IN-DEPTH ANALYSIS
OF THE "DEEMED TRUE" ALLEGATIONS OF THE VERIFIED COMPLAINT
RECITED BY THE JULY 5, 2006 DECISION & ORDER

> *NOTE: As the July 5, 2006 decision and order does not support its recitation of the purported "deemed true" allegations of the verified complaint by any citation to the complaint's paragraphs, the paragraphs herein indicated are based on comparing the recitation with the complaint.*

The decision starts off (at p. 2) with a paraphrase of ¶3 relating to plaintiff SASSOWER, which, by reciting that she is "a citizen of the United States and of the State of New York", gives the impression that it will be faithful to the most miniscule of the complaint's allegations. However, the paraphrase then converts SASSOWER into a "reader of the New York Times", materially omitting that she must first "purchase" the newspaper and is compelled to do so "[i]n discharge of her professional responsibilities". It also materially omits that on or about October 28, 2005, SASSOWER purchased 100 shares of NEW YORK TIMES COMPANY stock, becoming a shareholder in the company. Such excision of allegations that The Times is a for-profit, money-making, corporate entity is thereafter replicated throughout the decision.

The decision (at p. 2) then moves to a paraphrase of ¶4 relating to plaintiff CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA). It here excises the materially-significant allegation which ¶4 had itself underlined for emphasis, *to wit*, that CJA provides information

> "in independently-verifiable documentary form, to individuals and institutions charged with protecting the public from corruption. Among such institutions, The New York Times." (underlining in the original).

The decision thereafter similarly excises all the complaint's innumerable allegations that plaintiffs provided The Times with readily-verifiable primary source documentary

evidence of the corruption of the processes of judicial selection and discipline and of the judicial process itself, whose probative significance The Times never denied or disputed. It does this notwithstanding plaintiffs' causes of action, expressly rest on such uncontested, indeed, incontestable, documentary evidence (¶¶144-145, 148, 150, 164-166).

Plaintiffs' June 1, 2006 memorandum of law highlighted (at p. 16) the legal significance of this documentary evidence in that it enabled defendants to

> "independently draw their own conclusions about these vital governmental processes and the fitness of involved public officers, including those seeking re-election and further public office – and discharge their First Amendment obligation to the public based thereon, consistent with The Times' front-page motto of 'All the News That's Fit to Print' and its public declarations about monitoring government and informing voters.",

The memorandum also cited (at p. 25) the New York Court of Appeals' caveat in *Gaeta v. New York News, Inc.*, 62 N.Y.2d 340, 349 (1984), that "editorial judgments as to news content" must be "sustainable". Such uncontested evidence as plaintiffs provided The Times establishes its knowledge that its "editorial judgments as to news content" are not remotely "sustainable" with respect to the processes of judicial selection and discipline and the integrity of the judicial process – issues of "utmost public concern", recognized by the caselaw quoted by plaintiffs' memorandum of law (at p. 6): *Landmark v. Virginia*, 435 U.S. 829, 838-9 (1978), and *Rinaldi v. Holt, Rinehart & Winston*, 42 N.Y.2d 369, 380 (1970) – which is why the decision expunges it here and throughout.

Having paraphrased ¶¶3-4 as to plaintiffs, the decision does not then paraphrase ¶¶5-15 as to defendants. The Court thereby replicates Mr. Freeman's omission of these paragraphs from his dismissal motion, noted by plaintiffs' June 1, 2006 memorandum of law (at p. 6).

Thus omitted are the allegations that

> "defendant NEW YORK TIMES COMPANY [is] 'a money-making business, publicly traded on the New York Stock Exchange', whose revenues in 2005 were $3.4 billion [fn] and whose 'flagship', The New York Times, 'actively promotes itself as an authoritative, comprehensive news source', including by 'extensive advertising' – most prominently by 'its front-page masthead slogan, 'All the News That's Fit to Print'" (at ¶¶5, 6).

