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DATE: December 27, 2006

TO: Co-Directors & Faculty of the Program in Law & Journalism
Cameron Stracher; Lis Wiehl, Daphne Eviatar
Advisory Board of the Program in Law & Journalism
Floyd Abrams; Catherine Crier, Kris Fischer, James Goodale, Adam Liptak, Victor Navasky, Stewart Pinkerton, Jay Rosen
Panelists at the November 15, 2006 event "*Reporting the Law: A Year End Review*"
Jeffrey Toobin, Ruth Hochberger, Erin Moriarty, Abbe David Lowell
Journalist-Panelists at the April 20, 2006 event "*The Media & the Judiciary: Friend or Foe?*"
Catherine Crier, Andrew Napolitano
Affiliated Faculty of the Program in Law & Journalism
Robert Blecker; Michael Botein, Beth Simone Noveck, Tanina Rostain, James F. Simon, Richard Sherwin
Program in Law & Journalism Student Kerry Higgins (PLJ Media Watch Blogger)

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

RE: **PROGRAM IN LAW & JOURNALISM:**
Building Scholarship, Commentary, & Pedagogy based on Primary Source Documentary Evidence, Beginning with the Evidence Presented by CJA's Groundbreaking Public Interest Lawsuit against The New York Times in Vindication of the First Amendment – for which additionally, we seek ***amicus curiae*** and other legal assistance, either *pro bono* or paid

Enclosed is the Center for Judicial Accountability's memo of today's date to New York Law School's Associate Dean for Academic Affairs Jethro Lieberman – to which you are indicated recipients.

The memo expressly requests responses from the panelists at the November 15, 2006 event and from the journalist-panelists at the April 20, 2006 event, both events sponsored by the Program in Law & Journalism. Of course, responses are welcome from ALL wishing to do so.

I thank you, in advance, for your responses.

Elena Ruth Sassower

Enclosure
cc: Jethro K. Lieberman, Associate Dean for Academic Affairs & PLJ Affiliated Faculty Member
Other NY Law Students-PLJ Media Watch Bloggers:
Bryanne E. Kelleher, Chris M. Neely, Kelly A. DeAngelis, Ross K. Baron

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BY FAX: 212-219-3752 (11 pages)
BY E-MAIL: jlieberman@nyls.edu

DATE: December 27, 2006

TO: Professor Jethro K. Lieberman, Associate Dean for Academic Affairs
Affiliated Faculty, Program in Law & Journalism
New York Law School

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

RE: **PROGRAM IN LAW & JOURNALISM (PLJ):**
Building Scholarship, Commentary, & Pedagogy on Primary Source Documentary Evidence, Beginning with the Evidence Presented by CJA's Groundbreaking Public Interest Lawsuit against The New York Times in Vindication of the First Amendment – for which, additionally, we seek *amicus curiae* and other legal assistance, either *pro bono* or paid

This follows up our conversation on November 15, 2006, at the event on "*Reporting the Law – A Year End Review*". I asked you whether the Program in Law & Journalism (PLJ), which was sponsoring that day's event and which had sponsored the prior April 20, 2006 event "*The Judiciary and the Media: Friend or Foe?*", engages in scholarship.

In that connection, I stated that our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), has a goldmine of primary source documentary evidence in substantiation of the proposal I had publicly articulated by my audience comment at the April 20th event.[1] That proposal was that instead of looking at the relationship between the media and the judiciary as if it were homogenous and uniform, it might be more fruitful to study how the media covers specific issues. I identified two: the processes of judicial selection and discipline, as to which I stated, based on our experience and evidence, that the media's relationship with the judiciary is not adversarial, but collusive, and that there appears to be a media taboo in examining and reporting on how dysfunctional, politicized, and corrupted these processes are.

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[1] The videotape is posted on New York Law School's website: www.nyls.edu/pages/3318.asp.

You responded that the contours of PLJ were still evolving – leading me to express concern because virtually the entire PLJ Advisory Board has been directly involved in the very collusion between the media and the judiciary which needs to be the subject of scholarship. Indeed, many of these Board members have worked for, or have relationships with, the most significant and important of the media offenders: The New York Times and New York Law Journal.

