. Och's pledge was reprinted so that its noteworthy continuation could also be seen:

> "To make of the columns of *The New-York Times* a forum for consideration of all questions of public importance, and to that end to invite intelligent discussion from all shades of opinion."

The reality of *Times* reportage -- documented by our accompanying Compendia -- is very different. Where stories concern political manipulation of judgeships and judicial misconduct, there is a great deal of favoritism and protectionism by *The Times* in its censored reporting -- to the benefit of political and vested interests. Both on its pages and in its offices, *The Times* is anything but a "forum for consideration of questions of public importance" and, far from inviting "intelligent discussion", it wilfully shuts it out and blackballs those who are its spokemen. This is true in its news reporting, in its editorials, and in its Letters to the Editors. Moreover, Mr. Sulzberger and *Times* Executive Editors take no corrective action when such *Times* censorship -- impacting on the ability of citizens to intelligently exercise their franchise rights -- is brought to their attention.

So that you can "begin at the top" with this "Top Censored" nomination, we direct your attention to the two letters we previously sent to Mr. Sulzberger, alerting him to the suppression of electorally-relevant and objectively significant stories by *Times* reporters and editors. These letters requested Mr. Sulzberger to clarify the heralded "*All the News That's Fit to Print*" standard and the "highest standards of journalism and business" to which he and his predecessors had pledged themselves. They also requested an opportunity to meet with him or his representative to discuss "the reality of *The Times'* coverage of major news stories directly affecting the public interest".

Because our second letter, dated November 27, 1994 (Compendium IV, Doc. 1), recites the background of *Times* censorship that led us to place our $17,000 Op-Ed ad (Exhibit "A"), we ask that you begin with that letter. Indeed, that letter is important for another reason: it is the *prototype* for the Compendia accompanying this submission in that it combines a presentation of our prior

correspondence with *The Times*, with *Times* articles and editorials that show that the newspaper should have readily embraced the story, rather than -- as it did -- continually censor and suppress it. Specifically, the articles and editorials annexed to our November 27, 1994 letter showed that *The Times* had repeatedly recognized that politicians control judicial elections in New York, had decried the prevalence of uncontested and cross-endorsed judicial races, had reported on retaliation against whistleblowers and conflict-of-interest, and opined as to the necessity that electoral candidates respond to "meat and potatoes" issues as to how they will perform their duties.

So devastating was our presentation in our November 27, 1994 letter that neither Mr. Sulzberger nor *Times* Executive Editor Joseph Lelyveld ever responded to it. In and of itself, this is shocking -- but even more so because that letter, to which both Mr. Sulzberger and Mr. Lelyveld were sent copies by certified mail, return receipt, was actually addressed to Hilton Kramer, whose scathing column called "*Times Watch*" is a regular feature in the *New York Post*. Given that fact, one would have expected their response -- lest Mr. Kramer report in his column that they had not done so. However, *The Times* did not respond and, for reasons unknown to us, Mr. Kramer did not seize the opportunity to expose the story of *Times* censorship, which our November 27, 1994 letter dispositively chronicled.

As to our first letter to Mr. Sulzberger, dated June 30, 1992 (Compendium II, Ex. "P"), it enclosed a copy of the complaint we filed against *The Times* with the New York City Department of Consumer Affairs. Our complaint contended that *The Times* motto "*All The News That's Fit to Print*" was a "false and misleading advertising claim". In pertinent part, it stated:

> "For years, *The Times* has been considered a newspaper of record -- a reputation it actively promotes through its front-page motto 'All the News That's Fit to Print'.
>
> Such motto not only implies that *The Times* is competitively superior to newspapers not making that claim, but constitutes an affirmative representation to the public that purchase of *The Times* provides *all* information meeting objective standards of fitness -- and that anything rejected by it for publication does *not* meet those objective standards.
>
> *The Times* nowhere sets forth its criteria for determining the fitness of the news it prints. In view of *The Times*' obvious space limitations, we presume such criteria is two-fold: news which the public not only has a right to know, but which it *needs* to know to protect itself and to preserve the integrity of our democratic system.
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> ...
>
> *The Times* is not only a public institution, but a private business enterprise. As such, it must be held to the standard applied to other businesses in the City of New York -- namely, truth in advertising and avoidance of fraud upon the consuming public."

Such complaint was prompted by the refusal of then *Times* Executive Editor Max Frankel to explain *The Times* suppression of our six-month investigative critique of the federal judicial screening process, which we had submitted to the Senate Judiciary Committee and Senate leadership in May 1992, together with a request for a moratorium of all judicial confirmations pending an official investigation of the gross deficiencies we had uncovered. As summarized in the critique and moratorium request:

> "a serious and dangerous situation exists at every level of the judicial nomination and confirmation process -- from the inception of the senatorial recommendation up to and including nomination by the President and confirmation of the Senate -- resulting from the dereliction of all involved, including the professional organizations of the bar." (Critique, at p. 2)

Our June 14, 1992 letter to Mr. Frankel (Compendium II, Ex. "L") enclosed our critique, the moratorium request, as well as a further document constituting a supplement and update to our critique. We pointed out to Mr. Frankel that we would have expected *The Times* to have been particularly interested in our chronicling of the judicial nomination process since *twice* the previous month it had run editorials "opposing knee-jerk confirmation of judicial nominees", copies of which we enclosed (Compendium II, 5/7/92 and 5/31/92 editorials)[1]. We also highlighted for Mr. Frankel that the case study nominee examined by our critique was Andrew O'Rourke, the highest elected official of Westchester County, who, six years earlier, had been the Republican standard bearer on the gubernatorial ticket against Governor Mario Cuomo. Mr. O'Rourke had been nominated for a district court judgeship by President Bush on the recommendation of New York Senator Alfonse D'Amato -- both of whom were then running for re-election. Our June 14, 1992 letter to Mr. Frankel, which requested to meet with him, concluded by stating:

> "If you do not consider newsworthy the unique *pro bono* efforts of a *New York* citizens' group -- which have pierced the barrier of 'confidentiality' attached to the 'screening' process, exposed a public figure on the *New York* scene, and have the potential to impact upon the upcoming presidential and senatorial elections--we believe we are entitled to an explanation as to the standard of coverage for a newspaper which advertises itself as 'All the News That's Fit to Print'." (Compendium II, Ex. "L").

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[1] As our earlier correspondence with *Times* editors and reporters *explicitly* stated, it was the *Times* own May 7, 1992 editorial that *inspired* our moratorium request letter of May 18, 1992, addressed to Senate Majority Leader Mitchell (Compendium II, Ex. "D", "E", "F", "H").

Mr. Frankel's June 18, 1992 response was three-sentences (Compendium II, Ex. "O"). Without explaining *The Times'* standard for coverage, he rushed to the defense of the one reporter whose name our June 14, 1992 letter had identified. Mr. Frankel stated that that reporter, Bill Glaberson, was "as fine a reporter as we have" and baldly asserted that he shared Mr. Glaberson's "judgment" that our "material" did "not add up to an article for The Times"[2]. Mr. Frankel also declined to meet with us, saying "no purpose would be served".

What was Mr. Sulzberger's response? His letter to us, dated July 15, 1992, was also three-sentences (Compendium II, Ex. "T") and did not address any of the particulars of the complaint we had filed with the Department of Consumer Affairs. Instead, he stated his agreement with Mr. Frankel's letter response "in all respects" and, likewise, endorsed Mr. Glaberson as "a fine reporter with excellent news judgement (sic)". Like Mr. Frankel, Mr. Sulzberger also failed to elaborate upon *The Times'* standard for coverage and similarly rejected our meeting request because it "would serve no useful purpose."

It would appear that Mr. Sulzberger had *Times* Vice-President and General Counsel, Solomon B. Watson IV, put forth the paper's position to the Department of Consumer Affairs. By letter dated July 14, 1992 (Compendium II, Ex. "S"), Mr. Watson conspicuously ignored our contention that *The Times* is a "private business enterprise". Rather, he merely asserted that our complaint was "not one of consumer protection, but...one of editorial control of a newspaper" and, for that reason, outside the jurisdiction of the Department of Consumer Affairs[3].

