

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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BY FAX: 212-824-1950  
AND BY HAND

July 8, 1998

Michael Kramer, Editorial Director  
*Brill's Content*  
521 Fifth Avenue, 11th Floor  
New York, New York 10175

RE: Story Proposals:  
News Ombudsmen / Turning the Spotlight on *The New York Times*

Dear Mr. Kramer:

This letter follows up my brief telephone conversation on June 26th with Amy DiTullio, one of your Assistant Editors, who advised me that story proposals should be addressed to you.

Our non-partisan, non-profit citizens' organization believes that *Brill's Content* should develop stories about how the concept of news ombudsman has fared in the 31 years since it was "resurrect[ed]" by A.H. Raskin of *The New York Times* and Ben Bagdikian of *The Washington Post*. Bill Kovach's otherwise terrific "*Letter from the Ombudsman*" did not identify that only the smallest handful of media use news ombudsmen. Among those which do not -- and this is obliquely reflected by Mr. Kovach's *Letter* -- is *The New York Times*. We specifically propose that *Content* explore the media's failure to embrace the valuable ombudsman concept by focusing on its rejection by *The Times*. *The Times* is the leader which other mainstream media follow in their news reporting. Presumably, they have also followed *The Times* in this critical respect as well.

Mr. Kovach refers to *The Times* as having been "unimpressed" with the concept of an ombudsman. Yet, the concept -- as described by Mr. Kovach and as reflected by his "guaranteed contract", further showcased on *Content's* website -- is so plainly impressive as to lead *any* reasonable person to ask why *The Times* was "unimpressed" and what it viewed as the more impressive alternative for handling complaints against it.

Ironically, the misimpression fostered by *Content* in featuring *The Times'* investigation of Columbia/HCA in its premiere issue is that *The Times* may not require an ombudsman because its

standards of journalism and public responsibility are so exemplary that either it receives no complaints, or it receives no legitimate complaints, or its handling of legitimate complaints -- without an ombudsman -- manifests that same commitment to journalistic excellence as it demonstrated by its Columbia/HCA investigation. This is what *The Times* wants the public to believe.

Developing a story about the adequacy and efficacy of *The Times*' handling of complaints, in the absence of an ombudsman, will require examination of complaints filed with *The Times*. It may well be that because *The Times* has no ombudsman, complaints are not centralized in any particular office -- and not recorded. Yet, even if complaints are maintained and recorded, we doubt *The Times* would be willing to back up its rhetoric about not needing an ombudsman by providing *Content* with access so that *Times*' claims can be independently evaluated.

The Center for Judicial Accountability, Inc. (CJA), which has eight years of *direct, first-hand* experience with *The Times* is able to provide *Content* with the means to overcome this anticipated hurdle. We can show you what legitimate complaints against *The Times* look like -- and how they are handled. Over the years, we have filed many such complaints with *The Times* -- including to its top management and highest editors, among them, Arthur Sulzberger, Jr., Max Frankel, Joseph Lelyveld, Gene Roberts, and A.M. Rosenthal. These complaints lay out -- in meticulous detail and with substantiating documents -- how *The Times* has wilfully suppressed time-sensitive and electorally-significant news stories of official misconduct by government leaders and those occupying positions of power and influence. The complaints establish the absolute unaccountability and arrogance of *Times*' upper echelons, who have refused to clarify *The Times*' "news fit to print" standard, refused to identify the basis for *Times*' non-reportage of these "news fit to print" stories, and refused to meet with us. In short, these complaints are a "paper trail" establishing the knowledge and complicity of *Times* higher-ups in a pattern of deliberate suppression of objectively-significant, documented, and easily-verifiable stories, affecting the public, its democratic rights, and the integrity of governmental processes and in blackballing our citizens' organization, whose "David and Goliath" achievements should have been the stuff of front-page headlines.