Plaintiffs' memorandum highlighted (at pp. 6, 62-64) the legal significance of these allegations – with plaintiffs' June 1, 2006 cross-motion seeking, as part of its fifth branch relief for summary judgment, removal of the front-page slogan "All the News That's Fit to Print" as a false and misleading advertising claim, in violation of public policy, including General Business Law, Article 22-A (§§349 and 350, *et seq.*) and New York City Administrative Code §20-700, *et seq.*

Tellingly, in denying the cross-motion, the decision (at pp. 9-10) conceals the relief sought by this branch – just as it conceals the complaint's explicit final allegation on which it rests, *to wit*,

> "THE NEW YORK TIMES COMPANY has subordinated its First Amendment obligations to its own business and other self-interests. These include its interest in procuring the site for its new corporate headquarters, as well as favorable tax abatements and financial terms worth hundreds of millions of dollars..." (¶175).

Of course, in skipping over ¶¶5-15 pertaining to defendants, the decision also omits the allegations that prior to The Times' May 11, 2003 front-page confession of Jayson Blair's "journalistic fraud", the highest echelons of The Times had received and/or were knowledgeable of plaintiffs' many complaints, going back to 1992, that the newspaper was:

> "suppressing coverage of objectively-significant, readily-verifiable, documented stories about the corruption of the processes of judicial

> selection and discipline and of the judicial process itself, involving public officers seeking re-election and further public office" (¶7(b), also ¶¶8(b), 10(b), 11(b), 15).

This includes defendant SULZBERGER who

> "To the extremely limited extent [he] responded, he refused to take any corrective action, refused to elaborate upon the "All the News That's Fit to Print" standard, and refused any meeting at which The Times' criteria for coverage might be discussed." (at ¶7b).

Having skipped the allegations pertaining to the defendants, the decision does not then proceed to the complaint's "Factual Allegations", which begin at ¶16. Instead, the decision catapults over the first 51 "Factual Allegations (¶¶16-66) and substitutes (at pp. 2-3) three-quarters of a page of matter that is almost entirely NOT part of the complaint's allegations.

This substituted matter is as follows:

> "Since at least 1999, plaintiffs were seeking legal redress and press coverage concerning what they believed to be the corruption of the process by which judges were being appointed to the New York State courts, including the New York Court of Appeals, which corruption, they asserted, extended to Governor Pataki and his judicial appointments. On March 26, 1999, plaintiffs filed a complaint against Governor Pataki with the New York State Ethics Commission. Neither the Ethics Commission nor Attorney General Spitzer would pursue this complaint and it was apparently dismissed. Sassower then commenced an article 78 proceeding in the nature of mandamus against the Commission on Judicial Conduct of the State of New York seeking, among other relief, to compel the Commission to investigate her complaints of judicial misconduct. This proceeding was also dismissed (*Sassower v. Commission on Judicial Conduct*, 289 AD2d 119 [1st Dept 2001], lv denied 98 NY2d 720 [2002] and 99 NY2d 504 [2002]). In numerous letters, plaintiffs wrote to The Times demanding press coverage of the foregoing and offering to provide 'readily-verifiable' proof of the corruption of the process by which judges are appointed to our State's highest court. To the extent The Times provided press coverage of Governor Pataki's judicial appointments, it was, in plaintiffs' estimation, insufficient to alert the public to this issue.
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> Having been appointed by Governor Pataki to the New York Court of Appeals and having subsequently resigned therefrom, Judge Richard Wesley was nominated by President Bush to sit on the United States Court of Appeals for the Second Circuit. On May 22, 2003 Sassower attended the United States

> confirmation hearings with respect to Judge Wesley's nomination and attempted to speak in opposition to the nomination. She was arrested, charged with disruption of Congress and ultimately convicted in the Superior Court for the District of Columbia." (at pp. 2-3).