Thus it may be seen that when *The Times* is called to account for a palpable "lack of judgment", it is unwilling to demonstrate that its judgment has been responsibly exercised or define the criteria by which it interprets the "*News Fit to Print*" standard. Instead, those "at the top" of *The Times* -- when they do respond -- simply assert, in rhetorical fashion, the newspaper's right to make editorial judgments, as if that were ever at issue.

Before concluding our presentation with a description of *The Times* abusive treatment of us this past year -- wherein, by correspondence, we have again documented its deliberate suppression of critical, cutting-edge stories on judicial selection and discipline -- it is appropriate to add a post-script to our two aforesaid letters to Mr. Sulzberger (Compendium IV, Doc. 1; Compendium II, Ex. "P").

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[2] To permit Project Censored to evaluate the extraordinary documentary "material" which did "not add up to an article for The Times", copies are enclosed in a separate file marked "Critique 'material' provided to Mr. Frankel".

[3] Actually, by the time Mr. Watson sent his letter, the Department of Consumer Affairs had already dismissed our complaint -- without addressing our contention that *The Times* is a "private business enterprise" and "*All the News That's Fit to Print*" a promotional advertising claim (Compendium II, Ex. "Q").

The day following our June 30, 1992 letter to Mr. Sulzberger, with its enclosed consumer's complaint (Compendium II, Ex. "P"), *The Times* ran a full-page article about President Bush's selection of federal judges (Compendium II, 7/1/92). Included in the article was President Bush's comment "we have good, quality judges. I think I'd take that as a significant accomplishment" and further down, but unconnected, appeared the statistic that 16% of his judicial nominees had been rated "unqualified" by a minority of the ABA's Standing Committee on Federal Judiciary. At the bottom of the page was a section, entitled "Voices: San Francisco", in which three individuals -- including two "ordinary voters" -- were asked about President Bush's choices for the Court. In response to that article -- which was written by Neil Lewis, who had received our critique and returned it to us, immediately and without comment (Compendium II, Ex "C", "F", "G") -- we wrote a Letter to the Editor, dated July 10, 1992, about our critique of the federal judicial screening process -- including "screening" by the ABA (Compendium II, Ex "R"). *The Times* printed that Letter on July 17, 1992, albeit in expurgated form[4], under the title "Untrustworthy Ratings" (Compendium II, Ex "U"). Presumably, such publication was unbeknownst to Mr. Sulzberger -- who just two days earlier had written us (Compendium II, Ex. "T") that he concurred with Mr. Frankel, to wit, our critique did "not add up to an article for The Times".

Three weeks later, Mr. Glaberson, the reporter lauded by both Mr. Frankel and Mr. Sulzberger, wrote an article about Mr. O'Rourke's stalled federal court nomination, which appeared on the front-page of the Metro Section (Compendium II, 8/8/92). This was not surprising since Mr. O'Rourke was Westchester County Executive and a great many people in Westchester were interested in whether he would be continuing in that office. Anyone familiar with our critique knew that it was the reason why Mr. O'Rourke's confirmation was stalled, with no hearing scheduled (*See* Compendium II, Ex. "J", last paragraph), while other nominees were continuing to be processed and confirmed (Compendium II, 7/14/92, 9/1/92, 9/10/92). Yet, Mr. Glaberson's article omitted any mention of the critique, as well as of the local citizens' group that had worked six months to produce it. Instead, Mr. Glaberson incorporated in his story information which formed the centerpiece of our critique -- without attribution to us[5] -- and reached out for comment to the Washington-based, liberal lobbying organization, Alliance for Justice, which had done *no* study of Mr. O'Rourke's legal

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[4] The expurgation by the editors--who never saw a copy of our critique--removed from our Letter to the Editor our observation that it merited press attention and our criticism of *The Times* for giving valuable space to individuals who had nothing to say about judicial selection (Compendium II, Ex. "R").

[5] Mr. Glaberson later claimed to me that the reference in his article to Mr. O'Rourke having responded to the Senate Judiciary Committee's questionnaire request for ten significant cases with only three cases was based on "common knowledge", which he had gotten from an AP story. Inasmuch as we had provided our critique to the AP, Mr. Glaberson's claim sparked a correspondence with it on the subject. Since *The Times* subscribes to the AP, the exchange of letters, reflecting AP's utterly despicable behavior, is included in Compendium II (Ex. "AA", "BB", "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ", "KK", "LL", "MM").

qualifications. So much for the honesty and integrity of this *Times* reporter, described by Mr. Frankel as being "as fine a reporter as we have".

Three weeks after that, James Feron, another *Times*' reporter to whom we had given a copy of our critique (Compendium II, Ex. "W"), wrote a feature article for the *Times* Westchester Weekly. Mr. Feron's article (Compendium II, 8/30/92) described the devious way Mr. O'Rourke had become Westchester County Executive. For that purpose, Mr. Feron used materials which were part of our critique -- also without attribution to us and without mentioning the critique. Indeed, Mr. Feron made knowingly misleading representations in his article so as to deliberately "write us out" of it[6]. So much for the honesty and integrity of yet another *Times* reporter.

As for the post-script to our November 27, 1994 letter chronicling the *Times* censorship that had preceded our $17,000 Op-Ed ad (Compendium IV, Doc. 1), six weeks after we received the return receipts reflecting delivery to both Mr. Sulzberger and Mr. Lelyveld -- without any response from them -- I spoke with Ralph Nader by telephone. His recommendation was that we contact *Times* Managing Editor Gene Roberts, from whom he was confident we would get a response. Consequently, by letter dated January 17, 1995, we wrote Mr. Roberts -- with a copy to *Times* Metro Editor, Michael Oreskes, who Mr. Nader likewise believed would be responsive (Compendium IV, Doc. 2). Our January 17, 1995 letter highlighted for them the continuing, post-election significance of our October 26, 1994 Op-Ed ad (Exhibit "A"). Not only did we state that "the issue of political manipulation of judgeships and judicial corruption are as relevant as ever", we proved it by appending a slew of recent articles and two editorials that had appeared in *The Times*. We also pointed out that CJA was uniquely qualified to challenge the wisdom of *Times* editorials, which espoused that judicial elections be scrapped for an appointive system, like the one for selecting judges to the New York Court of Appeals. Our letter noted that we had twice testified before the State Senate Judiciary Committee in opposition to nominees to New York's Court of Appeals and had exposed that the closed appointive process -- and the rubber-stamp Senate confirmations thereafter -- is *not* consonant with "merit selection" and, indeed, unconstitutional. We further observed that report of our testimony had been suppressed by *The Times*, as had been a Letter to the Editor we had written regarding the utterly fraudulent so-called "process" of confirmation of judges to our highest state court (*See* also Compendium III, Exhibit "C"). In annexing copies of our suppressed written testimony for Mr. Roberts and Mr. Oreskes, we further stated:

> "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

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[6] Mr. Feron's article explicitly represented that an affidavit had been sent down to the Senate Judiciary Committee by a local lawyer for its consideration in connection with Mr. O'Rourke's qualifications. Yet, Mr. Feron knew that that lawyer was a member of our citizens' group and that his affidavit had been sent down to Washington by us as part of the critique, to which it was physically annexed as an exhibit. (*See* Compendium II, Ex. "W", also Ex. "J").

> editorials advocating the extension of such demonstrably unsatisfactory appointment process to other judicial, presently elective, offices of this state." (at p. 4).

We received no response whatever from any *Times* editorial page writer. However, within a week of our January 17, 1995 letter, we received a telephone call from Jane Fritch, who identified herself as the Investigative Projects Editor of *The Times* Metro Section. She told us that she had been instructed to look into a story. She had not seen our November 27, 1994 letter and we transmitted a copy to her under a January 23, 1995 coverletter that suggested a series of angles for stories -- including stories that would follow-up on public remarks of the by then former Governor Mario Cuomo on the subjects of "judicial term limits, judicial selection, and judicial discipline in this State" (Compendium IV, Doc. 3).

These larger issues were of little concern to Ms. Fritch -- who, as reflected by our two subsequent letters with her (Compendium IV, Docs. 4, 5) -- was more interested in the law license suspension of CJA's *pro bono* Director, Doris L. Sassower. Yet even after providing Ms. Fritch with a meticulous recitation of how that retaliatory and utterly lawless suspension was accomplished, as particularized by Ms. Sassower's Verified Complaint in her federal civil rights action, as well as by her Petition for Certiorari to the U.S. Supreme Court in her state action -- and notwithstanding that we reiterated to Ms. Fritch , as we had to other *Times* reporters, that we would readily supply her with the disciplinary files to prove that there was "*no* legal or factual basis for the suspension and that its issuance and perpetuation [were] a vicious retaliation for [Ms. Sassower's]...judicial 'whistleblow[ing]'" (Compendium IV, Doc. 1, Ex. "O", p. 2), we never heard from her thereafter. Indeed, by May 1995, Ms. Fritch was based in Washington. Our repeated long-distance calls to her over the next several months -- each time leaving a recorded message -- were all unreturned.

