

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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BY PRIORITY MAIL

CERTIFIED/RETURN RECEIPT: 7099-3400-0001-2734-1857

March 16, 2001

Michael Gartner, Ombudsman
Brill's Content
5315 Waterbury Road
Des Moines, Iowa 50312

RE: Complaint against Eric Efron, Editor of *Brill's Content*, and Steven Brill, its Chairman and CEO

Dear Mr. Gartner:

Pursuant to the notice in the monthly issues of *Brill's Content* that you "will investigate and report on specific complaints", our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), submits this "specific complaint" against Eric Efron, Editor of *Brill's Content*, based on his flagrant disregard for the standards *Brill's Content* purports to "Stand For": "Accountability" and "No Conflicts of Interest".

In particular, Mr. Efron used dishonest pretenses to twice reject story proposals which should have been speedily embraced by him -- were he and others at *Brill's Content* not afflicted by conflicts of interest. Mr. Efron has wilfully refused to respond to CJA's fact-specific challenges to these dishonest pretenses -- as to which, additionally, he has taken no corrective steps. Likewise, he has wilfully refused to respond to CJA's request for disclosure of conflicts of interest -- the existence of which he has neither denied nor disputed. This includes relationships, both personal and professional, with upper echelon management and editors at *The New York Times*. Further, he has wilfully refused to identify whether, as requested, his rejections of CJA's story proposals have been with the knowledge and approval of Chairman and CEO Steven Brill and whether, as requested, Mr. Brill has been provided with the proposals for his personal review.

To the extent Mr. Brill is knowledgeable and aware of this matter, but has wilfully failed and refused to respond, including by exercising supervision over Mr. Effron, this "specific complaint" is also against him.

Substantiating this complaint is CJA's exchange of correspondence with Mr. Effron. This correspondence begins with CJA's hand-delivered July 19, 1999 letter to Mr. Effron (Exhibit "A"), enclosing a copy of CJA's prior correspondence about story proposals it had first presented to Mr. Effron's predecessor, Michael Kramer, by letter dated July 8, 1998. The second sentence of that six-page July 8, 1998 letter proposed that *Brill's Content*:

"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*".

Pointing out that Bill Kovach's "Letter from the Ombudsman" in the July/August 1998 premiere issue of *Brill's Content* had not identified that "only the smallest handful of media use news ombudsmen", CJA's July 8, 1998 letter further proposed that *Brill's Content* "explore the media's failure to embrace the valuable ombudsman concept" by focusing on its rejection by *The New York Times* – as "the leader which other mainstream media follow". Expressly encompassed by this subsidiary proposal was why *The Times* had rejected the use of ombudsmen; its preferred alternative for handling of complaints; and an examination of the adequacy and efficacy of this preferred alternative.

Noting the likelihood that *The Times* would not willingly give *Brill's Content* access to complaints against it – essential to evaluating the adequacy and efficacy of *The Times'* handling of complaints in the absence of a news ombudsman, CJA's July 8, 1998 letter offered *Brill's Content* the benefit of a treasure trove of complaints it had filed over an eight-year period with *Times'* top management and highest editors – culminating in four complaints presented to *Times* Publisher, Arthur Sulzberger, Jr. As to these four complaints – copies of which were transmitted to *Brill's Content* with the July 8, 1998 letter – CJA's July 19, 1999 letter to Mr. Effron identified that they:

"not only establish the demonstrably dishonest and despicable manner in which *The Times* handles legitimate complaints against it, in the absence of a news ombudsman, but Mr. Sulzberger's shameless refusal to confront the necessity of a news ombudsman, evidentially presented to him."

By any *objective* standard, CJA's story proposals should have been seized by any magazine promoting itself as committed to bringing "the media's free ride to a screeching halt" – and especially one retaining an "outside ombudsman" under a "guaranteed contract" as a means of ensuring its own accountability.

As more than a year had already passed without *Brill's Content* having made any decision on the July 8, 1998 proposals, CJA's July 19, 1999 letter requested Mr. Effron's "personal attention"¹. Mr. Effron's response was a three-sentence July 23, 1999 letter (Exhibit "B") purporting that "Because of limited editorial resources, we are not able to pursue the story at this time. We'll keep your material on hand for future consideration."