As alleged mantra-like throughout the complaint, including by ¶¶16-66, CJA's advocacy rests on readily-verifiable primary source documentary evidence establishing corruption – not on what it "believe[s]". Nor do these first 51 "Factual Allegations" have anything to do with plaintiffs' advocacy relating to the corruption of judicial appointments to "the New York State courts, including the New York Court of Appeals", except tangentially by way of explicating the conflicts of interest suffered by the Times in reporting on the national story of the corruption of federal judicial selection involving Judge Wesley's nomination and confirmation to the Second Circuit Court of Appeals. Such national story, as likewise its electoral ramifications on the political future of New York's home-state senators, Charles Schumer, running for re-election in 2004, and Hillary Rodham Clinton, touted as a 2008 presidential candidate, is the focal subject of ¶¶16-66. These track and summarize plaintiffs' on-going correspondence and complaints to The Times' highest echelons who are the named defendants: SULZBERGER, KELLER, ABRAMSON, SIEGAL, THE EDITORIAL BOARD, laying before them – *via* CJA's website "Paper Trail" – the primary source documents establishing this major national story and particularizing The Times' multitudinous conflicts of interest in reporting it, arising from its suppression of every aspect of the underlying New York corruption stories on which it rested, for which plaintiffs had also provided The Times with substantiating documentation. Plaintiffs stated (at ¶24) that reporting on the instant national story would begin a process by which The Times would have to acknowledge the legitimacy of all their past complaints, spanning more than a decade.

In lieu of these first 51 "Factual Allegations" – whose evidentiary significance in establishing plaintiffs' causes of action for defamation, defamation *per se*, and journalistic fraud was reinforced at pages 14-15 of plaintiffs' June 1, 2006 memorandum of law – the decision purports that the "deemed true" allegations involve CJA's March 26, 1999 ethics complaint against Governor Pataki and the inaction of the Ethics Commission and Attorney General Spitzer with respect thereto. In fact, these are nowhere mentioned by the complaint's 123 "Factual Allegations"[1] – nor by the additional 37 allegations constituting its three causes of action (¶¶139-155, 156-162, 163-175).

As for plaintiffs' Article 78 proceeding against the New York State Commission on Judicial Conduct, the decision's reference to it – like its reference to plaintiffs' advocacy pertaining to the New York State judicial appointments process – is not derived from the "Factual Allegations" of ¶¶16-66. These paragraphs reference the lawsuit only as part of plaintiffs' correspondence with The Times explaining why The Times suffers from conflicts of interest in reporting on the corruption of federal judicial selection involving Judge Wesley's nomination and confirmation. (¶¶42, 46, 49, 50, 55, 113, 118, 121)[2]. The decision excises such context and describes the lawsuit in a way the complaint nowhere does. The complaint

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[1] It would appear that the Court plumbed for such information deep within plaintiffs' January 23, 2003 written statement of opposition to the confirmation of Susan P. Read to the New York Court of Appeals (at p. 8), indeed from its attached appendix [A-43-43], annexed as Exhibit 2 to the complaint's Exhibit A analysis of the FUCHS' column AND/OR from pages 4-5 of plaintiffs' October 13, 2003 letter to defendant KELLER, annexed as Exhibit H to the complaint. Evident from same is that plaintiffs' document-based advocacy with respect to the corruption of the state judicial appointments process went back MANY YEARS BEFORE "1999" and that their filed March 26, 1999 complaint was NOT dismissed by either the Ethics Commission or Attorney General Spitzer.

[2] Mr. Freeman's dismissal motion engaged in comparable misconduct as to the lawsuit against the Commission: see plaintiffs' June 1, 2006 memorandum of law (p. 18).

does not describe the lawsuit as seeking "to compel the Commission to investigate [SASSOWER's] complaints of judicial misconduct", but as a "public interest lawsuit against the Commission" (¶¶107, 109), in which the Commission was the beneficiary of a succession of fraudulent judicial decisions without which it would not have survived. This includes decisions of the New York Court of Appeals in which Judge Wesley participated, a material fact also concealed by the decision.[3]

