SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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ELENA RUTH SASSOWER and DORIS L. SASSOWER, Individually and as Director and President, respectively, of the Center for Judicial Accountability, Inc., and CENTER FOR JUDICIAL ACCOUNTABILTY, INC., Acting *Pro Bono Publico*,

Index #10-12596

Plaintiffs,

AFFIDAVIT IN OPPOSITION & IN SUPPORT OF CROSS-MOTION

-against-

GANNETT COMPANY, INC., The Journal News, LoHud.com HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS, D. SCOTT FAUBEL, KEITH EDDINGS, DOES 1-10,

Defendants.

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STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the first named individual plaintiff in the above-entitled action and submit this affidavit in opposition to the October 22, 2010 dismissal motion of Satterlee, Stephens, Burke & Burke, counsel to all defendants other than defendant Keith Eddings and defendants DOES 1-10.

2. This affidavit is also submitted in support of the relief sought by plaintiffs' cross-motion. As particularized by this affidavit and plaintiffs' accompanying memorandum of law, which I incorporate herein by reference, swearing to its truth, the Satterlee motion is a "fraud on the court" – as that phrase is defined[1] – requiring the Court to not only deny the motion, but to discharge its mandatory disciplinary responsibilities to the fullest by imposing maximum costs and sanctions, by making appropriate disciplinary referrals, and by assessing treble damages pursuant to Judiciary Law

[1] The definition, from Black's Law Dictionary, is set forth at fn. 1 of plaintiffs' accompanying memorandum of law.

§487. Such is fully warranted by the record herein, as likewise, the other relief sought by plaintiffs' cross-motion, including notice, pursuant to CPLR §3211(c), that Satterlee's dismissal motion is being considered for summary judgment in plaintiffs' favor.

3. In further support of plaintiffs' opposition and cross-motion, I purchased from the White Plains Cable Television Access Commission two copies of its video of the May 4, 2009 meeting of the White Plains Common Council, one for Satterlee and one for the Court. Each copy (Exhibit 10)[2] is identical to the copy I purchased from the White Plains Cable Television Access Commission in August 2010 and viewed on September 1, 2010. Such viewing, which was my first, is recounted at ¶31 of the Complaint, with ¶¶32-35 identifying the respects in which the video establishes that the news article is not a "fair and true report" of what took place "during" Judge Hansbury's confirmation at the May 4, 2009 Common Council meeting, corroborating plaintiffs' analysis of the news article – annexed to the Complaint as Exhibit 7 – and that plaintiffs did not "pursue" Judge Hansbury and his wife from the Council chamber, contrary to the news article (Exhibits A-1, A-2).

4. It would appear, based on information from the Executive Director of the White Plains Cable Television Access Commission, that shortly after I purchased the video (and contacted defendant Gannett to arrange service, thereupon serving the Summons with Notice), Satterlee and/or the defendants also purchased the video and, upon viewing it, telephoned the Commission to inquire whether the Commission had additionally recorded "the citizens' half-hour" that preceded the May 4, 2009 Common Council meeting.

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[2] The exhibits annexed to this affidavit are Exhibits 10-18, continuing the numerical sequence of exhibits annexed to plaintiffs' Verified Complaint, which are Exhibits 1-9 (with side-tabbed Exhibits A-K annexed to Exhibit 7).

5. It is against this background that Satterlee's motion must be viewed. The deficient and skimpy affidavits of Satterlee attorneys Meghan H. Sullivan, Esq. and Emily S. Smith, Esq. are silent as to the video. As for Satterlee's memorandum of law, whose deceit is chronicled by plaintiffs' accompanying memorandum of law, it not only conceals the video's existence, but brazenly falsifies the content of the Complaint's ¶¶32-34 to further conceal it.[3]

The False and Misleading Exhibits Annexed to the Affidavits of Satterlee Attorneys Meghan H. Sullivan and Emily S. Smith

6. As set forth by plaintiffs' memorandum of law (at p. 5), the affidavits of Ms. Sullivan and Ms. Smith: (a) are not sworn-to as being true; (b) do not state that they are based on familiarity with the facts, papers, and proceedings herein; and (c) are limited to annexing documents, whose purpose they do not identify and which, in fact, do not substantiate "a defense...founded upon documentary evidence" as to the Complaint's two libel causes of action or the journalistic fraud cause of action. The further particulars are as follows:

7. Ms. Sullivan's affidavit is four sentences, annexing two documents. Her Exhibit A is purported to be "a true and correct copy of the transcript of Elena Ruth Sassower's sentencing hearing on June 28, 2004 before Judge Brian Holeman of the Superior Court of the District of Columbia" – whose source is not identified.

