Joint Affidavit of Corruption in the Massachusetts Judiciary

The undersigned, duly sworn plaintiffs in a civil suit dismissed both in summary judgment and on appeal, and denied "Further Appellate Review" (FAR) by the Supreme Judicial Court, herein present authenticated evidence showing that the state judiciary lies open to manipulation by government and corporate personages – a wrenching reality for whistle blowers whose private lives and fortunes have been sacrificed to privilege.

In 1999 we were rightly forewarned that influence trumps justice with impunity in the Commonwealth. Nonetheless in January 2000 we sued Commissioner of Education David Driscoll and Globe Senior VP Gregory Thornton along with four underlings for defaming us as incompetents, thieves, and child abusers. By dishonoring us the defendants sought as well to discredit our charges of fiscal fraud at a state charter school of which Thornton was trustees chairman.

A concerted campaign of libel and slander against us began in earnest in 1997 – soon after we blew the whistle – and intensified in the wake of a damning state audit instigated on our evidence of false enrollment claims by the South Shore Charter School then of Hull, Massachusetts. Published in May 1999, the State Auditor's comprehensive review of the School's finances chronicled over $1 million in "undocumented [tuition] billings" submitted to the state by CEO/Headmaster Timothy Anderson during the first two years of operation. Predictably, the charter-school moguls publicly denigrated Auditor Joseph DeNucci as inept.

In 2001 the defendants moved for summary judgment and prevailed. The plaintiffs, dubbed "public figures," appealed and lost. The Supreme Judicial Court took eight months to consider and re-consider FAR. In November 2005 we were disappointed once more – but not amazed.

By dismissing Beck vs. DOE after six years of pretend litigation, the Massachusetts judiciary has sanctioned a corrupt summary judgment and equally fraudulent adjudication on appeal – both processes visibly engineered to deny plaintiffs their day in court. Nevertheless, Beck vs. DOE and DeNucci's audit may yet see light. While justice does not always prevail, and luckless litigants forever scream bloody murder, something extraordinary happened on the way *from* the forum – unthinkable events revealing that Beck had been slated for dismissal all along.

Charter-Gate

Three months after a perfunctory hearing in November 2001 to consider defendants' motion for summary judgment, Plymouth County Superior Court Sessions Clerk Brendan Sullivan on a Friday afternoon in March 2002 recovered a signed but curiously shelved Decision and Order of Judge Richard J. Chin, and made belated distribution to the parties.

Thereby, a 23-page court decree containing wild distortions of the case record – too numerous and slanted to constitute mere error – slipped through a narrow crack. In the ensuing three

years, on appeal, judicial brooms repeatedly swept clean *prima facie* evidence of judicial fraud, while these dumbfounded plaintiffs-appellants kept trusting that a next appeals judge would set matters aright – by acting upon crystal-clear signs of *ex parte* intrusion into the judicial process.

We are informed – we think reliably – that for the most part only clerks ever set eyes on our matter, from inception at the Brockton branch of the Plymouth Superior Court through denial of FAR by the SJC. For instance, despite the undeniable complexity of Beck – a multifaceted action involving three plaintiffs, eight defendants, ten counts (each charging defamation and conspiracy to defame), and nearly 300 authenticated exhibits – the suit was nonetheless relegated to the Appeals Court "non-argument list," which in theory facilitates processing of *"less-complex"* cases. First Assistant Clerk Gilbert Lima then wrote Beck off on March 9, 2005.

Three years earlier, in March 2002, the Clerk's Office at Brockton Superior, responding to the last in a series of persistent Friday phone calls placed by Plaintiff Rod Young, misinformed us that Judge Chin, by then three months from hearing defendants' motion for summary judgment – in a case he deemed particularly "complicated" – still had not rendered the decision and order he promised would issue within just weeks. However, most certainly at least one clerk other than Sullivan was aware that Chin – probably ignorant of his decision's falsified content and suspended distribution – already had signed off.

Not relying upon mailed notification of the Court's decision – on the advice of one notably jaded court cleric – we regularly checked the docket, lest the 30-day period for filing notice of appeal lapse without our knowing. We were urged moreover to certify copies of the docket periodically in order to counter any later assertion that we had been inattentive to 'updates' that had not in fact been timely. We did, and indeed they had not.

At noon Plaintiff Young passed the routine news of 'no news' to his co-plaintiffs David Higgs and Roberta Beck, the latter terminally ill – a personal tragedy of which the Court had long been aware. On this Friday Roberta, confined now to her deathbed, decided to call the Court herself to complain in desperation about the prolonged decision process. Sympathizing with Roberta, Sessions Clerk Sullivan acted late in the day after most staff had departed for the weekend.

Had Sullivan not made distribution of Judge Chin's Decision that Friday, conceivably its pages would have been purged on the sly to eliminate a dozen incriminating fabrications of the record, typical of which was a misquote artfully reversing an FBI report of investigation (p.3).

A likely perpetrator of illicit machinations in Beck was a clerk overseeing the case, John Deady, seemingly in cahoots with *ex parte* intruders meddling on defendants' behalves. Apparently Deady and/or co-conspirator(s) had hesitated to sanitize the signed, yet unsealed and undelivered Decision and Order. Or, issuance of the sham process – howsoever revamped in advance – was to have been delayed up to deadline for filing notice of appeal. Two dates annotated on the cover, ten days apart, show distribution anomalously *before and after* a March 4 postmark [p.16].

Despite the apparent mischief, plaintiffs filed their notice by the cut off, and subsequently enumerated in their appellate brief a laughing stock of distortions of material exhibits in the Decision. Reversal seemed assured. However, the Appeals Court, SJC, and quasi-judicial "Commission on Judicial Conduct" (CJC) scrupulously avoided the dozen metaphrased and misquoted excerpts of the record that plaintiffs had painstakingly laid bare. No doubt each of the fraudulent citations was to have been expunged – or sponged – after securing Judge Chin's signature, but before distribution. However, Sullivan's spur-of-the-moment mailing thwarted any illicit intent – improbably preparing the plaintiffs for the battle joined now after having run a 6-year juridical gauntlet.