Meantime, Doris Sassower, as CJA's Director, commenced a ground-breaking lawsuit against the New York State Commission on Judicial Conduct, the state agency whose constitutional and statutory duty is to protect the public from unfit State Court judges. The Verified Complaint alleged that the Commission was protecting politically-connected, powerful State Supreme Court judges from disciplinary investigation -- which it backed up with annexed documentary proof. The Complaint further showed that the Commission accomplished this protectionism by actually *rewriting* its statutory mandate so as to unlawfully convert its mandatory duty to investigate facially-meritorious judicial misconduct complaints into a discretionary option, unbounded by any standard. Following submission of a legally insufficient and perjurious dismissal motion by the State Attorney General, acting as counsel for the Commission, the case was dumped by a state court judge. His decision was published in full in *The New York Law Journal* July 31, 1995 issue, which noted it on its front-page as a "Decision of Interest". On August 14, 1995, our Letter to the Editor about the case was published in *The Law Journal* under the title "*Commission Abandons Investigative Mandate*" (Exhibit "B"). It described the fraudulent nature of the dismissal decision and concluded with a public challenge:

> "The public and legal community are encouraged to access the papers in [the case]...What those papers unmistakably show is that the commission protects judges from the consequences of their judicial misconduct -- and, in turn, is protected by them." (Exhibit "C", concluding paragraph).

Despite the transcending importance of the Commission on Judicial Conduct to the People of New York as the fundamental mechanism for redress of judicial misconduct, there was no follow-up by *The Times*. On September 29, 1995, we wrote to a *Times* reporter who had been recommended as being interested in the story. By then, we had filed an ethics complaint with the New York State Ethics Commission against the Commission on Judicial Conduct, as well as the State Attorney General, putting each of them on notice of their duty to take corrective steps to vacate the court's fraudulent decision. We provided this documentation to the *Times* reporter and in our coverletter (Compendium VI, Ex. "A") identified that at issue was how:

> "public agencies of government and public officials, rather than protecting the People of this State, brazenly defraud them and then protect and cover up for each other."

Two days later, our substantiating materials were returned to us under a note from the reporter that described them as "certainly interesting, but...not fit[ting] within the types of stories that I am pursuing" (Compendium VI, Ex. "B").

This brings us to the present year, one marked by continuing deliberate censorship by *The Times* and culminating in a unique set of our five unresponded-to letters to two *Times* reporters, Joyce Purnick and Jan Hoffman (Compendium VII, Ex. "D", "E", "F", "G", "H").

As reflected by Compendia V and VI, from December 1995 through April 1996, issues of judicial selection and discipline were big headline stories in *The Times*. Indeed, in the last eight days of 1995 and the first two of 1996, *The Times* ran nine good-size stories, including an editorial, about the selection process used by New York City's mayors in appointing judges to the criminal court and to interim posts on the civil court (Compendium V: 12/22/95, 12/23/95, 12/28/95, 12/28/95, 12/29/95, 12/29/95 editorial, 12/30/95, 1/1/96, 1/1/96). As to the problem of unfit state court judges and the importance of a mechanism to discipline and remove such judges, 11 stories, including two editorials, ran in *The Times* over the last two weeks in February, with another eight during the first two weeks of March (Compendium VI: 2/15/96, 2/16/96, 2/17/96, 2/18/96 editorial, 2/20/96, 2/21/96, 2/23/96, 2/24/96, 2/26/96, 2/28/96, 2/29/96, 3/1/96 editorial, 3/2/96, 3/4/96, 3/6/96, 3/7/96, 3/9/96, 3/14/96, 3/14/96 Op-Ed).

As intensive as this *Times* coverage was, it paled in comparison to the New York tabloids, where these were front-page stories, day after day, with the New York airwaves also flooded. The reason for this outpouring of media was because New York's politicians saw an opportunity to exploit these issues for their own cynical purposes. Former Mayor Ed Koch and current Mayor Rudolph Giuliani used their own radio talk shows on WABC, as well as press conferences, to publicly feud with each

other and incite the public.

Ironically, in both these major stories, CJA was an important player, exposing the political posturing that was actually going on. Yet, because of the press suppression -- including that of *The Times* -- self-serving politicians were able to get away with their manipulative conduct and the possibility was lost of "seizing the moment" to educate the public so that necessary structural change could be receptively implemented: opening the so-called "merit selection" process of judicial appointments and opening the process of judicial discipline. It can fairly be said that New Yorkers were robbed of that "golden opportunity" by the press.

As to the issue of mayoral selection of judges in New York City (Compendium V), all sides claimed that it should be based "on merit", not politics. But how "merit" was to be determined and the role played by incumbency was hotly disputed by former Mayor Koch and current Mayor Giuliani, who -- for weeks -- hurled epithets at each other on their WABC radio shows, with the press listening in and reporting on the dog fight, blow by blow (Compendium V, 12/23/95, 12/28/95, 1/1/96).

Although *The Times* explored the Mayor's "merit selection" process in some detail, it did not report the fact that culminating the appointment process was a public hearing at which, presumably, the public could hear and be heard as to the qualifications of the judicial appointees. Nor did *The Times* send a reporter to the public hearing of these controversial appointments or even provide the public any report of what had taken place -- as recounted to it by the only witness to testify at the hearing -- myself, as CJA coordinator. Indeed, so sham was the hearing that I immediately telephoned the very *Times* reporter whose by-line had appeared in the paper. I spent at least 15 minutes describing the hearing and my testimony as to the deficiencies of the completely closed selection process which makes "merit selection" impossible. Later that day, I went down to the City Hall office where *The Times* reporter was based (*See* also Compendium V, Ex. "A").

When nothing was reported by him -- or by reporters at the tabloids, with whom I had also spoken -- I called up WABC "talk radio" to describe the rubber-stamp hearing and my testimony that had blown a great big hole in the pretense of "merit selection". The staff of the show so impressed by what I had to say, that I was invited to be a guest on a different WABC talk show. After that, I was put on as a caller to Mayor Giuliani's weekly WABC radio show and, thereafter, as a caller to former Mayor Koch's show. The on-the-air exchange between myself and Mayor Giuliani was a coup and my exchange with former Mayor Koch was scandalous and shocking. Thereafter, I followed up with correspondence with these political "heavy-weights", challenging them as to whether -- in the name of what they purported to be "merit selection"-- they would open the process so as to make such claims publicly verifiable. *The Times* reported nothing about this dynamic challenge to the political leaders, which would have exposed what was going on once and for all. Nor did its reporter himself pursue the ready-made questions from that correspondence, which I gave him, so as to test the commitment of self-serving politicians to true "merit selection" (Compendium V, Ex. "B").

Because of this media suppression, we had to write up the story ourselves. On January 3, 1996, CJA sent *The Times* a Letter to the Editor, which we entitled "*New Year's Resolve: Open the Judicial Selection Process*" (Compendium V, Ex. "C"). It was not published. For that matter, no letters were published[7]. Fortunately, *The New York Law Journal*, which, by contrast to *The Times*, entertained lively debate on the issues by publishing a large numbers of letters -- including ours, which it published on January 24, 1996, under the title "*No Justification for Process's Secrecy*" (Exhibit "C"). Although copies were provided to *Times* reporters, there was no follow-up. Indeed, the next month, when more of Mayor Guiliani's judicial appointees had their so-called "public" hearing -- again *The Times* was not there. From our past experience, we knew it was uninterested in presenting to the public what took place -- which was even more outrageous than the previous hearing.