8. Based on the large numbering at the bottom of the transcript pages, Ms. Sullivan's source is the record on appeal substantiating my appeal of my conviction and six-month jail sentence for "disruption of Congress" to the D.C. Court of Appeals. This would have been accessible to Ms. Sullivan from plaintiff CJA's website, www.judgewatch.org, which posts the entire record of the "disruption of Congress" case, as likewise the entire record of the case *Sassower, et al., v. The New*

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[3] See, plaintiffs' accompanying memo of law, at pp. 18-19.

York Times, et al. – from which the June 28, 2004 transcript could also have been readily procured, as *The Times* annexed it to its motion to dismiss the complaint therein.

9. As Ms. Sullivan must be presumed to know, the June 28, 2004 transcript has no evidentiary value in supporting defendants' motion based on "documentary evidence", as my conviction and six-month jail sentence for "disruption of Congress" are not in dispute, having been identified by the Complaint's ¶3(c) and its Exhibit 1(c) and Exhibit 7 analysis. Indeed, based on plaintiffs' analysis of the very first paragraph of the article (Exhibit 7, pp. 6-7), Ms. Sullivan knows that the relevant transcript from the "disruption of Congress" case is of the U.S. Senate Judiciary Committee's May 22, 2003 hearing to confirm Richard Wesley to the Second Circuit Court of Appeals. This, however, she does not furnish – reflective of her knowledge that it corroborates that I was "completely silent" during Judge Wesley's confirmation, contrary to the article.

10. A copy of that corroborating May 22, 2003 transcript, accessed and downloaded from CJA's website, *via* the location indicated by the analysis (Exhibit 7, fn. 4), is annexed hereto (Exhibit 11a) in support of plaintiffs' cross-motion for summary judgment, together with my similarly-downloaded July 7, 2003 analysis of the transcript and video which I introduced at my "disruption of Congress" trial (Exhibit 11b).

11. Ms. Sullivan's affidavit purports that Exhibit B is "a true and correct copy of the July 6, 2006 Decision and Order in the case of Sassower v. The New York Times Co., No. 05-19841 (Sup. Ct. Westchester County)", but additionally includes the September 27, 2006 decision/order of the same judge in that case, Westchester County Court Judge Gerald Loehr. Ms. Sullivan also does not identify the source from which she obtained Judge Loehr's two unpublished decisions.

12. Upon information and belief, such source –whether CJA's website, the original court file of *Sassower v. The New York Times* from the Westchester County Clerk's Office, or *The Times*'

own case file – would have disclosed that plaintiffs appealed Judge Loehr's two unpublished decisions to the Appellate Division, Second Department. Indeed, Satterlee would have found the published appellate decision in *Sassower v. The New York Times* from its computerized search for adverse decisions involving plaintiffs to include in its memo of law, which Ms. Sullivan signed (see ¶¶20-22, *infra*). Yet, Ms. Sullivan's affidavit does not acknowledge that Judge Loehr's two decisions were appealed – let alone the issues plaintiffs raised on their appeals, the state of the record on the appeals, and the Appellate Division's decision.

13. Based on Satterlee's memo of law, it appears that the unstated purpose of Ms. Sullivan annexing Judge Loehr's July 5, 2006 decision/order[4] to her affidavit is three-fold: (a) to urge it as the basis for dismissing plaintiffs' cause of action for journalistic fraud (see pp. 1, 23); (b) to use it as authority for dismissing plaintiffs' libel causes of action (see pp. 15, 17-18, 21); and (c) to purport that plaintiffs' lawsuit is "simply the latest episode in a history of frivolous and abusive litigation spanning more than three decades..." (at pp. 2-3), a history including *Sassower v. The New York Times*.