Of the numerous exhibits flagrantly misrepresented in the Decision, two reports of investigation stand out as material to Beck and authoritative under state and federal statute and office. The reversal of their findings in canards planted in a draft court process is astonishing.

- The higher courts and CJC abided the Superior Court's incongruous interpretation of an official school inquiry into fiscal wrongdoing alleged of CEO Anderson by the plaintiffs. While the so-called "Pollets Report" found Anderson solely responsible for repeated enrollment irregularities – as had been documented by plaintiffs in their call for investigation under CMR – the Court cited the very report in finding Anderson and others justified in publicly accusing *plaintiffs* of the same.

Clearly Chin had accepted a diametric misstatement of the Pollets Report in his own draft decision that in effect held Plaintiff Roberta Beck and *not Timothy Anderson* directly responsible for the $1.1- million slate of "undocumented billings" just reported by the State Auditor.

> Pollets Report: "Anderson's enrollment decisions … were based on his belief that a ***student was enrolled when an application was accepted*** and a space was reserved … The School later adopted more stringent guidelines and criteria for enrollment …." [pp. 9-11]
>
> Decision: "According to the [school] report, Beck did make a number of errors." [p.17]

(emphasis supplied)

Citing its deceit as dispositive – and ignoring the state audit – the Court ruled, "... [T]here is no evidence of falsity ..." in defendants' allegations of "inaccuracies" and "errors" against plaintiffs.

- Neither the SJC, Appeals Court, nor CJC addressed the incongruity of a peremptory FBI *case closure* based *on lack of evidence* of computer crime, on the one hand, and the Court's condoning public allegations of investigation of plaintiffs *for computer crime* on the other – notwithstanding that up front the record gainsaid defendants' criminal charges as filed with the Bureau. In 2000 FBI agent Paul Cronin informed Young that defendants' charges had instantly proven frivolous.

Evidently Judge Chin relied again utterly on the penultimate draft of his Decision, which, in this instance, falsified an internal FBI "Case Closures" report by mistitling it "Higgs' FBI Report," and artfully misquoting its finding to belie that a crime had been committed, a prime suspect (Higgs) identified, and a supposed "*formal* investigation" of plaintiffs begun.

In actuality "Case Closures" positively *ruled out* wrongdoing of any sort – hence *precluded* suspects – and indeed *suspended* the Bureau's inquiry in its preliminary phase. Higgs' name was never other than "title" of the School's disingenuous complaint of computer crime. That is, there never was, nor could have been, an "FBI report" of investigation of Higgs or of any other person – except as purported in the draft decision fabricated to mislead a distracted jurist.

Neither Higgs nor Young was aware that the FBI had visited the school campus until long after the summary departure of its assigned agents. Young's name never came up before, during, or after their brief visit – as confirmed by the Bureau in its response to a freedom-of-information-act (FOIA) request by Young [p.15].

Defendants could only have been pursuing a private, malicious agenda in publicly proclaiming that plaintiffs were being investigated for "data theft" and "wire tapping" – and for repeating the unfounded accusations *three months* after the School's final FBI contact. Given Judge Chin's misinformed Decision, which curiously failed to rule on several challenged statements including the accusations of electronic crime, defendants might even today be declaring plaintiffs as FBI targets.

> FBI Report: **"***CASE CLOSURES* ... Investigation determined access to system was obtained via default Windows 95 settings allowing file sharing and remote access. *U.S. Attorney's Office declined prosecution. Request case be closed.*" [pp.12-14]
>
> Decision: "… *[A] copy of* ***Higgs' FBI report*** states that the **'**[i]nvestigation determined that access to the system was obtained via default Windows 95 settings allowing file sharing ***from a*** remote access.**'**" [p.17] (emphasis supplied)

While "file sharing" and "remote access" are indeed computer *default settings*, the misquote "file sharing *from a* remote access" is not, connoting instead the overt, even covert, *act* of downloading data from the School network to a computer operated remotely by Higgs. Judge Chin could only have concluded that the misquote – captioned by the misnomer "Higgs' FBI Report" – justified defendants' allegations of criminal investigation, obviating malice and defamation.

Having reversed "Case Closures," the Court ruled that defendants "... cannot be found liable for [stating] ... the FBI was investigating Young and Higgs …" – presumably for *"data theft"* and *"wire tapping"* as alleged by defendants, challenged by plaintiffs, and ignored by the Court.

To create the evidentiary void demanded by the Court's successive findings of no malice – and hence of no defamation – the Court misconstrued in all twenty-five material exhibits, including the Pollets and FBI reports. By the same token, the Court *avoided* fifty-one key exhibits that defied miscontrual, to include the state's rigorous thirty-page audit of the School and the FBI's explicit single-page FOIA reply to Young [p.15]. The two reports, state audit, and FOIA response dispute purported material facts, and therefore by law – if not by Chin's decision – preclude summary judgment. Arguing judicial error, the plaintiffs exampled these and 15 other mishandled exhibits.

The serial discrepancies – count after count – argue compellingly that unnamed clerk(s) meticulously drafted an artful decision and order of summary judgment to bring about an unwarranted ruling in favor of prominent defendants. Even cursory comparison of the Decision with the record demonstrates that "Case Closures" and "Pollets" were reworded to remove contradictions of fact, eliminating the documentary basis for *disputing* defendants' material but false assertions: to wit, that defendants had only innocently misstated that the FBI was investigating Higgs and Young for computer crimes, and that Beck and Young bore responsibility for gross enrollment errors.

While Judge Chin no doubt was duped into accepting that purported material facts like the alleged FBI investigation of Higgs and Young and supposed enrollment errors by Beck and Young, were not in dispute and therefore did not constitute defamation, he ineptly failed to check the pertinent citations in his Decision against the real McCoy posted to the record – the same as later attached to plaintiffs' petitions submitted to the Superior Court Dept. and CJC, and copied Chin.

> **Canon 3 of the Judicial Code of Ethics** (commentary): "A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that the general prohibition against ex parte communications is not violated through law clerks and other court personnel."
>
> **Section 3B(7)(c)**: "…[A] judge shall take all reasonable steps to avoid receiving from court personnel … factual information concerning a case that is not part of the case record. If court personnel … nevertheless bring non-record information about a case to the judge's attention, the judge may not base a decision on it …."