I do not recall whether, when we spoke before the start of the November 15th panel discussion, I identified our public interest lawsuit against The Times for journalistic fraud based on its knowingly false and misleading reporting and editorializing about the processes of judicial selection and discipline and its protectionism of complicit public officers, for whom it has been election-rigging – Attorney General Spitzer and Senator Clinton, among them. I know I discussed it with you afterward, in the wake of Jeffrey Toobin's expressed opinion as a panelist that:

> "The New York Times is not just the best newspaper in the United States, it is the best newspaper that has ever been published anywhere, at any time. It is a spectacular newspaper...If you read The New York Times everyday...you're awfully well informed."[2]

I gave you copies of CJA's press releases about the lawsuit – the first to implement the journalistic fraud cause of action posited by the 2003 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. I also gave you copies of my March 16, 2006 and March 24, 2006 memos to PLJ Co-Directors Professor Cameron Stracher and Lis Wiehl, inquiring as to their familiarity with the law review article and seeking their guidance in connection with the lawsuit.[3]

I related to you Co-Director Stracher's response to the March 16th memo. He stated:

> "I'm not sure why you think I'd be interested in assisting you to pursue a lawsuit against the NY Times, when I represent journalists, including the NY Times."

My March 24th memo highlighted this response, accompanied by my reply, which was as follows:

> "We believe...that any lawyer reading the verified complaint would recognize a civic duty to provide assistance -- as democracy, the rule of law, and the very essence of good citizenship are destroyed by the kind of press suppression, protectionism, and blackballing therein particularized.

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[2] The videotape is also posted on New York Law School's website: www.nyls.edu/pages/3318.asp.

[3] The press releases about our lawsuit against The Times and law review article are posted on our website, accessible *via* the sidebar panel "Suing The New York Times". My March 16, 2006 and March 24, 2006 memos are accessible *via* the "Outreach" link. See: "Law Schools & Law Professors" – "NY Law School".

> As professors of media law and the First Amendment, you are obligated to keep informed of significant developments in the field so as to incorporate them into your teaching and commentary, where relevant. We trust you would agree that the 2003 law review article and our public interest lawsuit are two such developments.
>
> In that connection, we have already proposed that the law review article and our historic lawsuit be part of the January 19, 2007 conference '*Reclaiming the First Amendment: A Conference on Constitutional Theories of Media Reform*', being organized by Hofstra University School of Law and the Brennan Center for Justice at New York University School of Law.[fn] The conference sponsors are presently soliciting proposals for papers that will address 'any aspect of the First Amendment and the mass media' to 'further the conference goal of proposing innovative policy and legal approaches'.[fn]
>
> We would be pleased to assist you or your law students in presenting this unfolding litigation in a conference paper – or in otherwise utilizing it for scholarly and empirical research."

I received no response to this March 24th memo from either Co-Director Stracher or Wiehl. When I mentioned this to Co-Director Wiehl following the November 15th panel discussion, she stated she had not received the memos. Although I had e-mailed them to her on March 17th and 24th, and, on April 20th, had taken copies of both memos to New York Law School's mailroom for delivery to her, I handed her duplicates. Not long after Ms. Wiehl left the reception area, I found what I believe to be these very same duplicates on a table beside the exit, along with the further memo I had just given her.[4]

This further memo, dated October 11, 2006, was addressed to "MEDIA OUTSIDE NEW YORK".[5] It summarized that New York's most important electoral contests – for Governor and U.S. Senate – had been rendered non-competitive by the refusal of New York media to examine and report on the records in office of Attorney General Spitzer and Senator Clinton pertaining to the processes of judicial selection and discipline – with knowledge that such would expose their roles in the corruption of these processes. I believe I also gave you a copy to substantiate that the

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[4] Ms. Wiehl's posted bio indicates that she held the position of principal deputy minority investigative counsel for the House Judiciary Committee, apparently during some period between 1995 and 2000. I extensively corresponded with both the minority and majority sides of the House Judiciary Committee during those years, exposing their utter dysfunction, nonfeasance, and corruption with respect to federal judicial discipline – a state of affairs concealed by The Times and at issue in the lawsuit. This correspondence is posted on CJA's website, accessible *via* the sidebar panel "Searching for Champions-Correspondence – Federal".

