

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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DATE: April 4, 2007

TO: Free Press:

Professor Bob McChesney, President, Chairman of the Board
Josh Silver, Executive Director
John Nichols, Board Member
Michael X. Delli Carpini, Dean, Annenberg School for Communications
at University of Pennsylvania

Professor Clay Calvert

Professor Robert D. Richards

Professor Jerome Barron

Professors Randall P. Bezanson

Professor Gilbert Cranberg

Professor Eric M. Freedman, Hofstra University Law School

Marjorie Heins, Esq., Brennan Center for Justice

at New York University Law School

Nicholas Lemann, Dean, Columbia University Graduate School of Journalism

Jethro Lieberman, Dean of Academic Affairs, New York Law School

Professor Cameron Stracher, Co-Director, Program in Law & Journalism

at New York Law School

Tom Rosenstiel, Director, Project for Excellence in Journalism

Alex Jones, Director, Shorenstein Center on the Press, Politics & Public Policy

at Harvard University

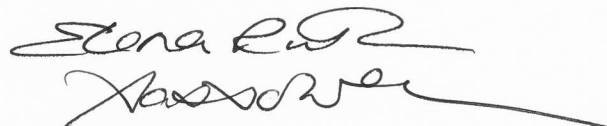
Robert Giles, Curator, Nieman Foundation for Journalism at Harvard University

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Fostering a "Culture of Collaboration" between Academia and Activists:
Putting into Practice Law Review Recommendations for Media Reform &
Accountability – CJA's Public Interest Lawsuit against The New York Times,
Championing "Necessary Knowledge for a Democratic Public Sphere"

Enclosed is my letter of today's date to Craig Calhoun, President of the Social Science Research Council, to which you are indicated recipients. I invite your response – including whether you would like to participate at the requested meeting between President Calhoun and myself.

Enclosure
cc: Craig Calhoun



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BY HAND

April 4, 2007

Craig Calhoun, President
Social Science Research Council
810 Seventh Avenue, 31st Floor
New York, New York 10019

RE: Request to Meet with You: Fostering a “Culture of Collaboration” between Academia and Activists:
Putting into Practice Law Review Recommendations for Media Reform & Accountability – CJA’s Public Interest Lawsuit against The New York Times, Championing “Necessary Knowledge for a Democratic Public Sphere”

Dear President Calhoun,

As a citizen activist, who had taken a 6:30 a.m. plane from New York City to Memphis, Tennessee on Thursday, January 11, 2007 so as not to miss the opening of the Media Policy Research Pre-Conference, co-sponsored by Social Science Research Council and Free Press, I thank you for your powerful introductory remarks about the necessity of building a “culture of collaboration” between academia and activists. Your words had particular meaning for me since fostering a “culture of collaboration” was precisely the reason for my attending the Pre-Conference, which I did on one hour’s sleep because I had been working, to the last minute, writing and running off 1,000 copies of a two-page handout, whose second side bore the capitalized and bold-faced title:

**“ADVANCING MEDIA REFORM BY PUTTING INTO PRACTICE
THE LAW REVIEW RECOMMENDATIONS OF SCHOLARS”.**

As you may be aware, on Sunday, January 14, 2007, Free Press concluded its National Media Reform Conference with a session entitled “Media Scholars’ Policy Research Review”, moderated by Free Press Co-Founder and President Robert McChesney. In the portion devoted to audience participation, I spoke, inspired by your opening invocation and by the presentation of that session’s final speaker, Professor Michael Delli Carpini, Dean of the Annenberg School for Communications at the University

* The **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens’ organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful – a goal which cannot be achieved without honest scholarship and a press discharging its First Amendment responsibilities.

of Pennsylvania, who had echoed the theme by which you had opened the Pre-Conference.

For your convenience, I have transcribed what I said from the audiotape¹ because, as nervous and as rushed as I was, it sums up the situation. I stated:

“My name is Elena Sassower. I am director and co-founder of the Center for Judicial Accountability, a non-partisan, non-profit citizens’ organization.

The goal of this conference is media reform. For the past nearly one year we have had a public interest lawsuit, ongoing, against The New York Times for journalistic fraud. It’s the first-ever lawsuit to bring such cause of action, which is based on a law review article by the co-directors of the Pennsylvania Center for the First Amendment at Pennsylvania State University, who posited, four years ago, a journalistic fraud cause of action, said that it would not be barred under the First Amendment, would be viable.

This is the first lawsuit to bring that cause of action. It is a powerful instrument to advancing media reform, bringing media accountability, and we have not been able to get any dialog with the professors who wrote the article. Nor have we been able to obtain any dialog and input from [three] other professors who wrote two other law review articles that we have been using in substantiation of this dramatic cause of action for journalistic fraud.