The Decision upheld on appeal, so replete with bald-faced deceptions, emboldens the plaintiffs-appellants to tackle the Superior Court, Appeals Court, SJC, and CJC head on. Intent upon covering up its own and others' wrongdoing, the judiciary can hardly entertain – much less *detain* – pro se litigants acting out contemptuously but righteously against misfeasant courts. If denied the spotlight afforded by a hearing, the plaintiffs will find alternate venues in which to pose over and over their vexing question, 'Why did a state court tamper with material evidence?'

> **Canon 3** (commentary): "[Section 3D] requires judges to report conduct indicating a substantial likelihood of a serious violation of professional conduct by judges or lawyers …."
>
> **Section 3D(1)**: "A judge having knowledge of facts indicating that another judge has committed a violation of the Code … shall inform the Chief Justice of [the Supreme Judicial Court] and of that judge's court."

Judicial fraud invites apprehension of the other kind – not in chains but on the hustings. While arresting questions of court integrity are quashed in courtrooms, they are freely asked and answered in the streets among citizens wary of an SJC in the news for stretching its purview. Beck may yet prevail in the Court of Public Opinion, and its successor, in Federal District.

Presentment

Under G.L. c. 258, the plaintiffs have drafted a so-called "presentment letter" announcing a new lawsuit – to be filed in state or federal court – naming among the defendants all of the jus-

tices who presided in Beck. The letter idealistically demands our money back – fees, expenses, and more, incurred during six years of fraudulent litigation. With attachment of the instant affidavit, it frames hard questions to be posed by reporters and others, to judges, litigants, 'officers of the court' (attorneys), and especially to administrative and legal clerks who knowingly or naively accepted *ex parte* materials that misinformed a summary judgment.

Our presentment letter also challenges the Court to enforce its decree that plaintiffs reimburse defendants' legal expenses, or to allow our recently filed motion (attached hereto) to cancel that unjustifiable obligation [p.19]. 'Mad as hell' we won't remit a plug nickel per order of a corrupt court, and fear only that the judiciary will sooner abide our utter contempt than provide a forum for airing large issues – to include truth.

The presentment-letter process responds directly to advice given us by Attorney General Thomas Reilly's Chief of Criminal Division, Kurt Schwartz, this past November.

Expanding beyond his unapologetic fiat "… the Criminal Bureau is not going to … take action on your … complaint," AAG Schwartz counseled that we "… confer with a private attorney about civil remedies that may be available …." Several lawyers and law academics have since opined that Schwartz, to his credit, has thereby encouraged us to bring an action against the courts – if not against his boss Tom Reilly as well. There appear no other "civil remedies" in the state's justice system that we have not already tested, as Schwartz undoubtedly is acutely aware.

Since 1997, plaintiffs have in fact taken pains to exhaust every available state recourse – regulatory, civil, and criminal – including the good offices of the State Auditor and the markedly disappointing auspices of the DOE, CJC, AG, and courts. From our unrelenting *pro se* effort has emerged – as savvy jurists foretold prior to our filing suit – an evident pattern of misfeasance and abuse of process from a Superior Court in Brockton to the government and judiciary on Beacon Hill, where, at the behest of Brahmins, justice was brokered, delayed, and ultimately denied.

Predictably, Reilly and Schwartz shied from interviewing us to review our evidence, thereby compromising Article XI of the Mass. Declaration of Rights which stipulates, "Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character." By Schwartz' politically inspired response, the AG has denied "remedy" or "recourse" for injuries sustained under a judge's gavel, subordinating to privilege his solemn pledge to protect citizens and enforce the law.

We recently brought our overall matter of bureaucratic and judicial corruption to the Office of U.S. Attorney Michael Sullivan. In a letter dated December 2, 2005, Assistant U.S. Attorney Jeffrey Auerhahn acknowledged our "evidence of criminal wrongdoing," referring us to the Massachusetts State Police and Attorney General – and by inference to an appropriate District Attorney.

Notably in late 1997 we reported our charges against the South Shore Charter School to then Plymouth County DA Michael Sullivan, and followed his advice to a letter.

Charter Fraud

In February 1997, as volunteers, employees, consultants, and parents of students at South Shore Charter, we informed the School's trustees that in the first two quarters of fiscal year 1997 CEO Timothy Anderson cheated the state out of $ten of thousands in unwarranted "tuition claims" – reportedly to afford his generous $100,000+ CEO's package – and that we wanted no part.

After several unsuccessful attempts by mail and phone to address the matter with Chairman Thornton, we reported Anderson's brazen illegalities in writing to Associate Commissioner of Education (Charter Schools) Scott Hamilton. At the time we were unaware that Hamilton, Anderson, Thornton, and their wives socialized.

Tellingly, Hamilton, the state's supposed charter-school watchdog, angrily dubbed us – and also Janet O'Brien (D-Hanover), chair of the state legislature's Joint Committee on Education – as paid "agents of the National Education Association," out to destroy charter schools.

Moving up a rung, we expressed our concerns in November 1997 to District Attorney Sullivan, and subsequently, on Sullivan's personal referral, lodged a formal complaint with the Office of the State Auditor. Following rigorous evaluation of our hard evidence of fiscal wrongdoing, OSA launched a 15-month audit of South Shore Charter that in 1999 reported a mind-boggling $1.1 million in "undocumented billings" submitted to the state by CEO Anderson in little over a school year, from September 1995 through December 1997.

In March 1999 the Department of Education let Associate Commissioner Hamilton go. The Department had taken note of an enrollment analysis we submitted to Board of Education Chairman John Silber showing that a $527,000 mid-year "tuition reimbursement," recently authorized by the associate commissioner, had been padded. Chairman Silber took timely action resulting in the reduction of the quarterly payment in question to a round $400,000 – still excessive by our calculations. Notably, the School lodged no objection.