In the following months, there was no evidence of "limited editorial resources" constraining *Brill's Content*, whose splashy monthly issues were filled with extensive stories – though not a single one about structural mechanisms for achieving media accountability. Among its coverstories, its November 1999 "Influence List: 25 People Whose Behind-The-Scenes Decisions Shape Our Media [And You've Never Heard of Most of Them]" – included four persons from *The New York Times*. Heading the list of 25 was Joseph Lelyveld, identified (at p. 76) as "executive editor of the nation's most prominent paper".

With no further word from *Brill's Content* over the next six months, CJA sent a follow-up January 6, 2000 letter to Mr. Effron (Exhibit "C"), asserting:

"...it is long past time that *Brill's Content* recognized that *if* its mission truly is, as it purports, 'to hold the media accountable', the first step should be to examine whether – and to what extent – the various media have structural mechanisms, such as 'news ombudsmen', news councils, and complaint procedures to foster that accountability. *The New York Times* IS the place to start.

¹ Annexed to CJA's July 19, 1999 letter to Mr. Effron was an earlier, January 5, 1999 letter to *Brill's Content* about the July 8, 1998 story proposals – to which CJA had received no response. At the time of CJA's January 5, 1999 letter, Mr. Effron had already been Editor for nearly a month. The first issue of *Brill's Content* to reflect his new position, the February 1999 issue, contained his "Inside Brill's Content" (p. 8). It purported that *Brill's Content* was receiving "ideas and suggestions" from readers – some of which it was incorporating – and that reader "questions and observations have been enormously helpful, spawning some of the stories you've read or will read in this magazine." His "Letter from the Editor" in the next issue, March 1999, continued along the same vein (p. 6): "we're always on the lookout for trash as well as gems, and we get a lot of our best leads from our readers. So keep on hounding and honoring us with your ideas and feedback, and we'll keep trying to sort it all out."

...
To date, the boast of *Brill's Content* to 'bring the media's free ride to a screeching halt' has not had the slightest effect in deterring the *Times* from continuing to wilfully violate its most fundamental journalistic responsibilities to the public it purports to serve. Only the establishment of a 'news ombudsman' or other such mechanism can do that. Assuredly, it will require coverage of its scandalous absence at *The Times* for this to happen."

Once again, CJA enclosed a copy of its prior exchange of correspondence with *Brill's Content* (Exhibits "A" and "B").

This time, Mr. Effron rejected CJA's proposals. His four-sentence January 18, 2000 letter (Exhibit "D") did this by simplifying them to the point of misrepresentation and by claiming that *Brill's Content* had already written about *The Times*' lack of an ombudsman. As to this claim, Mr. Effron provided not the slightest substantiation.

The simplistic and unsubstantiated nature of Mr. Effron's January 18, 2000 letter was particularized in CJA's three-page January 24, 2000 letter to him (Exhibit "E-1"). In addition to challenging Mr. Effron as to when *Brill's Content* had ever written about the substantive issues presented by CJA's story proposals, CJA expressly requested that Mr. Effron disclose whether he and others at *Brill's Content* were

"compromised by conflicts of interest, including by personal and professional relationships with Mr. Sulzberger, Mr. Lelyveld, or other *Times* higher-ups – who, to date, have been essentially unscathed, and in Mr. Lelyveld's case, even lauded by *Brill's Content* (11/99). They, of course, would have to be interviewed for any story about WHY *The Times* has no news ombudsman – a decision made at the top." (at p. 3)

A companion January 24, 2000 letter to Mr. Effron (Exhibit "E-2") requested him to clarify whether Mr. Brill had personally reviewed CJA's July 8, 1998 story proposals and, if not, that they be provided to him, along with CJA's exchange of letters with *Brill's Content*. CJA stated,

"With all due respect, CJA firmly believes that our document-supported story proposals are so important – and so much at the heart of what *Brill's Content* should be about – that their rejection

should be by no less than Mr. Brill himself.”²

Neither Mr. Effron nor Mr. Brill responded to either of CJA’s January 24, 2000 letters (Exhibits “E-1”, E-2”). This was highlighted eight months later in CJA’s fact-specific four-page letter for both of them, dated September 12, 2000 (Exhibit “F”), again enclosing a copy of CJA’s prior correspondence with *Brill’s Content* (Exhibits “A”-“E”). The hand-delivered letter further asserted that

“the failure of *Brill’s Content* to present stories examining the existence and efficacy of structures for achieving media accountability, *i.e.* news ombudsmen and news councils – and outright protectionism of the *Times* – is inexplicable, except as an expression of undisclosed conflict of interest by Mr. Effron and members of the *Brill’s Content* staff, such as CJA’s January 24, 2000 letter highlights (at p. 3).”

