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DATE: December 15, 2006

TO: Professor Richard H. Fallon, Harvard Law School

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: **PUTTING THEORY INTO PRACTICE –**
– & PRACTICE INTO SCHOLARSHIP & COMMENTARY
**Request for Your *Amicus Curiae* & Other Legal Assistance, *Pro Bono* or Paid,
in Groundbreaking Public Interest Lawsuit against The New York Times in
Vindication of the First Amendment – & for Your Bringing the Case into First
Amendment & Media Law Scholarship & Commentary**

This follows up my two memos to you, dated March 10, 2006 and March 24, 2006, seeking your guidance in advancing the Center for Judicial Accountability's landmark public interest lawsuit against The New York Times – the first to implement the powerful recommendation for media accountability proposed in the 2003 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, by the co-directors of the Pennsylvania Center for the First Amendment at Pennsylvania State University, Professors Clay Calvert and Robert D. Richards.

For your convenience, these memos and the law review article are posted on CJA's website, www.judgewidth.org. To access them, click on the sidebar panel "Suing The New York Times", which links to a page entitled "OUTREACH: The Champions & Betrayers of Media Accountability, The First Amendment, & The Public Interest". No responses from you are posted, as none were received.

* The Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens' organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful – a goal which cannot be achieved without honest scholarship and a press discharging its First Amendment responsibilities.

I am pleased to report that the lawsuit has resoundingly demonstrated the viability of the journalistic fraud cause of action, posited in "*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*", as neither The Times nor the judge to whom the case was steered were able to confront ANY of its legal and constitutional arguments. Nor were they able to confront ANY of our arguments based thereon or based on two other law review articles on which we relied: "*Access to the Press – A New First Amendment Right*" by Professor Jerome Barron, 80 Harvard Law Review 1641 (1967), and "*Institutional Reckless Disregard for Truth in Public Defamation Actions Against the Press*" by Professors Randall P. Bezanson and Gilbert Cranberg, 90 Iowa Law Review 887 (March 2005).

You can verify this for yourself from the lawsuit record, posted on our "Suing The New York Times" webpage.¹ Such will enable you to see that our lawsuit was so well pleaded that The Times had NO legitimate defense to ANY of our three causes of action: for defamation (¶¶139-155), defamation *per se* (¶¶156-162), and journalistic fraud (¶¶163-175) – thereby enabling us to cross-move not only for sanctions against The Times for its fraudulent motion to dismiss our complaint for failure to state a cause of action, but for summary judgment against it. The only reason we did not obtain a judgment in our favor, *as a matter of law*, is because the judge, who was hand-picked for the case in violation of random assignment rules, corrupted the judicial process by a decision which obliterated ALL cognizable legal and adjudicative standards – a decision to which he thereafter adhered upon our motion to vacate it for "fraud and lack of jurisdiction", made as part of our motion to disqualify him for "demonstrated actual bias and interest".

Our already drafted appellants' brief can expedite your verification of the breathtaking record of the case on appeal. I would be pleased to send it to you to buttress our request herein that you file an *amicus curiae* brief in support of the appeal.

The appeal must be perfected by February 21, 2007, unless we avail ourselves of an extension. There is no requirement that an *amicus curiae* brief be filed simultaneously with the appeal brief. It may be filed at any time prior to oral argument, upon the granting of a motion for same, though, obviously, a motion made earlier is more likely to be granted.

We would also welcome your comments and suggestions on our draft brief. Hopefully, you would offer them *pro bono*, in recognition of the lawsuit's historic significance in advancing both media accountability and the First Amendment. However, we are also willing to pay you for the benefit of your scholarly expertise so that the brief may be the best it can possibly be.

¹ Our uncontested arguments with respect to the three law review articles – unchallenged by The Times and the judge – appear, *inter alia*, in our June 1, 2006 memorandum of law (at pp. 20-21); my June 13, 2006 affidavit (at ¶¶19-23); our August 21, 2006 memorandum of law (at pp. 17-20); and my September 25, 2006 affidavit (at ¶¶23, 26-29).

Let me know if you are interested in filing an *amicus curiae* brief or in otherwise assisting us either on a *pro bono* or paid basis and I will promptly send you our draft appellants' brief. Should you not be interested, we ask for your recommendations as to other law professors who might be.

In any event, please confirm that you will be incorporating this landmark case into your First Amendment and media law scholarship and commentary and/or referring it to other professors for their relevant scholarship and commentary, as well as to academic institutes and entities that research and/or advocate on First Amendment and media law issues at Harvard and beyond. Scholarship, commentary, and advocacy must rest on evidence of what is happening "on the ground" – and this lawsuit is a case study of how the First Amendment and media law are litigated and adjudicated when the issues of "legitimate public concern" involve judicial corruption and the press' obligations with respect thereto.

Finally, over and beyond the documentary record of our lawsuit against The Times, we have a goldmine of primary source documentary evidence exploding a panoply of myths about how the press functions – including the blogs. This, too, must be made the subject of scholarship and we ask your assistance in that regard, as well.

I would be pleased to discuss any of the foregoing with you and thank you, in advance, for the courtesy of your response.

Elena Rud
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