

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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BY HAND

September 26, 2005

Byron Calame, Public Editor  
The New York Times  
229 West 43<sup>rd</sup> Street  
New York, New York 10036

RE: Bringing Long-Overdue Accountability and Responsiveness to The New York Times

Dear Mr. Calame,

In your yesterday's column, "*Even Geraldo Deserves a Fair Shake*", you criticized The Times' September 7, 2005 response to a demand by FOX News reporter Geraldo Rivera for correction of a false and defamatory sentence in a September 5, 2005 column by The Times' "chief television critic". As to this response -- that "no correction would be published" -- you specified that Executive Editor Bill Keller "personally made the final decision".

Please be advised that by contrast to the speed with which The Times and Mr. Keller responded to Mr. Rivera's media-publicized demand, neither The Times nor Mr. Keller have seen fit to respond to the Center for Judicial Accountability's July 29, 2005 letter for a correction of a front-page column, "*When the Judge Sledgehammered The Gadfly*" (Marek Fuchs, Westchester Section, November 7, 2004), that was false and defamatory throughout. This July 29, 2005 letter, addressed to Mr. Keller, was substantiated by a line-by-line analysis of the column and other documentary proof. It was hand-delivered to The Times on August 1, 2005 -- with full copies for ALL the indicated recipients. Among these, Publisher Arthur Sulzberger, Jr., Managing Editor for Newsgathering Jill Abramson, Standards Editor Allan Siegal, and Editorial Board Editor Gail Collins for sharing with all Editorial Board members. Its concluding words related to you in stating that if we did not hear from Mr. Keller within three weeks, "we will forward a complaint to The Times' new public editor, Byron Calame."

An identical full copy of this *unresponded-to* July 29, 2005 letter is enclosed so that you can take appropriate action. Indeed, the letter is perfect for the kind of expose treatment that you announced in your first column, "*The New Public Editor: Toward Greater Transparency*" (June 5, 2005) -- with its promise to elicit responses from involved editors and reporters, as you apparently have done for Mr. Rivera. Such expose would require, at minimum, an explanation from Mr. Keller, Ms. Abramson, and Mr. Siegal as to why there has been no response to the letter's line-by-

line analysis establishing that "*When the Judge Sledgehammered The Gadfly*" is:

"deliberately defamatory, knowingly false and misleading, and so completely covers up the politically-explosive underlying national and New York stories of the corruption of the processes of judicial selection and discipline, involving our highest public officers, as to be explicable only as a manifestation of The Times' 'profound and multitudinous conflicts of interest' [fn]." (analysis, p. 1).

These conflicts were shown to have arisen from The Times' wilful and deliberate disregard of a mountain of CJA's prior correspondence and complaints to The Times, spanning more than 13 years and reaching to Mr. Sulzberger. This includes our "post-Jayson Blair" correspondence and complaints from June 11-2003-November 1, 2003 addressed to the Editorial Board (June 11, 2003), Mr. Siegal (June 19, 2003), Ms. Abramson (August 26, 2003), and Mr. Keller (September 25, 2003, October 13, 2003, November 1, 2003), which they – and Mr. Sulzberger -- wilfully, deliberately, and collusively ignored, compounding the conflicts of interest those documents summarized and particularized.

Expose treatment of "*When the Judge Sledgehammered The Gadfly*" would be an appropriate counterweight to your August 28, 2005 column, "*A Conversation with the Standards Editor*", in which Mr. Siegal promoted himself and The Times' "top levels" – while undisclosed to readers and presumably yourself, he and they were all ignoring CJA's July 29, 2005 letter. Among Mr. Siegal's unchallenged comments which should be juxtaposed against our July 29, 2005 letter and its line-by-line analysis:

"I spend time helping staff members navigate our ethics and conflict-of-interest policies, and I'm the person who interprets those rules for them. I spend, also, a fair amount of time helping the paper decide when something should be corrected.

I also believe – and I do a certain amount of possibly tedious preaching – that we can save ourselves a lot of pain if we don't do anything that we would be embarrassed to have readers know about, that everything we do ought to be something we're willing to describe to readers and tell them about."

"...Bill [Keller] and Jill [Abramson] are very conscientious about referring a question to me before they decide the question. And they bring me lots of stuff."

"At the top levels of this paper, the values and ground rules are very well understood."

"I think over the years, particularly the last two or three years, staff members have gotten much more willing to admit mistakes. But people are human, and some number of times a week I find myself helping somebody over the

reluctance to admit error in print. And I sort of arrived at an aphorism that I use with a lot of them: if we were writing the story today, knowing what we know now, would we write it exactly the way we wrote it yesterday? And if the answer is no, we would do something different, then it seems to me that's evidence that we need a correction to bridge the distance between what we did and what we now know we should have done."