Likewise, neither Mr. Effron nor Mr. Brill responded to CJA’s September 12, 2000 letter (Exhibit “F”). This was brought to Mr. Effron’s *personal* attention on January 8, 2001, when, following his participation in a panel discussion, I went up to him and discussed it. At that time, I gave Mr. Effron, *in hand*, a January 8, 2001 letter (Exhibit “G”), the sole focus of which was CJA’s yet unresponded-to January 24, 2000 and September 12, 2000 letters (Exhibits “E” and “F”). Copies of these, of which CJA’s prior correspondence was part, were enclosed for the express reason of facilitating his “belated response to the serious issues presented therein”.

Yet, Mr. Effron did not respond to any of the serious issues detailed in those letters. Rather, by a three-sentence February 16, 2001 letter (Exhibit “H”), he again stated that *Brill’s Content* was rejecting the proposals. Again he simplified CJA’s proposals to the point of misrepresentation. This time he did NOT pretend that *Brill’s Content* had done a story about *The Times*’ lack of an ombudsman, but instead claimed that *The Times*’ lack of an ombudsman is “not a story, but rather, it is a fact, and one that is widely known”. He also sought to impugn the *objective* merit of CJA’s story proposals by stating that it was his “sense that what [CJA is]

² Two months later, in the April 2000 issue, the importance of news ombudsmen was underscored by *Brill’s Content* when among Mr. Brill’s several proposals for resolving conflicts to independent journalism by media conglomerates it highlighted in a box at the center of the page his suggestion that governmental benefits to media companies be “contingent on having an ombudsman to deal with complaints about self-interested reporting”. See “Rewind”, p. 27.

really interested in involves a deeply felt *personal* dispute with the *Times*" (emphasis added). He offered no facts to substantiate this "sense".

CJA's response was a hand-delivered five-page March 1, 2001 letter to Mr. Effron (Exhibit "T"), particularizing the distortions and dishonesty of his February 16, 2001 letter with the same precision as CJA's three-page January 24, 2000 letter to Mr. Effron (Exhibit "E-1") had particularized the distortions and dishonesty of his January 18, 2000 letter. Asserting "it is long past time that *Brill's Content* honestly confront CJA's ACTUAL proposals" and noting that *Brill's Content* "prominently publicizes that it stands for "No Conflicts of Interest" and "Accountability", CJA's March 1, 2001 letter expressly requested Mr. Effron's response:

"to its serious allegation that undisclosed conflicts of interest have tainted *Brill's Content* in its handling of CJA's July 8, 1998 story proposals, as well as to CJA's fact-specific demonstration, both in [the March 1, 2001] letter and the January 24, 2000 letter regarding the dishonesty of [his] February 16, 2001 and January 18, 2000 letters to [CJA]. Please also advise whether, as requested, Mr. Brill has himself reviewed CJA's July 8, 1998 story proposals and subsequent letters, including those of January 24, 2000 and September 12, 2000." (Exhibit "T", at p. 4)

To date, more than two weeks after hand-delivery of CJA's March 1, 2001 letter, CJA has received no response from Mr. Effron. This, non-response – like Mr. Effron's previous non-response to his demonstrated dishonesty and to questions as to conflicts of interest – is a direct repudiation of his promise in soliciting prospective readers, "we're about holding ourselves to an even higher standard than we hold our peers in the media. (No glass houses here... when we're wrong, you'll hear about it!)" (Exhibit "J-1") – a promise repeating Mr. Brill's own in soliciting readers, "we will put ourselves under the microscope just as much, if not more than, those we report on... by employing an independent ombudsman to investigate complaints about our work..." (Exhibit "J-2").

CJA's March 1, 2001 letter provided Mr. Effron with notice (at p. 4) that CJA would be turning to you for your "independent judgment as to the manner in which *Brill's Content* has handled CJA's July 8, 1998 story proposals". Mr. Effron apparently feels he has nothing to fear from you -- perhaps sharing the view of former *Times* Executive Editor Max Frankel, as cited in the last sentence of CJA's March 1, 2001 letter (Exhibit "T"), that news ombudsmen aren't really effective.