[5] The memo – and its predecessor August 25, 2006 memo addressed to "NEW YORK MEDIA" – are posed on CJA's website, accessible *via* the sidebar panel "Elections 2006: Informing the Voters"

media's cover-up of the corruption of judicial selection and discipline, involving our highest public officers, is not exclusive to The Times, but relates to a broad swathe of media, including the New York Law Journal.

At PLJ's April 20th event, I directed the following questions to Catherine Crier and Andrew Napolitano, the two journalists on the panel: (1) whether they "agreed or disagreed that there are certain areas that are taboos, where there is essentially collusion" between the media and the judiciary; and (2) "by way of empirical evidence", whether they themselves had "done any examination of the processes of judicial selection and discipline – and would they?"

The second question was addressed only by Ms. Crier, who cited her book The Case Against Lawyers, which she said contained a chapter, and her book Contempt: How the Right is Wronging American Justice, which she stated "deals a lot with that".

As to the first question, both Ms. Crier and Mr. Napolitano publicly resisted the notion of collusion between the media and judiciary. Ms. Crier's view was that it was a matter of "inattention" and "ignorance" by the media, whose attention, however, could be drawn by "a very singular high profile case" or "overt corruption case". Mr. Napolitano's view was that "the press has the power without any organized conspiracy" to elevate stories, or to ignore them, and by its publicity to create "interest", conceding that "the ink spilled" on stories about judicial selection and judicial corruption is "a drop in the bucket" compared to sensationalized murder stories – and that "it should be the other way around". This prompted a comment from Ms. Wiehl, sitting as moderator, about coverage being driven by the public's "interest". Ms. Crier responded by recognizing that it is the media that can create and escalate "interest", adding that she tends to "put the obligation back on the press", holding it "almost unethical to turn a blind eye to major problems – an act of omission" and declaring the press "guilty of ignoring, avoiding", especially with respect to stories that are "difficult" to understand.

Ms. Crier is a former Texas judge and host of her own TV show on Court-TV. Mr. Napolitano is a former New Jersey judge and senior judicial analyst on FOX-TV. Neither can be characterized as "ignorant". Yet, at the conclusion of the April 20th event, when I went up to each of them[6] and described our lawsuit against The Times as establishing the very kind of collusion with the judiciary which they had discounted – a case that was "very singular high profile" and involved "overt corruption" being covered up by The Times – neither showed particular interest in exploring story possibilities. I urged them to read the verified complaint, posted on our website, and the law review article on which our journalistic fraud cause of action was based, providing them – by way of written summary – with our one-page March 22nd first press release and our

[6] Mr. Napolitano's immediate statement to me when I approached him was that I had asked "the best question".

one-page April 11th letter to Times Executive Editor Bill Keller for his public response as part of The Times' "Talk to the Newsroom" series[7]. Neither Ms. Crier or Mr. Napolitano thereafter contacted me for a story.

My experience with Mr. Toobin, following PLJ's November 15th panel discussion, was even more disappointing. Mr. Toobin also cannot be characterized as "ignorant". He is a Harvard-educated lawyer, CNN legal analyst, and staff writer at The New Yorker. Yet, he was immediately resistant and hostile to exploring the reality of The Times' reporting and editorializing about judicial selection and discipline, its protectionism of Attorney General Spitzer and Senator Clinton, and the comparable cover-up by other press. With the greatest distaste, he took from me the copies of three e-mails I had previously sent him about the lawsuit, each enclosing our press releases – e-mails he stated he had not received. He also reluctantly took from me the October 11th memo. I have not heard from him since.

In view of Mr. Toobin's extravagant public praise of The Times at the November 15th panel discussion, I am sending a copy of this memo to him, with a request that he confront the mountain of contrary evidence presented by our lawsuit and comment upon whether – based on his review of the lawsuit record, posted on our website, www.judgewatch.org – it deserved to be included in the "*Reporting the Law –Year End Review*" and deserves to be reported on in the coming year, as likewise the unprecedented "disruption of Congress" case on which its causes of action for defamation and defamation *per se* rest[8].

