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June 19, 2003

Allan M. Siegel, Assistant Managing Editor
The New York Times
229 West 43rd Street
New York, New York 10036

RE: Ensuring Journalistic Integrity and Quality by Examining How
The New York Times Handles Complaints – Starting with CJA’s
June 11, 2003 Memorandum-Complaint

Dear Mr. Siegel:

This follows my brief phone conversation on Monday, June 16th, with your assistant, Ellen Kavier, who confirmed that you are heading a committee examining Times' newsroom policies in the wake of the Jayson Blair scandal. I understand that this is to be "a sweeping look at the newsroom's internal processes"¹, which will include how The Times handles complaints – including whether The Times should hire an independent ombudsman².

As discussed with Ms. Kavier, our New York-based, non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), has more than a dozen years of *direct, first-hand experience* with The Times' newsroom: its reporters, editors, and upper management – and can attest to how completely worthless the "newsroom's internal processes" are for ensuring journalistic integrity and quality. Such experience is reflected by our voluminous correspondence with The Times throughout these years, including in complaint, after complaint, after complaint -- ignored by editors and those in positions of highest supervisory authority at The Times. This includes Joseph Lelyveld, who has now temporarily returned to The Times as its executive editor in the wake of the Jayson Blair scandal, and Arthur Sulzberger, Jr., who remains The Times' publisher.

¹ "Times Reporter Steps Down Amid Criticism", May 29, 2003.

² "N.Y. Times Suspends Reporter", Washington Post, Howard Kurtz, May 24, 2003.

To Mr. Sulzberger, we long ago urged – and thereafter reiterated -- the need for The Times to bring in an ombudsman because, quite simply, editors of all ranks, including such high editors as Mr. Lelyveld, were ignoring legitimate, *fully-documented* complaints that reporters were wilfully and deliberately “suppressing important, time-sensitive, and electorally-significant stories” and blackballing our citizens’ organization, whose undertakings and achievements offered an inspiring model of citizen action.

In the event you are unaware of CJA’s many, many complaints, including our comprehensive October 21, 1996 complaint and December 2, 1996 supplement and our comprehensive February 12, 1998 complaint with its July 8, 1998 follow-up, you must immediately obtain them from whatever repository The Times has designated by its “internal processes” for centralized preservation of complaints, in the absence of an ombudsman³. Such complaints will reveal a level of “journalistic fraud” making that committed by rookie reporter Jayson Blair seem as “peanuts” by comparison. Indeed, whereas Jayson Blair acted alone in randomly falsifying stories, spurred by some kind of illness, rather than motive, CJA’s complaints chronicle sustained, collusive acts by seasoned news reporters, their editors, upper management, and the editorial board -- all perverting “the cardinal tenet of journalism, which is simply truth”⁴. What they did, knowingly and deliberately, was to ignore documentary evidence, both proffered and provided, of systemic governmental corruption, such as of judicial selection and discipline -- and the criminal complicity of New York’s highest public officers, including those up for re-election. The result, as they knew, was to deprive the public of information essential to safeguarding democracy, the rule of law, and the casting of an intelligent vote.

Notwithstanding The Times’ supposed “soul-searching” and “introspection” in the wake of the Jayson Blair scandal⁵, there has been NO abatement of “journalistic fraud” by its newsroom and editorial board in wilfully misleading the public. This may be seen from CJA’s June 11, 2003 memorandum-complaint to the editorial board – also sent to the newsroom. A copy is enclosed so that it may be the “starting point” for the committee’s examination of The Times’ “internal processes” for handling complaints.

This June 11th complaint typifies what all CJA’s past complaints have particularized as to the misconduct of news reporters and their editors – to no avail. Thus, on June 11th, senior Washington news reporter, Neil Lewis, told me he was “not interested” in writing any story about how a judge of New York’s *highest* state court, New York Court of Appeals Judge Richard C. Wesley, had been nominated to the Second Circuit Court of Appeals and (on that

³ Should you be unable to retrieve CJA’s complaints and related correspondence, we will supply duplicates.