14. This is a deceit on all three counts. The record of *Sassower v. The New York Times*, which Ms. Sullivan may be presumed to have examined, from whatever source, establishes that plaintiffs were entitled to summary judgment on both their libel and journalistic fraud causes of action, *as a matter of law*, that Judge Loehr's two unpublished decisions therein are each "judicial frauds" and were conclusively demonstrated as such by plaintiffs' appeals to the Appellate Division, Second Department, and that the Appellate Division, Second Department covered this up, totally, in a decision that did not identify ANY of their appellate issues, ANY of the facts, law, or argument they presented in support, and which concealed the existence of the

[4] July 5, 2006 is the date the decision/order was signed. July 6, 2006 is the entry date.

journalistic fraud cause of action in making it appear that plaintiffs' complaint therein was limited to a single defamation cause of action, when there were two.

15. In substantiation, annexed hereto are:

- plaintiffs' April 23, 2007 appellants' brief therein (Exhibit 12), whose recitation of *The Times*' dismissal motion, as demonstrated by plaintiffs' opposition/cross-motion therein (at pp. 11-20), bears uncanny resemblance to the dismissal motion that Satterlee has herein made[5]. The brief summarizes (at pp. 20-24) the respects in which Judge Loehr's unpublished July 5, 2006 decision is a judicial fraud, being factually and legally baseless – and knowingly so;

- the written oral argument I delivered both orally and in writing to the Appellate Division on December 14, 2007 (Exhibit 13), at which *The Times* did not show up;

- the Appellate Division's February 5, 2008 decision (Exhibit 14), a published decision, appearing at 48 A.D.3d 440, 852 N.Y.S. 180, and accessible electronically – whose concealment by Satterlee is suggestive of its recognition that the Appellate Division's obliteration of plaintiffs' journalistic fraud cause of action in that case is not helpful to the defendants herein.

16. These documents, as likewise the entire record in *Sassower v. The New York Times*, are accessible from CJA's website, most conveniently *via* the left sidebar panel "Suing *The New York Times*".

17. As for Ms. Smith's three-sentence affidavit, it annexes a single exhibit, its Exhibit A, which it purports to be "a true and correct copy of the Verified Complaint and its exhibits". This, too, is a deceit – and Ms. Smith does not identify the source for so-representing.

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[5] See, in particular, pp. 12-15, including that *The Times*' dismissal motion concealed the libel *per se* cause of action; concealed the individual and professional capacities of the plaintiff; concealed that plaintiffs were also representing the public; made no mention of the non-appearing DOES (thereby concealing that *Times* counsel was among them); and was non-probative, insufficient, false and misleading as to the other non-appearing defendants.

18. The copy of the Verified Complaint that Ms. Smith annexes was SUPERSEDED, twice, as Ms. Sullivan well knows. Indeed, Ms. Sullivan's knowledge is demonstrated by her failure to annex such supposedly "true and correct" copy as an exhibit to her own affidavit. This she could easily have done had she been willing to attest that it was "true and correct", which she plainly was not.

19. The facts, established by the attachments to my affidavit of service for the Verified Complaint (Exhibit 15b), are as follows. From 9:05 to 9:21 p.m. on October 4, 2010, I e-mailed to Ms. Sullivan the Verified Complaint and exhibits that Ms. Smith annexes as her Exhibit A. After doing so, I realized that what I had sent Ms. Sullivan had been scanned for legal size paper (which is why Ms. Smith's "true and correct" copy, on letter size paper, appears shrunken). Therefore, at 9:35 p.m., I resent Ms. Sullivan the Verified Complaint scanned for letter size paper by an e-mail identifying such fact – to which, at 9:56 p.m., she e-mailed me back that this was "Much appreciated". The next morning, at 8:01 a.m., I e-mailed Ms. Sullivan again, this time with a superseding Verified Complaint which I identified as "correct[ing] typos and mak[ing] some non-substantive clarifying changes" – further stating that I would hand-deliver a hard-copy, which I did the next day. Among the "clarifying changes", the addition of the words "contrary to the news article" at the end of ¶34 to highlight that the video of the Common Council meeting reflects that I (and my mother) left the Council chamber BEFORE Judge Hansbury and his wife and, therefore, had not "pursue[d]" him in leaving the Council chamber, as the article implied.

