

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director
Direct E-Mail: judgewatchers@aol.com

BY FAX: 202-994-1684 (12 pages)
BY E-MAIL: jbarron@law.gwu.edu

June 8, 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

Dear Professor Barron,

This follows up my March 10th and March 24th memos to you and Professor Dienes and my March 13th and March 24th memos to Hofstra University Law Professor Freedman, to which you were an indicated recipient. For your convenience, copies are enclosed

Just this past friday, June 2nd, I was able to obtain – and over the weekend read – your 1967 law review article "Access to the Press – A New First Amendment Right", 80 Harvard Law Review 1641, in which you search for methods of "legal intervention" to secure the "marketplace of ideas" on which a healthy democracy – and First Amendment jurisprudence -- rest.

Even before finishing your article, it was clear to me that one such "legal intervention" is a cause of action for journalistic fraud – now implemented for the first time by CJA's public interest lawsuit against The New York Times, based on the 2003 law review article of Professors Calvert and Richards, "Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence", 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1. **Do you agree and, if so, would you be willing to fortify the lawsuit by a brief supportive of the journalistic fraud cause of action set forth at ¶¶163-175 of our verified complaint?**

The status of the lawsuit is as follows: The New York Times made an April 13, 2006 motion to dismiss the complaint. Its response to the journalistic fraud cause of action was two sentences, neither of which confronted ¶¶163-175 -- or the law review article of Professors Calvert and Richards. This is particularized by our June 1, 2006 opposition papers¹, with a cross-motion for

¹ See plaintiffs' memorandum of law: pp. 20-21, responding to defendants' memorandum: pp. 8-9.

sanctions and summary judgment. These submissions are posted on CJA's website, www.judgewatch.org, accessible via the sidebar panel "*Suing the New York Times*" – which is where you'll also find the verified complaint and the "*Journalistic Malpractice*" law review article.

Needless to say, upon request, I would be pleased to send you with a hard copy of the casefile so that you can more easily confirm that this public interest lawsuit provides a breathtaking case-in-controversy in which to resolve, in the public interest, a wide variety of issues presented by "*Access to the Press – A New First Amendment Right*"² and other law review articles you have written³.

I would appreciate the opportunity to discuss the foregoing with you directly. Please advise as to when you would be available to take my call.

Thank you.

Yours for a quality judiciary
and responsible journalism,



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

Enclosures

² Among these, your observation (at p. 1659) that *Times v. Sullivan* "explicitly left open" the significance of a failure to retract in establishing actual malice. This is precisely what our memorandum of law noted (at p. 58) in support of our cross-motion relief for the disqualification of Times counsel who, having been involved in such failure and refusal to retract, are among the DOE defendants and would be called as witnesses.

³ These include "*The Rise and Fall of a Doctrine of Editorial Privilege: Reflections on Herbert v. Lando*", 47 George Washington Law Review 1002 (1978-1979), and "*Cohen v. Cowles Media and its Significance for First Amendment Law and Journalism*", 3 William & Mary Bill of Rights Journal 419 (1994).

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Elena Ruth Sassower, Director
Direct E-Mail: judgewatchers@aol.com

DATE: March 10, 2006

TO: George Washington University Law School Professors of Media Law
& The First Amendment:
Professor Jerome A. Barron
Professor C. Thomas Dienes

RE: Landmark Public Interest Lawsuit against The New York Times

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*"¹ by Professors Clay Calvert and Robert D. Richards, co-directors of the Pennsylvania Center for the First Amendment at Pennsylvania State University.

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 ten days and serve on The Times?

The law review article is posted on CJA's website, 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.

¹ 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1.

These primary source materials are a goldmine for scholarship, furnishing an unprecedented window into how The Times actually operates. They constitute "clear and convincing evidence" of both actual and common law malice by The Times— and, beyond that, of a pattern and practice of fraudulent journalism, subverting our democracy by concealing from the public report 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.

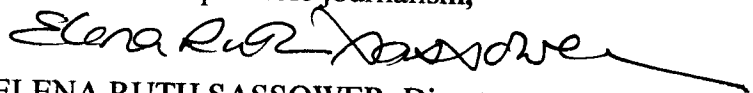
Upon your request for the draft Complaint, I will promptly e-mail it to you. The factual allegations essentially summarize our "Paper Trail" correspondence, beginning with our June 11, 2003 memorandum-complaint to The Times Editorial Board. What we most require now is the expertise of scholars and practitioners 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 this 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.

Thank you.

