

“Embattled”

Embattled is a code word for someone who the *New York Times* would like to see defeated. For example, the *Times* had often expressed its displeasure with Israel's conservative government, and it was only a matter of time before the conservative leader would find himself “embattled,” according to the *New York Times*. In an article under the headline “SHARON SAYS ARAFAT'S TRUCE CALL

AIMS AT INFLUENCING ISRAELI VOTERS” (January 13, 2002), the *Times* declared:

JERUSALEM, Jan. 12—Israel's embattled prime minister, Ariel Sharon, spoke dismissively today about Yasir Arafat's appeal for a pre-election halt to attacks on Israeli civilians, clearly implying that the Palestinian leader was trying to help his dovish opponent.

Though, in the article “EMBATTLED, SCRUTINIZED, POWELL SOLDIERS ON” (July 25, 2002), the *Times* spoke in endearing terms about the “nonideological” secretary of state, you can be sure the *Times* would like nothing more than to report Colin Powell's political defeat or, better yet, his joining the Democratic party. After all, if a future president of the United States is to be black, it won't count if he's a Republican.

Harvey L. Pitt, the former chairman of the Security Exchange Commission, must have had a target painted across his chest. It seemed the *Times* had identified him early on as someone to be taken down at all costs, and a front-page crusade against the SEC chairman had begun soon after he was nominated to that position.

By the summer of 2002, owing to the crusade the *Times* launched against him, Chairman Pitt became irrecoverably “embattled.” A *Times* news summary regarding Chairman Pitt's rejection of calls for his resignation was run under the headline “EMBATTLED, BUT STAYING” (July 15, 2002).

Several days later, in “S.E.C. CHIEF SET TO PURSUE FORMER CLIENTS” (July 18, 2002), the *Times* employed the “embattled” label again:

WASHINGTON, July 17—Harvey L. Pitt, the embattled head of the Securities and Exchange Commission, said today that with the expiration of ethics restrictions that have bound him during his first year in office, he would play a direct role in enforcement cases involving companies and accounting firms that were once his law clients.

Once Pitt was labeled as “embattled,” he should have braced himself for the firestorm to come. As soon as Congress passed legislation to create an accounting oversight board, the *New York Times* was determined to have an anti-business crusader head the board. Pitt soon discovered that when the \$3 billion *Times* soft-money machine wants something, either you give it to them, or watch out.

Shortly after Pitt pushed for the appointment of William H. Webster to lead the oversight board, rather than the *Times*' preferred candidate, the *Times* unleashed its fury. Harvey Pitt is a man of principle—what the *Times* would call an ideologue, not a pragmatist—and he didn't care what the newspapers would write about the nominee. But what Pitt did not understand, or did not expect, was how powerful the front page of the *Times* can be as a means of influence.

A week before the midterm 2002 elections, the “newspaper of record” dropped an atomic bomb on the “embattled” Harvey L. Pitt. The front page of the *New York Times* announced, “OVERSIGHT CHIEF TOLD PITT OF JOB AND A RED FLAG” (October 31, 2002):

WASHINGTON, Oct. 30—Shortly before William H. Webster was appointed to head a new board overseeing the accounting profession by the Securities and Exchange Commission last Friday, he told the commission's chairman, Harvey L. Pitt, that he had until recently headed the auditing committee of a company that was facing fraud accusations, Mr. Webster recounted today.

Mr. Pitt chose not to tell the other four commissioners who voted on Mr. Webster's nomination that day, according to S.E.C. officials. White House officials said they, too, were not informed about the details of Mr. Webster's work for the company.

The news that Pitt not only knew of Webster's problems but also failed to tell his fellow commissioners prior to their vote on Webster's appointment set off a firestorm of criticism from not just Democrats but the Bush administration as well—all of whom, apparently, believed what they read on the front page of the *New York Times*.

If what had been said on the front page of the *Times* had been true, you could hardly fault the criticism—the *Times* made Pitt look pretty stupid.

Naturally, the White House was furious, and the Democrats not only called for Pitt's immediate resignation but also launched several investigations into the matter, as the *Times* reported the next day in "3 INQUIRIES BEGUN INTO S.E.C.'S CHOICE OF AUDIT OVERSEER" (November 1, 2002).

The same day, the *Times* enhanced the "facts" that were reported on its front page in an editorial entitled "THE MESS AT THE S.E.C." (November 1, 2002), suggesting that Pitt actively concealed the facts from his fellow commissioners:

That "Pitt knew of Webster's role and hid that fact from fellow commissioners makes matters worse."

In the *Times*' classic one-two punch style, the editorial was coupled with a scorch-the-earth op-ed piece entitled "THE PITT PRINCIPAL," in which the *Times* columnist repeats the accusation as fact:

So Harvey Pitt decided not to tell other members of the Securities and Exchange Commission a small detail about the man he had chosen to head a crucial new accounting oversight board, after turning his back on a far more qualified candidate.