⁴ “Times Reporter Who Resigned Leaves Long Trail of Deception”, May 11, 2003, front page.

⁵ “Leadership at the Times”, June 6, 2003 editorial.

very day) confirmed. This, notwithstanding Mr. Lewis knew from the "paper trail" of primary source materials posted on the homepage of CJA's website, www.judgewatch.org, that such story would expose the corruption of federal judicial selection involving New York's own Senator Schumer, up for re-election, and Senator Clinton, riding high on a wave of self-promotion by the publication of her book – and provide the public with a stunning model of citizen action by our citizens' organization. Mr. Lewis would not explain why he was "not interested", would not identify which documents from CJA's homepage he had read, and would not give me the name of his editor. As the June 11th complaint reflects, I thereafter left urgent messages for all editors in the Washington newsroom in which he works – including for Jan Battaile, subsequently identified to me as having supervisory authority over him. However, eight hours later, I had still not received a return call from any editor. Indeed, as of today, eight days later – and after having left a further message for Ms. Battaile three days ago -- I have still not received any return call from her or from any other editor about Mr. Lewis' indefensible suppression of a major news story. Nor has any news editor called me to discuss the observation in the June 11th complaint that

"notwithstanding The Times editorializes about the need to scrutinize judicial nominees, its news coverage on federal judicial nominations is for courts *everywhere in the country, but New York and the Second Circuit*" (emphasis in the original).

If anything, The Times has now reinforced its disparate news coverage by the very example identified by CJA's June 11th complaint: its reporting of Michael Chertoff's nomination to the Third Circuit Court of Appeals, but not of Judge Wesley's nomination to the Second Circuit Court of Appeals on the very same day. True to form, last week The Times reported Mr. Chertoff's June 9th Senate confirmation, but not Judge Wesley's June 11th Senate confirmation. By any standard, this is "journalistic fraud" – misleading Times readers in general and New York and Second Circuit readers in particular to believe there is NOTHING they need to know about Judge Wesley and his journey to New York's federal appellate court.

On top of this are the prominent Times news articles that have since appeared about Senator Schumer, "*Can Anyone Beat This Senator? Schumer is Flush... and Formidable*" (Metro, front-page, June 15, 2003), and Senator Clinton, "*Road Map for Clinton in 2008*" (Week in Review, p. 2, June 15, 2003) – forward-looking political articles only possible because the newsroom "protected" these Senators by not reporting how they betrayed the rights and welfare of their New York constituents – and the nation -- in connection with Judge Wesley's confirmation.

As with so very many of CJA's past complaints, the Times' editorial board has here replicated the "journalistic fraud" of its newsroom. Thus, I received no response from the editorial board to the June 11th memorandum-complaint – nor to my further phone message to it three days

ago. No editorials have appeared during this period informing readers of what has taken place with so important a judicial appointment to the Second Circuit Court of Appeals – and the scandalous role of Senators Schumer and Clinton. This enabled Judge Wesley to be sworn in yesterday in Manhattan as the Second Circuit's newest federal appellate judge – as to which, of course, not even an item appears in today's Times.

To appreciate the egregiousness of the “journalistic fraud” committed by the editorial board, one need only look back to June 9th. On that day -- when the lead editorial on another subject was “*Keeping the Public Clueless*” -- the editorial board published “*A Note to Our Readers*”, which began:

“Editorial page editors live perpetually under the cloud of knowing they can never point out, warn about and comment on all the things that deserve attention. This page will never touch all the bases, but there are a few rules we try to honor. One is that while, The New York Times has become a truly national paper, it is still also very much a local paper to its home city and the surrounding suburbs. ...”