Seemingly in sync with Hamilton's dismissal, the Board of Trustees forcibly retired CEO Anderson. The investigative "Pollets Report," initiated by the plaintiffs but withheld from them until July 2000 [p.11], apparently had convinced the board that their CEO had been claiming non enrollees for tuition reimbursement – as seemingly condoned, disturbingly, by Thornton and Hamilton, both long familiar with ours and the State Auditor's evidence of Anderson's fiscal manipulations.

In May 1999, Auditor Joseph DeNucci specifically recommended in his "Official Report of Audit of the South Shore Charter School" that the DOE investigate "undocumented billings" ($1,095,324) and "questionable expenses" ($47,000), as submitted by Anderson.

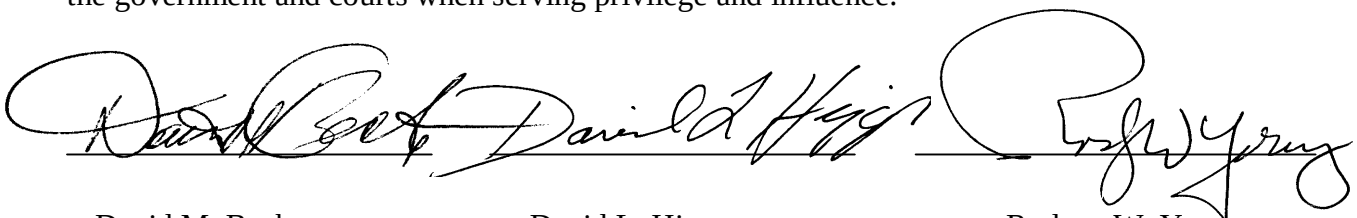
Commissioner Driscoll responded by publicly ridiculing the state audit the day after its release, rejecting out of hand DeNucci's call for investigation. Driscoll, the state's lead charter-school advocate, had closed ranks with Thornton and others in unequivocally defending South Shore Charter School – at plaintiffs' considerable expense. The bigwigs effectively blamed the whistle blowers for the very irregularities (termed by Driscoll "clerical errors") that Roberta Beck first reported in February 1997 – multiplied a thousand-fold in the recent state audit.

Early in 1998 defendants began calling plaintiffs every name in the book, including 'thief,' 'computer criminal,' 'wire tapper,' and 'child abuser.' Defendants' lawyers argued in summary judgment that while their clients indeed made the challenged statements – howsoever false and damaging – they had done so only in good faith as public employees, and that the plaintiffs, whom they roundly dismissed as limited-purpose public "gadflies," could not, under law, claim damages.

On the contrary, plaintiffs avow with indignation that the record of their case – set apart from the gross distortions and omissions in the Court's Decision and Order – demonstrates *malicious* and therefore actionable libel and slander, which, undiminished by any supposed public-employee or public-figure status, quashes outright defendants' motion for summary judgment both in law and fact. Nonetheless the courts are intent – no doubt for some "greater good" – to thwart our right to an evidentiary hearing at which to present witnesses and *original* exhibits.

****

On this 23rd day of April, 2006, under the pain and penalty of perjury, we commend the above to the consideration of all concerned citizens of this Commonwealth. We now commence *our* fix, inviting any and all to test our allegations and evidence of insidious abuse of process by the government and courts when serving privilege and influence.



David M. Beck
22 "F" Street
Hull, MA 02045
781-333-4148
maaogis@yahoo.com

David L. Higgs
1269 Pleasant Street
Weymouth, MA 02189
781-335-3301
dhiggs42@comcast.net

Rodney W. Young
70 "J" Street
Hull, MA 02045
781-925-9494
rodyoung@comcast.net

Excerpts from Decision and
Order of Summary Judgment
(distortions bolded – see pp.17-18)

"On June 16, 1999, the board of trustees of the SSCS appointed two trustees of the school to investigate and compare the **allegations raised by the defendants**."

Note: Beck and Young, who called for investigation of "enrollment errors," are *plaintiffs.*

"According to the preliminary draft of the resulting report, **Beck did make a number of errors** in the reports prepared for DOE. The only thing that was **under dispute was the significance of the mistakes**."

Note: There is no *finding* of error by Beck of any kind – even of "simple typos" – in the Pollets Report. Despite Anderson's disclaimer blaming plaintiffs [¶¶ 6, 7], nonetheless the investigators find that Anderson committed significant enrollment errors. The Court does not acknowledge this finding. See p.18.

"Pollets Report"

(pertinent passages bolded – see pp.10-11)

" On June 16, 1999 the South Shore Charter School Board of Trustees appointed Miriam Brownewall and John Pollets to **investigate allegations raised by Mrs. Roberta Beck and Mr. Rodney Young** relative to statements made by the then CEO of the Charter School, Tim Anderson.

"As part of the investigation Rodney Young, Roberta Beck, Timothy Anderson, Robin Coyne, Alice Hollingshead, and Jose Alphonso (sic) were contacted and interviewed. In addition, various memorandum, letters, facsimiles and reports were reviewed and examined.

"**Beck and Young alleged that Anderson improperly blamed them for enrollment errors** in the October 1996 enrollment report to the DOE in letters to the State Auditor and in newspaper interviews. Specifically Beck and Young claim that Anderson stated they 'mistakenly included certain names on the October 2, 1996 submission to the DOE'.

"As a result of the investigation the following was found:

"1. Anderson, as CEO of the South Shore Charter School had ultimate authority and responsibility for the enrollment submissions.

"2. **Anderson required Beck to check with him before making any changes to the student lists** and he made various enrollment decisions that Beck may have objected to.

"3. Anderson's enrollment decisions regarding the April and October reports in 1996 and 1997 were based on **his belief that a student was enrolled when an application was accepted and a space was reserved for that student**.

"4. There may not have been a clear policy regarding enrollment criteria during 1996 and 1997 from the DOE. **The School later adopted more stringent guidelines and criteria for enrollment and termination of enrollment.**

"5. The investigators did not find any evidence that the school obtained additional funds as a result of the enrollment reports and that payments made based on earlier reports were either refunded or adjusted based on the February report.

"6. Anderson felt that Beck had made a large number of errors on the reports causing him great frustration and **Beck believed that** [her] **errors were simple typos** of little consequence.

