

From: elena@judgewatch.org
Sent: Friday, February 27, 2026 1:10 PM
To: 'dlogan@rwu.edu'; 'rod.smolla@mwpp.com'

Cc: 'tom@clarelocke.com'; 'libby@clarelocke.com';
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Subject: **ALI's Restatement (3rd) of Torts -- & the Unfolding Federal Lawsuit for Judicial Recognition of "Journalistic Fraud" & "Institutional Reckless Disregard for Truth" in Vindication of the 1st Amendment & to Save our Imperiled Democracy**

Attachments: [no18-1-oct29-2025-verified-amended-complaint-signed-by-zerman.pdf](#)

TO: Law Professors David Logan and Rodney Smolla

How disappointing to have received no responses from you to my below evidence-rich February 17th e-mails – germane to your scholarship, teaching, and participation in the [American Law Institute's](#) (3rd) Restatement of Torts. May I know why?

As I will be contacting ALI's leadership on Monday about the "journalistic fraud" and "institutional reckless disregard for truth" causes of action – and CJA's unfolding federal lawsuit for their judicial recognition – kindly confirm that you will be endorsing the inclusion of these emerging torts in the (3rd) Restatement of Torts and identify the section in which you will be recommending they be placed. Will it be in the "[Torts: Defamation and Privacy](#)" Restatement, to which you are each advisors – or in the "[Torts: Remedies](#)" Restatement, or the "[Torts: Miscellaneous Provisions](#)" Restatement, or, perhaps in keeping with *Times v. Sullivan*, the "[Constitutional Torts](#)" Restatement?

As I have also received no responses from lawyers Tom Clare, Libby Locke, Charles Harder, Shane Vogt, and Roy Katriel to the below, I am cc'ing them, so that they will have an opportunity to contribute their legal opinions on so important a subject, directly impacting them and other First Amendment plaintiff lawyers suing the press.

Thank you.

Elena Sassower, Director
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From: elena@judgewatch.org <elena@judgewatch.org>
Sent: Tuesday, February 17, 2026 10:35 AM
To: 'tom@clarelocke.com' <tom@clarelocke.com>; 'libby@clarelocke.com' <libby@clarelocke.com>;
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Cc: 'dlogan@rwu.edu' <dlogan@rwu.edu>

Subject: Assisting You in Your Litigations vs the Press -- Vindicating the 1st Amendment & Saving Our Imperiled Democracy

TO: PLAINTIFF LAWYERS SUING THE PRESS

[Tom Clare, Esq. & Libby Locke, Esq.](#)

[Charles Harder, Esq.](#)

[Shane Vogt, Esq.](#)

[Professor Rodney Smolla, Esq.](#)

[Roy Katriel, Esq.](#)

To assist you in your litigations against the [New York Times](#) and other press, below is my self-explanatory e-mail to Professor David Logan pertaining to David Enrich's March 3, 2025 [New York Times Magazine](#) article "[Can the Media's Right to Pursue the Powerful Survive Trump's Second Term?](#)" and his book [Murder the Truth: Fear, the First Amendment and a Secret Campaign to Protect the Powerful](#), published March 11, 2025, from which it was adapted.

I look forward to answering your questions – and would appreciate your opinions as to whether, as I believe, the above-attached, here-linked [October 29, 2025 verified amended complaint](#) against [The New York Times](#) and 33 other press defendants, further substantiated by my [December 19, 2025 affidavit demonstrating subject matter jurisdiction](#), is a summary judgment case, with the SOLE issue being the magnitude of compensatory, presumed, and punitive damages – and that the jury determination will reasonably be tens of billions of dollars.

If so, would you be interested in "a piece of the action" on mutually-beneficial terms – or will you refer me to lawyers who would be?

Assembling a cracker-jack legal team for this monumental case, vindicating the First Amendment and safeguarding our imperiled democracy, is a priority.

Thank you.

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From: elena@judgewatch.org <elena@judgewatch.org>

Sent: Tuesday, February 17, 2026 10:01 AM

To: 'dlogan@rwu.edu' <dlogan@rwu.edu>

Subject: Evidence Substantiating Your Scholarship, Disparaged by NYT Reporter David Enrich & his Book Murder the Truth -- & for the ALI's Restatement (3rd) of Torts

TO: PROFESSOR DAVID LOGAN

I am director and co-founder of the nonpartisan, nonprofit citizens' organization Center for Judicial Accountability, Inc. (CJA) – and am writing to furnish you with primary-source, documentary evidence substantiating your 2020 law review article "Rescuing Our Democracy by Rethinking New York Times Co. v. Sullivan", disparaged by Times reporter David Enrich's March 3, 2025 New York Times Magazine article "Can the Media's Right to Pursue the Powerful Survive Trump's Second Term?" and his book Murder the Truth: Fear, the First Amendment and a Secret Campaign to Protect the Powerful, published March 11, 2025, from which it was adapted. Indeed, the evidence should be deemed part of the "road test", from outside the "ivory tower" that Mr. Enrich quoted you as saying you did not have.

