

From: elena@judgewatch.org
Sent: Monday, January 19, 2026 11:18 AM
To: 'Post, Robert'
Cc: 'lidsky@law.ufl.edu'

Subject: **Your Scholarly Duty & as an American Law Institute Reporter with Respect to the Causes of Action for "Journalistic Fraud", "Institutional Reckless Disregard for Truth", & CJA's Federal Lawsuit vs The NYT & 33 Other Press Defendants**

Attachments: [amended-complaint-oct-29-2025-signed-by-zerman.pdf](#)

TO: [Yale Law School Professor of Constitutional Law & The First Amendment Robert Post](#)

I am at a loss to understand your below January 16th e-mail to me, cc'ing Professor Lidsky, stating that you "haven't read the articles or the complaint". When were you planning to read them?

Did you not receive and read [my January 12th e-mail](#) to you, Professor Lidsky, and the other scholars who participated in Columbia University's Knight First Amendment Institute's project "[The Future of Press Freedom: Democracy, Law, and the News in Changing Times](#)"?

- asserting that the 2003 law review article "[Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence](#)", the 2005 law review article "[Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press](#)", and [CJA's October 29, 2025 federal lawsuit complaint](#) based thereon against [The New York Times](#) and 33 other press defendants answered the "critically important questions" the project was seeking to answer as to "How, if at all, can we shape doctrine and legal policies that grant rights to those acting as proxies for the public without privileging the powerful over the weak?...And what protections might be constitutional necessities for fulfilling the wider purpose of the First Amendment guarantee of freedom of the press?"
- requesting, based thereon, *amicus curiae* support for judicial recognition of the "journalistic fraud" and "institutional reckless disregard for truth" causes of action proposed by those law review articles, sought by CJA's federal complaint "*on behalf of the People of the State of New York & the Public Interest*";
- asserting that the federal complaint "EVIDENTIARILY rebuts [the scholars'] premises and preconceptions about press integrity and functioning, warranting substantial revisions/corrections/retractions to [their articles](#) and [May 3, 2024 symposium presentations](#)";
- requesting, if the scholars disagreed that their premises and preconceptions about press integrity and functioning were evidentially rebutted by the federal complaint, that they identify their evidence.

Were you not intending to respond to this dispositive January 12th e-mail – including defending your *own* article “[The Press and American Democracy](#)” and [symposium presentation](#) against the rebutting evidence of the federal complaint.

By the way, when you say that you have not read the above law review articles, are you also saying that nearly 20 years ago, when I brought them to your attention by [my March 10, 2006 memo](#); [my March 24, 2006 memo](#); [my December 15, 2006 memo](#), and [my May 1, 2007 memo](#) – to which the only response I received from you was a [May 1, 2007 autoreply](#) “Away From My Mail” – you also did not read them? And did you also not examine, *at that time*, [CJA’s March 21, 2006 verified complaint against The New York Times](#) and the [record thereon](#), to which I alerted you, with pleas for scholarship.

Finally, with respect to your prior January 16th e-mail to me, also below, stating that “a ‘restatement’ restates, but does not invent, law”, the [American Law Institute’s website](#) identifies its members as having “the opportunity to influence the development of the law in both existing and emerging areas” and quotes from the report that gave rise to ALI’s founding in 1923 that stated:

“We speak of the work which the organization should undertake as a Restatement; its object should not only be to help make certain much that is now uncertain and to simplify unnecessary complexities, but to promote those changes which will tend to adapt the laws to the needs of life.”

That certainly describes the proposed “journalistic fraud” and “institutional reckless disregard for truth” causes of action – whose necessity the federal complaint demonstrates, resoundingly.