Mr. Sulzberger received four of these complaints. The first, dated June 30, 1992, enclosed a copy of a complaint CJA filed with the New York City Department of Consumer Affairs, asserting that *The Times*' motto, "*All the News That's Fit to Print*", is a false and misleading advertising claim. The second, dated November 27, 1994, was a copy of our letter to Hilton Kramer, author of the "*Times Watch*" column in *The New York Post*. That letter chronicled the background of *Times*' suppression that impelled CJA to spend \$16,770 in the days before the 1994 election for a public interest ad on the Op-Ed page of *The Times* (10/26/94, "*Where Do You Go When Judges Break the Law?*"). The third was a copy of CJA's October 15, 1996 submission to Project Censored, the university-based program that annually identifies "top censored stories". The submission, which on October 21, 1996 was also filed with the *Times* as a complaint against it, chronicled SEVEN YEARS of *Times* censorship of stories about the dysfunction, politicization, and corruption of the processes of judicial selection and

discipline and detailed (at pp. 5-9) the two prior complaints we had sent to Mr. Sulzberger<sup>1</sup> -- copies of which it appended. This submission was then supplemented by a further submission on December 2, 1996. Our fourth complaint, dated February 12, 1998, and addressed to Mr. Sulzberger, opened with the sentence "Since *The New York Times* has no news ombudsman to handle complaints..." and, 14 pages later, concluded with the sentence, "Maybe, you'll decide that the *Times* does need a news ombudsman, after all."<sup>2</sup> In between those two sentences the February 12, 1998 complaint was a fact-specific, fully-documented recitation of the *Times'* *modus operandi* for dealing with legitimate complaints -- to ignore them -- including Mr. Sulzberger's own failure to take any corrective steps after I gave him, in hand, a copy of our Project Censored submission and supplement eight months earlier.

The memorable circumstances under which I gave Mr. Sulzberger the Project Censored submission and supplement are recounted at the outset of CJA's February 12, 1998 complaint to him: On May 8, 1997, Mr. Sulzberger, who was the featured speaker at the 92nd Street Y, entertained questions from the audience. I was one questioner -- and publicly asked Mr. Sulzberger why *The Times* has no news ombudsman and whether this reflected his view that there could be no legitimate complaints against *The Times*. Charlie Rose, the program's moderator, publicly commented that this was a very good question. Mr. Sulzberger's public response was that it was the responsibility of *Times'* editors to handle complaints and that having an ombudsman would let them "off the hook". It was to prove to

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<sup>1</sup> CJA's June 30, 1992 letter/complaint to Mr. Sulzberger is included in CJA's October 15, 1996 submission as Exhibit "P" to Compendium II; CJA's November 27, 1994 letter to Hilton Kramer, sent certified mail/rrr to Mr. Sulzberger, is Document #1 in Compendium IV.

<sup>2</sup> The immediate preceding paragraph described CJA's April 30, 1997 letter to A.M. Rosenthal (Exhibit "Q-2" to our February 12, 1998 complaint). That letter to Mr. Rosenthal began, as follows:

"Some months ago, your name was mentioned by Mike Wallace, when he appeared as a guest on Alex Jones' WNYC Radio Show "On the Media". The discussion was about the use of "ombudsmen" and "news councils" as a constructive means of restoring public confidence in the media, which is often viewed as arrogant and irresponsible -- and, lo and behold, sometimes is. According to Mr. Wallace, you are 'dead set against it'. If this is true, we would appreciate knowing what alternative mechanisms you see as preferable for handling complaints against journalists and media entities when their conduct violates professional and ethical standards."

Mr. Rosenthal's two-sentence May 7, 1997 response (Exhibit "Q-3") did NOT answer that question and ignored our request for his assistance in dealing with *Times* censorship and black-balling, as reflected by our October 21, 1996 *Times* complaint and supplement -- a copy of which we transmitted to Mr. Rosenthal with our April 30, 1997 letter. As to those materials, Mr. Rosenthal offered no comment.

Mr. Sulzberger that his confidence in *Times* editors was misplaced and that they were *not* meeting that responsibility that I went up to Mr. Sulzberger after the program and handed him a copy of CJA's October 21, 1996 complaint: our 23-page October 15, 1996 submission to Project Censored, as well as our 6-page December 2, 1996 supplement. The supplement graphically detailed the vicious and depraved manner in which a *Times* editor had addressed the October 21, 1996 complaint, unrestrained by higher editors, and the *Times*' "business as usual" continued suppression and blackballing.

As set forth in the February 12, 1998 complaint (at p. 2), although Mr. Sulzberger promised to read the October 21, 1996 complaint and supplement, we never heard from him following that May 8, 1997 exchange. Nor was there any abatement of *Times*' suppression and blackballing. Indeed, in December 1997 and January 1998, *The Times* so severely prejudiced the public welfare by its suppression of time-sensitive news stories and its blackballing of CJA as to necessitate our February 12, 1998 complaint to Mr. Sulzberger.