"7. Anderson's blame of Young and Beck for the enrollment errors [was] misplaced and inappropriate since **[Anderson]** retained ultimate authority for the [FY Claim] reports and **directed which students were added or deleted** from the report."

Preliminary Draft Report of Investigation of Young/ Beck Enrollment Allegations

From: Miriam Brownewall and John R. Pollets
Date: July 13, 1999

DRAFT

On June16, 1999 the South Shore Charter School Board of Trustees appointed Miriam Brownewall and John Pollets to investigate allegations raised by Mrs. Roberta Beck and Mr. Rodney Young relative to statements made by the then CEO of the Charter School, Tim Anderson.

As part of the investigation Rodney Yeung, Roberta Beck, Timothy Anderson, Robin Coyne, Alice Hollingshead, and Jose Alphonso were contacted and interviewed. In addition, various memorandum, letters, facsimiles and reports were reviewed and examined.

Beck and Young alleged that Anderson improperly blamed them for enrollment errors in the October 1996 enrollment report to the DOE in letters to the State Auditor and in newspaper interviews. Specifically Beck and Young claim that Anderson stated they "mistakenly included certain names on the October 2, 1996 submission to the DOE".

As a result of the investigation the following was found:

1. Anderson, as CEO of the South Shore Charter School had ultimate authority and responsibility for the enrollment submissions.

2. Anderson required Beck to check with him before making any changes to the student lists and he made various enrollment decisions that Beck may have objected to.

3. Anderson's enrollment decisions regarding the April and October reports in 1996 and 1997 were based on his belief that a student was enrolled when an application was accepted and a space was reserved for that student.

4. There may not have been a clear policy regarding enrollment criteria during 1996 and 1997 from the DOE. The School later adopted more stringent guidelines and criteria for enrollment and termination of enrollment.

5. The investigators did not find any evidence that the school obtained additional funds as a result of the enrollment reports and that payments made based on earlier reports were either refunded or adjusted based on the February report.

6. Anderson felt that Beck had made a large number of errors on the reports causing him great frustration and Beck believed that the errors were simple typos of little consequence.

7. Anderson's blame of Young and Beck for the enrollment errors were misplaced and inappropriate since he retained ultimate authority for the reports and directed which students were added or deleted from the report.

DRAFT

Miriam Brownewall, Acting Treasurer
John R. Pollets

Background and authentication of <u>Pollets Report</u>: Plaintiff Young filed a public-records request with the School on September 8, 1999 for the "Pollets Report" and related documents, accurately specifying author, date, and subject. Representing the School, Thornton denied the request on August 26, 1999 without acknowledging that the report existed – a violation of the state's public-records/freedom-of-information law. The Pollets Report finally was ordered released by the Public Records Division on July 11, 2000, after a lengthy ten-month review of a petition filed by Young.

Throughout discovery beginning in February 2000, Thornton and Attorney Mark Batten of Bingham Dana LLP denied the availability of any document produced by trustees John Pollets and Miriam Brownewall. However, the record reveals that on January 11, 2000 Batten provided a copy of the "Pollets Report" to the Public Records Division of the Office of the Secretary of State for in-camera review.

As is apparent from Batten's communications with the Division, arguing that the Pollets Report was not a pubic record, Thornton and Batten were confident that Young's petition for release would be denied, and that no acknowledgment of the Pollets Report would ever be made – per Division policy.

Not surprisingly then, on July 6, 2000, Batten responded untruthfully to Plaintiff Higgs' request for production of documents under rule 34 of Civil Procedure, specifying the Pollets Report and related documents. Batten wrote, "The School has searched its files for documents responsive to your request ... The enclosed appear to be the only documents in the School's possession that are responsive ...."

The Pollets Report was not among the notably unresponsive documents produced.

Five days later, on July 11, 2000, the Secretary of State unexpectedly declared the long buried Pollets Report – as clearly identified by author, date, and subject in Young's 1999 public-record request and as well in Higgs' 2000 discovery demand – to be a public document, ordering its release.

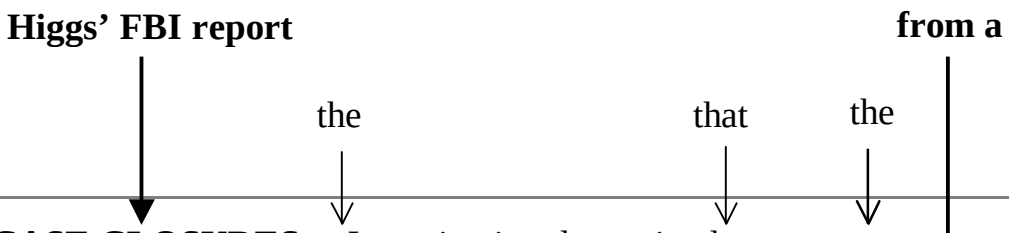
The Pollets Report next appeared in the Decision and Order of Summary Judgment, grossly distorted as to finding, seemingly from an *ex parte* substitution.

FBI report of Case Closures

(see pp. 13-14)

"CASE CLOSURES ... Investigation determined access to system was obtained via default Windows 95 settings allowing file sharing and remote access. US Attorney's Office declined prosecution. Request case be closed."

(Rewording in violation of U.S. Code Title 18)



"~~**CASE CLOSURES**~~ ... Investigation determined access to syste m was obtained via default Windows 95 settings allowing file sharing ~~**and**~~ remote access. ~~**US Attorney's Office declined prosecution**~~. ~~**Request case be closed**~~."

Misquotation in Summary Judgment *

(see p. 17)

"A copy of ***Higgs' FBI report*** states that *the* '[i]nvestigation determined *that* access to *the* system was obtained via default Windows 95 settings allowing file sharing ***from a*** remote access.'" [emphasis supplied]

* The title "CASE CLOSURES" and final two sentences of the actual report are omitted in the Decision and Order of Summary Judgment, effectively obscuring the material fact that the FBI investigation had been terminated without finding of wrongdoing.