No allegations of the complaint purport that plaintiffs' letters "demand[ed] press coverage of the foregoing". To the extent these letters "offer[ed] to provide 'readily-verifiable' proof of the corruption of the process by which judges are appointed to our State's highest court." – such was in addition to the readily-verifiable proof" that plaintiffs had already and repeatedly provided The Times. As for The Times' "press coverage of Governor Pataki's judicial appointments", the complaint does not allege that "it was, in plaintiffs' estimation, insufficient to alert the public to this issue". Rather, the complaint alleges (¶¶46(a), 120, 147, 148(b) & (c), 166) that The Times had suppressed ALL report of this readily-verifiable documentary evidence establishing the corruption of the state judicial appointments process and the complicity of public officers seeking re-election or further public office, such that the public was entirely ignorant of "this issue" – and that this suppression was without denying or

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[3] The Court does its own research in supplying (at p. 3) citations for the Appellate Division, First Department's decision in the case and for the New York Court of Appeals' decision dismissing the appeal of right – which it mislabels as for leave, only its second citation being the Court of Appeals' decision denying leave. In so doing, the Court knows from the complaint (¶¶ 42, 43(a), 46, 118, 121(a)) – but does not disclose – that these judicial decisions are not only fraudulent, but underlie CJA's opposition to Judge Wesley's confirmation. Indeed, the complaint particularizes the fraudulence of these decisions by annexing, as Exhibit R-2, CJA's March 26, 2003 memo, identifying it (at ¶¶43(a), 107, 113, 114(c)) as the most important document on CJA's website "Paper Trail Documenting the Corruption of Federal Judicial Selection/Confirmation & the 'Disruption of Congress' Case it Spawned" (Exhibit C-1, C-3).

disputing the probative significance of such documentary evidence (¶¶148, 165).

As for the Court's reciting (at p. 3) that Judge Wesley "resigned" from the New York Court of Appeals before being nominated by President Bush to the Second Circuit Court of Appeals, such is not alleged by the complaint. Nor would it be as it is factually false. Judge Wesley was a sitting judge on New York's Court of Appeals when President Bush nominated him to the Second Circuit Court of Appeals and, likewise, when he was confirmed by the United States Senate. Nor is there any allegation in the complaint that SASSOWER "attempted to speak in opposition" to Judge Wesley's nomination at the May 22, 2003 Senate Judiciary Committee hearing (*Cf.* ¶63). Nor would there be, as SASSOWER's analysis of FUCHS' column explicitly asserted (Exhibit A, at pp. 4, 8) that such characterization was materially misleading.

The decision (at p. 3) then moves from this three-quarter-page recitation to ¶67 pertaining to plaintiffs' May 11, 2004 letter (Exhibit L-1) – thereby making it appear that this May 11, 2004 letter is plaintiffs' FIRST communication with The Times with respect to Judge Wesley's nomination and confirmation – rather than, as the preceding 51 omitted "Factual Allegations" (¶¶16-66) establish, the continuation of an extensive correspondence, spanning from June 11, 2003 (Exhibits B, D, F, G, H, I, J), whereby plaintiffs again, and again, and again, put before The Times' highest echelon defendants SULZBERGER, KELLER, ABRAMSON, SIEGAL, and THE EDITORIAL BOARD, the primary source documents posted on CJA's website, establishing the corruption of federal judicial selection involving Judge Wesley – in which Senators Schumer and Clinton, each seeking re-election and/or

further public office, were directly complicitous. Yet, even in presenting the May 11, 2004 letter as if it were CJA's FIRST pertaining to Judge Wesley, the decision omits the allegations of the complaint (¶¶66-69) that The Times had before it the primary source documents substantiating the proposal from CJA's website – and that the context of the proposal was The Times' electoral coverage of the then unfolding 2004 Senate race.

The decision confines its recitation (at pp. 3-4) of the May 11, 2004 letter to reprinting the excerpt from the letter that appears at ¶67, with an introductory sentence that the letter "reiterat[ed] [SASSOWER's] demand for press coverage concerning these issues". Yet, there is nothing "demand[ing]" in plaintiffs' May 11, 2004 letter, either as reflected by ¶67 or any subsequent paragraphs of the complaint relating to it. Quite the opposite, the letter – which was addressed to a simple reporter, who is not a defendant – set forth a proposal that The Times examine Senator Schumer's deal-making in federal judgeships involving ideologically "moderate" candidates, using the nomination and confirmation of Judge Wesley as a "case study".

