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By Hand (8/1/05)

July 29, 2005

Bill Keller, Executive Editor
The New York Times
229 West 43rd Street
New York, New York 10036

- RE: (1) Being True to the First Amendment by reporting on the *readily-verifiable* evidence, detailed by CJA's September 25, 2003 and October 13, 2003 letters to you, of the corruption of the processes of judicial selection & discipline and the complicity of our highest public officers, including those seeking re-election or further public office -- New York Home-State Senator Hillary Rodham Clinton, New York State Attorney General Eliot Spitzer, and New York Governor George Pataki, among them
- (2) Being True to New York Times' "Ethical Journalism" Standards, Report Recommendations, and Your Own Announced Policies by responsive, corrective action with respect to The Times' defamatory and cover-up November 7, 2004 column "*When the Judge Sledgehammered The Gadfly*" (Westchester Section, front page)

Dear Mr. Keller:

This letter is occasioned by The New York Times' championing of the First Amendment in the Judith Miller case, highlighted by its July 19, 2005 editorial, "*A Jar of Red Herrings*". Your own position, expressed immediately upon Ms. Miller's incarceration as you stood before television cameras outside the U.S. District Court for the District of Columbia, was that unless reporters are able to assure their sources confidentiality, they will be compromised in their ability to obtain and report on "information that happens in the recesses of government and other powerful institutions". You stated that "anybody who believes that the government and other powerful institutions should be closely and aggressively watched should feel a chill up their spine" because of Ms. Miller's incarceration. Your words were printed in the next day's Times (July 7, 2005).

It is precisely because the Center for Judicial Accountability (CJA) agrees that “government and other powerful institutions should be closely and aggressively watched” that we have repeatedly alerted The Times’ highest echelons to the betrayal of First Amendment responsibilities by The Times’ newsroom and editorial board in refusing to report on evidence of the corruption of the processes of judicial selection and discipline involving our highest public officers, including those seeking re-election or further public office. Our mountain of correspondence with The Times, spanning nearly a decade and a half, is posted our website, www.judgewidth.org, accessible via the sidebar panel “*Press Suppression*” – “*The New York Times*”.

You are well familiar with this correspondence, as it was brought to your attention by CJA’s September 25, 2003 and October 13, 2003 letters to you – to which you never responded, even to the limited extent of referring the correspondence to your incoming public editor, as those letters requested and as we reiterated in a further November 1, 2003 letter to you. Such correspondence documentarily establishes that The Times has ZERO RESPECT for the First Amendment when it comes to informing the public about the corruption of the processes of judicial selection and discipline and the complicity of our highest public officers. This, where it has not had to rely on confidential sources and where the complete truthfulness of its nonconfidential source has been readily-verifiable from primary source materials, both provided to it and proffered. Indeed, our non-partisan, non-profit citizens’ organization has never once requested anonymity during the decade and a half in which we have provided and proffered such primary source materials to The Times.

In the unlikely event you are unaware of how The Times’ first public editor, Daniel Okrent, shamelessly covered up our fully-documented complaints when we independently turned to him in December 2003 and then again in June 2004, a copy of our exchange of correspondence with him is enclosed.¹ I specifically refer you to CJA’s June 17, 2004 complaint to Mr. Okrent entitled:

“Times ‘Protectionism’ of New York Senator Charles Schumer, Arising from its Multitudinous Conflicts of Interest – Covering Up his Pivotal Role in the Corruption of Judicial Selection and Discipline – and Depriving New Yorkers of the Information Necessary to their Casting of an Intelligent Vote in the 2004 Senate Election”.

¹ This exchange of correspondence is also posted on the “*Press Suppression – New York Times*” page of our website.

This June 17, 2004 complaint was expressly based on CJA's June 11, 2003 - May 24, 2004 correspondence with The Times, including our unresponded-to letters to you, and the primary source materials on which this correspondence rested: first and foremost, the primary source materials then posted on CJA's homepage under the heading "*Paper Trial Documenting the Corruption of Federal Judicial Selection/Confirmation and the 'Disruption of Congress' Case It Spawned*".

Mr. Okrent's response, by an unsigned June 21, 2004 e-mail, baldly purported that our June 17, 2004 complaint was unsupported by evidence. As my subsequent e-mail reflects, he would not provide a signed letter to that effect. Nor would he do what neither you nor anyone else at The Times would do: "deny or dispute the evidentiary significance of CJA's homepage 'Paper Trail' in establishing the corruption of judicial selection and discipline – and the official misconduct of New York Home-State Senators Schumer and Clinton with respect thereto" – all of which The Times was shown to have suppressed. As stated by my final June 22, 2004 e-mail,

"BY ANY OBJECTIVE STANDARD, the 'Paper Trail' presents 'hard evidence' of the most flagrant corruption by public officers and others on both national and New York State levels – warranting Times coverage." (capitalization in my e-mail).