The False and Deceitful Decisions Included in Satterlee's Memorandum of Law to Besmirch Plaintiffs and Mislead the Court

20. Satterlee's memo of law (at fn. 2, p. 2; pp. 3-5) cites to and/or quotes various cases involving myself and my mother to wrongfully besmirch us and mislead the Court. Unlike Satterlee, I have direct, first-hand knowledge of all but one case – and as to that one, *Sassower v. Signorelli*, have sufficient knowledge to attest to the fraudulence of the cited decision, 99 A.D.2d 358, 472 N.Y.S.2d 702 (2d Dep't 1984). As to the other cases, I can attest to the fraudulence of the judicial decisions therein of my own personal knowledge – and have documented same, including as to the decisions Satterlee cites: *Sassower v. Field*, 973 F.2d 75 (2d Cir. 1992); *Sassower v. Mangano*, 927 F. Supp. 113 (S.D.N.Y. 1996); *Wolstencroft v. Sassower*, 234 A.D.2d 540 (2d Dep't 1996); *Sassower v. Commission on Judicial Conduct*, 289 A.D.2d 119 (1st Dep't 2001); and the unpublished July 5, 2006 decision in *Sassower v The New York Times.*

21. Each of these decisions obliterate the most fundamental adjudicative standards, omitting, where not falsifying and distorting, the material facts, and citing law that is either inapplicable by reason thereof or materially distorted. This is verifiable from the record of those cases[6] – posted on CJA's website, www.judgewatch.org:

- the full record of *Sassower v. Mangano*, spanning to the U.S. Supreme Court, documentarily establishing the fraudulence of the District Court decision to which Satterlee cites. This is most conveniently accessed *via* the sidebar panel "Test Case-Federal (*Mangano*)";

- the full record of *Sassower v. Commission*, spanning to the New York Court of Appeals, documentarily establishing the fraudulence of the Appellate Division, First Department decision to which Satterlee cites. This is most conveniently accessed *via* the sidebar panel "Test Cases-State-NY (*Commission*)";

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[6] As recognized by the law review article, "*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*", 73 Albany Law Review 1 (2009), by Gerald Caplan, the legitimacy of judicial decisions can only be determined by comparison with the record ("...Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like..." (p. 53)).

- the full record of *Sassower v The New York Times*, spanning to the Appellate Division, Second Department, documentarily establishing the fraudulence of Judge Loehr's unpublished decision to which Satterlee cites. This is most conveniently accessed *via* the sidebar panel "Suing *The New York Times*": (See ¶¶13-15, *supra*, Exhibits 12, 13*)*;

- the full record of the "Disruption of Congress" case, to the U.S. Supreme Court, documentarily establishing the fraudulence of the "disruption of Congress" charge and the unconstitutionality of my conviction and sentence[7]. This is most conveniently accessed *via* the sidebar panel "Disruption of Congress";

- the pertinent record of *Sassower v. Field*, to the U.S. Supreme Court, documentarily establishing the fraudulence of the Second Circuit Court of Appeals decision to which Satterlee cites. Such record, consisting of our petition for rehearing *en banc* to the Second Circuit Court of Appeals and our petition to the U.S. Supreme Court for a writ of certiorari and petition for rehearing thereof, was annexed to the cross-motion I made in the White Plains City Court eviction proceeding before Judge Hansbury[8] and is most conveniently accessed *via* the top panel "Latest News", with its link to "The Corrupt Judicial Appointment Process to White Plains City Court".

22. These and other case records, including of *Wolstencroft v. Sassower*, are among the "primary-source documentary evidence" that I and my mother provided and proffered to defendant Gannett over these past 20 years – to which the Complaint's ¶3(d) refers.