I am cc’ing Professor Lidsky so that she can also respond to the foregoing, including with respect to her *own* article “[Defamation Law and the Crumbling Legitimacy of the Fourth Estate](#)” and her *own* [symposium presentation, on the same first panel with you](#) — and to my initial e-mail to her, on January 5th, also below, which she has not answered, most importantly, my straightforward four questions:

“Are you aware of 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](#)’ (Clay Calvert, Robert Richards). How about the cause of action for ‘institutional reckless disregard for truth’, similarly proposed as viable by the 2004-2005 law review article ‘[Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press](#)’ (Randell Bezanson, Gilbert Cranberg).

Has there been any scholarship about these two law review articles over the past 20 years – and lawsuits based thereon?”

I note that Professor Calvert is a participant in the [ALI’s Restatement \(3rd\) Defamation and Privacy](#), to which you and Professor Lidsky are the reporters.

Please respond promptly so that I may be guided accordingly as to next steps to ensure that your scholarship and reporting are not cherry-picked to serve chosen narratives and interests, in violation of your duty to your students, the legal community, and the public.

Thank you.

Elena Sassower, Director
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From: Post, Robert <robert.post@yale.edu>
Sent: Friday, January 16, 2026 5:29 PM
To: elena@judgewatch.org
Cc: lidsky@law.ufl.edu

Subject: RE: What is your view of the proposed "journalistic fraud" & "institutional reckless disregard for truth" causes of action -- & the federal lawsuit based thereon

Can't help you-- I haven't read the articles or the complaint. r

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From: elena@judgewatch.org <elena@judgewatch.org>
Sent: Friday, January 16, 2026 4:29 PM
To: Post, Robert <robert.post@yale.edu>
Cc: lidsky@law.ufl.edu

Subject: What is your view of the proposed "journalistic fraud" & "institutional reckless disregard for truth" causes of action -- & the federal lawsuit based thereon

Thank you, Professor Post, for your clarification.

What is your view of the "journalistic fraud" 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 of the cause of action for "institutional reckless disregard for truth", similarly proposed as viable by the 2004-2005 law review article "[Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press](#)" (Randell Bezanson, Gilbert Cranberg)?

And what is your view of CJA's federal lawsuit, seeking judicial recognition of those causes of action, as law? Do you dispute that the [October 29th verified amended complaint](#) proves the necessity of same by unassailable, open-and-shut, primary-source evidence?

Thank you.

Elena Sassower

From: Post, Robert <robert.post@yale.edu>

Sent: Friday, January 16, 2026 4:08 PM

To: elena@judgewatch.org

Cc: lidsky@law.ufl.edu

Subject: Re: Clarification -- "journalistic fraud", "institutional reckless disregard for truth", & The American Law Institute & its Restatement (3rd) of Torts -- "

Because a "restatement" restates, but does not invent, law. This is true for all restatements.

Sent from my iPhone

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On Jan 16, 2026, at 3:57 PM, elena@judgewatch.org wrote:

Thank you for your prompt response, Professor Post.

I assume by "no" you mean that you would not recommend inclusion of causes of action for "journalistic fraud" and "institutional reckless disregard for truth" into the ALI's Restatement (3rd) of Torts.

Kindly advise as to the reason – and whether, if they were to be included, they would be in "[Defamation and Privacy](#)", "[Remedies](#)", or "[Miscellaneous](#)".

Thank you.

Elena Sassower

Fom: Post, Robert <robert.post@yale.edu>

Sent: Friday, January 16, 2026 3:42 PM

To: elena@judgewatch.org; lidsky@law.ufl.edu

**Subject: RE: The American Law Institute & its Restatement (3rd) of Torts --
"journalistic fraud" and "institutional reckless disregard for truth"**

I'm afraid the answer to your question is no.

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From: elena@judgewatch.org <elena@judgewatch.org>
Sent: Friday, January 16, 2026 3:38 PM
To: lidsky@law.ufl.edu
Cc: Post, Robert <robert.post@yale.edu>

**Subject: The American Law Institute & its Restatement (3rd) of Torts -- "journalistic
fraud" and "institutional reckless disregard for truth"**

**TO: [University of Florida Media Law & First Amendment Professor Lyrrisa Barnett
Lidsky](#)**

I have received no response to my below January 5th e-mail to you, with its above attached
October 29, 2025 verified amended complaint against [The New York Times](#) and 33 other
press defendants for *knowingly* false, corruption-abetting, election-rigging journalism.