On June 28, 2004, six days after that last e-mail, I was incarcerated for six months as a result of the "disruption of Congress" case, whose explosive political ramifications were evident from CJA's homepage "Paper Trail"² and so-highlighted by my published Letters to the Editor in Roll Call (5/10/04) and the New York Law Journal (5/19/04), which CJA's correspondence to The Times, including to Mr. Okrent, had enclosed.

Like Ms. Miller's incarceration, my incarceration arose from my championing of First Amendment rights. Unlike Ms. Miller, however, I was unable to avoid the hellhole of D.C. Jail, being unassisted by a legal team and unheralded by Times coverage. Indeed, it was not until after Election Day, four and a half months later, that The Times published anything³ – and then a

² During my incarceration, this "Paper Trail" was renamed "PAPER TRAIL TO JAIL". It is now posted on the "DISRUPTION OF CONGRESS" page of our website.

³ "...one of the implicit responsibilities of the *Times*'s regional reporters is to read the local papers and see if any of them had uncovered any good stories that deserved a broader audience.", Hard News: The Scandals at The New York Times and Their Meaning for American Media by Seth Mnookin, at p. 102.

Stories about the "disruption of Congress" case against me and incarceration had appeared months earlier in the following publications: Legal Times (4/12/04, 4/19/04, 4/26/04, 7/5/04, 12/20/04), New York Law Journal (4/12/04, 4/21/04, 7/8/04), The Washington Post (4/15/04, 4/21/04, 6/29/04), Roll Call (4/21/04, 7/7/04, 7/15/04), and The Philadelphia Inquirer (7/3/04) – with Roll Call (5/10/04) and the New York Law Journal (5/19/04) each publishing my responsive Letters to the Editor. [See also, web-based White Plains

defamatory column by Marek Fuchs, "*When the Judge Sledgehammered The Gadfly*" (November 7, 2004, Westchester Section, front page), wholly concealing the First Amendment issues. Thus, Mr. Fuchs not only omitted my contention that a citizen's respectful request to testify at a public congressional hearing could not be deemed "disruption of Congress" without violating the First Amendment, but my contention that the probation terms imposed upon me by D.C. Superior Court Judge Brian Holeman as the price for avoiding incarceration themselves infringed on First Amendment rights. Indeed, Mr. Fuchs' disparagement of me for declining Judge Holeman's "offer" of probation and going to jail is the starkest of contrasts to your subsequent praise of Ms. Miller's "brave and principled choice" for not disclosing her source and going to jail⁴.

Yet, concealing the First Amendment issues was only the beginning. Mr. Fuchs concealed virtually every material fact about the "disruption of Congress" case – even that this was the charge of which I had been convicted. He also concealed, totally, the underlying national story of the corruption of federal judicial selection/confirmation, involving Senators Schumer and Clinton – as well as the New York corruption story on which it rested. As you know from CJA's September 25, 2003 and October 13, 2003 letters to you, this New York corruption story is embodied by the record of my public interest lawsuit against the New York State Commission on Judicial Conduct – a record establishing not only the corruption of that vital state agency, but the corruption of "merit selection" to the New York Court of Appeals and of the judicial appointments process to New York's lower state courts – actively aided and abetted by New York's highest public officers – *to wit*, Governor George Pataki, Attorney General Eliot Spitzer, Chief Judge Judith Kaye, and the leadership of the New York State Legislature.

Mr. Fuchs' November 7, 2004 column – falling below the most fundamental journalism standards, including by *its reliance on unidentified sources* for its denigrating and provocative characterizations of me and by its omission of nearly everything I told Mr. Fuchs when I spoke to him from a payphone from jail during an interview of at least 20 minutes – is inexplicable except as a manifestation of the "profound and multitudinous conflicts of interest" which my June 17, 2004 complaint to Mr. Okrent expressly identified as impeding Times coverage.

CitizenNetReporter (7/2/04: www.whiteplainscnr.com/modules.php?name=News&file=article&sid=2627).

⁴ You similarly described Ms. Miller as having made a "brave and honorable choice" on the July 17, 2004 broadcast of CNN's Reliable Sources with Howard Kurtz. The Times' July 19, 2004 editorial also recognized Ms. Miller's "principled stand".

These “profound and multitudinous conflicts” were particularized by CJA’s September 25, 2003 and October 13, 2003 letters to you – expanding on the concise summary in CJA’s June 19, 2003 letter to Assistant Managing Editor Allan Siegal, then heading the “Committee on Safeguarding the Integrity of Our Journalism” – to which neither he nor any other Times recipient ever responded. Among these recipients: Publisher Arthur Sulzberger, Jr., Managing Editor Jill Abramson, Assistant Managing Editor Jonathan Landman, Washington Bureau Chief Philip Taubman, and Editorial Page Editor Gail Collins. Nor did Mr. Okrent ever respond to these conflicts, except inferentially by his outright lie that we had provided no evidence.

