

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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BY E-MAIL: eschatonmail@comcast.net

DATE: January 26, 2007

TO: Duncan B. Black
Blogger: [Eschaton/ www.atrrios.blogspot.com](http://www.atrrios.blogspot.com)
Senior Fellow, Media Matters for America

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

RE: THE STATUS OF YOUR REVIEW: The New York Times' Election-Rigging for
Senator Hillary Rodham Clinton, as Alleged & Chronicled by CJA's Public Interest
Lawsuit against It

Senator Hillary Rodham Clinton's announcement that she's "in to win" the race for president makes all the more imperative your review of CJA's public interest lawsuit against The New York Times so that you can report its election-rigging allegations – and the documentary evidence that supports them – to your readers.

For your convenience, I have transcribed the audiotape¹ of an extract of your formal presentation as a panelist at the Friday, January 12th session "Media and Elections" at the Free Press National Conference on Media Reform in Memphis and my responding comment and questions, culminating in the exchange between us:

Duncan Black:

"...we're talking about, sort of, what stories the media missed about the election and how they are likely to miss important stories or get things wrong going forward to 2008.

To me – since I am obsessed with the media – the missed media story is the

* 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.

¹ The audiotape is posted on Free Press' website: www.freepress.net/conference/=full_schedule07.

media and how, the role the media plays in elections and why that's important...

...

Just to sum up, and I'll pass the baton, the real story that the media constantly misses – and I think it's somewhat deliberate, it's deliberate obtuseness, they know it, they just don't want to admit it – is, ultimately, sort of, the role that they play in not simply being, sort of, passive conduits for information, but, sort of, being active participants in the passing of news from highly partisan sources without always acknowledging their role or where the judgment in doing that comes from..."

Elena Sassower:

"Duncan Black said that the problem is the media; that they don't recognize the decisive role that they play in the elections.

There is now pending a lawsuit, a public interest lawsuit against The New York Times for journalistic fraud which entails, explicitly, its election-rigging – its election-rigging for both democratic and republican candidates. That lawsuit was pending throughout 2006 and specific election-rigging allegations related to Senator Clinton and Eliot Spitzer, both of whose races, electoral races in New York, were not remotely competitive because of the media.

My question is, we could not get any play for that lawsuit against The New York Times, charging it with election-rigging during an election year in which Clinton and Spitzer rode to victory by landslide margins. My question is, do you think now we can get some media play of this important public interest lawsuit that advances media reform and the integrity of elections?

And, additionally, to those who I did not provide a handout about this important lawsuit, which is posted in its entirety on our website, I have –"

[request by man in audience for website]

"Thank you. The website is www.judgewatch.org. It's the website of the non-partisan, non-profit citizens' organization called Center for Judicial Accountability.

These issues of the integrity of the elections are not democratic, they're not republican. They are of concern to all of us – and I have to make one comment, important, and that is, I am offended and at a loss to understand how a conference on media reform should be so taken over by democrats, progressives, liberals. Frankly, we should be inviting and reaching out to republicans, conservatives. This is an issue. Media reform is about, I thought, internet neutrality, for example, internet equality, for example, bringing a diversity of viewpoints. Why are the only viewpoints here, being represented, are democratic?

I'm sorry. The question is, will there be any report of this important public interest lawsuit against The Times for election-rigging?"

Moderator Paul Waldman (?):

"As to why there are not more conservatives here, I think it is an interesting question and I didn't organize the conference so I don't know about whom they

invited. But, you're right and I think there are lots of discussions about net neutrality and things like that here. We're not the only panel at this conference.

Panelist Cornell Belcher (?):

"I'm conservative, I'm from Virginia."

Moderator Paul Waldman (?):

"Well, there you go. Okay, next question."

Elena Sassower:

"No. But will there be coverage of the lawsuit by, for example, Duncan Black, or because he works for Media Matters that aligns itself with a progressive, liberal agenda, you will not write about a lawsuit that exposes Hillary Rodham Clinton and Eliot Spitzer, two preeminent democrats, who are the rising stars."

Duncan Black:

"I have to confess, I'm sure that maybe this proves your point, but most of us probably have not heard about this."

Elena Sassower:

"Okay".

Duncan Black:

"But, we'd be, I'd certainly, be interested to know and then I'll tell you about whether Media Matters will do anything about this."

Elena Sassower:

"As long as you're open to the evidence."

Duncan Black:

"Okay."

The referred-to handout about the lawsuit bore the title "**THE GATEKEEPERS' ARE ALIVE & WELL: Subverting Our Democracy by 'Protecting' The New York Times & Our Highest Public Officers**" – and I gave you a copy at the conclusion of the January 12th session. Enclosed is another copy for your convenience. The lawsuit record, posted on CJA's website, is accessible *via* the sidebar panel "Suing The New York Times". Also pertinent, the sidebar panels "Elections 2006: Informing the Voters" and "Press Suppression", containing links to webpages entitled "Press Protectionism of Senator...Clinton" and "Paper Trail of Senator Clinton's Corruption in Office". Needless to say, I would be pleased to discuss with you the posted lawsuit record and substantiating underlying and accompanying evidence so as to facilitate your review of this journalistically and politically explosive story.

I look forward to hearing from you soon.

Thank you.

A handwritten signature in black ink, appearing to read "Elena R. R. Jansone". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Attachment: double-sided handout

cc: Moderator & Other Journalist/Scholar Panelists at "Media and Elections"

Paul Waldman, Senior Fellow, Media Matters for America

Steve Freeman, Visiting Scholar, University of Pennsylvania

Co-Author, Was the 2004 Presidential Election Stolen?

Moderator & Panelists at "Watchdogging the Media"

Craig Aaron, Communications Director, Free Press

David Brock, Founder, President & CEO, Media Matters for America

Janine Jackson, Program Director, FAIR

Norman Solomon, Founder & Executive Director, Institute for Public Accuracy

Free Press

Robert McChesney, Co-Founder, President, & Board Chairman

John Nichols, Co-Founder & Board Member

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**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.judgewidth.org, accessible via the sidebar panels "Elections 2006: Informing the Voters", "Press Suppression", and "Suing The New York Times".

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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).