

CENTER for JUDICIAL ACCOUNTABILITY, INC. *

Post Office Box 8220
White Plains, New York 10602

Tel. (914) 421-1200
Fax (914) 428-4994

E-Mail: judgewatch@aol.com
Web site: www.judgewatch.org

Elena Ruth Sassower, Director
Direct E-Mail: judgewatchers@aol.com

DATE: April 4, 2007

TO: Social Science Research Council –
Necessary Knowledge for a Democratic Public Sphere Program

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

RE: Small Grants Project for Academic-Advocacy Collaboration in Media &
Communications

PROPOSAL:

Understanding Why and How Academia Betrays Both Scholarship and Advocacy – And What Can Be Done About It

Short description of how the research will be used to advance public-interest change in the media/communications area:

Media reform is being made by a landmark public interest lawsuit brought by our non-partisan, non-profit citizens' organization. Yet although the lawsuit implements the recommendations for media reform and accountability propounded in three law review articles by five professors, these professors have refused our requests for comment, let alone guidance. Likewise, other professors and institutes of research and pedagogy. All have also ignored our entreaties that the primary source evidence generated by the lawsuit be made the subject of scholarship and teaching. Why? And what remedial strategies can be devised to build a "culture of collaboration" between academia and activists?

Research Project:

This is a casestudy designed to probe academia's sabotage of an historic opportunity to advance and successfully test their own theories and recommendations for media reform and accountability, as well as their materially false and incomplete scholarship about press performance, media law, and the First

* 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.

Amendment. The project's goal is to examine what, if anything, can be done about the institutional, professional, and personal conflicts of interests that are presumably responsible for academia's betrayal of their duty of honest scholarship and ethical responsibility to the public.

At issue is the first-ever public interest lawsuit against The New York Times for journalistic fraud – a cause of action we are utilizing to vindicate the public's right to “necessary knowledge for a democratic public sphere”, which is the basis for the First Amendment's free press guarantee. The viability of a journalistic fraud cause of action was posited by 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), by Professors Clay Calvert and Robert Richards, who saw it as a powerful tool for media accountability. The lawsuit also relies on two other law review articles: “*Access to the Press – A New First Amendment Right*”, 80 Harvard Law Review 1641 (1967), by Professor Jerome Barron, who – 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), by Professors Randall P. Bezanson and Gilbert Cranberg, who recognized that the media has become a profit-driven business, substituting financial considerations for journalistic ones, and necessitating a different framework of liability.

Our letter of today's date to Social Science Research Council President Craig Calhoun summarizes the situation, with the particulars laid out by its enclosures. These enclosures include, in addition to the three law review articles, copies of our correspondence with the five professors who authored the articles, as well as with the following institutes of media research and pedagogy: Project for Excellence in Journalism, Columbia University Graduate School of Journalism, Shorenstein Center on the Press, Politics and Public Policy at Harvard University, Nieman Foundation for Journalism at Harvard University, and Program on Law and Journalism at New York Law School. These are illustrative of the high-quality of our extensive correspondence to professors of law and journalism and with institutes of media research and pedagogy posted on our website, www.judgewatch.org, accessible *via* the “Outreach” link to our “Suing The New York Times” webpage. Such correspondence endeavored to open dialog with them about the law review articles and about our lawsuit based thereon. It also sought *amicus curiae* or other legal assistance, whether *pro bono* or paid, and/or referrals to legal scholars in a position to assist. Equally important, it sought to ensure that the on-the-ground empiric evidence underlying and generated by the lawsuit would be incorporated into First Amendment and media law scholarship, commentary, and teaching.

As reflected by our letter to President Calhoun, virtually all of our correspondence was unresponded-to by the professors and the institutes of scholarship and teaching to which we turned – with none substantively commenting upon the law review articles or the lawsuit or on building media and legal scholarship based thereon. It was such state of affairs that led to our attendance at the Social Science Research Council's Pre-Conference in Memphis, Tennessee on January 11, 2007, with a prepared handout whose concluding words, in boldfaced type, read:

“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 [the] groundbreaking public interest lawsuit against The New York Times which has given it birth.”

