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June 15, 2006

Professor Jerome A. Barron
The George Washington University Law School
Washington, D.C.

RE: Implementing your 1967 Law Review Article, "*Access to the Press – A New First Amendment Right*" by a Cause of Action for Journalistic Fraud
-- TEST CASE: *Sassower, et al. v. The New York Times Company, et al.*

Dear Professor Barron,

While eagerly awaiting your response to my June 8th letter, I received from The New York Times a June 9th reply affidavit to plaintiffs' June 1st opposition/cross-motion.¹

It did not address the law review article "*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Malpractice*", 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1 (2003) – on which our cause of action for journalistic fraud rests. This, on the pretense that the article has "no...applicability" beyond the circumstances of the Jayson Blair case."

My response, by affidavit dated June 13th, was that the article was explicit that:

"It is well-settled U.S. Supreme Court precedent that news organizations lack immunity from generally applicable tort liability" – citing, for that proposition, *Cohen v. Cowles Media Co.*, 501 U.S. 663, 669-70 (1991) – the case from which the quote that appears at page 1 of the verified complaint was taken."

Stating "Fraud is a tort – and recognized cause of action", my reply affidavit then asserted:

"Applying such recognized cause of action to the media would be an appropriate "legal intervention" to secure the "marketplace of ideas" on which a healthy democracy and First Amendment jurisprudence rest. The necessity of devising a "legal intervention"

¹ As you know, the record of the case is posted on CJA's website, www.judgewatch.org, accessible via the sidebar panel "Suing The New York Times".

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for such purpose was recognized 40 years ago in the law review article "*Access to the Press – A New First Amendment Right*", 80 Harvard Law Review 1641 (1967)." (at ¶22)

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I reiterated this at yesterday's oral argument – handing up to the Court copies of both "*Journalistic Malpractice*" and "*Access to the Press*" and noting that Hofstra University Law School will be holding a symposium in January 2007 to commemorate the 40th anniversary of the publication of your law review article.

It is thus now even more imperative that I have the benefit of your view as to whether you agree that a journalistic fraud cause of action would be – as I have asserted to the Court -- an "appropriate 'legal intervention'" – and, if so, your answer as to whether you would be willing to provide the Court with a supportive brief.

Based on yesterday's oral argument, I am preparing a further submission to the Court. As part thereof, I would like to set forth how, in the 40 years since your law review article was written, the law has developed with respect to the issues you presented. Obviously, I cannot wait until the January 2007 conference for such critical information – and would appreciate the opportunity to discuss this with you, as well.

Please advise when it would be most convenient for me to call. I have been holding off contacting the conference organizers – and other participating scholars – until hearing from you.

Thank you.

Yours for a quality judiciary
and responsible journalism,



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