From mid-February 1996 and for months thereafter, the tabloid headlines screamed about New York City Criminal Court Judge Lorin Duckman (Compendium VI). Judge Duckman had lowered the bail of a man jailed for harassing his girlfriend, who, three weeks after his release, murdered her and killed himself. Virtually overnight, Judge Duckman was branded on the front-page of New York's tabloids as a "junk judge", called a "murderer" on talk radio, and featured in a segment on NBC's national news magazine Dateline. Again, it was Mayor Giuliani who instigated this campaign of vilification -- holding press conferences and using his own WABC radio show to claim that Judge Duckman was unfit and a menace to all New Yorkers (Compendium VI, 2/17/96). The Mayor claimed that he was supported in this serious charge by the transcript of the bail hearing and repeatedly read selected excerpts from the transcript to demonstrate the judge's misconduct in this domestic violence case. In their coverage, all local media -- not excepting *The Times* -- followed lock-step behind Mayor Giuliani, who was joined by New York Governor George Pataki.

At the height of this politically-instigated media lynching, CJA obtained a copy of the bail hearing transcript and concluded that it did not support the claims of judicial misconduct being made by New York's highest elected officials. CJA wasted no time in taking action. We immediately wrote Mayor Giuliani a letter, dated and faxed February 27, 1996 -- with a copy to the Governor, as well as the Brooklyn District Attorney -- and, single-handedly "took them on", charging them with misleading and wrongfully inciting the public (Compendium VI, Ex. "C"). Quoting from the bail transcript, CJA showed that Judge Duckman had not abused his discretion and that it was the Brooklyn District Attorney's office which was responsible for failing to properly present the case to Judge Duckman and bring it to trial in a timely manner.

The next day, February 28, 1996, I called Joyce Purnick of *The Times*, whose interview with Judge Duckman appeared in that morning's paper (Compendium VI, 2/28/96). She already had a copy of our February 27, 1996 letter -- faxed to her by Judge Duckman's lawyer, to whom we had faxed it the previous evening. Later that day, after WABC radio read portions of our letter, interviewed me, and had me respond to calls from listeners, I faxed the letter to another *Times* reporter (Compendium

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[7] We have noted a number of occasions when no Letters to the Editor have been published after articles and editorials on judicial and related issues have appeared in *The Times*.

VI, Ex. "D"), explicitly requesting that he:

> "follow up by questioning the Mayor about this letter, which accuses him of unfairly maligning Judge Duckman and covering up for the Brooklyn D.A. The public has a right to ANSWERS about these serious charges." (Compendium VI, Ex. "D").

CJA's courageous letter-challenge to the Mayor, Governor, and Brooklyn District Attorney at a time when bar associations and law schools were silent or hemming and hawing on the sidelines was simply "blacked out" by *Times* reporters. Yet, its significance -- and that of our organization -- was recognized by *Times* Op-Ed page editor, Howard Goldberg, albeit belatedly. Two weeks after we sent a copy of our February 27, 1996 letter to the Op-Ed Page -- rewritten for publication as an Op-Ed piece (Compendium VI, Ex. "F") -- Mr. Goldberg telephoned. He was not sure, at that point, that it was sufficiently current, but wanted to find out more about our organization and invited us to write a piece for the Op-Ed page.

Of course, I told him that we hadn't been on the Op-Ed page since our $17,000 Op-Ed ad, "*Where Do You Go When Judges Break the Law?*" (Ex. "A"). After describing CJA's ground-breaking activities, I stated that they had been suppressed from coverage by *The Times* and we, ourselves, "blackballed". I believe Mr. Goldberg was rather taken aback by my use of that word. In any event, I followed up our conversation with a letter to him, dated March 21, 1996 (Compendium VI , Ex. "G"), which enclosed copies of our two *New York Law Journal* Letters to the Editor "*Commission Abandons Investigative Mandate*" (Exhibit "B") and "*No Justification for Process's Secrecy*" (Exhibit "C"), stating:

> "For reasons which we *cannot* fathom, the *Times* has shown *no* interest whatever in following up and reporting upon the *timely* information presented by those letters -- *all of it verifiable and based on documentary evidence*. This replicates its disinterest in verifying the shocking recitation of judicial corruption and retaliation set forth in our October 26, 1994 Op-Ed ad."

I also enclosed for Mr. Goldberg a copy of our March 18, 1996 letter to the President of the City Bar, Barbara Paul Robinson, challenging her endorsement of the New York State Commission on Judicial Conduct as a "good system for disciplining or even removing a judge for misconduct", which had appeared on *The Times* Op-Ed page the previous week (Compendium VI, 3/14/96: "*Protect Judges From Politicians*"). Indeed, on March 1, 1996, *The Times* had run an editorial entitled "*Keeping the Courts Independent*", approving Governor Pataki's decision to refer the Duckman matter to the Commission on Judicial Conduct (Compendium VI, 3/1/96).

Our March 18, 1996 letter to Ms. Robinson revealed the hypocrisy of the Bar President's praise of the Commission when, in her possession, was "irrefutable proof that the Commission on Judicial Conduct is not merely dysfunctional, but corrupt." That "irrefutable proof" was the file of our case against the Commission -- a copy of which we had provided the City Bar two months earlier in

substantiation of our August 14, 1994 Letter to the Editor, "*Commission Abandons Investigative Mandate*". Indeed, our March 18, 1996 letter exposed not only the City Bar's lack of integrity, but that of a newly-formed group of 26 bar associations and law schools who were constituting themselves as a "Committee to Preserve the Independence of the Judiciary" -- to whom we had also provided a copy of the file. On March 9, 1996, within days of its formation, this Committee was already the beneficiary of *Times* reportage (Compendium VI, 3/9/96: "*Lawyers Create a Panel to Assess Judges' Actions*").

Our March 18, 1996 letter also described yet another recipient of the file of our case against the Commission: Mayor Giuliani. Indeed, it annexed a copy of a February 20, 1996 transmittal letter in which -- a week before our dynamite February 27, 1996 letter to the Mayor -- we pointed out to his counsel that much as the Mayor was rushing to protect the People of New York from Judge Duckman:

> "The innocent victims of this City's run-a-muck judges, who have not suffered loss of life in a literal sense, expect [him] to come out against the judges who have destroyed their lives -- as he is doing now in calling for Judge Duckman's impeachment. They expect the Mayor to take the lead in calling for decisive action against the Commission on Judicial Conduct when -- as now -- he is presented with *prima facie* evidence that it covers up criminal conduct by sitting judges..." (at p. 3).

Because of the significance our March 18, 1996 letter -- to which both Mayor Giuliani and the Governor were each indicated recipients -- I concluded my letter to Mr. Goldberg with the hope that it and the other materials we enclosed would be passed on by him to "the 'news' side, with a recommendation that they are worthy of coverage" (Compendium VI, Ex. "G").

Thereafter, by letter dated March 25, 1996 (Compendium VI, Ex. "H"), we provided Joyce Purnick and Jan Hoffman with their own copy of our March 18, 1996 letter, as well as our August 14, 1995 Letter to the Editor, "*Commission Abandons Investigative Mandate*" (Exhibit "B"), offering them the "irrefutable documentary proof" of the Commission's dysfunction and corruption, to wit, the Commission file. We noted that both the *New York Post* and *The Daily News* had run articles, quoting us about the Commission on Judicial Conduct[8]. We never heard back from either Ms.

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[8] CJA's expertise -- as an informed voice able to provide accurate information critical of the Commission -- was also recognized by *The Times'* own weekly cable program, "This Week: Close-Up", which Ms. Purnick hosts. The producer of that show phoned to invite us to appear as a guest on the March 1, 1996 show for a panel discussion about the Commission (Compendium VI, Ex. "E"). However, shortly after being invited, we were disinvited, and the televised discussion that took place between two bar leaders and a New York Supreme Court justice was completely one-sided, all of them in agreement as to the Commission's efficacy. The only critical comment was interjected by Ms. Purnick and, in the subsequent panel discussion of *Times* writers, by Ms. Purnick, together with Ms. Hoffman.

Purnick or Ms. Hoffman, who meantime were being recognized for their journalistic "excellence"[9].

Taking this as yet another signal that *The Times* was not going to report anything we had to offer, we made no attempt to give *The Times* important information relating to other stories it was covering -- including the other front-page judge story of the first four months of 1996: Federal Judge Harold Baer, who, in early April 1996, reversed a highly criticized decision he had rendered in January excluding 80 lbs of drug evidence in a criminal case as being the product of an illegal search.