Not long after my December 23, 2004 release from incarceration in D.C., I telephoned Mr. Fuchs, who admitted that when he wrote his column he was aware of CJA’s complaints against The Times. Indeed, the complaints from June 11, 2003 to June 17, 2004 were not only posted on the “*Press Suppression–New York Times*” page of our website, but on the “*Paper Trail Documenting the Corruption of Federal Judicial Selection/Confirmation and the ‘Disruption of Congress’ Case It Spawned*” to which I had referred him when he interviewed me for the column.

To enable you to more easily see the kind of smear, cover-up journalism which a self-interested Times was not constrained from putting forward in the aftermath of the July 28, 2003 “Siegal Committee” report on “Safeguarding the Integrity of Our Journalism”, I enclose a line-by-line, paragraph-by-paragraph analysis of Mr. Fuchs’ November 7, 2004 column. Indeed, Mr. Fuchs’ column appeared within two months of the September 2004 issuance of The Times handbook on Ethical Journalism and during the very week The Times commenced the further examination that culminated in its May 2, 2005 report, “*Preserving Our Readers’ Trust*”.

In keeping with the “values and practices” of the ethics handbook, the recommendations of The Times reports, and your own June 23, 2005 staff memo, “*Assuring Our Credibility*”, I – and your readership – rightfully expect a response as to the appearance and actuality that Mr. Fuchs’ maligning *ad hominem* column was a manifestation of The Times’ “profound and multitudinous conflicts of interests”. This, in addition to a correction of the column’s massive “errors” – which can only be done by an investigative expose of the groundbreaking “disruption of Congress” case to which the public was then, and is now, entitled. Needless to say, such investigative expose must present findings of fact and conclusions of law with respect to what CJA’s September 25, 2003 letter to you identified (at p. 5) as “the most important” of the primary source materials on the “Paper Trail”: CJA’s March 26, 2003 written statement particularizing the documentary evidence of the on-the-bench corruption of New York Court of Appeals Judge Richard Wesley – substantiated by the accompanying two final motions in my public interest lawsuit against the New York State Commission on Judicial Conduct.

Just as investigative coverage would have rightfully derailed Senator Schumer's 2004 re-election, it will rightfully derail Senator Clinton's re-election in 2006 and her much-hyped candidacy for the presidency in 2008. Its repercussions will be no less dramatic for Attorney General Spitzer, running to be elected New York's governor in 2006, and for Governor Pataki, whose presidential aspirations and prospects The Times has continually speculated about, including in the past three days in reporting on his decision not to seek a fourth term as governor.⁵

Thanks to Times protectionism of Senator Schumer – including by the very reporter, Raymond Hernandez, whose own conflicts of interest and misconduct our May 11, 2004 – June 17, 2004 correspondence particularized -- Senator Schumer won re-election last November “with a record 71 percent of the vote” -- a fact Mr. Hernandez was not ashamed to report⁶. This landslide and the anticipated landslides in 2006 for a re-elected Senator Clinton and a Governor-Elect Spitzer directly result from The Times' “protectionism” of which our October 13, 2003 letter to you gave notice:

“...without timely news reportage critically examining the records of these public officers, the electoral races [will] be fatally skewed well before the party conventions. These incumbents [will] seem invincible, deterring challengers from within their own parties, deterring strong challengers from the opposing major parties, and altogether discouraging challenge from the minor parties, who [will] confer their valuable party lines to the powerful incumbents.” (at p. 18, underlining in the October 13, 2003 letter).⁷

⁵ “Pataki Decides to Forgo a 4th Term, Confidants Say” (7/27/05, Michael Cooper & Patrick Healy); “Pataki Rules Out 4th Term but Not a Run for the White House” (7/27/05, Jennifer Bayot); “A Hectic Day for the G.O.P., Full of Hints and Speculations” (7/27/05); “Pataki Says He Won't Seek a 4th Term” (7/28/05, Michael Cooper); “The Governor's Exit Strategy” (7/28/05, editorial); “Not So Loudly, Governor Gets Point Across” (7/29/05, Patrick Healy); “The Shadow of His Predecessor Dominates the Pataki Legacy” (7/29/05, Michael Cooper); “A Date That Lives in Oratory” (7/29/05, Clyde Haberman).

[NOTE: On August 1, 2005, this letter – which had not yet been hand-delivered – was revised to add to the body of the letter the next paragraph beginning “Thanks to Times protectionism of Senator Schumer...”, as well as to supplement this footnote by citation to four additional pieces from the previous day's Times and one from that day's, further repeating and speculating on Governor Pataki's presidential run: “For Pataki, a Rare Path Toward the National Stage” (7/31/05, Sam Roberts); “For Native Sons, Less Favor at Home” (7/31/05, Patrick Healy); “Moderation in Pursuit of Victory” (7/31/05, Nicholas Confessore); “The Governor Goes to Iowa” (7/31/05, editorial), “Pataki Will Veto New Rule on Pill” (8/1/05, Raymond Hernandez & Al Baker).]