When you read a fact on the front page of the *New York Times*, you expect it to be the truth. Even Republican senators sometimes believe what they read in the *Times*, and after reading the latest story about the chairman, they became the fuel for another front-page story that appeared the next day under the headline "SENIOR REPUBLICAN JOINS IN CRITICISM OF S.E.C. CHAIRMAN" (November 2, 2002):

WASHINGTON, Nov. 1—The political troubles of the chairman of the Securities and Exchange Commission deepened today when the senator who will become the senior Republican on the banking committee supported calls by Democrats for hearings into the selection of an overseer of the accounting profession.

The senator, Richard C. Shelby, Republican of Alabama, criticized the judgment of the S.E.C. chairman, Harvey L. Pitt. He cited Mr. Pitt's failure to tell other commissioners that William H. Webster, the man picked to head the accounting oversight board, had headed the audit committee of a company accused of fraud.

Within a week after the story first broke, on the night of the midterm election, the "embattled" Harvey Pitt finally resigned, as the *Times* gleefully reported on its front page in "S.E.C.'S EMBATTLED CHIEF RESIGNS IN WAKE OF LATEST POLITICAL STORM" (November 7, 2002). In that front-page story, the *Times* echoed the context two more times:

His hold over the agency cracked last Thursday with the disclosure that he had failed to tell either the White House or the four other commissioners at the S.E.C. that he had known that William H. Webster, the new accounting board chairman, had headed the audit committee of a company accused of fraud. Mr. Webster, who was recruited for the post by the White House, was approved by the commission 10 days ago in a bitterly divided vote in which two of the five commissioners said he was unqualified for the job.

The disclosure that Mr. Pitt *withheld information* about Mr. Webster's ties to the ailing company, U.S. Technologies, led to the immediate start of three investigations into Mr. Pitt's handling of the selection of the new board, including a Congressional inquiry that was preparing for three days of Senate hearings this month. (emphasis added)

Soon the *Times* printed a follow-up article, "PRAISE TO SCORN: MERCURIAL RIDE OF S.E.C. CHIEF" (November 10, 2002), which included a photo of Pitt and a timeline of his short chairmanship. The caption read, "An embattled 14 months."

But wait. Remember those investigations instigated by the Democrats ("3 INQUIRIES BEGUN INTO S.E.C.'S CHOICE OF AUDIT OVERSEER," November 1, 2002)? The results of those investigations were reported a few weeks later in the following article published not by the *New York Times* but by the *Associated Press* (December 19, 2002):

PITT UNAWARE OF PROBLEMS WITH NOMINEE

WASHINGTON (AP) — A congressional investigation found no evidence that Harvey Pitt, the former Securities and Exchange Commission chairman, knew in advance about problems with the first nominee approved to lead a new accounting oversight board.

In other words, unlike Howell Raines, who knew about Jayson Blair's history of shoddy reporting but did not pass the information on to Blair's supervising editors, Pitt never knew of Webster's problems and therefore could not have withheld the information from his fellow commissioners as the *Times* charged.

"We found no evidence that the SEC chairman was informed of any other information about the company's history and Judge Webster's role prior to the Oct. 25 vote," the report said.

If they believed their own October 31 story, the editors of the *Times* must have been stunned by this news. The headline and the lead of their front-page October 31 article no longer held up. Any civilized journalist would have expressed remorse over an error so egregious it cost a person his high placed government position and tarnished his personal reputation. But apparently, civility is not a core principal of journalism, at least not at the *New York Times*. Perhaps another news organization would have published a correction, an editor's note, or a full story rectifying the error on its front page, which is the *Times'* policy in such instances. Perhaps a private note of apology to Pitt was in order, too. On the contrary, for the *Times* the situation clearly called for a cover up.

What it chose to do was spin the GAO report in a way that buried its guilt and poured salt on the wounds of the "embattled" Pitt. According to the *Associated Press* wire story:

The report released Thursday by the General Accounting Office, the investigative arm of Congress, was critical of the SEC's selection and vetting process, saying it "was neither consistent nor effective and changed and evolved over time."

The *Times* read into the report something that just wasn't there—that the entire SEC was "chaotic"—and it made that charge on its front page (December 20, 2002):

GOVERNMENT REPORT DETAILS A CHAOTIC S.E.C. UNDER PITT

WASHINGTON, Dec. 19—The Securities and Exchange Commission under Harvey L. Pitt was described today as dysfunctional by a government report examining the agency's selection of a new accounting oversight board.

The General Accounting Office report did nothing of the kind; it reported no general "dysfunction" of the SEC but merely, just as the *Associated Press* reported, expressed its criticism of the SEC's process for selecting the head of the accounting oversight board.