(12/31/1995)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE **Date:** 06/03/1998

To: Boston **Attn:** SSA [redacted] b7C

From: Boston
Squad C-11
Contact: SA [redacted] b7C

Approved By: [redacted]

Drafted By: [redacted] car

Case ID #: 9B-BS-82047
288-BS-81938
288-BS-82231
288-BS-82385
288-BS-82384

Title: CASE CLOSURES

Synopsis: Request the following cases be closed.

Details: Case #: 9B-BS-82047
Title: UNSUB(S);
Learning Company - Victim
Extortion

O/S

Investigation determined that no specific threats were made against the computer network of the Learning Company. Additionally, no threat of serious physical harm or financial loss was present. No further treats have been received by the Learning Company since the 1/3/1998 threatening e-mail. Request case be closed.

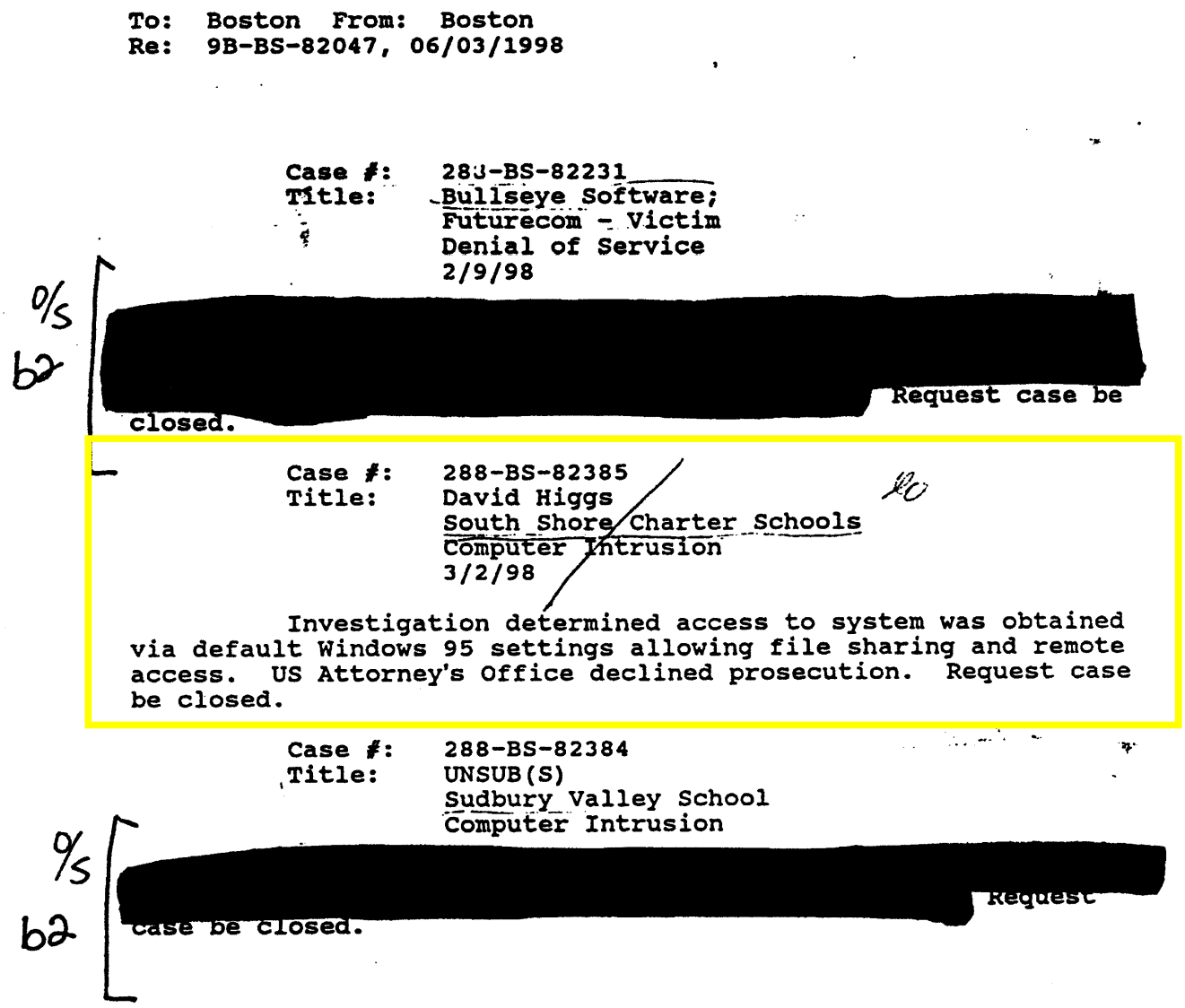
Case #: 288-BS-81938
Title: ITW, INC.
INTAP
Denial of Service
11/28/97

O/S
b2

[redacted] Request case be closed.

UPLOADED
WITH/TEXT 6/11/98
WITHOUT/TEXT
BY 6/11/98
DATE 6-8-98

288-BS-82385-8



To: Boston From: Boston
Re: 9B-BS-82047, 06/03/1998

Case #: 288-BS-82231
Title: Bullseye Software; Futurecom - Victim
Denial of Service
2/9/98

[redacted] Request case be closed.

Case #: 288-BS-82385
Title: David Higgs
South Shore Charter Schools
Computer Intrusion
3/2/98

Investigation determined access to system was obtained via default Windows 95 settings allowing file sharing and remote access. US Attorney's Office declined prosecution. Request case be closed.

Case #: 288-BS-82384
Title: UNSUB(S)
Sudbury Valley School
Computer Intrusion

[redacted] Request case be closed.

Background and authentication of "Case Closures" Report

All investigative documents of the FBI were produced in response to Plaintiff Higgs' freedom-of-information-act (FOIA) request in early 2000, specifying all records referencing the school and his surname. Notably a similar request by Young produced no documents referencing "Young." [p.15].

The case-closures report is an internal FBI document that was not available to any litigant until two years after the fact. It reflects the outcome of a preliminary inquiry into the School's complaint, as filed by Defendant Dianne Miles formally charging that Plaintiff Higgs had illegally downloaded a psychological report on his son from a school computer to his home workstation.