The proposed research would involve an independent examination of the correspondence and the referred-to lawsuit record and other primary source documents. This would be followed by interviews with the professors and institutes to whom the correspondence was directed to obtain their answers as to why they did not respond and took no steps to ensure that scholarship in media and First Amendment law was informed by the powerful primary source evidence underlying and generated by the lawsuit. Interviews can also be conducted of other professors and academic personnel with whom we interacted in other ways – especially in face-to-face encounters which included providing them with copies of handouts about the lawsuit and the law review articles. This would include professors participating at:

- (1) the January 11, 2007 Media Policy Research Pre-Conference, co-sponsored by the Social Science Research Council and Free Press;
- (2) the January 12-14, 2007 National Conference on Media Reform, sponsored by Free Press;
- (3) the January 19, 2007 conference “Reclaiming the First Amendment: Constitutional Theories of Media Reform”, co-sponsored by Hofstra University Law School and the Brennan Center for Justice at New York University;
- (4) the February 8, 2007 symposium “Media Reform: Is It Good for Journalism”, sponsored by Columbia University Graduate School of Journalism; and
- (5) the February 16, 2007 symposium “Writing About the Law: From Bluebook to Blogs and Beyond”, sponsored by the Program in Law and Journalism at New York Law School.

These interviews will enable a precise evaluation of the real-life impediments to establishing a “culture of collaboration” between academics and activists from which strategies to overcome these obstacles can be formulated. The efficacy of these strategies can then be tested – both as to the casestudy, as well as generally.

Within the casestudy, the ultimate effectiveness of the devised strategies would be: (1) *amicus curiae* briefs from academia addressed to our lawsuit’s application of the three law review articles to support the journalistic fraud cause of action -- and the state of the lawsuit record on appeal with respect thereto; and (2) development of scholarship, commentary, and teaching based on the primary source documentary evidence underlying the lawsuit and generated by it.

The capstone would be the convening of a symposium on the “culture of collaboration” achieved.

Description of the Proposing Organization:

The Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens' organization based in White Plains, New York. Founded in 1989, CJA is dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful, as likewise the judicial process itself. We do this on federal, state, and local levels by interacting with these processes – and documenting these interactions by primary source documents that can be independently verified and reported on by academia and the press. Unfortunately, we have also documented that when it comes to examining and reporting on evidentiary proof of systemic corruption involving judicial selection, judicial discipline, and the judicial process, academia and the press flagrantly abandons any interest. Meaningful reforms cannot be achieved as a result. Our public interest lawsuit against The New York Times chronicles this, where it is the basis of the journalistic fraud cause of action against our nation's "most important news organization"¹.

CJA is a §501(c)(3) tax-exempt, membership organization. Our annual operating budget is approximately \$75,000.

The Name, Institutional Affiliation and Research Experience of the Academic Partner:

We have NO academic partner for this research project because academia has rejected all our efforts at outreach and collaboration. It is to find out why – and to devise appropriate remedial strategies -- that we seek a grant for academic-advocacy collaboration. Upon attaining such collaborative grant, our first priority will be to locate the academic partner for the proposed research. Alternatively, we ask that the Social Science Research Council utilize its extensive network of academic contacts to assign us a suitable academic partner.

Project Timeline:

The proposed examination of correspondence, the lawsuit record, and interviews with professors and institutions of research and pedagogy can be accomplished and written up within two months, together with a formulation of remedial strategies. An additional month or two should suffice for testing within the casestudy as to whether these strategies have any effectiveness. The true test of effectiveness – *amicus curiae* briefs and the development of scholarship, commentary, and pedagogy based on the lawsuit – will be ascertainable within 4-12 months.

Budget:

We are requesting the maximum grant of \$7,500 to cover expenses – hopefully enough to include the symposium!

¹ So described by Alex Jones, Director of the Shorenstein Center on the Press, Politics and Public Policy at Harvard, because of The Times' "ability to influence the nation's news agenda".