Tellingly, your yesterday's column does not refer to Mr. Siegal's role with respect to Mr. Keller's "final decision" not to publish a correction for Mr. Rivera – and whether he or such other "top levels" as Ms. Abramson agreed with Mr. Keller's shameful and incomprehensible rationale.

Copies of CJA's *unresponded-to* correspondence and complaints from June 11, 2003 – November 1, 2003 should be in the office files of Mr. Keller, Mr. Siegal, Ms. Abramson, the Editorial Board, and Mr. Sulzberger – in addition to the office files of your predecessor, Daniel Okrent, to whom we delivered them under a December 1, 2003 coverletter to begin his first day as The Times' first public editor. Nevertheless, to expedite your handling of this complaint, especially as to the Times' conflicts of interest which underlie "*When the Judge Sledgehammered The Gadfly*", copies are enclosed.

Such correspondence and complaints – indeed our 13-year history of correspondence and complaints to The Times -- are also conveniently posted on our website, [www.judgewatch.org](http://www.judgewatch.org), accessible *via* the sidebar panel, "PRESS SUPPRESSION: The New York Times". As reflected therein, our July 29, 2005 letter to Mr. Keller is not the last of our correspondence with The Times. On August 16, 2005, I hand-delivered a memo addressed to Mr. Keller and the other Times recipients of our July 29, 2005 letter. Entitled "Collaboratively Moving Forward", this August 16, 2005 memo -- to which we have also received *no response* -- transmitted to Mr. Sulzberger CJA's document-substantiated March 26, 2003 written statement, whose importance in exposing the corruption of judicial selection and discipline involving our highest public officers, including those seeking re-election and further public office, was highlighted by both the July 29, 2005 letter (at pp. 5-7) and its enclosed line-by-line analysis (at pp. 5-6, 8, 17-18). We trust you can easily obtain same from Mr. Sulzberger in substantiation of this complaint.

That The Times did not respond to the July 29, 2005 letter with its offer of "our complete cooperation"(at p. 8) – nor to the "olive branch" extended by the August 16, 2005 memo by its constructive suggestion that The Times "invit[e] me to a meeting to discuss how we may collaboratively move forward" (at p. 1) – only reinforces what our prior correspondence and complaints have documented AGAIN, and AGAIN, and AGAIN: The Times' unwillingness to confront its conflicts of interest and its pattern and practice of refusing to report on *readily-verifiable* documentary evidence of the corruption of judicial selection and discipline and the complicity of public officers, including those seeking re-election and further public office. Indeed, within the past month, The Times has blithely continued to betray its First Amendment responsibilities and has wilfully deprived New Yorkers of information essential to their exercising

an informed vote. This, in the context of the September 13, 2005 primaries for Manhattan and Brooklyn district attorneys – as to which we sent The Times four memos -- two dated September 2, 2005 and two dated September 8, 2005 – *without response*<sup>1</sup>. These memos, also posted on the “PRESS SUPPRESSION: New York Times” page of our website, summarized the *readily-verifiable* documentary evidence establishing that Manhattan District Attorney Robert Morgenthau and Brooklyn District Attorney Charles Hynes have each covered up high-level systemic judicial and political corruption involving the New York State Commission on Judicial Conduct – obligating the press to demand from them, on behalf of the voters, an explanation responsive to the evidence and, likewise, to elicit responses from the competing candidates. That since August 16, 2005 – with my delivery of CJA’s March 26, 2003 written statement and its accompanying two final motions in my public interest lawsuit against the Commission -- The Times has had a pivotal portion of this *readily-verifiable* documentary evidence, enabling it to *independently verify*, WITHIN THE SPACE OF AN HOUR, that, *as to matters of law*, the Commission has been the beneficiary of five fraudulent judicial decisions of New York’s lower state courts without which it could not have survived three separate lawsuits<sup>2</sup> -- makes its failure to pursue *any* aspect of the

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<sup>1</sup> These four memos were e-mailed to Mr. Keller, Ms. Abramson, the Editorial Board, and Mr. Sulzberger, with the initial September 2, 2005 memo also faxed to Mr. Keller, the Editorial Board, and Metro.

Leslie Eaton, who was doing “the lion’s share” of election reporting of the race for Manhattan district attorney was also e-mailed these memos. Indeed, I discussed the content of what would become the initial September 2, 2005 memo with Ms. Eaton at the end of the day on August 31, 2005, when she returned my two calls to her from earlier that day and the day before. Such is reflected by the August 31, 2005 e-mail I sent her shortly after we spoke – also posted on our website. I never heard back from Ms. Eaton after that and her largely insignificant election reporting of the race for Manhattan district attorney not only continued, but was plainly trivial in the face of the *readily-verifiable* political scandal I outlined for her by phone and which was laid out by the September 2, 2005 memos. See “*His Service Is Vintage, and Some Say the Approach Is, Too*”, (9/5/05, Leslie Eaton, William Rashbaum); “*A Bitter Contest for Prosecutor, Scuffle and All*” (9/8/05, Leslie Eaton); “*Final Swirl of Activity in Race for Manhattan Prosecutor*” (9/13/05, Leslie Eaton); also, “*Morgenthau Wins Race by Big Margin*” (9/14/05, Leslie Eaton).