FBI agents quickly determined on-site that the School's network was open to all, and departed.

During the summary-judgment hearing, Higgs produced the psychological report in question, which had been mailed to him by the school psychologist. The document bears a date two months after the date Miles claimed that the item had been electronically downloaded illegally.

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

One Center Plaza
Boston, MA 02108-1801
January 20, 2000

Mr. Rodney Wiley Young
70 "J" Street
Hull, MA 02045

Dear Mr. Young:

This is in response to your Freedom of Information-Privacy Acts (FOIPA) request received by this office on January 12, 2000.

Based on the information furnished, a search of the automated indices to the central records system maintained in the Boston office located no records responsive to your FOIPA request to indicate you have ever been of investigatory interest to the FBI. The automated indices is an index to all records created since 10/01/84 in this office.

If you have reason to believe records responsive to your request exist prior to the above date, you will have to request another search. In order to respond to our many requests in a timely manner, our focus is to identify responsive records in the automated indices that are indexed as main files. A main file index record carries the names of subjects of FBI investigations.

Although no main file records responsive to your FOIPA request were located in our automated indices, we are required to inform you that you are entitled to file an administrative appeal if you so desire. Appeals should be directed in writing to the Co-Director, Office of Information and Privacy, U.S. Department of Justice, Suite 570, Flag Building, Washington, D.C. 20530, within sixty days from receipt of this letter. The envelope and the letter should be clearly marked "Information Appeal."

Sincerely yours,

BARRY W. MAWN
Special Agent in Charge

By:
FRANK M. DAVIS
Chief Division Counsel

59

Commonwealth of Massachusetts
County of Plymouth
The Superior Court

CIVIL DOCKET# **PLCV2000-00076**

Beck et al
vs.
Massachusetts Department of Education et al

SUMMARY JUDGMENT M.R.C.P. 56

This action came on to be heard before the Court, Charles J. Hely, Justice, presiding, upon motion of the defendant(s), Massachusetts Department of Education, Edward Kirby, Scott Hamilton, South Shore Charter School, David P. Driscoll, Gregory L. Thornton, Chairman of SSCS Board of Trustees, Timothy Anderson, Diane Ellis Miles, for Summary Judgment pursuant to Mass. R. Civ. P. 56- the parties having been heard - and the Court having considered the *pleadings-and affidavits, finds there is no genuine issue as to material fact and that the defendant is entitled to a judgment as a matter of law,

It is **ORDERED and ADJUDGED:**

That the Complaint of the Plaintiff (s), Roberta Beck, David L. Higgs, Rodney W. Young be and hereby is **DISMISSED** against the Defendant (s), Massachusetts Department of Education, Edward Kirby, Scott Hamilton, South Shore Charter School, David P. Driscoll, Gregory L. Thornton, Chairman of SSCS Board of Trustees, Timothy Anderson, Diane Ellis Miles, with costs.

Dated at Plymouth, Massachusetts this 25th of February, 2002.

Francis R. Powers,
Clerk of the Courts

By: John C. Barr
Assistant Clerk

copies mailed 02/25/2002

3-6-02 MB MP RB DH RY BE

cvdjud56d_1.wpd 271707 jud56d graycath

Note: initials at left refer to pro se plaintiffs and defense attorneys:

RB	Roberta Beck
DH	David Higgs
RY	Rod Young
MB	Atty. Mark W. Batten
MP	Atty. Mark P. Sutliff (?)
BE	Atty. Betsy Ehrenberg

EduCore lease. Young subsequently brought a district court action against Anderson. On July 24, 1997, Beck and Young testified in Hingham District Court pursuant to this action. The court concluded that Young was entitled to $1,000 for services that he had rendered to SSCS. For this trial, Beck and Young testified that Anderson had directed them to falsify an official claim form which lead to the school receiving an unwarranted $10,000. After testifying, Beck felt as if she had lost a lot respect from the SSCS community.

D. The FBI Investigation

In June 1998, Miles began noticing irregularities in the telephone, fax, and computer equipment as well as what she considered unauthorized intrusions into confidential student files. Among other things, she noticed that many computer information sheets showed that the files were last saved by "david l. higgs." When Miles spoke to Anderson, he told her to contact the telephone company. The telephone company, upon inspecting the telephone wiring, allegedly told Miles to notify the Federal Bureau of Investigation ("FBI") to further investigate these irregularities. Upon its inspection, the FBI told Miles that there was enough evidence to begin a formal investigation. While the FBI did investigate computer irregularities alleged by Miles, an FBI agent told Young that no investigation pertaining to him was ever made. There was, on the other hand, a case number associated with Higgs. A copy of Higgs's FBI report states that the "[i]nvestigation determined that access to the system was obtained via default Windows 95 settings allowing file sharing from a remote access."

E. Board of Trustees Investigation

On June 16, 1999, the board of trustees of the SSCS appointed two trustees of the school to investigate and compare the allegations raised by the defendants. According to the preliminary

draft of the resulting report, Beck did make a number of errors in the reports prepared for the DOE. The only thing that was under dispute was the significance of the mistakes. The committee concluded that even if the mistakes were significant, Anderson was ultimately responsible for the accuracy of the reports and therefore Anderson inappropriately blamed Beck and Young for the resulting enrollment errors.

F. Plaintiffs' Complaint

In their complaint, the plaintiffs state nine counts of defamation. The nine counts are addressed to all defendants. Each count begins by alleging that the defendants participated in a long-standing conspiracy to discredit and vilify the plaintiffs due to the plaintiffs' opposition to certain practices and policies of the SSCS and the DOE charter school office. The counts then make more specific allegations.

The Count I makes reference to statements contained in the November 13, 1997 issue of school's "CEO & Founder Update." In that issue, Anderson stated that he had asked Young why the school could not just submit manually recorded figures to the state rather than using the EduCore program to generate the reports. The plaintiffs argue that this statement contradicts the testimony provided by Young and Beck in the Hingham District Court and therefore discredits the plaintiffs by insinuating that they are perjurers.