Additionally, and because this conference began by an invocation by Craig Calhoun about the need to bring together scholarship and activists, the academy and activists/advocates, and because Professor [Delli] Carpini spoke so eloquently in conclusion to the same effect, let me just tell you that we have not only [not] been able to get dialog from the authors of these important law review articles who theorized, who recommended reform that is now being implemented in a dramatic lawsuit, but we have not been able to get from any other scholars to whom we have turned – law professors, the most eminent names in First Amendment and media law, the institutions of research and learning – we have not been able to get from them any dialog, any input, any thought, let alone advocacy and support.”

Man’s Voice: “Hire a good P.R. firm.”

“Well, we haven’t also been able to get any media about this important lawsuit. I will, in conclusion, urge – and ask – since you said there must be a marriage between the academy and advocates and activists, and, indeed, you cannot make media reform unless it happens on-the-ground and you put in practice your pretty theories, I urge you to be kind enough to read the handout about this important public interest lawsuit against The New York Times for journalistic fraud, which has such promise and potential, and to do your best, to do your utmost, to bring to bear the academic community, its involvement.

One last thing, because we didn’t have interlocutors –

¹ The audiotape is posted on Free Press’ website: www.freepress.net/conference/=full_schedule07 .

Thank you. Thank you.

The ultimate interlocutor was The New York Times, which demonstrated it had no defense.”

My extensive outreach to law professors and institutes of media research and pedagogy to obtain the “collaboration” about which you and Dean Delli Carpini spoke is reflected by my extensive correspondence with them, posted on our website, www.judgewatch.org. It contains a sidebar panel “Suing The New York Times”, with a link entitled “Outreach”. For your convenience, an illustrative sample is enclosed: my correspondence with the five professors who wrote the three law review articles on which CJA’s landmark public interest lawsuit against The Times relies, as well as the law review articles themselves²:

- (1) Professors Clay Calvert and Robert D. Richards, co-directors of the Pennsylvania Center for the First Amendment at Pennsylvania State University, who conceived the journalistic fraud cause of action about which they wrote in “*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*”, 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1 (2003);
- (2) Professor Jerome Barron, who wrote “*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
- (3) Professors Randall P. Bezanson and Gilbert Cranberg, who wrote “*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.

Also enclosed is a sampling of our correspondence with institutes of media research and pedagogy: (1) Project for Excellence in Journalism; (2) Columbia University Graduate School of Journalism; (3) Shorenstein Center on the Press, Politics, and Public Policy at Harvard University; (4) Nieman Foundation for Journalism at Harvard University; and (5) Program on Law and Journalism at New York Law School. The entirety of such correspondence is also accessible *via* the “Outreach” on our “Suing The New York Times” webpage.

² As to scholarship published in academic journals, your remarks at the Pre-Conference were as follows:

“...it is a tragedy when academia cuts itself off from active participation in the public sphere. It is a tragedy when academic scholarship is evaluated solely on publication in refereed articles where things will be read by six other specialists if you are lucky. The mean number of times an academic article is cited in literature is slightly less than once – between 0.8 and 0.9.”

...For a variety of internal discussions, there are huge resources deployed. There is a great deal of knowledge generated. Powerful analytic techniques. It’s not that this is not a significant kind of knowledge production, but it is very poorly engaged with broader public discussions.”

On Friday, January 19, 2007, five days after I returned to New York from the National Conference on Media Reform in Memphis, Hofstra University Law School and the Brennan Center for Justice at New York University co-sponsored a conference entitled “Reclaiming the First Amendment: Constitutional Theories of Media Reform”, which I also attended. The conference celebrated the 40th anniversary of Professor Barron’s law review article. Copies of the Social Science Research Council brochure about its Necessary Knowledge for a Democratic Public Sphere Program were on a table for distribution.

Professor Barron addressed the conference. In the question period, I publicly asked his opinion as to whether a journalistic fraud cause of action – such as brought for the first time by our Times lawsuit – represented the kind of “legal intervention” to secure a “marketplace of ideas” for which he had searched 40 years ago in his law review article. Without acknowledging that I had sent him correspondence about the lawsuit in March, and then in June, and then again in December 2006, as well as just two days earlier, on January 17, 2007 – most of which I had simultaneously e-mailed to the other scholars participating at the Hofstra-Brennan Center conference – Professor Barron disposed of my question by purporting he was “not familiar” with the lawsuit.³ He also added – to forestall having to subsequently address the issue – that he was “no longer looking for cases” because he was “too old”.⁴ This can be confirmed by Social Science Research Council Program Coordinator Rik Panganiban, who was in the audience during this public exchange.⁵

It is possible that Bob McChesney, a participant at the January 19, 2007 Hofstra-Brennan Center conference, can also confirm Professor Barron’s response. However, I have received no answer from Professor McChesney to my January 25, 2007 letter to him, asking that he confirm his presence during the exchange. Such letter additionally asked him whether, when I spoke at the January 14, 2007 Media Scholars’ Policy Research Review, which he moderated, he recognized himself as one of the scholars about whom I was referring. This, because he, like the other scholars participating at the Hofstra-Brennan Center conference – including Professor Barron – had not responded to my correspondence about the law review articles on which The Times lawsuit was based.