However, on May 7, 1996, when the State Senate Judiciary Committee was considering a Bill to open up disciplinary proceedings against judges once the Commission on Judicial Conduct had authorized prosecution against them, CJA issued a Press Release about the Bill (Compendium VI, Ex. "I"). It was faxed to *The Times* and many copies were left at the Press Room of the Capitol, where *The Times* has an office.

Our Press Release supported the Bill, but described how CJA's case against the Commission showed that it didn't go far enough. In addition to annexing a copy of our Letter to the Editor, "*Commission Abandons Investigative Mandate*" (Exhibit "B"), our Press Release announced that a copy of the litigation file was "being delivered today to the Senate Judiciary Committee, as well as to Governor Pataki". It also stated:

> "Accompanying the file are petitions, signed by almost 1,500 New Yorkers, urging public hearings and investigation of judicial corruption in this State" (Compendium VI, Ex. "I").

We heard nothing from *The Times*, which a month and a half later published an editorial, "*End Secret Trials of Judges*" (Compendium VII, 6/22/96), completely ignoring what our Press Release had pointed out[10], namely that 98% of complaints filed with the Commission never result in authorization of disciplinary proceedings against judges (Note: *see also* 8/8/96 editorial, last paragraph).

In June 1996, after six months of chronicling the secretive and fraudulent process by which Governor Pataki appoints judges to New York's Court of Claims and to interim terms on the Supreme Court --

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[9] Ms. Purnick was among the *Times*' recipients of the Polk Award (Compendium VI, 3/11/96). Ms. Hoffman received the ABA's Silver Gavel Award (August, 1996) (Cf. Compendium VI, Ex. "A").

[10] Had *The Times* shown the slightest interest in what our Press Release had to say we would have provided it with a copy of our extensive critique of the Senate Bill, which we prepared for the Assembly Judiciary Committee -- at the Committee's request.

-- using a phantom screening committee, composed of members whose names are *not* publicly available, whose procedures are *not* publicly available, and which has *no* telephone number except *via* the office of the Governor's counsel, the situation was dire[11]. Governor Pataki had appointed an unprecedented number of judges, to be confirmed following public hearings of the Senate Judiciary Committee, at which the public was *not* permitted to testify. Among the Governor's appointees was a judicial member of the Commission on Judicial Conduct, who had not only participated in the dismissal of fully-documented complaints of judicial misconduct, but had knowingly permitted the Commission to be the beneficiary of the demonstrably fraudulent decision dismissing our litigation challenge.

We decided to try going through *The Times* Metro desk and utilized the phone menu "to report a news story happening today". We were instructed that we needed to provide a faxed summary of the story. We did so. In fact, we faxed copies to both *The Times'* New York and Albany offices (Compendium VII, Ex. "A", "B") -- with no response whatever. Not only was no *Times* reporter present at the confirmation hearing in Albany, there was no follow-up by *The Times* reporter we visited at the Capitol following the conclusion of the hearing, leaving with him a copy of our explosive June 11, 1996 letter addressed to the Senators (See Compendium VII, Ex. "C"), whose content we had explained to him. Indeed, the same reporter, then and thereafter writing about the passage of the New York's fiscal budget -- and the closed-door, deal-making between the Governor

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[11] The impetus for CJA's investigative examination were press reports -- including an article in *The Times* by Joseph Berger -- that Westchester County Executive O'Rourke would be appointed by Governor Pataki to a state court judgeship (Compendium II, 11/16/95, 12/21/95). Mr. Berger treated the possibility seriously and, in his article, "*O'Rourke Waits, Quietly, for Judgeship*", included a description of Mr. O'Rourke's failed federal judicial nomination, distancing himself from why the nomination "stalled" by qualifying it as Mr. O'Rourke's explanation. In fact, Mr. Berger knew the real reason: which was our 1992 six-month investigative critique of Mr. O'Rourke's judicial qualifications showing him to be unfit. Indeed, Mr. Berger not only had a copy of the critique, which I gave him -- in hand -- when I met with him in his office on March 8, 1993, but had received from us six different current and important "story angles" about the critique (Compendium II, Ex. "OO") -- not a single one of which he had followed up. Following publication of his 11/16/95 article, which did not mention our critique, I, as well as a CJA Board member, telephoned Mr. Berger. He was extremely uninterested in having any comment from us -- the experts on Mr. O'Rourke's judicial qualifications -- about our view of Mr. O'Rourke's qualifications to be a state court judge. It must be emphasized that but for the conspiratorial suppression of our critique by *The Times* and other media, there would have been no possibility that Mr. O'Rourke's name would have been floated for a state court judgeship, or, as it was in March 1993, for another bid for a federal judgeship (Compendium II, 3/4/93, 3/6/93). Indeed, his "squeaker" re-election in 1993 as Westchester County Executive may very well have turned out differently (Compendium II, 11/3/93, 11/7/93) (*See* also Compendium II, Ex. "OO", p. 2).

and key legislators in negotiating a budget, to which other legislators give their blind approval (Compendium VII, 6/4/96 editorial, 7/13/96, 7/14/96) -- was describing a process very similar to what our June 11, 1996 statement showed was going on with judgeships. In short, everything we were reporting about the exclusion of the public from the process of judicial selection, the collusion between the legislative and executive branches in using judicial appointments to make deals, and the gutting of safeguards, was consistent with what *The Times* had been reporting about the Pataki administration in other areas of governance (*See, in particular,* Compendium VII, 3/23/96, "*Pataki's Secrets*", Op-Ed page).

We also contacted Ms. Purnick. The initial calls were made by a member of our Board of Directors, which I then followed-up. I briefly spoke with her and, as reflected by my June 12, 1996 letter (Compendium VII, Ex. "D"), gave her with a copy of our June 11, 1996 letter to the Senators. Additionally, we provided her our June 12, 1996 letter to the Governor's counsel, which invited his:

> "comment -- on behalf of the Governor -- to the serious issues therein presented, bearing upon the public's right to *basic* information about how the Governor chooses our state judges." (Compendium VII, Ex. "D").

Two and a half months later -- with the usual no-response from the Governor's counsel (Cf. Compendium VII, Ex. "D") -- I called Ms. Purnick to find out why she was not pursuing the story. She gave a number of excuses. These included that she had no illusions about how the process of judicial selection worked -- as if the issue were what she, a sophisticated *Times* reporter, knew -- rather than what the public had a right to know. Upon telling her this, she seized upon another excuse: namely, that Jan Hoffman, rather than herself, reports on the law. Yet, I told Ms. Purnick that I had seen many law-related stories bearing her by-line (Compendium IV, Doc. 2, Ex. 5, 12/5/94: "*Politics and Judgeships: Learning the Realities*", 12/8/94: "*Judges, Patronage and Status Quo*"; Compendium V, 12/28/95: "*Heeding Only His Own Gavel, A Mayor Pays*"; 1/11/96: "*Real Lesons on Politics From a Movie*"; Compendium VI, 2/26/96: "*Judge Seen As a Symptom of a Failed Law*", 2/28/96: "*An Embattled Judge Breaks His Silence: Judge Responds to Domestic-Abuse Furor*", 3/7/96: "*Low Priority for the Judging of the Judges*", 4/24/96 "*Judge Wins This Round by Losing*") -- and that, moreover, I had, at various times, left messages for Jan Hoffman -- none of which had been returned. I frankly told her that it had long been obvious to her that we were being "black-balled". Ms. Purnick denied this. However, she then went on to tell me that she had concerns about the legitimacy of CJA. I responded by saying that I found it odd that neither she nor anyone else at *The Times* had expressed any such concerns before, that all our work was *completely documented and readily verifiable*, and that we would be pleased to meet with her, Ms. Hoffman, and anyone else from *The Times* so that they could learn more about the organization. Indeed, I invited them to come to CJA's headquarters and mentioned that the film crew that taped us for the A & E Investigative Reports documentary with Bill Kurtis, which had first aired last April, came to our headquarters, as had the Senior Editor of *Reader's Digest* Washington Bureau, whose story on "worst judges" was in that month's August issue.

Although the effect of *Times* censorship of information about CJA and its accomplishments has been to prevent the public from knowing about the organization[12], thereby stymying its growth, Ms. Purnick told me that she was troubled that the size of CJA's membership might be only myself and my mother. I assured Ms. Purnick that that was not the case, that my mother and I were the founders and "moving force" behind CJA, but that the organization had several hundred members in 22 states, including Alaska. Ms. Purnick specifically asked me to put that in writing and also inquired as to whether I would show her our membership list for New York. I responded by telling her that we protect the identities of our members, but, if it were really important to her, I would contact them to see if they would object to my giving her their names.

