



Written by [Bob Adelman](#) on August 30, 2017

Why Was Palin's Defamation Lawsuit Against the New York Times Tossed?

Senior Federal District Court Judge Jed Rakoff [ruled on Tuesday](#) that James Bennet, the author of the virulent anti-gun diatribe published by the *New York Times* following the shooting of Republican Representative Steve Scalise on a baseball field, didn't maliciously link that shooting to Sarah Palin. It was just a mistake, said the judge:



Mistakes will be made, some of which will be hurtful to others. If political journalism is to achieve its constitutionally endorsed role of challenging the powerful, legal redress by a public figure must be limited to those cases where the public figure has a plausible factual basis for complaining that the mistake was made maliciously.

But Bennet did put in the link deliberately, clumsily attempting to tie the Scalise shooting to the shooting of Gabby Giffords by mental case Jared Lee Loughner in 2011. Bennet's agenda was clear from his editorial: if Donald Trump and the NRA had their way, then:

Every member of Congress, and every other American of whatever age, would have to go to baseball practice, or to school, or to work, or to the post office, or to the health clinic — or to any of the other places [where] mass shootings now take place — with a gun on their hip....

That is the society the gun lobby is working toward. Is it the one Americans want?

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In his haste to get the screed out while the topic was still front page news, Bennet reached back to an ad that one of Palin's political action committees created in 2011 showing a bullseye on congressional districts represented by anti-gun Democrats. Bennet wrote that that proved the link between political rhetoric and the shooting of Giffords. From the editorial as it now appears on the *Times'* website, Bennet wrote:

Was this attack [on Scalise] evidence of how vicious American politics has become? Probably. In 2011, Jared Lee Loughner opened fire in a supermarket parking lot, grievously wounding Representative Gabby Giffords and killing six people, including a 9-year-old girl. At the time, we and others were sharply critical of the heated political rhetoric on the right. Before the shooting, Sarah Palin's political action committee circulated a map that showed the targeted electoral districts of Ms. Giffords and 19 other Democrats under stylized cross hairs. But in that case no connection to the shooting was ever established.

This is the whitewashed version. The original paragraph contained this: "The link to political incitement was clear." On



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Wednesday the *Times*, in announcing that Palin's lawsuit against it had been tossed, said:

[Bennet's] editorial suggested a connection between a map of targeted electoral districts circulated by Ms. Palin's political action committee and the 2011 mass shooting by Jared L. Loughner that severely wounded Representative Gabrielle Giffords. The *Times* later issued a correction, saying there was no link between political rhetoric and the shooting.

Judge Rakoff had to jump through some hoops to conclude that Bennet and the *Times* had not acted maliciously, thus libeling Palin. He called for an extraordinary "evidentiary" hearing and took personal testimony from the author in order, said the judge, to see if Palin's complaint contained "sufficient allegations of actual malice." In his ruling he said that the behavior of Bennet was "much more plausibly consistent with making an unintended mistake and then correcting it than with actual malice."

Case dismissed.

In that suit Palin's lawyers claimed that "the *Times*' conduct was committed knowingly, intentionally, willfully, wantonly and maliciously, with the intent to harm Mrs. Palin, or in blatant disregard of the substantial likelihood of causing her harm, thereby entitling Mrs. Palin to an award of punitive damages."

What Mrs. Palin is left with is a big legal bill. But her efforts to obtain justice are not without reward. Those carefully reading the judge's obviously biased conclusion that Bennet just made a mistake that was corrected immediately upon its discovery know that that "mistake" would have remained had not observers caught him at it and demanded at least a correction if not an outright retraction. It also reveals that Lady Justice is not always blind. Harvard-trained judge Jedd Rakoff regularly sits on the 9th Circuit Court of Appeals, widely recognized as one of the most liberal courts in the country. And Matt Taibbi of left-leaning *Rolling Stone* magazine called him "sort of a legal hero of our time."

To paraphrase President Franklin Roosevelt, if something happens, or doesn't happen, one can be sure that it was planned that way.

Photo of Sarah Palin: By Gage Skidmore from Peoria, AZ, United States of America - Sarah Palin, CC BY-SA 2.0, <https://commons.wikimedia.org/w/index.php?curid=53704766>

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