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by Elena Sassower, Director, Center for Judicial Accountability, Inc.

New York Law School's Program in Law & Journalism
February 16, 2007 Symposium: "Writing About the Law: From Bluebook to Blogs and Beyond"

Morning Panel #1: "Just Cite It! The Traditional Law Review Structure" –

Panelists: **Professor James Lindgren** – Northwestern University School of Law
 & Co-Founder of the section on Scholarship of the Association of American Law Schools;
 Professor Randy E. Barnett – Georgetown University Law Center
 & Senior Fellow at the Cato Institute and the Goldwater Institute;
 Professor Ann Althouse – University of Wisconsin School of Law;
 Author & Blogger
 Professor Paul Caron – University of Cincinnati School of Law;
 Publisher & Editor of TaxProf Blog

Moderator: **Professor Cameron Stracher**, Co-Director, Program in Law & Journalism
 Publisher, Law Review –New York Law School

[at 56.34]

Sassower: My name is Elena Sassower and I'm director of a nonpartisan, nonprofit citizens' organization called the Center for Judicial Accountability. 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 the 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, these scholarly pieces 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.

A point that I'd like to make – a question – and perhaps you could address this. We are activists, advocates and we have, now on-going, a public interest lawsuit against The New York Times. It's based on a law review article that posited as viable, not barred by the First Amendment, a cause of action for journalistic fraud. We could not get from the authors of that law review article any thought, input, comment about a lawsuit based on their own law review article.

Additionally, the lawsuit rests on two other law review articles, also by scholars, who posited different theories, recommendations as to what needed to happen to create greater accountability by the media. Likewise the authors of those law review articles will not comment and indeed, let me just, in closing, say that we have solicited a broad range of scholars to comment on the law review article – forgetting about the lawsuit putting into practice the theories and recommendations. We can't even get dialog among the professors about the viability of a journalistic cause of action, about the viability of a cause of action for institutional reckless disregard for truth in public defamation actions. We can't get dialog by the professors publicly, we can't get dialog as to the application. How do you make sense of that and what can be done?

Althouse: Well, I think one thing is, if you're bringing a lawsuit and you call a professor and it seems like you're seeking legal advice in a particular lawsuit, the professor probably won't want to talk directly to you about that. That doesn't sound like an intellectual interchange, it sounds like you're seeking advice from the professor as a lawyer so I would be wary of a phone call that came in like that. So, if you're trying to have more of a dialog with professors I would recommend, you know, setting up a symposium or something like that and inviting people to do that. I think if you're talking about phone calls to people who wrote law review articles that you're using in a lawsuit and you want more detail, it's going to feel like you're seeking legal advice from the professor as a lawyer, and you probably, I would think, get a cold shoulder for that and that's why.

Stracher: Well, that's the interesting thing about the legal profession and about legal scholarship in general is that we are scholars, but many of us have also been practitioners where we've represented people and sometimes the lines are not entirely clear and we are uncomfortable moving from one to the other.