I then wrote Ms. Purnick a letter, dated August 27, 1996 (Compendium VII, Ex. "E"), with a copy to Ms. Hoffman, reiterating our conversation -- and included, as well, biographic information about my mother, about whom Ms. Purnick had also expressed some vague concern. I specifically drew her attention to an article my mother had written on judicial selection, which appeared on the front-page of *The New York Law Journal* on October 22, 1971, stating that its last lines were as true today as when they were written:

> "Perhaps the day when the judiciary is wholly divorced from political influence can be seen only in the eyes of visionaries. But unrelenting public interest and the glare of publicity focused on every judicial vacancy can make that day come sooner."

My letter concluded with the hope that by the 25th anniversary of that *Law Journal* article -- *The Times* would see fit to print the story about how CJA was "making that visionary future happen."

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[12] Other than our $17,000 *Times* Op-Ed ad (Exhibit "A"), the only mention of CJA that has ever appeared in *The Times* was in a December 11, 1993 article in the Metro Section, "*Meeting with Cuomo Brings Out the Critics*" (Compendium I, Ex. "DD"), which reported my spirited exchange with the Governor. The only mention of CJA's predecessor local group, the Ninth Judicial Committee -- other than my July 17, 1992 Letter to the Editor, "*Untrustworthy Ratings?*"-- appeared in the Westchester Weekly section: an October 14, 1990 article, "*Agreement on Judicial Candidates*" (Compendium II, Ex. "C"), a May 19, 1991 article, "*Lawyer to Pursue Suit on Cross-Endorsement*", and Doris Sassower's June 9, 1991 Letter to the Editor, "*Cross-Endorsement: Questions of Protection*" (Compendium II, Ex. "W"). The utterly lawless and retaliatory suspension of Doris Sassower's license -- *without* written charges, *without* findings, *without* reasons, and *without* a hearing -- occurred five days after *The Times* published her June 9, 1991 Letter to the Editor. Without any explanation, *The Times* has steadfastly refused to report on that suspension -- although its unlawful and and retaliatory nature is *readily verifiable*. This was pointed out to Joseph Berger, to whom I sent a specific letter on the subject, dated October 3, 1994 (Compendium IV, Ex. "O"), as well as to Jane Fritch, to whom that letter was likewise provided. In all this time, over five years, Ms. Sassower has been unlawfully denied her right to immediate vacatur of her constitutionally-violative findingless suspension, denied a post-suspension hearing as to its basis, and denied any and all appellate review.

Two and a half weeks later, we had still not heard from either Ms. Purnick or Ms. Hoffman. Meantime, Ms. Hoffman had written an article about Governor Pataki's appointment of his counsel to sit on the Commission that recommends nominees to the Court of Appeals (Compendium VI, 9/14/96) -- an individual whose corrupt conduct in handling judicial nominations to the Court of Claims and Supreme Court we had spent six months documenting, with no exposure by *The Times*. I, therefore, wrote Ms. Hoffman, by letter dated September 16, 1996 (Compendium VII, Ex. "F"), reiterating that "it has long been obvious to us that we are being 'black-balled'" and asking that she and Ms. Purnick respond to our unanswered August 27th letter by the end of the week "and/or...undertake to arrange a meeting...with [their] superiors at *The Times*".

Four days later, by fax dated September 20, 1996 (Compendium VII, Ex. "G"), I notified Ms. Hoffman and Ms. Purnick that CJA was having its Board of Directors' meeting that day and would appreciate a response to the August 27th letter. Still, no response.

Ten days later, by letter dated October 1, 1996 (Compendium VII, Ex. "H"), I reiterated that we had had no response to our three prior written communications, as well as to a telephone message and that, consequently, were requesting the names of their superiors at *The Times*. As an addendum, we noted that among the media that had recognized CJA's expertise in judicial selection and discipline was *Penthouse* magazine, which quoted in an article in its November issue entitled, "*Playing Politics with Justice*", and that its author had visited our headquarters at least twice. Still nothing.

Finally, after another ten days, on October 10, 1996, we sent our last letter (Compendium VII, Ex. "I"), inquiring as to a possible conflict of interest on the part of Jan Hoffman making it impossible for her to responsibly discharge her professional duties. We asked Ms. Hoffman for a prompt response since we were by then formulating our complaint and did not wish to suggest to her superiors that she had been motivated by undisclosed personal factors, if that were not the case. Ms. Hoffman has not responded.

Nor has Ms. Purnick, to whom we also sent that letter, responded. Ironically, in her regular front-page Metro column, appearing in yesterday's *Times* (Compendium VII, 10/14/96: "*Women Seen, Or Just Used, Through Art*"), Ms. Purnick wrote about a much reviled statue, called "civic virtue", which has deteriorated through neglect. Her comment, however, is that this is a "fitting demise" because of the sexism inherent in the statue: "civic virtue" is portrayed as a strong, muscular young man in a fig leaf', "stomping on 'vice and corruption'", depicted as two female figures: "a mermaid-type woman naked to the waist, the other a nymph or some other mythical figure". Yet, in the real world, where true civic virtue is represented by two women[13], sacrificing and struggling to build a citizens' organization that, year after year, has been striking at the very heart of governmental

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[13] Indeed, as Ms. Purnick well knows from my mother's Martindale-Hubbell Law Directory listing, my mother was a pre-eminent leader of the women's movement, long before it was recognized as such (Compendium VII, Ex. "E").

corruption and abuse, what is Ms. Purnick's excuse for her despicable black-balling behavior -- and that of her *Times* colleagues -- whose intent plainly is to demoralize, if not defeat, such courageous civic virtue and leave corruption triumphant.

The above documented recitation of censorship and black-balling by one of America's leading newspapers raises serious questions of journalistic responsibility. Just how serious may be seen from a recent indignant *Times* editorial, entitled "*The Color of Mendacity*" (Exhibit "G": 7/19/96), which uses words like "corrupt" and "corrupting" to describe a breach of "core values of serious journalism". Those values -- of honesty and integrity, from which credibility flows -- amount to "a fundamental contract between journalists, serious publications and their readers". *The Times* then gives an example:

> "If journalists lie or publications knowingly publish deceptively incomplete stories, then readers who become aware of the deception will ever after ask the most damaging of all questions: How do I know you are telling me the whole truth as best you can determine it *this time*?"

The foregoing fully documented account shows, over and again, that *The Times* has not only "knowingly publish[ed] deceptively incomplete stories", but has deliberately censored and suppressed major news stories, affecting the public's democratic rights and ability to protect itself from brazen governmental corruption and abuse. There can be no greater media sin.

More than two years ago, in an October 8, 1994 letter to Jan Hoffman, we quoted the words of Jeremy Bentham, as quoted by First Amendment expert Floyd Abrams in a Letter to the Editor, published by *The Times*. That letter to Ms. Hoffman, thereafter, became an exhibit to our unresponded-to November 27, 1994 letter, which we sent to Mr. Sulzberger (Compendium IV, Doc. 1, Ex. "P", p. 3):

> "Without publicity, all other checks are insufficient; in comparison of publicity, all other checks are of small account".

Because of the on-going cataclysmic consequences to the public resulting from *The Times* betrayal of the public trust and breach of its "fundamental contract" with its readers, a copy of this recitation, including the substantiating Compendia, is being sent to *The Times* as a complaint so that curative measures may be immediately taken[14]. These would include a meeting with the Publisher and Executive Editor of *The Times* -- or their representatives -- as requested by us so very long ago in our 1992 and 1994 letters (Compendium II, Ex. "L", "P", Compendium IV, Doc. 1).