23. It may be noted that Satterlee partner Mark A. Fowler, Esq., whose name appears first on Satterlee's notice of motion and memo of law and who has submitted no affidavit, has

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[7] Satterlee's memo of law (at p. 4) purports that I "appeared uninvited" at the U.S. Senate Judiciary Committee's May 22, 2003 hearing to confirm the nomination of Richard Wesley to the Second Circuit Court of Appeals. This is a deceit. No "invitat[ion] was needed to "appear[]" at the Senate Judiciary Committee's hearing, which was a public hearing. The only "invitat[ion]" needed was to testify – and, as established by the video and transcript of the May 22, 2003 hearing, further explicated by my analysis thereof (Exhibits 11a, 11b), I respectfully made such request after the hearing had already been announced adjourned. Tellingly, Satterlee's memo does not deny or dispute the accuracy of the Complaint's ¶3(c) and Exhibit 7 (at p. 7) that the "disruption of Congress" charge was "trumped up", that I had "interrupted nothing", and that Judge Wesley's corruption as a New York Court of Appeals judge is "documented" – which it quotes (at p. 4).

[8] Also annexed to that cross-motion is my 1997 law review article, "*Without Merit: The Empty Promise of Judicial Discipline*" – the same as is Exhibit 1a to the Verified Complaint – whose description at page 95 under the heading "Direct, First-Hand Experience" is of the record in *Sassower v. Field*. It describes the Second Circuit Court of Appeals decision as "rest[ing] on non-existent facts" and "on its face, aberrant, contradictory, and violat[ing] black-letter law of the circuit and the U.S. Supreme Court."

knowledge of background facts of the Complaint pertaining to plaintiffs' interaction with defendant Journal News, as reflected by the Complaint's ¶4(i) and his December 21, 1995 letter to me, annexed as Exhibit 3d.

Plaintiffs' Service upon Defendant Eddings & Defendants DOES 1-10

24. As set forth at pages 48-50, 57-58 of plaintiffs' accompanying memo of law, Satterlee has failed to furnish the Court with any admissible evidence that defendant Eddings is no longer employed at defendant Journal News or by defendant Gannett.

25. I personally accompanied process server Nina Best to The Journal News' headquarters at 1 Gannett Drive, White Plains, New York 10604 on August 31, 2010 and, thereafter, to the main post office in White Plains New York. Her affidavit of service is annexed hereto (Exhibit 15a).

26. I was present when Ms. Best handed three copies of the Summons with Notice for defendant DOES 1-10 to The Journal News' Vice President of Operations, Tony Simmons, who stated he was authorized to accept service for them. Mr. Simmons declined to accept service for defendant Eddings, stating that defendant Eddings no longer worked there. He did not, however, provide any proof of defendant Eddings' employment status, be it at The Journal News or with Gannett. Consequently, and because I had been unable to secure another address for defendant Eddings, I stated that I wished Ms. Best to serve him with a copy of the Summons with Notice for defendant Eddings, that no authorization was necessary – only a person of suitable age and discretion – and that if, in fact, defendant Eddings did not work there, he could challenge the service as defective. Ms. Simmons' response was to not only refuse to accept service for defendant Eddings, but to state that he would tear up any Summons with Notice that Ms. Best

gave to the receptionist for defendant Eddings. As reflected by Ms. Best's affidavit (Exhibit 15a), this is what he did.

27. I was personally present when Ms. Best mailed the six envelopes, recited in her affidavit of service (Exhibit 15a). Prior thereto, I had prepared and stuffed the envelopes for her to mail. The Summons with Notice for DOES 1-10 was contained in the envelope addressed to GANNETT COMPANY, INC., The Journal News, and LoHud.Com at 1 Gannett Drive, White Plains, New York 10604. The envelope for defendant Eddings also was addressed to him at 1 Gannett Drive, White Plains, New York 10604. Each envelope was marked "Personal & Confidential" and bore my name and return address.