As the only e-mail address I could locate for Professor McChesney was at the University of Illinois, I also sent my January 25, 2007 letter to him to Free Press Executive Director Josh Silver on January 29, 2007, requesting that he forward it to Professional McChesney. Although my pertinent correspondence with Professor McChesney and Free Press is posted on CJA’s website⁶, copies are

³ Professor Barron had also not returned phone messages I had left for him.

⁴ Earlier in the conference I had introduced myself to Professor Barron and offered him copies of the correspondence. He refused to accept these from me – just as he refused to accept them at the conclusion of the conference when I again offered them to him. He also would not identify any younger scholars and disciples, to whom I might turn if he were “too old” to render an opinion.

⁵ A video recorder was operating during the session, but I have not located the posted video on either the Hofstra Law School or Brennan Center for Justice websites.

⁶ See “Suing The New York Times” – “Outreach” and scroll down to “Media-Watch Organizations, Media, & Journalists”.

enclosed for your convenience.

The net effect of my exhaustive efforts to achieve “collaboration” with scholars at the January 11, 2007 Media Policy Research Pre-Conference, and with scholars at the January 12 – 14, 2007 National Conference on Media Reform, and with scholars at the January 19, 2007 Hofstra Law School-Brennan Center conference – followed up by my subsequent correspondence with Professor McChesney and Free Press is there remains no “collaboration”. Nor could I find collaboration with scholars at a February 8, 2007 symposium at Columbia University Graduate School of Journalism on “Media Reform: Is It Good for Journalism” or at a February 16, 2007 symposium at New York Law School on “Writing About the Law: From Bluebook to Blogs and Beyond”, where – to no avail – I identified your invocation that academia and activists develop collaborative relationships⁷ and distributed the remnants of the 1,000 copies of CJA’s handout from the January 11-14, 2007 Pre-Conference and Conference in Memphis.

I, therefore, respectfully request to meet with you, at your earliest convenience, so that we can discuss how the Social Science Research Council can foster a “culture of collaboration” between professors and institutions of research and pedagogy and we, the activists, who – unaided by “the experts” – have implemented seminal law review recommendations by our first-of-its-kind, public interest lawsuit against The Times for journalistic fraud. That such journalistic fraud cause of action expressly vindicates the very purpose for which the First Amendment guarantees a free press, namely, so that the press can report on “matters of legitimate public concern”, thereby enabling an informed public to self-govern – in other words, ensuring “necessary knowledge for a democratic public sphere” – makes the Social Science Research Council’s assistance by its Necessary Knowledge for a Democratic Public Sphere Program all the more compelled.

⁷ At the February 16, 2007 New York Law School event, sponsored by its Law and Journalism Program, I identified your invocation publicly in my question from the audience:

“...I was in Memphis, Tennessee last month at the National Conference on Media Reform. And opening the conference, actually a pre-conference, was Craig Calhoun, who is president of the Social Science Research Council. And he was speaking very much on this issue: who reads the professional journals, what impact, what influence, is it having. And he stated that statistically, if you’re lucky, these scholarly journals are read by six others, if you’re lucky. And there was some other statistic as to the minuscule readership of these important pieces. Well, his point was – and it was carried through elsewhere in the conference – is that there is a necessity to join, to marry, academia, scholarship, with the activists, the advocates.”

At Columbia University Graduate School of Journalism’s February 8, 2007 program, I identified it in my private conversation with Dean Nicholas Lemann, which followed upon my public question from the audience.

Both of my public questions concerned how to secure opinion and comment of the academic community on the issues of media reform presented by CJA’s lawsuit against The Times. The videos of my questions are posted at http://www.jrn.columbia.edu/events/media_reform/media_reform_panel.asp and <http://www.nyls.edu/pages/3318.asp> (Session #1 “Just Cite It! The Traditional Law Review Structure”).

Thank you.

Yours for a quality judiciary and media accountability,



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

Enclosures

Double-sided handout

Correspondence with Professor Barron (with receipts) & law review article

Correspondence with Professors Clay and Richards & law review article

Correspondence with Professors Bezanson and Cranberg & law review article

Correspondence with Free Press: Bob McChesney, Josh Silver & John Nichols

Illustrative Correspondence with Institutes of Media Research & Pedagogy

- (1) Project for Excellence in Journalism;
- (2) Columbia University Graduate School of Journalism;
- (3) Shorenstein Center on the Press, Politics, & Public Policy at Harvard University;
- (4) Nieman Foundation for Journalism at Harvard University;
- (5) Program on Law and Journalism at New York Law School.

cc: Free Press:

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