

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 8220
White Plains, New York 10602

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: judgewatch@aol.com
Website: www.judgewatch.org

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

**TO: MEDIA POLICY RESEARCH PRE-CONFERENCE
& NATIONAL CONFERENCE FOR MEDIA REFORM: January 11-14, 2007**

**RE: "THE GATEKEEPERS" ARE ALIVE & WELL: Subverting Our Democracy
by "Protecting" The New York Times & Our Highest Public Officers**

IF it were readily-verifiable and documented that The New York Times was deliberately keeping the public ignorant of the corruption of the processes of judicial selection and discipline and just as deliberately election-rigging for complicit public officers, wouldn't you expect the multitude of media – including blogs – to pounce on this newsworthy story?

The reality is completely opposite. Last year, our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), filed a landmark public interest lawsuit against The New York Times for libel and journalistic fraud based on its knowingly false and misleading reporting and editorializing on judicial selection and discipline and its election-rigging for public officers involved in these corrupt processes. These public officers include Senator Hillary Rodham Clinton and Attorney General Eliot Spitzer, whose records in office concerning judicial selection and discipline The Times refused to report on, with knowledge they would warrant criminal prosecution of each for corruption. Yet despite CJA's herculean efforts during the 2006 election year to secure coverage – including three widely-circulated press releases – no media reported anything about this journalistically and politically-explosive lawsuit, not even its existence. Meanwhile Ms. Clinton breezed to a second term as U.S. Senator from New York and Mr. Spitzer breezed to becoming New York's Governor, each by landslide margins.

Additionally, and despite four widely-circulated memos to the media for election coverage, none would even independently report on the records of Ms. Clinton or Mr. Spitzer concerning judicial selection and discipline so that voters might be informed of how flagrantly these public officers had betrayed them. This, apart from not informing voters how The Times and other media had created the non-competitive electoral races of Ms. Clinton and Mr. Spitzer by their years of "protectionism" of each.

This extraordinary story – fully documented and readily-verifiable – of how even the political and media blogs, manned by reputable journalists, participated in the subversion of our democracy in the crucial 2006 election year, deliberately skewing and subverting the 2008 presidential race – and how the big-name institutions of media scholarship and training allowed it to happen and are covering it up: Project for Excellence in Journalism, Shorenstein Center on the Press, Politics, and Public Policy at Harvard, Nieman Foundation for Journalism at Harvard, and Columbia Graduate School of Journalism – is chronicled by the primary source documents posted on CJA's website, www.judgewatch.org, accessible via the sidebar panels "Elections 2006: Informing the Voters", "Press Suppression", and "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.

ADVANCING MEDIA REFORM BY PUTTING INTO PRACTICE
THE LAW REVIEW RECOMMENDATIONS OF SCHOLARS:
Suing The New York Times for Journalistic Fraud
in Vindication of the First Amendment

The purpose of a free press, as guaranteed by our First Amendment, is to ensure that citizens are provided with the information essential to preserving democracy and exercising their democratic rights.

“The First Amendment goes beyond protection of the press...’...‘it is the right of the [public], not the right of the [media], which is paramount,’...for ‘without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally,’...”

These powerful words from the United States Supreme Court preface the verified complaint in CJA’s public interest lawsuit against The New York Times – underscoring that its goal, consistent with that of media reform, is to vindicate the public’s right to the information necessary to self-govern. The lawsuit achieves this goal by a cause of action for journalistic fraud.

CJA’s lawsuit, the first to bring a journalistic fraud cause of action, implements the recommendation of a 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 (2003), which conceived such cause of action as a means to advancing media accountability.

The lawsuit has reinforced the viability of a journalistic fraud cause of action. Neither The Times nor the judge to whom the lawsuit was steered were able to confront any of the legal or constitutional arguments made by that law review article in support of its viability. Nor were they able to confront any of CJA’s arguments based thereon or based on two other law review articles: “*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 “*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.

Go to the lawsuit record, posted on CJA’s website, www.judgewatch.org, accessible *via* the sidebar panel “Suing The New York Times”. It contains all three law review articles and CJA’s unchallenged arguments¹. The journalistic fraud cause of action appears at ¶¶163-175 of the posted verified complaint. **We invite and welcome your comments.**

LET MEDIA POLICY RESEARCHERS & PROPONENTS OF MEDIA REFORM & THE PUBLIC’S RIGHT TO KNOW bring to public discussion this important journalistic fraud cause of action and CJA’s groundbreaking public interest lawsuit against The New York Times which has given it birth.

¹ June 1, 2006 memo of law (at pp. 20-21); June 13, 2006 reply affidavit (at ¶¶19-23); August 21, 2006 memo of law (at pp. 17-20); and September 25, 2006 reply affidavit (at ¶¶23, 26-29).