I am also sending a copy of this memo to the other panelists at PLJ's November 15th event, also with a request for their comment as to whether our lawsuit against The Times and the underlying "disruption of Congress" case are cases that a responsible media should have been – and should now be – reporting, in discharge of its First Amendment responsibilities. These panelists are Ruth Hochberger, a lawyer and journalism professor at Columbia University Graduate School of Journalism and New York University, who landed these positions (teaching, among other things, media ethics) and her editor-in-residence position at the new CUNY Graduate School of Journalism, notwithstanding her many years of collusion with the judiciary as editor-in-chief of

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[7] Our April 11, 2006 letter for public response by Mr. Keller is accessible from our "Suing The New York Times" webpage, where it is part of the "Background Paper Trail".

[8] Summarizing the significance of the "disruption of Congress" case – including with respect to Senator Clinton's presidential ambitions – are my three published letters to the editor in the New York Law Journal (May 19, 2004); The Village Voice (February 16, 2005), and Roll Call (May 10, 2004). These and the entire case record are posted on our website, accessible *via* the "Disruption of Congress" webpage. I may have also provided Mr. Toobin with copies of these important published letters, which I certainly provided to his fellow panelists Ms. Moriarty and Mr. Lowell, *infra*.

the New York Law Journal[9]; Erin Moriarty, a lawyer and prize-winning correspondent on CBS TV's 48 Hours, and Abbe Lowell, Esq., "recognized as one of the 100 Most Influential Attorneys in America". None of these journalists – or Mr. Lowell – can be tagged "ignorant".

Additionally, I am sending a copy of this memo to Ms. Crier and Mr. Napolitano, with the identical request.

So that this further empirical test of how the media operates can be most meaningful for PLJ students, I propose that they be given the opportunity to comment on whether the Times lawsuit and its underlying "disruption of Congress" case are cases that they would reasonably expect the media to report. As future lawyers and legal journalists, they can then gauge their own opinions about these easy-to-understand cases with those of seasoned journalists. For such purpose – or for the convenience of any of this memo's recipients – I would be pleased to supply hard copies of any of the record documents posted on CJA's website pertaining to either case.

As is readily apparent from the lawsuit, its cause of action for journalistic fraud is aimed at restoring the balance between the media's privileges under the First Amendment and its responsibilities – a subject surely worthy of media report, scholarship, and teaching. The viability of such cause of action is demonstrated by the record. Neither The Times nor the judge to whom the case was steered were able to confront ANY of the legal and constitutional arguments presented by "*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*". Nor were they able to confront ANY of our arguments based thereon or based on two other law review articles on which we relied: "*Access to the Press – A New First Amendment Right*", 80 Harvard Law Review 1641 (1967), and "*Institutional Reckless Disregard for Truth in Public Defamation Actions Against the Press*", 90 Iowa Law Review 887 (March 2005)[10].

Indeed, our lawsuit was so well pleaded that The Times had NO legitimate defense to ANY of our three causes of action: for defamation (¶¶139-155), defamation *per se* (¶¶156-162), and journalistic fraud (¶¶163-175) – thereby enabling us to cross-move not only for sanctions against The Times for its fraudulent motion to dismiss our complaint for failure to state a cause of action, but for summary judgment against it. The only reason we did not obtain a judgment in our favor, *as a matter of law*, is because the judge, who was hand-picked for the case in violation of random assignment rules, corrupted the judicial process by a decision which obliterated ALL cognizable

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[9] This collusion, evidenced by our correspondence with Ms. Hochberger, spanning many years, is posted on our website, accessible *via* the sidebar panel "Press Suppression"– New York Law Journal.

[10] These law review articles and our uncontested arguments with respect thereto – unchallenged by The Times and the judge are posted on our "Suing The New York Times" webpage. See, *inter alia*, our June 1, 2006 memorandum of law (at pp. 20-21); my June 13, 2006 affidavit (at ¶¶19-23); our August 21, 2006 memorandum of law (at pp. 17-20); and my September 25, 2006 affidavit (at ¶¶23, 26-29).

legal and adjudicative standards – a decision to which he thereafter adhered upon our motion to vacate it for "fraud and lack of jurisdiction", made as part of our motion to disqualify him for "demonstrated actual bias and interest".