Mr. Sulzberger's response to our fact-specific, fully-documented February 12, 1998 complaint was a conclusory five-sentence note, to which none of the indicated recipients of our complaint were indicated as receiving copies. In full, Mr. Sulzberger's note stated:

"I've received your lengthy letter and enormous volume of documents. You and The Times simply disagree as to what is news. In my judgment, an ombudsman would come to the same conclusion I have. You see our actions as suppression; we see them as judgment. Everything else flows from there."

The *most cursory* examination of CJA's February 12, 1998 complaint -- and its predecessor October 21, 1996 complaint and December 2, 1996 supplement -- establish the rank dishonesty and deceit of Mr. Sulzberger's pretense as to the conclusions to be reached by an ombudsman reading these materials. **ANY OBJECTIVE READER** -- let alone an ombudsman who necessarily understands the media's obligations to true, fair, and accurate reporting and its critical role in ensuring the vitality of democratic government and a system of checks and balances -- would be horrified and repulsed by the conduct of *Times* reporters, editors, and management, as documentarily established by those primary source materials. Indeed, these materials not only debunk *any* claim that *The Times* does not need an ombudsman, they demonstrate how *The Times* -- at all levels of the newspaper -- shamelessly covers up and conceals legitimate complaints to brazenly advance an *illegitimate* agenda: protecting public officials and establishment leaders who have corrupted the very governmental processes which are supposed to safeguard citizen rights and ensure government integrity. Such betrayal of the public trust and of standards of responsible journalism is always deleterious -- and never more so than in an election year, such as this, where *The Times* is deliberately depriving the public of the very information it needs to make informed electoral choices -- a fact highlighted, to no avail, by our February 12, 1998 complaint (See, particularly, pp. 3-4, and footnotes 10 and 16.)

Full copies of CJA's October 21, 1996 complaint<sup>3</sup>, December 2, 1996 supplement, and February 12, 1998 complaint are enclosed -- as is Mr. Sulzberger's February 18, 1998 response. Mr. Sulzberger's disingenuous response was notwithstanding our February 12, 1998 complaint pointed out (at p. 3) that Steven Brill was developing *Content* magazine as an expose of the "media's power, arrogance, and lack of accountability" and the likelihood that Mr. Brill would be interested in examining "how the *Times* handles legitimate complaints of journalistic misconduct by reporters and editors". The conclusion reasonably drawn from Mr. Sulzberger's February 18, 1998 response is that he did not then believe he had anything to fear from Mr. Brill -- an indicated recipient of the February 12, 1998 complaint<sup>4</sup> -- or from his new magazine.

Finally, we would note that Ralph Nader -- whose endorsement of *Content* is featured on the magazine's website and promotional literature -- and who was an indicated recipient of CJA's October 21, 1996 complaint, December 2, 1996 supplement, and February 12, 1998 complaint -- started his career as a proponent of the ombudsman concept, not just for the media, but for government generally. Mr. Nader has long been critical of *The Times* and has articulated the need to investigate it:

"There should be a study of *The New York Times*. Why the *Times* covers what it does. What are its priorities?... What about the likes and dislikes of its editors? How high up are the decisions on editorials made? *The Times* is a world of its own and a study would be worth doing..." Nader: The People's Lawyer, by Robert F. Buckhorn, Prentice-Hall, Inc., 1972, at p. 69).

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<sup>3</sup> This includes the seven compendia of exhibits that substantiated CJA's October 21, 1996 complaint, as well as the file of materials transmitted to Max Frankel to substantiate our June 14, 1992 complaint to him [See, fn. 2 of our October 15, 1996 submission to Project Censored].

<sup>4</sup> All indicated recipients were sent copies of CJA's February 12, 1998 complaint except for Mr. Brill and Mr. Rose, whose copies are being provided with this letter.

Michael Kramer, Editorial Director

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The enclosed primary source materials -- presenting hard evidence of years of deliberate suppression and black-balling by *The Times*, irreparably prejudicing the public at large and stunting the growth and development of this citizens' organization -- provide *Content* with a powerful opportunity to also embark on such long-overdue study.

Yours for a quality judiciary  
and responsible journalism,



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

Enclosures

cc: Arthur Sulzberger, Jr.  
ALL indicated recipients of CJA's February 12, 1998 complaint to Mr. Sulzberger  
Bill Kovach, Ombudsman, *Brill's Content*