If you weren't aware of the fact that the *Times* had the story completely wrong in its critical October 31 article—the one that “cracked” Pitt's hold over the SEC—you would hardly know it from reading this article. The headline of the *AP* story—that Pitt was unaware of Webster's problems prior to the SEC's vote on his appointment—didn't appear on the front page of the *Times*. The *Times* buried that aspect of the story—which was the real news—in the tenth paragraph of its December 20 article, a paragraph that did not even appear in the same section of the paper but was virtually hidden on page 4 of the *Times*' Business section.

Moreover, it was reported in the following convoluted way:

On that morning, according to the report, Mr. Herdman learned that Mr.

Webster had dismissed the outside auditors of U.S. Technologies after the auditors complained of significant financial problems. But Mr. Herdman, a longtime friend and close adviser to Mr. Pitt, decided that the information was not significant and did not need to be shared with the commissioners.

Last month, Mr. Webster, Mr. Pitt and Mr. Herdman announced their resignations.

In other words, it was Herdman who withheld the information from the SEC commissioners, including Chairman Pitt. Since Pitt was not aware of Webster's troubles, he could not have withheld the information as the *Times* previously reported, and reported, and reported.

It appeared from the article that the *Times* was concerned that it may have opened itself to a defamation lawsuit. The *Times* seemed to go out of its way, in the following paragraphs, to detail the basis of its original October 31 front-page story:

In an interview on October 30, Mr. Webster said that before his selection he had told Mr. Pitt and Mr. Herdman that the company had been accused of fraud.

But this is not a quote from Webster, only the word of the reporter. If there had been a quote in the reporter's notes directly stating what Webster said he told Pitt, you can be sure the *Times* would have printed it. But the *Times* apparently couldn't come up with it and published only the following quote, which is substantially ambiguous about what Webster said and whom he said it to:

“I told them that people are making accusations,” Mr. Webster said of his conversation with Mr. Pitt and Mr. Herdman.

The word “them” suggests that Webster may have told any number of people at the SEC, not necessarily Pitt. In fact, in a sign that the *Times* may have been admitting some uncertainty about its original story, the above version indicates that Webster's conversation was with both Pitt *and* Herdman. Here's how the sentence read in the original October 31 article:

“I told them that people are making accusations,” Mr. Webster said of his conversation with *Mr. Pitt*, before he was appointed last Friday. (emphasis added)

The December 20 article offered no explanation for the mysterious addition of Herdman's name to the new version of this paragraph. Recall, the October 31 article also charged:

Mr. Pitt chose not to tell the other four commissioners who voted on Mr. Webster's nomination that day, according to S.E.C. officials.

The “S.E.C. officials,” to whom that information was attributed, were never quoted nor even identified. If they existed at all, they would have to have been very close to Pitt to have known what information the chairman knew and what he chose to do (or not do) with it. Apparently, they were not close enough to know the truth.

In fact, there is some indication that the editors of the *Times* may have been uncertain about the truth of its story even on the day they originally printed it. The morning of October 31, the article originally ran in the *Times*' national edition under the headline "OVERSIGHT CHIEF TOLD PITT OF JOB AND A RED FLAG." Mysteriously, later editions of the *Times* that day ran the article under the revised headline "AUDIT OVERSEER CITED PROBLEMS WITH PREVIOUS POST"—the editors eliminated the reference to Pitt and were no longer specific about the identity of the person to whom Webster allegedly raised his "Red Flag," now called "problems."

Could the *Times* have known on October 31, and throughout the political firestorm that ensued during the week before the 2002 midterm election and Pitt's resignation, that he was unaware of the potential problems with Webster's appointment? It certainly looks that way.

The GAO's finding that there was "no evidence that the SEC chairman was informed of any other information about the company's history and Judge Webster's role prior to the Oct. 25 vote" was directly contrary to what was not only reported but also crusaded in the *New York Times*—in its news pages, editorial pages, and op-ed pages. The *Times*' accusation that Pitt "hid" information from his fellow commissioners was palpably wrong.

Given the *Times*' defensive reaction to the truth during the day the *Times* originally reported the story and in the aftermath of the GAO's report, it would seem that an investigation of the affair is in order—the question being, "What did the *Times* know, and when did it know it?"

It is not clear, however, who, if anyone, conducts independent investigations of egregious errors by leading newspapers. Do we allow the *Times* to conduct another Blair-style mea culpa on the front page and then move on? One thing is certain: such an investigation is not likely to take the form of a lawsuit against the *Times*. For Pitt to prevail in an action against the *Times* for defamation of character, he, being a public figure, would have to show that the *Times* acted in "reckless disregard of the truth." That is a difficult standard to meet—with the facts centering on Webster's word against that of the *Times*' reporter.

Nevertheless, there may come a day when a public official who is treated by the *Times* the way Pitt was treated might just take the paper to court. Perhaps the Blair scandal will provide the impetus needed for a lawsuit. Such a lawsuit could expose reporters and editors to legal depositions that could lead to some enlightening revelations about the *Times*' editorial decision process.