In that connection, please disclose whether you yourself have any conflicts of interest that would impede your independent review of this complaint against Mr. Effron and Mr. Brill. This includes not only your personal and professional relationships with both these men – perhaps culminating in your retention as “outside ombudsman”³ – but your relationships with the high-ranking management and editors at *The New York Times* who they have so assiduously protected. Such relationships may be presumed from the prominent positions you have held, including as Page One editor for *The Wall Street Journal* and President of NBC News, summarized by Mr. Brill’s “Special Note” in the July/August 2000 of *Brill’s Content*⁴ (Exhibit “K-1”).

It is ironic that Mr. Brill’s “Special Note” (Exhibit “K-1”) begins with the statement that the use of an “outside, independent ombudsman” by *Brill’s Content* – begun in 1998 at the magazine’s inception -- represented “something *never* before tried by *any* publication” (emphases added). How can readers of *Brill’s Content* either understand or appreciate this when *Brill’s Content* has so deliberately refused to develop stories on the history and variations of the news ombudsman concept, such as proposed by CJA’s July 8, 1998 letter? This refusal has left readers of *Brill’s Content* not only ignorant as to how the relatively few other news ombudsmen at other publications function, but as to why *Brill’s Content* decided to break with those models. Conspicuously, *Brill’s Content* has not provided its readership with the opinions of other news ombudsmen as to its “never before tried” precedent. Nor did Bill Kovach, your predecessor, see fit to end his two-year contract with any final column examining his experience with it. Instead, readers have only Mr. Brill’s self-congratulations on the success of his ombudsman “initiative” in his “Special Note” (Exhibit “K-1”).

³ *Brill’s Content* supplies no information as to the “process” by which it selects its “outside ombudsman” – and neither you nor your predecessor, Bill Kovach, have discussed the subject.

⁴ Two years earlier, the July/August 1998 premiere issue of *Brill’s Content* identified (at p. 9) Mr. Kovach’s credentials to include his position as Chief of the Washington, D.C. bureau of *The New York Times*. His presumed relationships with high-level *Times* editors and management may have made him reluctant to take up CJA’s July 8, 1998 fax invitation (Exhibit “K-2”) to “weigh in” on CJA’s complaints to *The Times* and the claims of Mr. Sulzberger relative thereto. [Also sent to Mr. Kovach was a copy of CJA’s July 15, 1998 letter to Charlie Rose – annexed hereto as Exhibit “K-3”.]

For reasons unknown, it appears that you, like Mr. Kovach before you, are not a member of the Organization of News Ombudsmen – a valuable organization whose existence *Brill's Content* has never identified for its readers, even under the magazine's self-aggrandizing heading of "Stuff We Like". The Organization of News Ombudsmen has a website [www.newsombudsmen.org] containing informative essays about news ombudsmen throughout the country and world, such as have not remotely appeared in the pages or on the website of *Brill's Content*, as well as informative essays about a subject even more concealed by *Brill's Content* than ombudsmen -- news councils. Among these essays: "*News Ombudsmanship: Its History and Rationale*", "*The Newspaper Ombudsman: A Personal Memoir of the Early Days*", and "*Why Did One News Council Fail and the Other Succeed?*". The website also provides useful links, such as to the Minnesota News Council, whose essay, "*How to Start a News Council*", empowers citizens to actively participate in building media accountability⁵. There is no comparable empowerment in *Brill's Content*, which seems to conceive citizen involvement as citizens reading and dialoging with *Brill's Content*.

Although the website of the Organization of News Ombudsman gives a link to *Brill's Content*, there appears to be no link from the *Brill's Content* website to the Organization of News Ombudsman – or, for that matter, to any entity involved in promoting media accountability, be it an organization or a publication. This suggests that *Brill's Content* wants its website readers⁶, as likewise, its magazine readers, to believe that it alone is championing media accountability – an illusion

⁵ See, also, the link to the Washington News Council.

⁶ It must be noted that the *Brill's Content* website is a disaster when it comes to finding out what the magazine has printed about "news ombudsmen". A search produces a jumbled, non-chronological listing, generally without any helpful summary as to the subject of each entry, which, when accessed, often contain no more than a stray reference to "ombudsman", if that. As for the "Letters from the Ombudsman", many are posted on the website without the date of the magazine in which they appeared. Reflecting this is the on-line "Letter" on the important subject of conflict of interest and disclosure (Exhibit "L-1"). This on-line February 2000 "Letter" is, moreover, wrongly attributed to YOU rather than Mr. Kovach, whose authorship is clear from the magazine's "hard copy" (Exhibit "L-2").