Yours for a quality judiciary
and responsible journalism,



ELENA RUTH SASSOWER, Director
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Elena Ruth Sassower, Director
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DATE: March 24, 2006

TO: George Washington University Law School Professors of Media Law
& The First Amendment:
Professor Jerome A. Barron
Professor C. Thomas Dienes

RE: Vindicating the First Amendment:
Elena Ruth Sassower, et al. v. The New York Times Company, et al.

Following up my March 10th memorandum, this is to advise that on March 21st – the first full day of spring – we served the verified complaint in the above-named public interest lawsuit against The New York Times. It is posted on CJA's website, www.judgwatch.org, accessible via the sidebar panel "Suing The New York Times". Our press release entitled "FIRST-OF-ITS-KIND PUBLIC INTEREST LAWSUIT vs THE NEW YORK TIMES IN VINDICATION OF THE FIRST AMENDMENT" is enclosed.

Pursuant to New York's CPLR 3025(a), we have several weeks within which to amend the verified complaint, as of right. Consequently, you can still contribute your expertise to strengthening our three causes of action for libel, libel *per se*, and journalistic fraud and damages based thereon. We would welcome your guidance on behalf of the public, whose interest we continue to single-handedly champion, without funding and without benefit of specialists in media law. Should you require compensation for your advice, we will make appropriate arrangements.

A professor at another law school e-mailed us that "[he's] not sure why [we] think [he'd] be interested in assisting [us] to pursue a lawsuit against the NYTimes, when [he] represent[s] journalists, including the NY Times". We believe, however, that any lawyer reading the verified complaint would recognize a civic duty to provide assistance -- as democracy, the rule of law, and the very essence of good citizenship are destroyed by the kind of press suppression, protectionism, and blackballing therein particularized.

As professors of media law and the First Amendment, you are obligated to keep informed of significant developments in the field so as to incorporate them into your teaching and commentary, where relevant. We trust you would agree that the 2003 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, and our public interest public interest lawsuit are two such developments.

In that connection, we have proposed that the law review article and our history-making lawsuit be part of the January 19, 2007 conference "*Reclaiming the First Amendment: A Conference on Constitutional Theories of Media Reform*", being organized by Hofstra University School of Law and the Brennan Center for Justice at New York University School of Law¹. As the conference is commemorating the 40th anniversary of the publication of Professor Barron's 1967 Harvard Law Review article "*Access to the Press – A New First Amendment Right*" – and he is to be its luncheon speaker -- we would be grateful for his endorsement of this proposal. This is especially so as we have had no response from the conference organizers.

Needless to say, we would be pleased to assist you or your law students in presenting this unfolding litigation in a conference paper – or in otherwise utilizing it for scholarly and empirical research.

Thank you.

Yours for a quality judiciary
and responsible journalism,



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

Enclosure

¹ Such was proposed by my March 13th memorandum to Hofstra University Law School Professor Eric Freedman, a copy of which was sent to Professor Barron on that date. It is posted on CJA's website, accessible from the sidebar panel "Suing The New York Times" via the link "Outreach: Champions & Betrayers of Media Accountability, the First Amendment, & the Public Interest". That is where my prior March 10th memorandum to you is also posted, to be joined by this memo.

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P R E S S R E L E A S E: March 22, 2006 onward

FIRST-OF-ITS-KIND PUBLIC INTEREST LAWSUIT vs THE NEW YORK TIMES IN VINDICATION OF THE FIRST AMENDMENT

The New York Times is being sued for libel and journalistic fraud in a landmark public interest lawsuit, 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*", 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1.

The lawsuit, charging The Times with betraying its First Amendment responsibilities to the public, is brought by the Center for Judicial Accountability, Inc. (CJA) and its director, Elena Ruth Sassower. The libel causes of action are based on a Times' column, "*When the Judge Sledgehammered The Gadfly*", about Ms. Sassower, then serving a six-month jail sentence in D.C., after conviction on a "disruption of Congress" charge. An analysis of the column, annexed as Exhibit A to the Verified Complaint, demonstrates that the column is "deliberately defamatory", "knowingly false and misleading", and "completely covers up the politically-explosive underlying national and New York stories of the corruption of the processes of judicial selection and discipline, involving our highest public officers".

These public officers include Senator Hillary Rodham Clinton, running for re-election to the U.S. Senate this year, with an eye to the presidency in 2008, and New York Attorney General Eliot Spitzer, running this year to be New York's next governor. The Verified Complaint alleges that their anticipated landslide victories are being rigged by The Times, whose steadfast refusal to report on the records of Ms. Clinton and Mr. Spitzer with respect to judicial selection and discipline is with knowledge that such reporting would rightfully end their electoral prospects, if not generate disciplinary and criminal prosecutions against them for corruption. As for past electoral races, the Verified Complaint dramatically shows that The Times rigged Senator Charles Schumer's 2004 re-election to the Senate by similarly refusing to report on his record as to judicial selection and discipline, and, prior thereto, rigged Mr. Spitzer's 2002 re-election as attorney general and Governor George Pataki's 2002 and 1998 re-elections as New York's governor, likewise by refusing to report on their records.

