

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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DATE: January 26, 2007

TO: David Brock, Founder, President, & CEO/Media Matters for America

Janine Jackson, Program Director/Fairness and Accuracy in Reporting (FAIR)
Host-Producer, "CounterSpin" Radio Show

Norman Solomon, Founder & Executive Director/Institute for Public Accuracy
Columnist, "Media Beat"
Board Member, Free Press Action Fund

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

RE: "ELEPHANT IN THE ROOM" –
First-Ever Public Interest Lawsuit against The New York Times
for Journalistic Fraud – MAKING MEDIA REFORM HAPPEN

While eagerly awaiting your informed comment about CJA's on-the-ground effort to advance media reform by a public interest lawsuit against The New York Times for journalistic fraud, I have transcribed my question and our exchange from the audiotape of the Saturday, January 13th session "Watchdogging the Media" at the Free Press National Conference on Media Reform in Memphis¹:

"My name is Elena Sassower. I am director and co-founder of a non-partisan, non-profit citizens' organization called the Center for Judicial Accountability.

For almost a year, we've been powerfully advancing media reform by a public interest lawsuit against The New York Times for journalistic fraud.

Now, all of our panelists have made generous mention of The New York Times and I would like to know when the panelists are going to

* 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.

address this 'elephant in the room' – the lawsuit.

I have contacted both FAIR and the Institute for Public Accuracy, repeatedly, over the course of the past year, with information about the lawsuit and I believe you are in a position to comment upon it. I also believe that Mr. Brock, you have some knowledge of this lawsuit. So perhaps you'd like to comment about it?"

Norman Solomon:

"Well, I know I have been in e-mail correspondence with somebody who was thinking about such a lawsuit about six months ago so I don't gather that it's the one that you are referring to and I don't know what the details of it are. The plan I heard was the idea that since people were harmed by some New York Times reporting, therefore, as with a trunk in an automobile that would blow up on impact, The New York Times would be sued for kind of product liability. Is that the gist of your suit?"

Elena Sassower:

"The lawsuit brings a cause of action for journalistic fraud against The New York Times for its knowingly false and misleading reporting and editorializing with respect to the processes of judicial selection and discipline and, indeed, as to the corruption of the judicial process itself – involving our highest public officers including Senator Hillary Rodham Clinton and Attorney General, now New York Governor, Eliot Spitzer, for whom it has been election-rigging. And, indeed, the lawsuit entails allegations of election-rigging by The New York Times and, indeed, I don't need to remind you that New York's elections have not been, for many years, remotely competitive and that has everything to do with The New York Times and hence the lawsuit."

Norman Solomon:

"I don't know anything about your lawsuit."

Elena Sassower:

"Okay."

Moderator Craig Aaron (?):

"I'm sure that everybody will be able to come and find you to ask questions afterward. I really do have to let, there's 10, 20 people lined up and we have only about 15 minutes left."

Elena Sassower:

"Let me just so that – so that everyone here can see for themselves the serious and substantial nature of the lawsuit and its potential to make far-

reaching reform, I have a handout and everything is on our website, www.judgewatch.org, the complete lawsuit.”

Moderator Craig Aaron (?):

“Okay. Thank you.”

Elena Sassower

“Thank you.”

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 a copy to each of you at the conclusion of the January 13th session². 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”. My e-mails to both FAIR and the Institute for Public Accuracy, including to Norman Solomon, from March 22/23, 2006, June 9, 2006, and August 22, 2006, transmitting our three press releases about the lawsuit, are accessible *via* the “Outreach” webpage for “Media-Watch Organizations, Media, & Journalists”.³

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.

Finally, as Paul Waldman from Media Matters moderated the January 12th conference session “Media and Elections” at which I made comments and asked questions that are relevant to each of you, I enclose a copy of my memo of today’s date to Duncan Black, a Senior Fellow of Media Matters, who was a panelist.

I look forward to hearing from you soon.

Thank you.



Attachment: double-sided handout
cc’s: next page

² I also gave Sam Hussein, the Institute for Public Accuracy’s Communications Director, a copy of the handout on January 14th.

³ Mr. Brock’s awareness of the lawsuit arose from a personal conversation he had on November 13, 2006 with CJA co-founder, Doris L. Sassower – my mother – whose pioneering contributions to equal rights for women were recognized in a book Feminists Who Changed America: 1963-1975. Mr. Brock was an invited speaker at the celebration of the book’s publication, held at Columbia University in New York.

cc: Free Press

Craig Aaron, Communications Director & Moderator "Watchdogging the Media"

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

John Nichols, Co-Founder & Board Member

Moderator & Journalist/Scholar Panelists of "Media and Elections"

Paul Waldman, Senior Fellow, Media Matters

Duncan Black, Senior Fellow, Media Matters & Blogger "Eschaton"

Steve Freeman, Visiting Scholar/University of Pennsylvania

Co-Author, Was the 2004 Presidential Election Stolen?

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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.judgewatch.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).