The premises of Mr. Enrich's article and book are that professional journalists and such traditional media as The New York Times adhere to standards of fact-checking, accuracy, and, impliedly, objectivity – and use their First Amendment freedom, enhanced, immeasurably, by the actual malice standard of *Times v. Sullivan*, to "pursue the powerful", most importantly, by honest reporting on public officers and those seeking public office.

Both premises are demonstrably false – and it is hard to believe that Mr. Enrich does not know this and, specifically, as pertains to The Times.

For example, his book (at pp. 269-70) gives "special recognition" to David McCraw, describing him as "The *Times*' unflappable in-house lawyer [who] has enabled more high-impact journalism than anyone who doesn't work at the *Times* can imagine" and stating: "He has been a crucial resource for me since I arrived in 2017, and that continued as I researched and wrote this book."

Did Mr. McCraw and others at The Times and elsewhere not apprise Mr. Enrich – in keeping with honesty and truthfulness – of CJA's 30-plus years of interaction with Times reporters, editors, and managerial/executive levels, chronicling The Times' *knowingly* false, corruption-abetting, election-rigging journalism, "protecting the powerful" at the highest levels of government, both in New York and Washington – and the lawsuit I and CJA had brought against The Times on our own behalf and for "The Public", by a March 21, 2006 verified complaint, precipitated by The Times' *knowingly* false, pervasively defamatory column about me during my six-month incarceration on a bogus "disruption of Congress" charge, which it refused to correct. Indeed, my interaction with Mr. McCraw and his then colleague in The Times' legal department, George Freeman, is recited by the verified complaint (at paras. 127, 132, 135), with the substantiating correspondence annexed as its Exhibits T-1 to T-22.

Mr. Enrich "interview[ed]" Mr. Freeman for his book – a fact identified by his "Notes" section (at p. 312), in attributing to Mr. Freeman the statement (at p. 249) that The Times has not been "on the losing end of a libel lawsuit in the United States since the early 1960s". Twenty years earlier, Mr. Freeman comparably stated this to me by a December 2, 2005 letter, quoted by the verified complaint (at para. 129):

"The Times has not paid a dollar in damages in libel cases (or settled any libel cases for money) since well before libel law was constitutionalized in *The New York Times v. Sullivan* case...in 1964".

It was Mr. Freeman who defended against CJA's lawsuit, following service of the complaint on March 21, 2006. The litigation record, spanning to February 5, 2008, is a "perfect paper trail" establishing how The Times avoided being "on the losing end", *to wit*, in the absence of any legitimate defense, Mr. Freeman corrupted the judicial process by litigation fraud and was rewarded by fraudulent judicial decisions of New York state trial and appellate judges. This was how The Times reputationally survived and avoided paying

gargantuan compensatory, presumed, and punitive damages. In other words, **there is at least one libel lawsuit that puts the lie to what Mr. Enrich's book describes (at p. 249) as the "impeccable" record of The Times' "fleet of lawyers" in the 60 years since *Times v. Sullivan*.**

Yet the litigation record of CJA's lawsuit against The Times goes beyond exposing that Mr. Freeman had NO legitimate defense to the lawsuit's first two causes of action, for libel and libel *per se*. It also exposes that he had NO defense to its third cause of action for "journalistic fraud" – a cause of action 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*](#)" (Clay Calvert, Robert Richards) – and, thereafter, to a cause of action for "institutional reckless disregard for truth", proposed as viable by the 2005 law review article "[*Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press*](#)" (Randall Bezanson, Gilbert Cranberg).

Your copiously-researched and annotated 2020 law review article, which opens with the words "Our democracy is in trouble, awash in an unprecedented number of lies" and ends with the words "our democracy hangs in the balance", does not cite to the above 2003 law review article and cites to the 2005 law review article (at footnote 124) only for its unexceptional characterization of the *Times v. Sullivan* actual malice standard as "demanding". Yet aren't their proposed "journalistic fraud" and "institutional reckless disregard for truth" causes of action OBVIOUS remedies against the deluge of press lies destroying our democracy?