The Times' protectionism of all these public officers -- and its suppression of any coverage of the readily-verifiable documentary evidence of systemic governmental corruption involving judicial selection and discipline, provided it by CJA throughout the past 15 years -- underlies the lawsuit's cause of action for journalistic fraud.

The Verified Complaint, its substantiating exhibits, and the law review article are posted on CJA's website, www.judgewidth.org -- accessible via the sidebar panel, "Suing The New York Times".

* The Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens' organization working to ensure that the processes of judicial selection and discipline are effective and meaningful.

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Elena Ruth Sassower, Director
Direct E-Mail: judgewatchers@aol.com

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*"¹ 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?"

¹ 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1.

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, 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.

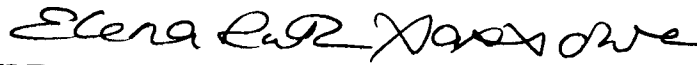
Upon request, I will promptly e-mail the draft Complaint to you and the other professors. The factual allegations essentially summarize our "Paper Trail" correspondence, beginning with our June 11, 2003 memorandum-complaint to The Times Editorial Board. What we most require now is the expertise of scholars 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.

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

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Elena Ruth Sassower, Director
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DATE: March 24, 2006

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

RE: Vindicating the First Amendment
Elena Ruth Sassower, et al. v The New York Times Company, et al.
& the January 19, 2007 Conference
"Reclaiming the First Amendment: A Conference on Constitutional Theories of Media Reform"

Following up my March 13th memorandum, this is to advise that on March 21st – the first full day of spring – we served the verified complaint in the above-named public interest lawsuit against The New York Times. It is posted on CJA's website, www.judgewatch.org, accessible via the sidebar panel "Suing The New York Times". Our press release entitled "FIRST-OF-ITS-KIND PUBLIC INTEREST LAWSUIT vs THE NEW YORK TIMES IN VINDICATION OF THE FIRST AMENDMENT" is enclosed.

Pursuant to New York's CPLR 3025(a), we have several weeks within which to amend the verified complaint, as of right. Consequently, you can still contribute your expertise to strengthening our three causes of action for libel, libel *per se*, and journalistic fraud and damages based thereon. We would welcome your guidance on behalf of the public, whose interest we continue to single-handedly champion, without funding and without benefit of specialists in media law. Should you require compensation for your advice, we will make appropriate arrangements.

A professor at another law school e-mailed us that "[he's] not sure why [we] think [he'd] be interested in assisting [us] to pursue a lawsuit against the NYTimes, when [he] represent[s] journalists, including the NY Times". We believe, however, that any lawyer reading the verified complaint would recognize a civic duty to provide assistance -- as democracy, the rule of law, and the very essence of good citizenship are destroyed by the kind of press suppression, protectionism, and blackballing therein particularized.

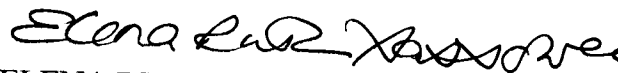
As a professor of media law and the First Amendment, you are obligated to keep informed of significant developments in the field so as to incorporate them into your teaching and commentary, where relevant. We trust you would agree that the 2003 law review article "Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence", 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1, and our public interest lawsuit are two such developments.

In that connection, we have yet to hear from you or from the Brennan Center's Marjorie Heims regarding our proposal that the law review article and our history-making lawsuit be part of the January 19, 2007 conference "*Reclaiming the First Amendment: A Conference on Constitutional Theories of Media Reform*". Please advise.

By copy of this memorandum to Professor Jerome Barron, whose 1967 Harvard Law Review article "*Access to the Press – A New First Amendment Right*" is being commemorated by the conference and who is to be the luncheon speaker – and by copies to the conference's four keynote speakers, Professors C. Edwin Baker, Lili Levi, Ellen P. Goodman, and Robert McChesney – all indicated recipients of my March 13th memorandum to you¹ – we respectfully request their endorsement of such inclusion.

Thank you.

Yours for a quality judiciary
and responsible journalism,



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

Enclosure

cc: Marjorie Heins, Esq., Brennan Center for Justice at New York University School of Law
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

¹ My March 13th memorandum to you is posted on CJA's website, accessible from the sidebar panel "Suing The New York Times" via the link "Outreach: Champions & Betrayers of Media Accountability, the First Amendment, & the Public Interest". That is where this memo will also be posted.