In regards to the February 2000 "Letter from the Ombudsman", CJA trusts that you not only share Mr. Kovach's view that an editor has the oversight responsibility of assigning stories to writers who are unafflicted by conflicts of interest – and, where that is not possible, of ensuring that the writers' conflicts are adequately disclosed to readers – but, in the context of THIS complaint, that you will recognize an important opportunity to articulate that an editor has an earlier stage of responsibility – involving *story proposals* -- where he must ensure that he himself is free of conflicts so that his review is objective.

that requires it to deprive its readers of information about the functioning of structural mechanisms that are not only capable of doing a far better job, but of doing it on an on-going basis.

Because it is reasonable to expect that the Organization of News Ombudsmen would have an interest in this important complaint – including how it will be handled by you as the “outside, independent ombudsman” of *Brill's Content*, a copy is being sent to its President, Elissa Papirno, with a request that the Organization provide any possible assistance it can -- including recommending to CJA a journalist to expose *The New York Times'* brazen deceit about not needing a news ombudsman – and its impact on other media -- covered up by *Brill's Content*. This, so as to force – through the power of public opinion -- fundamental accountability at both publications. Indeed, notwithstanding the inflated claims of *Brill's Content* about having made an “overwhelming[]” difference “for the good”: “we’ve got journalists thinking twice about filing that story... We’re raising the bar so the media will perform with greater accuracy and integrity” – claims it used to unsuccessfully solicit CJA to renew its expired two-year subscription -- CJA’s September 12, 2000 letter to *Brill's Content* (Exhibit “F”) put it on notice that:

“*Brill's Content* has not had the slightest effect in bringing to the *Times* anything resembling accountability, honesty, and journalistic responsibility. That will happen only when the *Times* is the subject of the scandalous coverage it deserves so that, powerful as the *Times* is, it is forced to recoup its credibility by establishing a news ombudsman and by participating in the development of news councils.” (at pp. 3-4)⁷

Finally, please advise whether, as requested in CJA’s March 1, 2001 letter to Mr. Effron (Exhibit “I”, p. 4), he has forwarded to you CJA’s four documented complaints to Mr. Sulzberger that accompanied CJA’s July 8, 1998 letter. As Mr. Effron should know, these complaints resoundingly reveal the utter baselessness of his “sense” that “what [CJA is] really interested in involved a deeply-felt *personal* dispute with the *Times*” (emphasis added).

Needless to say, much as CJA offered to assist *Brill's Content* in assessing the July 8, 1998 story proposals – including by making a personal presentation⁸ -- CJA

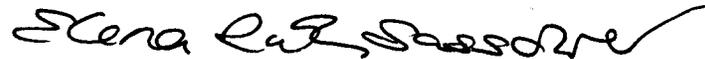
⁷ See also CJA’s January 5, 1999 letter to *Brill's Content* – which is part of Exhibit “A”.

⁸ See p. 2 of CJA’s January 6, 2000 letter to Mr. Effron (Exhibit “C”).

March 16, 2001

would also be pleased to assist you in every aspect of this complaint.

Yours for a quality judiciary
and responsible journalism,



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

Enclosure: CJA's informational brochure with its two NYT Letters to the Editor,
"Untrustworthy Ratings?", 7/17/92
"On Choosing Judges, Pataki Creates Problems", 11/16/96

cc: *Brill's Content*: (2 copies)
[certified mail/rrr: 7099-3400-0001-2734-1918]
Eric Effron, Editor
Steven Brill, Chairman & CEO
Organization of News Ombudsmen:
[certified mail/rrr: 7099-3400-0001-2734-1949]
Elissa Papirno, President

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Eric Egan/Steven Br
 Street, Apt. No., or PO Box No.
1230 Avenue of the Americas
 City, State, ZIP+4
NY NY 10020

PS Form 3800, July 1999 See Reverse

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1. Article Addressed to:

*Bill's Content
 Eric Egan/Steven Br
 Steven Brill, Chairman + CEO
 1230 Avenue of the Americas
 NY NY 10020*

2. Article

5

PS Form

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