As such, The Times lawsuit is a powerful case study of the very kind of *readily-verifiable* judicial corruption that The Times, the Law Journal, and other media have pretended does not exist by their refusal to report on the casefile evidence that lawsuits are "thrown" by fraudulent judicial decisions – evidence we have given and proffered to them time and again over many, many, years.

PLJ's eight-member Advisory Board includes Times' legal correspondent Adam Liptak and the Law Journal's editor-in-chief Kris Fischer[11]. Their roles in suppressing report of casefile evidence of fraudulent judicial decisions, protecting corrupted processes of judicial selection and discipline, are documented by our correspondence with each of them.[12] Both have the legal expertise to appreciate the groundbreaking significance of our public interest lawsuit against The Times. Even more so Floyd Abrams and James Goodale, who, in addition to being PLJ Advisory Board members, are members of the Law Journal's Board of Editors and have served as attorneys for the Law Journal and The Times.[13]

Yet, there has been NO coverage of the lawsuit by the media, nor scholarship by the academic

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[11] Ms. Fischer is married to New York Law School Professor Michael Botein, who directs New York Law School's Media Center. Professor Botein appropriately made such disclosure on April 20th, when I visited his office and provided him with copies of our previously e-mailed March 16th and March 24th memos which were addressed to him, in addition to Professor Stracher and Ms. Wiehl.

[12] As for our correspondence with Adam Liptak, see his November 8, 1994 and November 4, 1998 letters to us and our November 11, 1998 letter to him, posted on CJA's website, accessible *via* the "Background Paper Trail" which is part of our "Suing The New York Times" sidebar panel.

As for our correspondence with Kris Fischer, see our mountain of correspondence with her, spanning from our August 12, 1997 letter to her to our September 18, 2006 letter to her and beyond, accessible *via* our "Press Suppression" sidebar panel, with its link to the New York Law Journal.

[13] Our "Press Suppression" link to the New York Law Journal also posts our correspondence with Mr. Abrams, as we futilely reached out to him, by letters dated July 24, 1997 and July 28, 1997, for assistance when the New York Law Journal, on Mr. Goodale's advice, refused to run CJA's paid about casefile evidence of fraudulent judicial decisions and the corruption of the judicial process by New York's Attorneys General, covering up the corruption of judicial selection and discipline. Our August 1, 1997 letter to Mr. Goodale is also posted. The paid ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", was finally published on August 27, 1997 at a cost to us of $3,077, but ONLY because of the intercession of the Law Journal's then publisher, James Finkelstein, with whom I personally spoke by phone. The posted correspondence relating to the ad – spanning from June 17, 1997, when it was initially submitted as a Perspective Column – to December 11, 1997 – suffices as a case study of the kind of wilful and deliberate concealment of judicial corruption that is practiced by the press, having nothing to do with "ignorance" or lack of "attention".

community. This includes from three other PLJ Advisory Board members – none of whom can be deemed "ignorant", and whose "attention" may be presumed from the circumstances of our contact:

(1) Victor Navasky, editor *emeritus* of The Nation and professor at Columbia University Graduate School of Journalism, who began his career at The Times. Back in 1996, Mr. Navasky put a dinner with himself and his wife on auction, to benefit the National Lawyers Guild – for which I was the highest bidder. On July 17, 2006, I spoke by phone with his wife to make arrangements. Preliminarily, and so that our dinner conversation might be informed, I hand-delivered to their home a full copy of the verified complaint in the lawsuit against The Times under a covermemo addressed to him as chair of the Columbia Journalism Review, which promotes itself as "America's premier media watchdog". I received no response from Mr. Navasky to that memo or to the two subsequent memos I e-mailed him in September about the lawsuit and the media's rigging of New York's important electoral races. The dinner, which I so long ago paid for, has yet to take place;[14]