The purpose of this “*Note to Our Readers*” was to let readers know that the editorial board was so committed to providing its national and metropolitan audiences with needed information that it was expanding its editorial writing. Yet, three days later, when the editorial board had before it CJA's June 11th memorandum, with its “paper trail” of primary source materials from the www.judgewatch.org homepage laying out a major national scandal about the corruption of federal judicial selection, whose roots expose the corruption of the New York State Commission on Judicial Conduct and “merit selection” to the New York Court of Appeals, involving – and criminally implicating -- a panoply of New York's highest public officers: Governor George Pataki, Attorney General Eliot Spitzer, Chief Judge Judith Kaye, and the leadership of the New York State Senate -- over and beyond Senators Schumer and Clinton -- the editorial board's response was to withhold ALL information about it from both national and metropolitan audiences. Nothing Jayson Blair did remotely compares in magnitude and scope with this knowing and deliberate betrayal of the public trust by The Times' editorial board, aligned with its newsroom, in “*Keeping the Public Clueless*”.

The New York-centered corruption of public agencies, processes, and public officers underlying the national story of the corruption of federal judicial selection could have been -- and should have been -- long ago reported by The Times' newsroom and made the subject of editorial comment so as to have spared the People of New York ongoing and irreparable injury. This did not happen -- but not because CJA did not do EVERYTHING in its power to alert editors and management up to The Times publisher of their journalistic responsibilities in complaint, after complaint, after complaint. This will be obvious to the committee upon its review of these many, many documented complaints – from which it will also see that there

was absolutely no accountability and responsiveness at The Times – at any level.

Such review of CJA's past complaints will also make evident that both The Times' newsroom and editorial board suffer from profound conflicts of interest in reporting and editorializing on the instant national story about the corruption of federal judicial selection precisely because they have suppressed every aspect of the underlying corruption it encompasses. Indeed, reporting and editorializing on the national story would begin a process by which The Times would have to acknowledge the legitimacy of *all* CJA's prior complaints of its wilful and deliberate cover-up, "protectionism", and blackballing.

Unquestionably, the committee you head includes members of The Times whose misconduct has been chronicled in CJA's past complaints – or who, unbeknownst to us – were involved in what we were complaining about. Ms. Kavier declined to give me the names of the committee members -- other than that they included three outside representatives. Surely, their names are not confidential – and we request that information.

We look forward to assisting the committee in developing proper procedures for The Times' handling of complaints. To that end, we request to meet with the committee to make a personal presentation about our many, many complaints and to answer questions. However, most immediately, we request that you provide a role model example of how, absent an ombudsman, the June 11th complaint should be professionally handled, consistent with journalistic responsibilities.

Thank you.

Yours for a quality judiciary,



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cc: Editorial Board

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URGENT ATTENTION REQUIRED

DATE: June 11, 2003

TO: Editorial Board, The New York Times

FROM: Elena Ruth Sassower, Coordinator

RE: The Scandal of Federal Judicial Selection in the Second Circuit and the Betrayal of the People of New York by New York Senators Schumer & Clinton -- as *Readily-Verifiable* from the "Paper Trail" of Primary-Source Materials Posted on the Home-Page of www.judgewatch.org.

This follows up my phone conversation with staff assistant, **Maureen Muenster**, shortly after 3:00 p.m. today, requesting to speak with Gail Collins or to those Editorial Board members who write The New York Times' editorials on federal judicial selection.

The Editorial Board must be alerted to what is happening with federal judicial selection right here in the Second Circuit – as to which The New York Times has given NO coverage – notwithstanding this would be of greatest concern to its New York readers – New York being in the Second Circuit. Indeed, my today's phone call to the Editorial Board was occasioned by my phone call twenty minutes earlier to Neil Lewis, who routinely covers federal judicial nominations and the Senate Judiciary Committee. In that conversation, Mr. Lewis unceremoniously told me that he was "not interested" in writing about the nomination of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals, whose scandalous dimensions are chronicled on the homepage of www.judgewatch.org, the website of our New York-based, non-partisan, non-profit citizens' organization – as to which I had given him notice two days earlier and spoken to him briefly yesterday⁶.

