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January 25, 2007

Robert W. McChesney
Co-Founder, President & Board Chairman, Free Press
Research Professor, Institute of Communications Research,
University of Illinois at Urbana-Champaign
Host, "Media Matters", WILL-AM Radio

RE: Putting Theory into Practice & Practice into Scholarship & Commentary:
ON-THE-GROUND MEDIA REFORM: First-of-its-Kind Public Interest
Lawsuit vs The New York Times for Journalistic Fraud in Vindication of the
First Amendment

Dear Professor McChesney:

This follows up our brief conversation on Friday, January 19th, shortly before 8:30 a.m., upon my arrival at the Hofstra University Law School conference "Reclaiming the First Amendment: A Conference on Constitutional Theories of Media Reform". You had been sitting in the lounge, chatting with Professor Jerome Barron when I arrived. We exchanged words some minutes later, when you got up.

You recognized me from Free Press' National Conference on Media Reform in Memphis as having contributed comments at the January 14th session "Media Scholars' Policy Research Review", which you had moderated. In our brief conversation, I stated that I wished to discuss those comments with you and recounted that I had tried to do so at the close of the Memphis conference, but had been unable to find you. I had, however, run into John Nichols, who, upon my asking if he knew where you were, told me that he would be seeing you in 45 minutes. I then gave John papers to give you – a double-sided handout about CJA's groundbreaking public interest lawsuit against The New York Times and copies of my prior correspondence with you about the lawsuit and the Hofstra conference. I also asked John to tell you that I would be seeing you at the Hofstra conference.

* 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.

You replied that John had not given you anything. You also stated – in response to my attempt to arrange an appropriate time for us to speak – that you would be at the Hofstra conference until its end. I distinctly remember saying that I did not think I would have any difficulty in finding you since, in contrast to the Memphis conference, the Hofstra conference was small.

I did not see you at the end of the Hofstra conference, however. Indeed, hours before the conference ended, I was unable to locate you in the audience when I looked to find you in the afternoon sessions following Professor Barron's presentation. As I recollect, during the morning session, you had been sitting in the back with Professor Ed Baker, with whom you had participated on the first panel.

Am I mistaken in my recollection that you told me that you would be at the Hofstra conference until the end? And were you in the audience when I asked Professor Barron his opinion as to whether the journalistic fraud cause of action – brought for the first time by The Times lawsuit – represented the kind of "legal intervention" to secure a "marketplace of ideas" for which he had searched 40 years ago in his law review article, "Access to the Press – A New First Amendment Right", which the conference was celebrating?

Since Professor Barron publicly responded that he was "not familiar" with the lawsuit and was "no longer looking for cases" because he was "too old", please advise as to your view of the lawsuit – and when you will be available to discuss the public comments I made at the January 14th "Media Scholars' Policy Research Review". For your convenience, I have transcribed those comments from the audiotape¹:

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

The goal of this conference is media reform. For the past nearly one year we have had a public interest lawsuit, ongoing, against The New York Times for journalistic fraud. It's the first-ever lawsuit to bring such cause of action, which is based on a law review article by the co-directors of the Pennsylvania Center for the First Amendment at Pennsylvania State University, who posited, four years ago, a journalistic fraud cause of action, said that it would not be barred under the First Amendment, would be viable.

This is the first lawsuit to bring that cause of action. It is a powerful instrument to advancing media reform, bringing media accountability, and we have not been able to get any dialog with the professors who wrote the article. Nor have we been able to obtain any dialog and input from [three] other professors who wrote two other law review articles that we have been using in substantiation of this dramatic cause of action for journalistic fraud.

Additionally, and because this conference began by an invocation by Craig Calhoun about the need to bring together scholarship and activists, the academy and activists/advocates, and because Professor [Delli] Carpini spoke so eloquently in conclusion to the same effect, let me just tell you that we have not only [not]

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

been able to get dialog from the authors of these important law review articles who theorized, who recommended reform that is now being implemented in a dramatic lawsuit, but we have not been able to get from any other scholars to whom we have turned – law professors, the most eminent names in First Amendment and media law, the institutions of research and learning – we have not been able to get from them any dialog, any input, any thought, let alone advocacy and support.”