(2) Jay Rosen, Associate Professor of Journalism at New York University, media critic and blogger, who is a "leading figure in the reform movement known as 'public journalism' which calls on the press to take a more active role in strengthening citizenship, improving political debate and reviving public life". I first e-mailed Mr. Rosen about The Times lawsuit in February, after a Times article quoted him in a story about "*Answering Back to the News Media, Using the Internet*". He ignored that e-mail and my further e-mails in February, March, and June – hard copies of which I then gave him, *in hand*, at the end of June at the Media Giraffe conference on democracy and the media, held at the University of Massachusetts at Amherst, where he "cold-shouldered" me. I received no response from him to any of these – or to my subsequent e-mails to him in July, August and September including those transmitting my correspondence addressed to the Project for Excellence in Journalism and the Nieman Foundation for Journalism at Harvard, to which he was an indicated recipient so that he might have the opportunity to deny or dispute his inexplicable, unprofessional conduct which I therein recited;[15]

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[14] My correspondence with Mr. Navasky is posted on CJA's website – accessible *via* the Outreach link of the "Suing The New York Times" webpage. See: "Academic Institutes & Universities" – Columbia Graduate School of Journalism. Enclosed with my hand-delivery to him on July 17th were my e-mails to The Nation's media critic, Eric Alterman, and to its Washington editor, David Corn, reflecting my transmittal to them of our two press releases about our lawsuit against The Times, to which we had received no response. These e-mails to Messrs. Alterman and Corn are accessible *via* the "Outreach" link of our "Suing The New York Times" webpage [See "Media-Watch Organizations, Media, & Journalists", which additionally links to their bios from The Nation's website, from which it is eminently clear that neither of these seasoned journalists can be viewed as "ignorant".

[15] My correspondence with Mr. Rosen is posted on CJA's website – accessible *via* the "Outreach" link of the "Suing The New York Times" webpage. See: "Media-Watch Organizations, Media, & Journalists".

(3) Catherine Crier, who wrote an inscription to me on April 20th in the copy of her book, Contempt: How the Right is Wronging American Justice,[16] that I bought based on her public assertion that it demonstrated that she had written on issues of judicial selection and discipline.[17] The inscription, reflecting our conversation about The Times lawsuit, reads: "Best of luck with the suit!"

The success of The Times suit never depended on luck. It depended then – as now – on whether the court was going to apply settled and applicable law to the facts of the case or "throw" the case by a fraudulent judicial decision. In the absence of any media, it was the latter that was going to happen and did happen.[18] Such perversion of any semblance of "the rule of law", *readily-verifiable* from the casefile record, is what America's judicial process looks like in case, after case, after case – a reality the media and academia wilfully conceal, while countless innocent lives are destroyed and our society, as a whole, irreparably injured.

Please advise as to whether PLJ is going to perpetuate such concealment by sponsoring events, but not undertaking ANY evidence-based scholarship. This includes scholarship into whether the public claims and assertions of panelists at its sponsored events are borne out empirically.

The powerful relevance of our Times lawsuit and the "disruption of Congress" case to students being trained to examine journalism and the law is obvious from PLJ's website, www.nyls.edu/pages/3313.asp. Its "Media Watch Blogs" posts a November 21, 2006 blog entry

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[16] Ms. Crier's inscription to me, as likewise Mr. Napolitano's inscription "From one lover of freedom to another", which he wrote in the copy of his book The Constitution in Exile: How the Federal Government has Seized Power by Rewriting the Supreme Law of the Land, which I also bought, are posted on CJA's website – accessible *via* the "Outreach" link of the "Suing The New York Times" webpage. See: "Media-Watch Organizations, Media, & Journalists".

[17] Ms. Crier's important, well-written book devotes no pages to judicial discipline. As for the relatively few pages devoted to judicial selection (at pp. 40-43, 195-207), these absolve the Democrats of responsibility for the successes of the far right. This responsibility, indeed the Democrats' complicity with the Republicans in the corruption of federal judicial selection, is exemplified by the 2003 "disruption of Congress" case, where the Democrats had a golden opportunity to halt judicial confirmations by "blowing the whistle" on fraudulent American Bar Association ratings, which a Republican-controlled Senate Judiciary Committee was covering up Instead, the Democrats chose to perpetuate the fraudulent ratings and cover-up, just as they had years earlier in 2001, 1998, and 1996 when the Senate Judiciary Committee was in Republican hands – and in 1992-3, when the Committee was in their own Democratic hands. [See: CJA's sidebar panel "Judicial Selection-Federal"].