⁶ “Clinton's Popularity Up in State, Even Among Republicans” (Raymond Hernandez, 2/22/05).

⁷ See also page 30 of our October 13, 2003 letter: “It is evident...that Senator Schumer – up for re-election next year – occupies a status similar to Attorney General Spitzer at The Times: ‘protected’ from scrutiny, with coverage reinforcing the advantages of incumbency and deterring challenge”.

As stated by our June 19, 2003 letter to Mr. Siegal – and reiterated by our September 25, 2003 and October 13, 2003 letters to you⁸ -- it is “journalistic fraud” more serious, by far, than the random acts of rookie reporter Jayson Blair for The Times to present the public with articles and editorials about the electoral posturings and prospects of these public officers when its news and editorial sides both know, from the documentary evidence CJA long ago provided and proffered, that reporting on their roles in corrupting the processes of judicial selection and discipline would rightfully end their political careers. Such required response then, as now, by an immediate direction for an investigative examination of the records of Senator Schumer, Senator Clinton, Governor Pataki and Attorney General Spitzer as to these vital processes. That their records with respect to judicial selection and discipline converge in the “disruption of Congress” case -- resting, as it does, on the record of my public interest lawsuit against the New York State Commission on Judicial Conduct -- made such examination all the simpler, as it still is.

Please advise whether, consistent with The Times' First Amendment responsibilities, you will rise above your own undisclosed conflicts of interest⁹ and make this long-overdue direction. As

Analysis of Times coverage would show it is heavily weighted to reporting on speculation, on the political power brokers who support the incumbents or who are commenting on their prospects, on the incumbents' fund raising; on their politically-expedient posturings and positions – for which, by virtue of their public office, they get added free-publicity -- and on polls. The polls would tumble, as likewise the fundraising, if the public were informed of the records of these public officers with respect to judicial selection and discipline.

Illustrative of the coverage that Mr. Hernandez has given to Senator Clinton, while suppressing any report of her record on judicial selection and discipline and her role in the “disruption of Congress” case: “*As Clinton Shifts Themes, Debate Arises on Her Motives*” (2/1/05); “*Clinton's Popularity Up in State, Even Among Republicans*” (2/22/05); “*Aide to Mrs. Clinton Derides Pataki's Presidential Chances*” (3/1/05); “*As Clinton Wins G.O.P. Friends, Her Rivals' Task Toughens*” (3/6/05); “*Firm Close to the Clintons Is a Political Force in New York*” (3/22/05); “*In Vigilant Hillaryland, Advisors Stay Devoted*” (6/1/05); “*One Clinton, at Least, Finds 2008 Run Worth Discussing*” (6/3/05); “*The Evolution of Hillary Clinton*” (7/13/05, with Patrick Healy); and “*Clinton Urges Inquiry Into Hidden Sex in Grand Theft Auto Game*” (7/14/05).

⁸ Our October 13, 2003 letter to you reprinted (at pp. 22-24, 19-21) our October 8, 2002 memo to the editorial board regarding Times electoral endorsements for Attorney General and Governor in the November 2002 elections – including the memo's enclosed story proposal, “*Exposing the REAL Attorney General Spitzer, Not the P.R. Version.*” That same story proposal is even more politically explosive and far-reaching today than it was 2-1/2 years ago.

⁹ According to Seth Mnookin's Hard News (pp. 6, 22, 215), you were managing editor under Joseph Lelyveld and he “openly campaigned” for you to succeed him as executive editor. Mr. Lelyveld's extraordinary nonfeasance as executive editor, ignoring metro's suppression of time-sensitive stories about the corruption of judicial selection, impacting the 1998 elections for Governor and Attorney General, was particularized by, and was the reason for, CJA's comprehensive February 12, 1998 complaint to Publisher Sulzberger.

July 29, 2005

promised by our September 25, 2003 and October 13, 2003 letters, you may be assured of our complete cooperation – including by prompt transmittal of hard copies of all the substantiating primary source documents.

We await your response. If we do not hear from you within three weeks, we will forward a complaint to The Times' new public editor, Byron Calame.

Yours for a quality judiciary
and responsible journalism,



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

Enclosure: (1) CJA's exchange of correspondence with Public Editor Daniel Okrent
(2) *"When the Judge Sledgehammered The Gadfly"* – with analysis & documentary proof substantiating analysis of paragraph 14, including as relates to pages 27-28 of CJA's October 13, 2003 letter

cc: 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
Jayson Blair
Seth Mnookin & other members of the press
The Public