Yours for a quality judiciary
and responsible journalism,

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

Enclosures: Attached Exhibits "A"-"G"
7 Compendia
CJA informational brochure

cc: *The New York Times*
Ralph Nader

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[14] After reading about the value of a "News Ombudsman", described in Project Censored's 1996 Yearbook (pp. 167-170), I telephoned *The Times* to find out whether they had such office. The switchboard operator indicated that the answer was "yes", gave us her name, Nancy Nielsen, and further identified that Ms. Nielson is also Vice-President of Corporate Relations. As it turned out, Ms. Nielsen was on vacation and her office knows nothing about her having the title "News Ombudsman". However I did speak, at length, with Nancy Chan, who is Project Coordinator of Corporate Communications. She explained that "traditionally, *The Times* does not have anyone with that title", but that the office is a proper channel for complaints. Ms. Chan was an absolute pleasure to speak with and, after we spoke at great length, recognized -- on her own-- her professional obligation to follow-up. I told her about our nomination of *The New York Times* for Project Censored and that we would transmit to her a copy. We specifically requested that she bring it to the attention of Mr. Sulzberger, Mr. Lelyveld, Mr. Roberts, and Mr. Oreskes. From her responsible demeanor, we have every expectation that she will.

R[illegible]inted from the Op-Ed Page, Oct. 26, 1[illegible], THE NEW YORK TIMES

The New York Times

Where Do You Go When Judges Break the Law?

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

On June 14, 1991, a New York State court suspended an attorney's license to practice law—immediately, indefinitely and unconditionally. The attorney was suspended with no notice of charges, no hearing, no findings of professional misconduct and no reasons. All this violates the law and the court's own explicit rules.

Today, more than three years later, the suspension remains in effect, and the court refuses even to provide a hearing as to the basis of the suspension. No appellate review has been allowed.

Can this really happen here in America? It not only can, it did.

The attorney is Doris L. Sassower, renowned nationally as a pioneer of equal rights and family law reform, with a distinguished 35-year career at the bar. When the court suspended her, Sassower was *pro bono* counsel in a landmark voting rights case. The case challenged a political deal involving the "cross-endorsement" of judicial candidates that was implemented at illegally conducted nominating conventions.

Cross-endorsement is a bartering scheme by which opposing political parties nominate the same candidates for public office, virtually guaranteeing their election. These "no contest" deals frequently involve powerful judgeships and turn voters into a rubber stamp, subverting the democratic process. In New York and other states, judicial cross endorsement is a way of life.

One such deal was actually put into writing in 1989. Democratic and Republican party bosses dealt out seven judgeships over a three-year period. "The Deal" also included a provision that one cross-endorsed candidate would be "elected" to a 14-year judicial term, then resign eight months after taking the bench in order to be "elected" to a different, more patronage-rich judgeship. The result was a musical-chairs succession of new judicial vacancies for other cross-endorsed candidates to fill.

Doris Sassower filed a suit to stop this scam, but paid a heavy price for her role as a judicial whistle-blower. Judges who were themselves the products of cross-endorsement dumped the case. Other cross-endorsed brethren on the bench then viciously retaliated against her by suspending her law license, putting her out of business overnight.

Our state law provides citizens a remedy to ensure independent review of governmental misconduct. Sassower pursued this remedy by a separate lawsuit against the judges who suspended her license.

That remedy was destroyed by those judges who, once again, disobeyed the law — this time, the law prohibiting a judge from deciding a case to which he is a party and in which he has an interest. Predictably, the judges dismissed the case against themselves.

New York's Attorney General, whose job includes defending state judges sued for wrongdoing, argued to our state's highest court that there should be no appellate review of the judges' self-interested decision in their own favor.

Last month, our state's highest court — on which cross-endorsed judges sit — denied Sassower any right of appeal, turning its back on the most basic legal principle that "no man shall be the judge of his own cause." In the process, that court gave its latest demonstration that judges and high-ranking state officials are above the law.

Three years ago this week, Doris Sassower wrote to Governor Cuomo asking him to appoint a special prosecutor to investigate the documented evidence of lawless conduct by judges and the retaliatory suspension of her license. He refused. Now, all state remedies have been exhausted.

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, which is real and rampant in this state.

Where do you go when judges break the law? You go public.

Contact us with horror stories of your own.

CENTER *for* JUDICIAL ACCOUNTABILITY

TEL (914) 421-1200 • FAX (914) 684-6554
E-MAIL probono@delphi.com
Box 69, Gedney Station • White Plains, NY 10605

*The **Center for Judicial Accountability, Inc.** is a national, non-partisan, not-for-profit citizens' organization raising public consciousness about how judges break the law and get away with it.*

Exhibit "A"

NEW YORK LAW JOURNAL

Monday, August 14, 1995

LETTERS

To the Editor

Comm'n Abandons Investigative Mandate

Your front-page article, "Funding Cut Seen Curbing Disciplining of Judges," (*NYLJ*, Aug. 1) quotes the chairman of the New York State Commission on Judicial Conduct as saying that budget cuts are compromising the commission's ability to carry out "its constitutional mandate." That mandate, delineated in Article 2-A of the Judiciary Law, is to "investigate" each complaint against judges and judicial candidates, the only exception being where the commission "determines that the complaint on its face lacks merit" (§44.1).

Yet, long ago, in the very period when your article shows the commission had more than ample resources — and indeed, was, thereafter, requesting less funding — the commission jettisoned such investigative mandate by promulgating a rule (22 NYCRR §7000.3) converting its mandatory duty to an optional one so that, unbounded by any standard and without investigaiton, it could arbitrarily dismiss judicial misconduct complaints. The unconstitutional result of such rule which, as written, cannot be reconciled with the statute, is that, by the commission's own statistics, it dismisses, without investigation, over 100 complaints a month.

For years, the commission has been accused of going after small town justices to the virtual exclusion of those sitting on this state's higher courts. Yet, until now, the confidentiality of the commission's procedures has prevented researchers and the media from glimpsing the kind of facially-meritorious complaints the commission dismisses and the protectionism it practices when the complained-of judge is powerful and politically-connected. However, the Center for Judicial Accountability Inc., a not-for-profit, non-partisan citizens' organization, has been developing an archive of duplicate copies of such complaints. Earlier this year, we undertook a constitutional challenge to the commission's self-promulgated rule, as written and applied. Our Article 78 petition annexed copies of eight facially-meritorious complaints against high-ranking judges filed with the commission since 1989, all summarily dismissed by the commisison, with no finding that the complaints were facially without merit.

In "round one" of the litigaiton, Manhattan Supreme Court Justice Herman Cahn dismissed the Article 78 proceeding in a decision reported on the second-front-page of the July 31 *Law Journal* and reprinted in full. By his decision, Justice Cahn, ignoring the fact that the commission was in default, held the commission's self-promulgated rule constitutional. He did this by ignoring the commission's own explicit definition of the term "investigation" and by advancing an argument never put forward by the commission. As to the unconstitutionality of the rule, as applied, demonstrated by the commission's summary dismissals of the eight facially-meritorious complaints, Justice Cahn held, without any law to support such ruling and by misrepresenting the factual record before him, that "the issue is not before the court."

The public and legal community are encouraged to access the papers in the Article 78 proceeding from the New York County Clerk's office (*Sassower v. Commission*, #95-109141) — including the many motions by citizen intervenors. What those papers unmistakably show is that the commission protects judges from the consequences of their judicial misconduct — and, in turn, is protected by them.

Elena Ruth Sassower
White Plains, N.Y.

Ex "B"

New York Law Journal®
The Official Law Paper for the First and Second Judicial Departments

To the Editor

WEDNESDAY, JANUARY 24, 1996

No Justification For Process's Secrecy

Without detracting from Thomas Hoffman's excellent suggestion (*NYLJ*, Jan. 5) that the Mayor's Advisory Committee on the Judiciary hold public hearings on "the judicial selection process in general," I wish to make known that on Dec. 27 the Advisory Committee held a so-called "public" hearing on the Mayor's 15 appointees to the civil and criminal courts which became, de facto, a hearing on the judicial selection process.

As the only person to give testimony at that "public" hearing — I protested the exclusion of the public from the screening process, pointing out that the secrecy of the Committee's procedures makes it impossible for the public to verify whether — and to what extent — "merit selection" principles are being respected.

Most people — readers of the *Law Journal* included — have no idea how completely closed the judicial selection process is to public participation, let alone scrutiny, and how skewed the results are because of that. The public is entirely shut out — except at the very end of the process, *after* the Mayor's judicial appointments have been announced. At that point, the Mayor's Advisory Committee holds a so-called "public" hearing on the Mayor's new appointees — a hearing not even publicized in a manner designed to reach the general public. The consequence is that the public-at-large knows nothing about the "public" hearing — and misses out on what is literally its one and only opportunity to have a say as to who will be its judges.