[18] I had predicted as much to Mr. Napolitano on April 20th when he told me to keep him informed about what happens in the lawsuit. My response to him was that without media attention, the case would be "thrown" by a fraudulent judicial decision – a fact which I stated I believe he knew.

of law student Kerry Higgins entitled "*New Democratic Majority Throws Bush's Judicial Nominations Into Uncertainty*", critiquing a November 12, 2006 article by Times reporter Neil Lewis, bearing that title. A copy of the blog entry is enclosed, with a request that you and all those connected with PLJ – its staff, affiliated faculty, and, of course, its Advisory Board – read it in conjunction with the factual allegations of our verified complaint against The Times, beginning with the first two factual allegations (¶¶16-17) and the referred-to June 11, 2003 memorandum-complaint against Mr. Lewis and his editors.[19] To enable PLJ students to make their own judgments – and to reinforce for them the importance of utilizing a broader range of information sources in evaluating media performance – I am sending a copy of this letter to them, *via* Ms. Higgins, for review and appropriate blogging on "PLJ's Media Watch Blogs".

Finally, I take this opportunity to request the names of all New York Law School professors who teach media law and the First Amendment so that I might contact them about their own scholarship and pedagogy – and about providing and *amicus curiae* brief and/or legal assistance in the appeal, either on a paid on unpaid basis. Our appeal brief is due on February 21, 2007.

I thank you, in advance, for the courtesy of your response.

Enclosure

cc: PLJ's Co-Directors & Faculty
Cameron Stracher; Lis Wiehl, Daphne Eviatar[20]
PLJ's Advisory Board
Floyd Abrams; Catherine Crier, Kris Fischer, James Goodale, Adam Liptak, Victor Navasky, Stewart Pinkerton, Jay Rosen
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PLJ's Other Affiliated Faculty
Robert Blecker; Michael Botein, Beth Simone Noveck, Tanina Rostain, James F. Simon, Richard Sherwin
New York Law Student Kerry Higgins (PLJ Media Watch Blogger)
& Other NY Law Students-PLJ Media Watch Bloggers:
Bryanne E. Kelleher, Chris M. Neely, Kelly A. DeAngelis, Ross K. Baron

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[19] The specific factual allegations of the verified complaint referring to Mr. Lewis are ¶¶17, 33-4, 71, 94.

[20] As Ms. Eviatar's e-mail address appears on PLJ's website solicitation for "Tips & Ideas", which requests "thoughts about media coverage of the law or suggestions for our program", a copy of this letter, clearly containing both, is being sent to her for that additional reason.

Kerry Higgins

« Judge Eyes 9/11 Payout Cap of $1B | Main | Alcatel purchase of Lucent Approved »

New Democratic Majority Throws Bush's Judicial Nominations Into Uncertainty

New Democratic Majority Throws Bush's Judicial Nominations Into Uncertainty (Neil A. Lewis, New York Times, 11.12.06) discusses how the recent power-shift in Congress might affect the confirmation of several of President Bush's nominations to the federal bench. However, the article never adequately explains the confirmation process, so readers may be left unsure why the fact that Patrick Leahy leadership of the Senate Judiciary Committee will make any difference after he replaces Arlen Specter. (The two senators are pictured directly below the headline.)

The article spends much time addressing Bush's "effort to shape the federal bench with conservative judicial nominees." Though there is much discussion of the politics of nominations, there is not enough discussion of the process of confirmation. The article informs readers that the Constitution gives the Senate the power to confirm or decline a president's judicial nominations. However, it never explains terms like "filibuster" before telling readers that democrats had taken that "unusual step" to block certain recent nominations.

Although many readers of the New York Times may be aware of the process, the federal judiciary appointment process is far from common knowledge. (see http://www.uscourts.gov/faq.html) This article never even bothers to point out that the same Constitution that gives the Senate the power to confirm or decline nominations also grants federal judges life-terms in office. Which is why the confirmation process is so important, because these nominees could have the power to shape the law for the next fifty years or more. That's something pretty important to keep in mind when you're talking about nominees which include a lawyer "rated unqualified for the court by the American Bar Association."

Posted by Kerry Higgins on November 21, 2006 02:02 PM | Permalink

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