In 2010, CJA, again acting "*Pro Bono Publico*", brought another lawsuit, now against Gannett, also for libel, libel *per se*, and "journalistic fraud" – and also advancing an "institutional reckless disregard for truth" cause of action. The [October 4, 2010 verified complaint](#) recited CJA's [20-plus years of interaction with Gannett reporters, editors, and managerial/executive levels](#) about Gannett's defamatory, *knowingly* false, corruption-abetting, election-rigging, journalism, culminating in the article it had refused to retract giving rise to the lawsuit. The [litigation record, spanning to December 5, 2013](#), is also a "perfect paper trail" establishing that Gannett, identically, had NO legitimate defense and survived reputationally and avoided paying gargantuan compensatory, presumed, and punitive damages by an identical *modus operandi*: its counsel corrupted the judicial process by litigation fraud and was rewarded by fraudulent judicial decisions of New York state trial and appellate judges.

As for press reporting of either lawsuit, there was virtually none – and zero scholarship by academia and other "knowledge institutions" (see "[Journalism and Academia: Knowledge Institutions Buttressing Constitutional Democracy](#)" (July 1, 2024, Vicki Jackson)).

The lie-staunching, democracy-saving "journalistic fraud" and "institutional reckless disregard for truth" causes of action are now the first two causes of action in a federal lawsuit that CJA has brought "*on behalf of the People of the State of New York & the Public Interest*" against The New York Times and 33 representative other press defendants, followed by a third cause of action for "defrauding purchasers, contributors, and taxpayers" and a fourth cause of action for "conspiracy". Above-attached and here-linked is the [October 29, 2025 verified amended complaint](#), as signed by CJA's attorney on January 5, 2026, chronicling their destruction of constitutional, lawful New York state governance by *knowingly* false, corruption-abetting, election-rigging journalism – with NO difference among the press entities that are for-profit, nonprofit, public, national/"local", print, broadcast, digital, including those receiving and conferring tax benefits. This verified pleading, and its mountain of links to primary-source, documentary evidence, spanning decades, is the hard truth of how the press, of all stripes, operate – and operated in the days before the internet and social media – flagrantly abusing the protections afforded them by *Times v. Sullivan* – and competent, honest investigation by Mr. Enrich would have so-revealed, starting with The Times, on which his book lavishes repeated praise.

As for the [federal lawsuit's electronically-accessible record](#), it is a "perfect paper trail" of the unprecedented manner in which the district court has proceeded because, as clear from the [October 29, 2025 verified amended complaint](#) and my [December 19, 2025 affidavit demonstrating subject matter jurisdiction](#), it is a summary judgment case on all four causes of action. The SOLE issue is the magnitude of compensatory, presumed, and punitive damages – a jury determination that will reasonably be tens of billions of dollars.

I look forward to discussing the foregoing with you – and other deceptions of Mr. Enrich's book and his articles and interviews based thereon and pertaining to the [Media Law Resource Center](#), whose executive director is [Mr. Freeman](#) and whose March 2022 white paper "[New York Times v. Sullivan – The Case for Preserving an Essential Precedent](#)" Mr. Enrich curiously does not mention, including in his "Notes", notwithstanding he may be presumed to have read it and its responses to your 2020 law review article and Justice Gorsuch's 2021 dissent in *Berisha v. Larson* relying on it. Please call me. I have much to share with you about the white paper, in rebuttal.

Finally, as to the concluding suggestion of your law review article (at p. 813) that "fresh thinking" by the [American Law Institute](#), now engaged in a restatement of the law of defamation, could address your concerns about the spread of lies torpedoing our democracy, would you not agree that the "journalistic fraud" and "institutional reckless disregard for truth" causes of action – and CJA's monumental unfolding federal lawsuit – must be part of that "fresh thinking"? Your voice and leadership will make the difference – and ensure the proper placement of these causes of action. Would they be in the "[Torts: Defamation and Privacy](#)" Restatement, to which you are an advisor (as are Mr. Freeman and Mr. Calvert), or in the "[Torts: Remedies](#)" Restatement, or in the "[Torts: Miscellaneous Provisions](#)" Restatement, or maybe, in keeping with *Times v. Sullivan*, the "[Constitutional Torts](#)" Restatement? About this, please let me hear from you as soon as possible, as I anticipate contacting ALI leadership next week.

I will shortly be forwarding this e-mail to some of the lawyers highlighted by Mr. Enrich as suing the press – and will cc you on it.

Thank you.

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