The decision (at pp. 4-5) then jumps to ¶¶76-77, which it falsifies, distorts, and materially expurgates by stating:

> "When The Times declined to provide such coverage, in a letter dated May 24, 2004, Sassower concluded that such editorial decision was influenced by the 'highest echelons' of The Times [fn 2] and was the product of The Times' conflicts of interest. Sassower suggested that The Times' decision not to cover the Wesley nomination must had [sic] been predicated on the knowledge that such coverage would have revealed Senator Schumer's disregard of the corruption of both Judge Wesley and Governor Pataki thereby derailing Senator Schumer's re-election campaign – a campaign which The Times had endorsed. The letter closed with Sassower informing The Times that she would be filing a complaint against 'all concerned' with The Times' public editor/ombudsman, Daniel Okrent ('Okrent')."
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> [fn 2: According to plaintiffs, these included Arthur

> Sulzberger, Jr., Publisher of The Times, Bill Keller, Executive Editor of The Times, Jill Abramson, first Managing Editor for Newsgathering for The Times, Allan Siegal, Assistant Managing Editor for The Times and The Times' Editorial Boar and all have been named as defendants herein."].

There is NO allegation of the complaint that The Times "declined" coverage. Rather, as reflected by ¶¶74, 81, and 84, the reporter did NOT respond to the proposal, just as The Times' highest echelons – including the defendants identified by footnote 2 – had NOT responded to plaintiffs' succession of prior correspondence and complaints, as recounted by ¶¶16-62, concealed by the decision. And the May 24, 2004 memorandum (Exhibit M) – which the decision makes appear as if it was from The Times declining coverage – was SASSOWER's own, addressed to The Times' metro editor for politics, who is not a defendant. Neither in that memorandum – nor in the allegations of the complaint based thereon (¶¶74-78) – did Sassower "conclud[e]" anything until she first laid out the pertinent facts, likewise concealed by the decision. These concealed facts, set forth by ¶¶74-78, include that "the most cursory review of the substantiating primary source materials posted on...CJA's website...under the heading, 'Paper Trail'" warranted the proposed "objective, critical examination of Senator Schumer's record on judicial selection, discipline, and constituent services relating thereto" (¶75), that such would "rightfully derail" his Senate re-election campaign, with comparable political consequences for "Senator Clinton's talked-about future candidacy for president" (¶76), and that The Times' February 2004 advertising supplement, promising voters "EVERYTHING YOU NEED TO KNOW ABOUT THE 2004 ELECTIONS", compelled its reporting of Senator Schumer's record, rather than its continued reporting of repetitive, speculative stories, constituting free-publicity for Senator Schumer

(¶74).

Having already excised the block of 51 "Factual Allegations" (¶¶16-66) pertaining, virtually exclusively, to the misconduct of The Times' "highest echelons" who are the named defendants SULZBERGER, KELLER, ABRAMSON, SIEGAL, and THE EDITORIAL BOARD, in addition to having excised the allegations as to their background (¶¶5-15), from which the conflicts of interest of The Times' lower ranks with respect to the May 11, 2004 proposal would have been self-evident, the decision now also conceals that the May 24, 2004 memorandum (as likewise ¶77) identified that The Times' "profound and multitudinous conflicts of interest" with respect to the proposal were set forth by plaintiffs' October 13, 2003 letter to KELLER (Exhibit H), referred to by the proposal itself. Both the memorandum and ¶77, quoting from it, further stated that if editors responsible for election coverage did not rise above those conflicts – as was their "journalistic duty to do" – SASSOWER would "assume that such is after consultation with, and under the influence of, the implicated-highest echelons of The Times, who are also their friends and colleagues" and would file a complaint "against all concerned" with defendant OKRENT, the public editor, which she hoped would not be necessary.

