

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

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DATE: March 13, 2006

TO: Professor Eric M. Freedman, Hofstra University School of Law

RE: Landmark Public Interest Lawsuit against The New York Times  
& the January 19, 2007 Conference "Reclaiming the First Amendment:  
A Conference on Constitutional Theories of Media Reform"

The Center for Judicial Accountability, Inc. (CJA) is a non-partisan, non-profit citizens' organization, dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful. In furtherance of this goal – and to vindicate the public's First Amendment rights – we have commenced a landmark public interest lawsuit against The New York Times. We believe it to be the first to implement the powerful recommendation for media accountability proposed in the 2003 law review article "*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*"<sup>1</sup> by Professors Clay Calvert and Robert D. Richards, co-directors of the Pennsylvania Center for the First Amendment at Pennsylvania State University.

We propose that the law review article – and our groundbreaking lawsuit -- be part of the January 19, 2007 conference "*Reclaiming the First Amendment: A Conference on Constitutional Theories of Media Reform*" which you are organizing for Hofstra University School of Law in conjunction with the Brennan Center for Justice. According to the conference announcement, you are presently soliciting proposals for papers that will address "any aspect of the First Amendment and the mass media" to "further the conference goal of proposing innovative policy and legal approaches".

Ironically, before learning of the conference, we had already written to Professor Jerome Barron, who is to be the conference's luncheon speaker and whose 1967 Harvard Law Review article, "*Access to the Press – A New First Amendment Right*" you are commemorating by the conference. We had also already written to Professor C. Edwin Baker, who is to be one of the conference's four keynote speakers. To them we asked what we now ask you:

"Are you familiar with the law review article? And would you be willing to review and comment on our draft Complaint, which we must finalize within the next [week] and serve on The Times?"

By copy of this memo to the conference's three other keynote speakers, Professor Lili Levi, Professor Ellen P. Goodman, and Professor Robert McChesney, we also ask them these same two questions.

The law review article is posted on CJA's website, [www.judgewatch.org](http://www.judgewatch.org), where it is conveniently accessible *via* the sidebar panel, "Suing The New York Times". This is where you'll also find our Summons with Notice, which we served upon The Times this past Valentine's Day. Additionally posted are our July 29, 2005 letter to Times Executive Editor Bill Keller, with its paragraph-by-paragraph analysis of the knowingly false, defamatory, and cover-up column, "*When the Judge Sledgehammered The Gadfly*", our follow-up August 16, 2005 memo, and our September 26, 2005 letter to Public Editor Byron Calame. From these, you can swiftly discern the outlines of our three causes of action for libel, libel *per se*, and journalistic fraud. Clicking on the link for the "Paper Trail of Suppression, Protectionism, & Blackballing by The New York Times" will bring you to our preceding correspondence with The Times, spanning 15 years, as well as our culminating four-month correspondence with its Legal Department.

These *primary source* materials are a goldmine for media and First Amendment scholarship, furnishing an unprecedented window into how The Times actually operates. From these, you can see that we can easily prove both actual and common law malice by The Times— and, beyond that, a pattern and practice of fraudulent journalism, subverting our democracy by suppressing coverage of *readily-verifiable* evidence of systemic governmental corruption. Such involves the processes of judicial selection and discipline in which our highest public officers, including those seeking re-election or further public office, are complicitous. As chronicled, The Times' conduct is knowing and deliberate and rises to a level of election-rigging.

Upon request, I will promptly e-mail the draft Complaint to you and the other professors. The factual allegations essentially summarize our "Paper Trail" correspondence, beginning with our June 11, 2003 memorandum-complaint to The Times Editorial Board. What we most require now is the expertise of scholars and practitioners of media law, the First Amendment, and fraud to ensure that our three causes of action are properly pleaded, including with respect to compensatory and punitive damages.

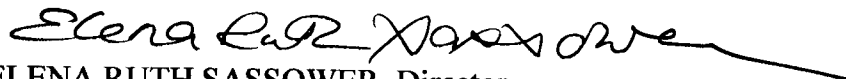
We hope you will be excited by this historic, law-making case — and feel privileged to participate in it, in vindication of the First Amendment, which we are championing. Perhaps you can also refer us to other scholars and practitioners. We would additionally be grateful for your bringing the case to the attention of your law students, especially those searching for *pro bono* opportunities that would afford them a powerful, high-profile litigation experience.

Our ultimate goal is to assemble a top-flight legal support team. Needless to say, we are ready to offer generous recompense from the \$906,000,000 damage award our Complaint seeks -- and, by your efforts and theirs -- obtains.

March 13, 2006

Finally, it goes without saying that we will offer the full record of this groundbreaking, unfolding litigation to such professors or others who wish to present it in a conference paper – or to otherwise utilize it for scholarly and empirical research.

Yours for a quality judiciary  
and responsible journalism,



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

cc: Professor Jerome Barron, George Washington University Law School  
Professor C. Edwin Baker, University of Pennsylvania Law School  
Professor Lili Levi, University of Miami School of Law  
Professor Ellen P. Goodman, Rutgers School of Law at Camden  
Professor Robert McChesney, Institute of Communications Research,  
College of Communications/University of Illinois at Urbana-Champaign  
Professors Clay Calvert & Robert D. Richards, Co-Directors,  
Pennsylvania Center for the First Amendment at Pennsylvania State University  
Marjorie Heins, Esq., Brennan Center for Justice at New York University School of Law