Count II alleges that Anderson told members of the SSCS community that Beck and Young repeatedly and incompetently made false entries on claim forms submitted to the DOE. The count also makes reference to a letter written by Anderson to the state auditor in which he stated that

> "[d]ue to the great number of inaccuracies in Roberta's work, [Anderson] kept a working summary list of students who entered and left SSCS and manually recalculated all [claim

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

TRIAL COURT
SUPERIOR COURT DEPT.
CIVIL ACTION: **00-0076A**

David M. Beck,)
David L. Higgs and)
Rodney W. Young,)
Plaintiffs,)
vs.)
)
Massachusetts Department of Education [DOE], and)
South Shore Charter School [SSCS], and)
David P. Driscoll, Commissioner of Education, and)
Scott W. Hamilton, (former) DOE Associate Commissioner of Education, and)
Edward Kirby, (former) Acting DOE Associate Commissioner of Education, and)
Timothy Anderson, (former) SSCS Chief Executive Officer, and)
Diane Ellis Miles, (former) SSCS Headmaster, and)
Gregory L. Thornton, (former) Chairman, SSCS Board of Trustees,)
Defendants.)

MOTION OF PLAINTIFFS THAT THE COURT COUNTERMAND ITS ORDER REQUIRING THEM TO REIMBURSE DEFENDANTS' COSTS, AND, ADDITIONALLY, THAT THE COURT REQUEST OF THE CHIEF JUSTICE OF THE SUPREME JUDICIAL COURT THAT APPARENT ADJUDICATIVE WRONGDOING BE INVESTIGATED.

1. The Court dismissed the above named case by its Decision and Order of Summary Judgment dated February 25, 2002, which subsequently was upheld in March 2005 by the Appeals Court, and denied Further Appellate Review by the Supreme Judicial Court the following November. Notwithstanding, the plaintiffs hereby request that this Court eliminate the phrase "with costs" in the edict "It is ORDERED ... [t]hat the Complaint of the Plaintiff(s) ... hereby is DISMISSED ... with costs," thereby relieving plaintiffs of the obligation to reimburse defendants' litigation expenses.

2. Through their attorneys, defendants Gregory Thornton and Timothy Anderson on May 2, 2002 filed with this Court a 50-page "Bill of Costs" in the amount of $6,422.29. Assistant Attorney General Mark Sutliff, representing defendants David Driscoll, Scott Hamilton, and Edward Kirby, indicated to plaintiffs in writing that following adjudication of the appeal in his clients' favor, a bill of costs would be filed by the Office of the Attorney General. Defendant Dianne Miles, represented by Pyle, Rome, Lichten & Ehrenberg, P.C., has not stated her intention in the same regard.

3. Plaintiffs justify their request for relief by reason of the manifest fraud permeating the adjudication of their action. Remarkably, the Decision and Order itself contains grievous misrepresentations of the record, undoubtedly contrived by clerk(s) of this Court in collusion with *ex parte* intruder(s) in the judicial process, to misinform the summary judgment. Tellingly, all fabrications favor defendants.

4. Moreover, despite a plethora of compelling arguments in law and fact, plaintiffs' appeal was relegated to the Appeals Court's "*non-argument* list," whereupon a clerk – in lieu of a judicial panel

– wrote it off with sophomoric and irrefutably erroneous argument. The Appeals Court gave no consideration whatsoever to the manifold misrepresentations and omissions shown by plaintiffs clearly to have masked disputations of material fact, and thereby – through but deceit – affirmed the lower court's decree allowing defendants-appellees' motion for summary judgment.

5. The seventeen findings in the Superior Court's Decision and Order misconstrued twenty-five exhibits and avoided fifty-one others – all seventy-six documents thus precluded from contradicting material facts purported by the defendants. In the attached "Joint Affidavit Attesting Judicial Corruption," dated January 1, 2006, plaintiffs focused on four key exhibits that were variously metaphrased, misquoted, and disregarded in the Decision. In their 2004 appellate brief plaintiffs treated exhaustively six misrepresentations and nineteen omissions, with no judicial notice documented.

6. Per the Code of Judicial Conduct, plaintiffs demand that this Court review the attached affidavit and relevant records, and – as warranted – call for immediate investigation into judicial fraud.

> **Canon 3B(7)(c)(i)** "[A] judge shall take all reasonable steps to avoid receiving from court personnel or other judges factual information concerning a case that is not part of the case record."
>
> **Canon 3D(1)** "A judge having knowledge of facts indicating a substantial likelihood that another judge has committed a violation of the Code ... shall inform the Chief Justice of [the Supreme Judicial Court] and of that judge's court ...."

7. Plaintiffs freely acknowledge their disdain for court personnel who corrupted the adjudication of their matter, in order to protect powerful defendants. Accordingly, we express our unalterable refusal to reimburse costs incurred by any of the eight defendants – even as mandated in the Decision and Order of Summary Judgment. Plaintiffs challenge the Court to enforce its order by holding a hearing, and, should our outrage indeed prove outrageous, find us in contempt.

8. However, we have no expectation that the Court will act against its self-interest by granting the instant motion or – even less expediently – by holding an enforcement hearing. To avoid exposure of corruption in the public eye, the Court likely has, or soon will have, arranged with the defendants to forego enforcement. Accordingly, Bingham McCutchen LLP; Pyle, Rome, Lichten & Ehrenberg, P.C; and even the Office of the Attorney General – a state agency obliged to pursue monies owing – no doubt will simply guard an ignoble silence.

Respectfully submitted,

David M. Beck, pro se David L. Higgs, pro se Rodney W. Young, pro se

Date: February 17, 2006

Attached: Joint Affidavit Attesting Judicial Corruption,* dated January 1, 2006
[* URL: "http://courtcorruption.wellrock.net": Corruption in the Massachusetts Judiciary]

On the steps of the Plymouth Superior Courthouse, Rod Young of Hull demonstrates his contempt for court order requiring plaintiffs in Beck vs. DOE to reimburse defendants' litigation costs. Young and two co-plaintiffs say that the content of a Decision and Order of Summary Judgment in their defamation suit against the Department of Education and South Shore Charter School contains "ex parte" misrepresentations of the case record.