It deserves note that neither the May 24, 2004 memorandum nor the allegations pertaining to it (¶¶74-79) refer to Governor Pataki . Nor do they say that The Times "had endorsed" Senator Schumer's campaign. Indeed, The Times' editorial endorsement of Senator Schumer's re-election was nearly five months later, on October 17, 2004 – and recited at ¶91 of the complaint, concealed by the decision.

From this materially false expurgation of ¶¶76-77, the decision (at p. 5) skips to ¶80 –

passing over ¶79 that The Times did not respond to plaintiffs' May 24, 2004 memorandum.

The decision's recitation of ¶80 is limited to "On June 17, 2004, plaintiffs filed a complaint with Okrent" – omitting ALL its factual and evidentiary particulars, recited at ¶¶80-84, including as to the evidentiary significance of the "Paper Trail". This enables the decision (at p. 5) to then quote plaintiffs' ¶85 as to OKRENT's e-mail response, which falsely purported that plaintiffs had not presented "any evidence" to support their complaint. The decision then omits ¶¶86-87, exposing the falsity of OKRENT's unsigned response – and likewise omits ¶88(b), as it further underscores the evidentiary significance of the "Paper Trail".

The decision (at p. 5) thus jumps from ¶80 to ¶85. From there it skips to ¶89, pertaining to Judge Holeman's June 28, 2004 sentencing of SASSOWER. The decision materially distorts ¶89, as neither that paragraph – nor any other of the complaint – state that SASSOWER was

> "originally sentenced to 92 days in jail together with two years probation. One of the terms of the probation was that she was to prepare and forward to Senators Hatch, Leahy, Chambliss, Schumer and Clinton and to Judge Wesley letters of apology. When she refused, Judge Holeman sentenced her to six months incarceration." (at p. 5).

The extent of what ¶89 says on that subject is that "SASSOWER was sentenced to a maximum six-month jail sentence on the 'disruption of Congress' charge, after declining probation terms."

The decision (at p. 5) then leaps to ¶96, pertaining to the November 7, 2004 publication of FUCHS' column, "*When the Judge Sledgehammered The Gadfly*" – skipping the span of "Factual Allegations" from ¶¶90-95 about The Times' electoral coverage of the 2004 Senate

campaign for New York, its editorial endorsement for Senator Schumer, and Senator Schumer's "record-breaking" landslide victory on November 3, 2004.

Although ¶96 did not print the column, the decision prints it, in full (at pp. 5-7) – thereupon announcing "This complaint followed" (at p. 7). In so doing, the decision conceals the entire 15-month chronology recited by 42 paragraphs of the complaint (¶¶97-138), spanning from FUCHS' interviewing of SASSOWER for the column on or about November 1, 2004 to plaintiffs' service of the summons with notice upon defendants on Valentine's Day, February 14, 2006 – paragraphs material to establishing plaintiffs' pleaded causes of action for defamation (¶¶139-155), defamation *per se* (¶¶156-162), and journalistic fraud (¶¶163-175).

Among the most important of these 42 paragraphs are those pertaining to SASSOWER's analysis of FUCHS' column (Exhibit A), showing it to be false and misleading throughout, which she presented to defendants – including the "highest echelon" named defendants[4], none of whom ever denied or disputed its accuracy – just as such unnamed DOES as Mr. Freeman and The New York Times Company Legal Department did not deny or dispute its accuracy in rejecting plaintiffs' entreaties for their intervention to avert litigation.

Plaintiffs' defamation causes of action expressly rest on this analysis, whose "decisive" significance was underscored and demonstrated by their June 1, 2006 cross-motion[5]. This is why the decision omits reciting that the analysis even exists.

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[4] Excepting Defendant OKRENT, then no longer employed by The Times.

[5] See Plaintiffs' June 1, 2006 memorandum of law (pp. 4, 31-44), SASSOWER's June 1, 2006 affidavit (¶¶25-26) and June 13, 2006 reply affidavit (¶¶15-16, including fn. 4).