ORAL ARGUMENT:
Appellate Division, Second Department:
December 14, 2007, 10 a.m.

[*#2006-8091, #2006-10709, #2007-186*]

ELENA RUTH SASSOWER, Individually and as Coordinator of the Center for Judicial Accountability, Inc., CENTER FOR JUDICIAL ACCOUNTABILITY, INC., and The Public as represented by them, v. THE NEW YORK TIMES COMPANY, The New York Times, ARTHUR SULZBERGER, JR., BILL KELLER, JILL ABRAMSON, ALLAN M. SIEGAL, GAIL COLLINS, individually and on behalf of THE EDITORIAL BOARD, DANIEL OKRENT, BYRON CALAME, and DOES 1-20

Good morning. I am Elena Ruth Sassower, plaintiff-appellant in this case, *pro se* in my individual capacity. In my professional capacity as the former coordinator of the Center for Judicial Accountability, Inc. – and now its director – I am represented by counsel, who additionally represents the Center. I and the Center also represent The Public, on whose behalf our verified complaint seeks judgment against defendants The New York Times Company, *et al* on our cause of action for journalistic fraud. For ourselves, our verified complaint seeks judgment on our causes of action for defamation and defamation *per se* [R-79-90 (¶¶139-175), "WHEREFORE")].

At issue on these consolidated appeals is the integrity of the judicial process – and all six of our "Questions Presented" to this Court are addressed to this transcendently important issue. On these appeals, as below, the appearing defendants are represented by The New York Times Company Legal Department in the person of George Freeman,

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who here – as there – conceals that he himself and the Legal Department are defendant DOES, sued for conduct generating this suit and, specifically, for their prelitigation misfeasance with respect to the document decisive of the viability of the two defamation causes of action [R-36 (¶15), R-75-79 (¶¶125-138)]. That document is the 18-page, paragraph-by-paragraph contextual analysis of the column, annexed to the complaint as Exhibit A [R-97-205] and incorporated by reference in the complaint's three causes of action [R-79 (¶140), R-84 (¶156), R-86 (R-163)].

Mr. Freeman's flagrant misconduct in the court below is encompassed by two of the "Questions Presented" and is fully particularized by our appellants' brief. Our reply brief chronicles his continued flagrant misconduct before this Court by his respondents' brief.

As the record shows, Mr. Freeman made a pre-answer motion to dismiss the verified complaint for failure to state a cause of action pursuant to CPLR §3211(a)(7), which, in addition to its other fatal deficiencies, falsified and omitted the complaint's material allegations – including our Exhibit A analysis – and which rested on law that was either inapplicable by reason thereof or which he falsified and distorted [R-415-468, R-609-619]. Plaintiffs demonstrated this by their opposition papers, which were joined with a six-branch cross-motion, whose first three branches were specifically directed against Mr. Freeman and the Legal Department: (1) for costs and sanctions against them; (2) for disciplinary referrals against them; and (3) for their disqualification on grounds of conflict of interest and because they are witnesses. The three further branches of the cross-motion were: (4) for summary judgment against the appearing defendants; (5) a default judgment against the non-appearing defendants; and (6) for such other and

further relief as was just and proper [R-469-608, (R-609-619), R-620-633), R-634-699].

Judge Gerald Loehr – to whom the case was steered, in violation of random assignment rules [R-721] – and who, as a County Court judge with less than two years on the bench was ineligible for assignment to this Supreme Court case, and for whom legal qualifications had been waived [R-915] – then "threw" the case by a decision which granted Mr. Freeman's dismissal motion, without identifying any of the facts, law, or legal argument presented by our opposition or even that we had interposed opposition [R-7-17]. In so doing, the decision falsified and omitted the complaint's allegations even more egregiously than Mr. Freeman had, and like him, relied on inapplicable law or law that was otherwise false and distorted.

Although the legal standard for dismissal for failure to state a cause of action pursuant to CPLR 3211§(a)(7) is that "each and every allegation" of the complaint is to be considered "as true", a standard we had placed before Judge Loehr by our opposition, quoting from the New York Court of Appeals in *Silsdorf v. Levine*, 59 N.Y.2d 8, 12 (1983) [R-545] – Judge Loehr's decision, though citing *Silsdorf* [R-8], omitted all but nine of the complaint's 175 allegations – and these nine he expurgated and mischaracterized – with none of these nine, moreover, comprising the 37 allegations that are the complaint's three causes of action [R-79-89 (¶¶139-175)]. Nor did his decision otherwise mention our Exhibit A analysis, with its paragraph-by-paragraph showing that the column, by defendant Marek Fuchs, published on the front page of The Times' Westchester Section, was not just false, but knowingly so, as demonstrated by its recitation of the telephone interview I gave Mr. Fuchs, while incarcerated, which had recounted for him the facts about my arrest for "disruption of Congress", my trial and

conviction in D.C. Superior Court, and the six-month jail sentence imposed upon me – facts whose truthfulness Mr. Fuchs could readily verify – and which I urged him to verify from the transcript and other record documents posted on the Center's website, which I discussed with him, along with their far-reaching constitutional and legal significance. As shown by the analysis, the innumerable express and implied facts that Mr. Fuchs thereafter reported in his column were methodically falsified and skewed by him for purposes of lending substance to his defaming characterizations of me and the Center, which his column then further bolstered by attributing them to unidentified "staunchest defenders", "defenders" and a "most earnest listener" – anonymous persons demonstrated by the analysis to be fictions. As for our cross-motion, Judge Loehr's decision also denied it, all of whose relief we were entitled to, *as a matter of law*.

We documented the fraudulence of this decision in the reargument/renewal motion we thereafter made, additionally seeking Judge Loehr's disqualification for demonstrated actual bias and interest, and, if denied, for disclosure by him and for referral of the case assignment back to the Administrative Judge who had made it [R-700-836, (R-837-842), R-843-900]. Judge Loehr denied this motion by a decision no less fraudulent than his prior decision [R-26-29].

Our consolidated appeals herein expressly seek from this Court <u>specific factual findings</u> with respect to our showing that each of these two decisions are judicial frauds, triggering this Court's mandatory "Disciplinary Responsibilities" under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, to refer Judge Loehr for disciplinary and criminal investigation and prosecution, in addition to Mr. Freeman and The New York Times Company Legal Department, who seek – before this Court, as

below – to be the beneficiaries of these fraudulent decisions. Thus, for instance – in face of our Exhibit A analysis particularizing the column's myriad of express and implied facts which are false and demonstrably so, Mr. Freeman's opposing brief to this Court purports, as if true:

> "Judge Loehr correctly pointed out that the only factual inaccuracy plaintiffs identified 'is that the article reported that Sassower had been arrested for disorderly conduct when in fact the charge was disruption of Congress.' As he correctly concluded, 'such a minor discrepancy does not amount to falsity as a matter of law.'" (p. 19, underlining added).

Indeed, Mr. Freeman promotes and urges Judge Loehr's decisions on the Court throughout.

Before reserving the balance of my time for rebuttal, I will merely observe that if this Court is fair and impartial, as is its obligation to be, it will be making history simply by following the law. Based on the state of the record, this Court's appellate duty requires that it not only reinstate our well-pleaded, indeed, documented, 175-allegation verified complaint, but that it grant our cross-motion for summary judgment on our causes of action for defamation, defamation *per se*, and journalistic fraud, in addition to a default judgment against the non-appearing defendants – including the defendant New York Times Company DOES.