Man’s Voice: “Hire a good P.R. firm.”

“Well, we haven’t also been able to get any media about this important lawsuit.

I will, in conclusion, urge – and ask – since you said there must be a marriage between the academy and advocates and activists and, indeed, you cannot make media reform unless it happens on-the-ground and you put in practice your pretty theories, I urge you to be kind enough to read the handout about this important public interest lawsuit against The New York Times for journalistic fraud, which has such promise and potential, and to do your best, to do your utmost, to bring to bear the academic community, its involvement.

One last thing, because we didn’t have interlocutors –

Thank you. Thank you.

The ultimate interlocutor was The New York Times, which demonstrated it had no defense.”

Please also advise as to whether – when I made these comments – you realized that you were among the scholars to whom I was referring, having received from me three memos dated March 13, 2006, March 24, 2006, and December 14, 2006, addressed and e-mailed to the Hofstra conference participants – to which neither you nor they had responded. In the event you did not receive these e-mailed memos, please advise. Indeed, these three memos were what I had wanted to give you personally at the end of the Memphis conference, and which I then gave to John Nichols to give you.

On January 17, 2007, three days after the Memphis conference and two days before the Hofstra conference, I sent you and the other Hofstra conference participants a further e-mail. Entitled “Jan. 19, 2007 conference – Putting into Practice ‘Constitutional Theories of Media Reform’ in Vindication of the First Amendment”, it stated:

“Dear Professors:

As I have received no response from any of you to my December 14, 2006 memo about the Center for Judicial Accountability’s groundbreaking public interest lawsuit against The New York Times for journalistic fraud – putting into practice three separate law review articles, including Professor Bar[r]on’s ‘*Access to the Press – a New First Amendment Right*’ – I am resending the e-mail which transmitted it.

Although the full lawsuit record is posted on CJA's website, www.judgewatch.org – accessible *via* the sidebar link ‘Suing The New York Times’ – I will, for your convenience, be bringing a duplicate copy to the conference for your review.

I look forward to answering your questions and to your scholarly opinion and comment about this history-making case.

Thank you.”

Please advise if you did not receive and read this January 17th e-mail prior to our brief January 19th conversation. Certainly, I had you in mind when I brought the duplicate copy of the Times lawsuit to the Hofstra conference in the canvas bag from the Memphis conference, imprinted with the words: “reform media. transform democracy. freepress * www.freepress.net”.

All my aforementioned e-mailed correspondence pertaining to the Hofstra conference is posted on CJA’s website, www.judgewatch.org, accessible *via* the sidebar panel “Suing The New York Times” – where it is posted on the “Outreach” webpage relating to “Law Schools and Law Professors”. Nevertheless, I am attaching it herewith, for your convenience. Likewise, I am attaching the handout to which I referred at the January 14th “Media Scholars’ Policy Research Review”. The second side, whose capitalized, bold-faced title is “**ADVANCING MEDIA REFORM BY PUTTING INTO PRACTICE THE LAW REVIEW RECOMMENDATIONS OF SCHOLARS**”, closes with the following paragraph:

“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.”

I look forward to your response as to what you will do, at this juncture, to facilitate such “public discussion”. This includes by scholars and institutions of research and pedagogy, from whom, to date, there has been NO COMMENT.

Thank you.

Yours for a quality judiciary
and responsible journalism,



ELENA RUTH SASSOWER, Director
Center for Judicial Accountability, Inc.

Attachments:

- March 13, 2006 memo
- March 24, 2006 memo
- December 14, 2006 memo
- Double-sided handout: January 11-14, 2007
- January 17, 2007 e-mail

cc: John Nichols, Free Press Co., Founder & Board Member