So that I may be guided accordingly in my contacts with the [American Law Institute](#),
please advise, without further delay, as to whether, as the e-mail asks, "you will
recommend to the American Law Institute that its Restatement (3rd) of Torts include the
causes of action for 'journalistic fraud' and 'institutional reckless disregard for truth'."

Also, please advise whether these torts would be in the [Restatement \(3rd\) of the Laws of
Defamation and Privacy](#), whose co-reporter, with you, is Professor Robert Post – and, if
not, would they be in "[Remedies](#)", or "[Miscellaneous](#)".

Professor Post is herein cc'd so that he may also advise, including as to his
recommendation.

Thank you.

Elena Sassower, Director
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From: elena@judgewatch.org <elena@judgewatch.org>

Sent: Monday, January 5, 2026 4:16 PM

To: 'lidsky@law.ufl.edu' <lidsky@law.ufl.edu>

Subject: Federal Lawsuit vs The NYT & 33 Other Press Defendants, in Vindication of the First Amendment, with Causes of Action for "Journalistic Fraud" & "Institutional Reckless Disregard for Truth", etc.

TO: [University of Florida Media Law & First Amendment Professor Lyrissa Barnett Lidsky](#)

I am director and co-founder of the nonpartisan, nonprofit citizens' organization Center for Judicial Accountability, Inc. (CJA) and learned of you and your important scholarship in media law and the First Amendment from the December 2, 2025 [Free Speech Unmuted](#) podcast "[Defamation Law in the Age of AI with Lyrissa Lidsky](#)".

Are you aware of 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](#)" (Clay Calvert, Robert Richards). How about the cause of action for "institutional reckless disregard for truth", similarly proposed as viable by the 2004-2005 law review article "[Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press](#)" (Randell Bezanson, Gilbert Cranberg).

Has there been any scholarship about these two law review articles over the past 20 years – and lawsuits based thereon? I have found none.

In 2006, CJA brought one such lawsuit, in New York state courts, against [The New York Times](#) and in 2010, brought a second such lawsuit against [Gannett](#) – each "thrown" by fraudulent judicial decisions, on trial and appellate levels, obliterating all adjudicative standards.

CJA has now brought a third lawsuit, this time in federal court against 34 press defendants, [The New York Times](#) among them, highlighting and hyperlinking to the records of these two prior lawsuits in support of declarations and damages for "Journalistic Fraud" and "Institutional Reckless Disregard for Truth", which are its first two causes of action, followed by "Defrauding Purchasers, Contributors, & Taxpayers" and "Conspiracy". Above-attached and here-linked is the [October 29, 2025 verified amended complaint](#), which – like the verified complaints in the prior two lawsuits – chronicle, with open-and-shut, primary source evidence, how the press/media *actually* operate, flagrantly violating their First Amendment responsibilities and journalist codes of conduct. Surely, it is no coincidence that scholarship as to this [reality](#) of press/media performance that would give rise to a "journalistic fraud" cause of action is also [seemingly non-existent](#).

In addition to furnishing you with CJA's federal lawsuit for your scholarship and teaching, would you be available to participate in the lawsuit either *pro bono* or as a paid expert? I believe the lawsuit is a summary judgment case, with NO defense to it, factually or legally, and that the SOLE issue is the magnitude of compensatory, presumed, and punitive damages – a jury determination that will reasonably be many tens of billions of dollars. The district court's irregular handling of the lawsuit, highlighted by my December 19th affidavit, reinforces this. What do you think?

I look forward to discussing the foregoing with you – and whether you will recommend to the American Law Institute that its Restatement (3rd) of Torts include the causes of action for “journalistic fraud” and “institutional reckless disregard for truth”.

Kindly let me know, as soon as possible.

Thank you.

Elena Sassower, Director
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