⁶ In that brief conversation, I stated that notwithstanding The Times editorializes about the need to scrutinize judicial nominees, its news coverage on federal judicial nominations is for courts *everywhere in the country, but New York and the Second Circuit*. As illustrative, I believe I mentioned that The Times had run a news item about the nomination of Michael Chertoff to the Third Circuit Court of Appeals, accompanied by a picture. Wholly ignored was the nomination, made the very same day, of Richard Wesley to the Second Circuit Court

Because Mr. Lewis refused to identify why he was “not interested”, refused to identify what documents from the [www.judgewatch](http://www.judgewatch.org) homepage he had read, and refused to give me the name of his editor, our conversation lasted no more than about 30 seconds. Indeed, as I attempted to ask him whether, with three Op-Ed page articles on federal judicial selection in today's Times, he was actually “saying” that New Yorkers weren't entitled to know what was happening in their own Second Circuit involving a powerful federal appellate judgeship and their own New York Senators (Schumer up for re-election and Clinton depicted in today's Times' editorial as having fashioned a self-serving narrative), Mr. Lewis responded, “I'm saying, good-bye”, and hung up the phone while I was in mid-sentence.

Unknown to me when I phoned Mr. Lewis at about 2:45 p.m. today, as likewise when I spoke with Ms. Muenster twenty minutes later, was that listed on today's Senate schedule for 11:00 a.m. was 15 minutes of “debate” on Judge Wesley's confirmation, followed by a vote “at approximately 11:15 a.m.”. Presumably, Mr. Lewis knew this when he told me he was “not interested” -- and knew that Judge Wesley had been confirmed by a 96-0 Senate vote. Presumably, too, he knew that tomorrow's Times would have to run something about the confirmation -- if for no other reason than that it created a vacancy on New York's Court of Appeals.

In trying, on my own, to locate Mr. Lewis' editors, I was told by Tanya at the national desk in New York that they are all in the D.C. Bureau. Upon calling the D.C. Bureau (2:52 p.m.; 202-862-0324), I was told by Mr. Renick, who answered the phone, that Mr. Lewis' editors were all in a meeting -- and that I should leave a voice mail message. He then transferred me to an automated line, whose recording begins by assuring that “responsible editors” will respond “very promptly”. Three quarters of an hour later, as I was composing an e-mail message to you, as Ms. Muenster had requested, I somehow decided to check the Senate website. It was then that I discovered the Senate schedule with the “debate” and vote on Judge Wesley's confirmation listed for five hours earlier. This prompted my immediate -- and even more urgent -- call to the D.C. Bureau to speak to an editor. It was then 3:45 p.m. For some reason, the call was routed to David Johnston, a reporter, not an editor, whose “beat” is terrorism. Very kindly, he listened to what I had to say for over ten minutes, even assuring me that he would himself take a look at the story of Judge Wesley's nomination told by the documents on the www.judgewatch.org homepage -- as to which I beseeched him to contact an editor on my behalf. He then routed me back to the D.C. Bureau. According to Jennifer Misthal, who took my call, the editors were still all in a meeting. This included Jan Battaile, who Ms. Misthal believed to be Mr. Lewis' editor, having supervisory authority over him. I left an urgent, detailed message with Ms. Misthal for Ms. Battaile, as well as for all other editors, mentioning my discovery of the Senate calendar and the probability of Judge Wesley's

of Appeals -- where, additionally, he was a judge on New York's highest state.

confirmation – surely to be reported in tomorrow's Times as no big story, when, as Mr. Lewis knew from our website, it was a MONUMENTAL story of the corruption of federal judicial selection.

At 4:10 p.m., I returned to writing the e-mail message I had commenced half an hour earlier. It took about half an hour to complete – at which time, for reasons unknown, I was unable to transmit the e-mail. It is now midnight. – and I have received NO RETURN CALL FROM ANY EDITOR AT THE WASHINGTON BUREAU.

Please advise, without delay, as to whether, based on your review of the “paper trail” of documents posted on the www.judgewatch.org homepage, The Times' editorial page will recognize its journalistic obligation to inform New York readers and the public at large about the corruption of federal judicial selection, exposed by Judge Wesley's nomination and confirmation – and will take steps to ensure that the “news side” of The Times does likewise.

Thank you.

cc: Washington Bureau/By Fax: 202-862-0427