

From: Henricksen, Wes <whenricksen@barry.edu>
Sent: Friday, April 10, 2026 4:25 PM
To: elena@judgewatch.org

Subject: **Re: Scholarship & Lawsuit Participation: Federal Lawsuit to Establish Causes of Action for "Journalistic Fraud" & "Institutional Reckless Disregard for Truth"**

Attachments: Henricksen_In Fraud We Trust.pdf

Dear Elena,

I have begun digging into the materials you sent me on Wednesday, including the Verified Amended Complaint. In short, I have a lot more work to do in order to digest and analyze the causes of action and the issues you raise. But I will make a couple of remarks, by way of a partial response to your email.

First, I had not previously been aware of the scholarly proposal of a "journalistic fraud" cause of action. However, the concept of "journalistic fraud" broadly lines up with my own work on "fraud on the public," by journalists and others. One of the major components of my "fraud on the public" theory is that the laws we have against fraud, which were developed in an age of horses and buggies, in which deceit was almost exclusively done face-to-face, fail to address the primary way deceit is today carried out: by disseminating intentional falsehoods to the masses, most often for political or financial gain.

I have attached a Digital Review Copy of *In Fraud We Trust* (feel free to share it), where I most comprehensively lay out my argument and analysis of fraud on the public. But I also discuss it in *Disinformation and the First Amendment*, the law review article you noted in your email.

Second, I am interested in contributing to your efforts to hold wrongdoers accountable, especially those who profit politically or financially off of deceit. On that front, I am interested in getting involved. But it will take me some time to get up to speed on the claims in the case, the underlying facts, etc. I don't want to over-promise, and so I will need some more time to assess just how involved I should be in the case.

Third, from what I have gathered in my initial review of the claims, it appears that my work might be of help in setting the doctrinal foundation for convincing the court (trial, appellate) to interpret the fraud laws to encompass the kinds of falsehoods spread by journalists, media platforms, and politicians. Indeed, I have more work to do on this front as I believe there has been an "over-reliance" on the reliance component of fraud, which, while important in face-to-face deceit, is totally irrelevant in the "fraud on the public" context, such as securities fraud, etc. Moreover, courts have issued some holdings endorsing this view in the context of tobacco litigation and asbestos litigation.

That's all for now. My next week is pretty booked up. But perhaps we can schedule a phone call for the week after next or the week after that (i.e., the last two weeks of April). I'm available on 4/23, 4/24, and every day the week after that, from 12pm-2pm, and from 4pm-5:30pm ET.

Best,
Wes

Wes E. Henricksen

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From: elena@judgewatch.org <elena@judgewatch.org>
Sent: Wednesday, April 8, 2026 2:01 PM
To: Henricksen, Wes <whenricksen@barry.edu>

Subject: Scholarship & Lawsuit Participation: Federal Lawsuit to Establish Causes of Action for "Journalistic Fraud" & "Institutional Reckless Disregard for Truth"

Re-sent, correcting typographical error in subject line, transposing Institutional and Reckless.

Apologies.

Elena Sassower

From: elena@judgewatch.org <elena@judgewatch.org>
Sent: Wednesday, April 8, 2026 1:04 PM
To: 'whenricksen@barry.edu' <whenricksen@barry.edu>

Subject: Scholarship & Lawsuit Participation: Federal Lawsuit to Establish Causes of Action for "Journalistic Fraud" & "Institutional Reckless Disregard for Truth"

TO: [Associate Law Professor Wes Henricksen/Barry University School of Law](#)

I am director and co-founder of the nonpartisan, nonprofit citizens' organization [Center for Judicial Accountability, Inc. \(CJA\)](#).

A *propos* of your 2022 law review article "[Disinformation and the First Amendment: Fraud on the Public](#)", 96 St. John's L. Rev. 543, and your 2024 book [In Fraud We Trust](#), did any of your law professor colleagues and fellow scholars of media law, the First Amendment, and torts alert you to the cause of action for "journalistic fraud" proposed as viable under the First Amendment and just waiting to be tested by the 2003 law review article "[Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence](#)" by Professors Clay Calvert and Robert Richards – as to which there has seemingly been NO scholarship and NONE of lawsuits based thereon, such as the two that CJA brought, on behalf of the public, both in New York state courts, the first, against [The New York Times](#) (2006-2008), and the second, against [Gannett](#) (2010-2013).

These two lawsuits, whose records prove the viability of the "journalistic fraud" cause of action and, additionally, of a cause of action for "institutional reckless disregard for truth", proposed in a 2005 law review article "[Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press](#)" by Professors Randall Bezanson and Gilbert Cranberg, are now part of a third lawsuit which CJA has brought, on behalf of the public, this time in federal court, against the [NYT](#) and 33 other representative press defendants.

Above-attached and here-linked is the [October 29, 2025 amended verified complaint, as signed by CJA's counsel and refiled on January 5, 2026](#), from which you will readily discern that there is NO defense to its four causes of action, factually or legally – and that the SOLE issue will be the magnitude of compensatory, presumed, and punitive damages, a jury determination that will reasonably be many billions of dollars. This is reinforced by the district court's unprecedented handling of the case, as reflected by my [December 19th affidavit demonstrating subject matter jurisdiction](#), my [February 23rd letter to the district judge](#), and the judge's [March 2nd so-ordered annotation](#).

Obvious from your 2022 law review article (and, presumably, your book and other scholarship) is that it substantiates the "journalistic fraud" and other causes of action – and I would like to speak with you about this, both in terms of your own scholarly follow-up and teaching and with respect to whether you would be interested in filing an *amicus curiae* brief or otherwise participating in the lawsuit, either *pro bono* or for pay.

When would you be available for a conversation?

Thank you.

Elena Sassower, Director
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