28. I received no return of any of the envelopes Ms. Best mailed. Such would indicate, at very least, that if defendant Eddings did not work at The Journal News, the mailed envelope containing the Summons with Notice was forwarded to him, giving him notice of the lawsuit.

29. My attempts to locate other addresses for defendant Eddings through the internet and by directory assistance, both prior to August 31, 2010 and immediately thereafter, including while *en route* to the post office with Ms. Best, were unsuccessful. Nor was I able to secure an address for defendant Eddings from the Journal News, whose human resources department I contacted on or about August 25, 2010, after telephoning Gannett's headquarters in Virginia and speaking to the head of its litigation bureau about effecting service.

The Unchallenged Argument & Legal Authorities Supporting the Complaint's Two Proposed Causes of Action

30. To assist the Court in confronting the Complaint's "Third Cause of Action for Journalistic Fraud" (¶¶65-79) and the additional cause of action for "Institutional Reckless

Disregard for Truth", requested in the "WHEREFORE" clause (at p. 33) – as more fully discussed at pages 41-48 of plaintiffs' memorandum of law – annexed hereto are the two law review articles on which those proposed causes of action rest, identified at footnote 14 of the Complaint:

- "*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*", by Professors Clay Calvert and Robert D. Richards, 11 Fordham Intellectual Property, Media & Entertainment Law Journal, 1 (2003) (Exhibit 16); 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 (2005) (Exhibit 17).

31. Satterlee's memo of law not only fails to confront ANY of the argument and legal authorities set forth in these two law review articles supporting those causes of action (Exhibits 16, 17), but conceals the very existence of these law review articles in moving to dismiss the Complaint for failure to state a cause of action.

32. This is all the more indefensible as Satterlee has all the expertise and resources to have provided the Court with a fully responsive brief on behalf of its $5.6 billion corporate client, "the nation's largest newspaper chain, publishing more than 82 daily newspapers in the United States, including USA Today, the nation's largest-selling daily newspaper" (Complaint, ¶6). The credentials of the Satterlee law firm and its attorneys, Mr. Fowler and Ms. Sullivan, representing this corporate giant, are reflected by the annexed print-outs from the Satterlee website (Exhibit 18).

ELENA RUTH SASSOWER

Sworn to before me this
29th day of November 2010

Notary Public

Diane M. Carpenter
Notary Public State of New York
No. 4964038
Qualified in Suffolk County
Commission Expires March 19, 20 14

TABLE OF EXHIBITS

Exhibit 10: White Plains Cable Television Access Commission video of the May 4, 2009 White Plains Common Council meeting

Exhibit 11a: stenographic transcript of the U.S. Senate Judiciary Committee's May 22, 2003 hearing to confirm the nomination of Richard Wesley to the Second Circuit Court of Appeals, as faxed to Elena Sassower on May 29, 2003

Exhibit 11b: Elena Sassower's July 7, 2003 analysis of the video and transcript

Exhibit 12: Plaintiffs' April 23, 2007 appellants' brief in *Sassower v. The New York Times*

Exhibit 13: Elena Sassower's written oral argument to the Appellate Division, Second Department on December 14, 2007 in *Sassower v. The New York Times*

Exhibit 14: Appellate Division's February 5, 2008 decision in *Sassower v. The New York Times*, 48 A.D.3d 440, 852 N.Y.S. 180

Exhibit 15a: Affidavits of Service for Summons with Notice: August 31, 2010
Exhibit 15b: Affidavit of Service for Verified Complaint: October 4-6, 2010

Exhibit 16: "*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*", by Professor Clay Calvert and Robert D. Richards, 11 Fordham Intellectual Property, Media & Entertainment Law Journal, 1 (2003)

Exhibit 17: "*Institutional Reckless Disregard for Truth in Public Defamation Actions Against the Press*", by Professors Randall P. Bezanson & Gilbert Cranberg, 90 Iowa Law Review 887 (2005)

Exhibit 18: Satterlee website print-out: (a) Our Approach; (b) Practice Area in Media Law; (c); credentials of Mark A. Fowler, Esq; (d) credentials of Meghan H. Sullivan, Esq.