The earlier stages of the process foreclose that right: The Mayor's Committee receives applications from candidates applying to be judges, but keeps their identities secret from the public. This effectively prevents the public from giving the Committee information about the applicants that would be useful to its evaluation and selection of the required three nominees for each judicial vacancy. As to those nominees selected by the Committee and passed on to the Mayor, their identities are also kept secret from the public — thus preventing the public from coming forward with information even at that late stage.

From the outcome of this defective process, the Mayor selects our soon-to-be-judges. Yet his announcement of their names is not accompanied by release of the applications they filed with the Mayor's Advisory Committee at the beginning of the process, setting forth their qualifications. Those applications remain secret to the end.

Consequently, the public is unable to verify the qualifications of the Mayor's judicial appointees — and whether they are, in fact, the "most qualified." It is precisely because the public has no access to the applications of the Mayor's appointees — or to those of the other Committee nominees and of the entire applicant pool — that we have been battered for the last three weeks by wildly divergent claims about the absolute and relative qualifications of the Mayor's promoted and demoted judges, which even press investigation has been unable to resolve.

As I testified before the Mayor's Advisory Committee, there is no justification for the secrecy that shrouds the judicial screening process. Judges are public officers, paid for by the taxpayers, and wield near absolute powers over our lives. By filing applications with the Mayor's Advisory Committee, those applying to be judges represent themselves as possessing requisite superior qualifications. As such, they must be willing, like other contenders for public office, to accept public scrutiny as the price.

Although some writers to this column of the *Law Journal* have despaired that "politics" can ever be divorced from judicial selection — the most powerful beginning is to remove the self-imposed secrecy of the judicial screening process. Until then, "merit selection" can only remain the charade that it is.

Elena Ruth Sassower
White Plains, N.Y.

4/5/96 Op-Ed Ad

The celebration of a century.

In August 1896, a young newspaper publisher from Chattanooga, Tennessee, came to New York to make his mark and

purchased a financially bankrupt newspaper called The New-York Times. His name was Adolph S. Ochs. His goal was to build a newspaper with a reputation for a fair and complete news report backed by honorable business practices. One hundred years later, Mr. Ochs's vision still serves as the standard for this newspaper. ❧ Not only is 1996 the centennial year of Mr. Ochs's purchase, it also marks the 100th anniversary of The New York Times Book Review, The New York Times Magazine and the most famous newspaper slogan in history: "All the News That's Fit to Print." ❧ The men and women of The New York Times thank all the readers, advertisers and other supporters of The New York Times, who have helped to make this milestone possible.

ADOLPH S. OCHS
THE MAN WHO CHANGED The Times
A CENTENNIAL CELEBRATION OF THE NEW YORK TIMES

Ex "D"

The New York Times

Founded in 1851

ADOLPH S. OCHS, *Publisher 1896-1935*
ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*
ARTHUR OCHS SULZBERGER, *Publisher 1963-1992*

From The Publisher

It has been four generations since Adolph S. Ochs laid down the precepts that have successfully guided The New York Times for 96 years. Those principles have been carried forward with distinction by my grandfather, Arthur Hays Sulzberger; my uncle, Orvil E. Dryfoos, and my father, Arthur Ochs Sulzberger.

Each of these men, in their message upon being named Publisher, quoted the pledge Mr. Ochs made when he took the helm of The Times:

> *To give the news impartially, without fear or favor, regardless of any party, sect or interest involved.*

Each remained faithful to those words and the spirit behind them.

To follow in such footsteps is both a great honor and a daunting challenge. I pledge that, with the aid of the men and women who make this great paper all it is, The Times will continue to adhere to the high standards of journalism and business to which it has always held itself.

In assuming the duties of this office, I remain grateful for the guidance that has been and will continue to be given to me by my father. While he relinquishes the title of Publisher, he retains that of Chairman and Chief Executive Officer of The New York Times Company. It gives me great comfort to know that his presence and counsel will continue for years to come.

ARTHUR OCHS SULZBERGER JR.

Without Fear or Favor

Exactly 100 years ago today, Adolph S. Ochs, the founding father of the modern Times, published a declaration of principles in these pages setting forth his goals for the respectable but failing newspaper he had just taken over. The 38-year-old publisher, who had already rescued a dying paper in Chattanooga, Tenn., now found himself pitted in New York against powerful, sensationalistic competitors in the heyday of yellow journalism. His statement envisioned a dignified and responsible alternative that would provide trustworthy news and opinion. One especially elegant and inspirational goal — "to give the news impartially, without fear or favor, regardless of party, sect, or interests involved" — has held a place of honor at The Times ever since. Ochs's statement, reprinted below, was widely quoted at the time and remains a worthy credo for journalists everywhere, however difficult to fulfill.

To undertake the management of The New-York Times, with its great history for right doing, and to attempt to keep bright the lustre which Henry J. Raymond and George Jones [the paper's founding publishers] have given it is an extraordinary task. But if a sincere desire to conduct a high-standard newspaper, clean, dignified, and trustworthy, requires honesty, watchfulness, earnestness, industry, and practical knowledge applied with common sense, I entertain the hope that I can succeed in maintaining the high estimate that thoughtful, pure-minded people have ever had of The New-York Times.

It will be my earnest aim that The New-York Times give the news, all the news, in concise and attractive form, in language that is parliamentary in good society, and give it as early, if not earlier, than it can be learned through any other reliable medium; to give the news impartially, without fear or favor, regardless of party, sect, or interests involved; to make of the columns of The New-York Times a forum for the consideration of all questions of public importance, and to that end to invite intelligent discussion from all shades of opinion.

There will be no radical changes in the personnel of the present efficient staff. Mr. Charles R. Miller, who has so ably for many years presided over the editorial pages, will continue to be the editor; nor will there be a departure from the general tone and character and policies pursued with relation to public questions that have distinguished The New-York Times as a non-partisan newspaper — unless it be, if possible, to intensify its devotion to the cause of sound money and tariff reform, opposition to wastefulness and peculation in administering public affairs, and in its advocacy of the lowest tax consistent with good government, and no more government than is absolutely necessary to protect society, maintain individual and vested rights, and assure the free exercise of a sound conscience.

ADOLPH S. OCHS, New-York, Aug. 18, 1896

8/19/96

Ex "F"

7/19/96

The Color of Mendacity

American journalists have long believed that Government intrusion is the greatest threat to the profession. That may still be true when it comes to issues of independence and secrecy. But when it comes to the credibility of the American press, the most damaging recent wounds have been self-inflicted. The mimicking of salacious British tabloids, the raucous Washington talk shows, the fad for intellectually flaccid "civic journalism" have all done damage. The latest damage comes from the political columnist Joe Klein's revelation that he lied, often and energetically, about being the anonymous author of "Primary Colors" and that his top editor at Newsweek cooperated in the subterfuge.

Their behavior violates the fundamental contract between journalists, serious publications and their readers. If journalists lie or publications knowingly publish deceptively incomplete stories, then readers who become aware of the deception will ever after ask the most damaging of all questions: How do I know you are telling me the whole truth as best you can determine it *this time*?

Mr. Klein and Newsweek's editor, Maynard Parker, have invited the public and their professional colleagues to view their actions as an amusing game with soap-opera overtones. Of course, what they do with their individual credibility is up to them and the owners of their magazine. But it is shameless of Mr. Klein to excuse his falsehoods as similar to the protection of confidential sources. "There are times," he said, "when I've had to lie to protect a source, and I put that in this category."

In fact, principled journalists do not lie to protect sources. They rely on constitutional and statutory guarantees of journalistic privilege. Scores of reporters have maintained silence, sometimes to the point of going to jail, and their publications have spent a lot of money to defend the confidentiality guarantee in court. But they do so without lying. To try to stretch a noble doctrine to excuse a duplicitous book-selling scheme is irresponsible and disreputable.

One of the artistic models for Mr. Klein's book was "All the King's Men," by Robert Penn Warren. But we have to wonder if Mr. Klein really mastered the theme of the book, which has to do with the insidious nature of corruption. Mr. Klein wants his colleagues to view his actions as a diverting and highly profitable whimsy. But he has held a prominent role in his generation of political journalists. For that reason, people interested in preserving the core values of serious journalism have to view his actions and words as corrupt and — if they become an example to others — corrupting.

Ex "G"