Nor did I hear from Jonathan Hicks, who did “the lion’s share” of election reporting of the race for Brooklyn district attorney. I left him a voice mail message on September 7, 2005 and then called him again on September 8, 2005, essentially to get his e-mail address so that I could e-mail him the September 8, 2005 memos. Although I asked him to call me after he had read the memos, he never did. He wrote one additional election article, “*Three Brooklyn Rivals Step Up Their Attacks on Hynes*” (September 10, 2005), whose disingenuousness, on all sides, is revealed by comparison to the September 8, 2005 memos.

See, also, “*For Cleaner Courts in Brooklyn*” (9/4/05, editorial); “*Challengers See a Conflict Over Plea Deal and Donations*” (9/6/05, Jonathan Hicks); “*On Election Eve, Brooklyn Party Leader Is on Trial*” (9/8/05, Anemona Hartocollis); “*Blank Invoices Detailed in Political Corruption Trial*” (9/9/05, Anemona Hartocollis); “*Assemblyman’s Defense Shows Other Side of the Bag*” (9/10/05, Anemona Hartocollis); “*Trial of an Assemblyman Focuses on a Ripped Check*” (9/13/05, Anemona Hartocollis); “*Primary Choices*” (9/13/05, editorial endorsements); also, “*Hynes Wins a Fiercely Contested Primary Race for District Attorney*” (9/14/05, Raymond Hernandez).

<sup>2</sup> This *readily-verifiable* documentary proof is presented by my October 24, 2002 motion for leave to appeal to the New York Court of Appeals – a fact pointed out at page 20 of the March 26, 2003 written

September 2, 2005 and September 8, 2005 memos all the more indefensible. What The Times chose, instead, was to continue with largely trivial reporting and materially false and misleading editorial positions – the consequence of which was to permit demonstrably corrupt incumbents to triumph at the polls, to the detriment of the People of the State of New York.

We look forward to your prompt response – and promise you our fullest assistance, including by copies of all the referred-to substantiating documents so that you can confirm for yourself that when it comes to informing the public about *readily-verifiable* documentary evidence of the corruption of the processes of judicial selection and discipline and the complicity of our highest public officers, including those seeking re-election and further public office, The Times unabashedly abandons any notion of “public service” and its “crucial watchdog role in our democracy” (your June 5, 2005 column, “*The New Public Editor: Toward Greater Transparency*”).<sup>3</sup> Its false, defamatory, and cover-up column “*When the Judge Sledgehammered The Gadfly*” – with its reliance on anonymous sources to fortify its baseless characterizations of me -- is but one crowning example.

Thank you.

Yours for a quality judiciary  
and responsible journalism,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability, Inc. (CJA)

Enclosures & cc's: See next page

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statement.

<sup>3</sup> Your September 11, 2005 column, “*Covering New Orleans: The Decade Before the Storm*”, identifies that you did “A search of substantive Times news articles about New Orleans” over the past ten years. This, because “As a national newspaper with high aspirations, The New York Times assumes a responsibility to alert its readers to significant problems as they emerge in major cities such as New Orleans.”

In substantiation of this complaint, we specifically request that you undertake a “search of substantive Times news articles” -- as well as editorials -- over at least an equivalent time span to see if you find ANY examining, let alone investigating, the processes of judicial appointment to New York’s lower state courts, to New York’s federal courts, and of “merit selection” to the New York Court of Appeals and ANY examining, let alone investigating, the efficacy of judicial disciplinary/removal processes, such as the New York State Commission on Judicial Conduct and the federal judicial complaint mechanisms reposed in the federal judiciary, in Congress, and the Justice Department. Such is more than warranted by the particulars set forth by our mountain of prior correspondence and complaints – including those from June 11, 2003 onward.

- Enclosures: (1) CJA's July 29, 2005 letter to Bill Keller  
(2) CJA's *unresponded-to* correspondence and complaints to The New York Times  
from June 11, 2003-November 1, 2003

cc: The New York Times

All indicated New York Times recipients of CJA's July 29, 2005 letter to Bill Keller:

Bill Keller, Executive Editor

Arthur Sulzberger, Jr., Publisher

Jill Abramson, Managing Editor for Newsgathering

Allan Siegal, Standards Editor

Jonathan Landman, Assistant Managing Editor

Philip Taubman, Washington Bureau Chief

Gail Collins, Editorial Page Editor (for sharing with ALL Editorial Board members)

Marek Fuchs

Raymond Hernandez

Leslie Eaton

Jonathan Hicks

FOX News

Geraldo Rivera

Bill O'Reilly