

ADVANCING MEDIA REFORM BY PUTTING INTO PRACTICE
THE LAW REVIEW RECOMMENDATIONS OF SCHOLARS:
Suing The New York Times for Journalistic Fraud
in Vindication of the First Amendment

The purpose of a free press, as guaranteed by our First Amendment, is to ensure that citizens are provided with the information essential to preserving democracy and exercising their democratic rights.

“The First Amendment goes beyond protection of the press...’...‘it is the right of the [public], not the right of the [media], which is paramount,’...for ‘without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally,’...”

These powerful words from the United States Supreme Court preface the verified complaint in CJA’s public interest lawsuit against The New York Times – underscoring that its goal, consistent with that of media reform, is to vindicate the public’s right to the information necessary to self-govern. The lawsuit achieves this goal by a cause of action for journalistic fraud.

CJA’s lawsuit, the first to bring a journalistic fraud cause of action, implements the recommendation of a law review article, “*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*”, 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1 (2003), which conceived such cause of action as a means to advancing media accountability.

The lawsuit has reinforced the viability of a journalistic fraud cause of action. Neither The Times nor the judge to whom the lawsuit was steered were able to confront any of the legal or constitutional arguments made by that law review article in support of its viability. Nor were they able to confront any of CJA’s arguments based thereon or based on two other law review articles: “*Access to the Press – A New First Amendment Right*”, 80 Harvard Law Review 1641 (1967), which – 40 years ago – recognized the need for “legal intervention” to secure the “marketplace of ideas” on which a healthy democracy and the First Amendment rest, and “*Institutional Reckless Disregard for Truth in Public Defamation Actions Against the Press*”, 90 Iowa Law Review 887 (2005), which recognized that the media has become a profit-driven business, substituting financial considerations for journalistic ones, and necessitating a different framework of liability.

Go to the lawsuit record, posted on CJA’s website, www.judgewatch.org, accessible *via* the sidebar panel “Suing The New York Times”. It contains all three law review articles and CJA’s unchallenged arguments¹. The journalistic fraud cause of action appears at ¶¶163-175 of the posted verified complaint. **We invite and welcome your comments.**

LET MEDIA POLICY RESEARCHERS & PROPONENTS OF MEDIA REFORM & THE PUBLIC’S RIGHT TO KNOW bring to public discussion this important journalistic fraud cause of action and CJA’s groundbreaking public interest lawsuit against The New York Times which has given it birth.

¹ June 1, 2006 memo of law (at pp. 20-21); June 13, 2006 reply affidavit (at ¶¶19-23); August 21, 2006 memo of law (at pp. 17-20); and September 25, 2006 reply affidavit (at ¶¶23, 26-29).