

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STEVEN J. HATFILL, M.D.,

Plaintiff-Appellee,

- vs -

ATTORNEY GENERAL  
MICHAEL B. MUKASEY, *et al.*,

Defendants.

Case No.: 08-5049

District Court No.  
1:03-CV-1793 (RBW)

**EMERGENCY MOTION FOR LEAVE TO FILE RESPONSE OF MEDIA  
*AMICI CURIAE* IN SUPPORT OF EMERGENCY MOTION TO  
STAY ORDER HOLDING NON-PARTY REPORTER IN  
CONTEMPT FOR REFUSING TO REVEAL THE NAMES OF HER  
CONFIDENTIAL SOURCES**

Pursuant to Federal Rules of Appellate Procedure 29, Media Amici<sup>1</sup>  
respectfully move this Court for leave to file an *amicus* brief in support of non-

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<sup>1</sup> Media Amici are ALM Media, Inc., American Society of Newspaper Editors, The Associated Press, The Association of American Publishers, Inc., Bloomberg L.P., Cable News Network, Inc., CBS Broadcasting, Inc., The Citizen Media Law Project, Cox Enterprises, Inc., Dow Jones & Company, The E. W. Scripps Company, The Hearst Corporation, Landmark Communications, Inc., Magazine Publishers of America, The McClatchy Company, The National Association of Broadcasters, National Federation of Press Women, The National Newspaper Association, The National Press Club, National Public Radio, NBC Universal, Inc., Newspaper Association of America, The Newspaper Guild – CWA, The New York Times Company, The Radio-Television News Directors

party journalist Toni Locy's Emergency Motion to Stay Order Holding Non-Party Reporter in Contempt for Refusing to Reveal the Names of her Confidential Sources. The district court's Order was filed on March 7, 2008, and sanctions begin to accrue at midnight tonight.

Media Amici include leading news organizations as well as related professional and trade associations. They share an interest in promoting excellence in journalism and in defending the freedom of the press. Of particular interest here, Media Amici are committed to "the press' function as a vital source of information [which] is weakened whenever the ability of journalists to gather news is impaired." *Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981).

In this case, the district court imposed what can only be described as ruinous fines against a former reporter for refusing, pursuant to both the First Amendment and her common-law confidential source privilege, to name *all* of her confidential news sources for matters related to bioterrorism, including some who certainly were *not* the sources for the articles at issue. The violation of Ms. Locy's rights has been made even more grave and immediate because the district court refused to issue a stay pending appeal, despite clear authority establishing that a stay is warranted. Moreover, the court specifically has forbidden Ms. Locy from being reimbursed for her fines by her former newspaper or any other person – even a

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Association, The Reporters Committee for Freedom of the Press, The Society of Professional Journalists, Time, Inc., and Tribune Company, Inc.

family member – thus making it possible that she will be forced to capitulate before this Court can review the unsettled and important legal issues in this case.

Beginning at midnight tonight, the district court's Order requires Ms. Locy to pay drastic fines and specifically prohibits her from receiving any financial assistance in paying those fines – a restriction against a journalist without precedent as far as Media Amici are aware. Media Amici believe the district court's decision, which defers to this Court with respect to unresolved legal issues but forecloses effective appellate review, presents a serious threat to the freedom of the press. Media Amici and their members often are involved in disputes concerning the identities of confidential news sources, and they often have been forced to litigate these issues. Media Amici often are faced with difficult choices similar to those that Ms. Locy faces today. Media Amici therefore can bring substantial experience to bear on the issues presented here – not simply in terms of legal expertise, but also in terms of describing the practical impact of this decision on newsgathering and the free flow of information. Media Amici respectfully submit that their views will aid this Court in considering Ms. Locy's Emergency Motion.

Counsel for non-party journalist Toni Locy and Plaintiff Steven Hatfill have authorized the undersigned to advise the Court that they consent to the relief sought herein. The Government informs counsel that it takes no position regarding this filing.

RESPECTFULLY SUBMITTED this <sup>th</sup> 18 day of March, 2008.

Davis Wright Tremaine LLP  
Attorneys for *Amici Curiae*

By

A handwritten signature in black ink, appearing to read 'Laura R. Handman', written over a horizontal line.

Laura R. Handman  
Brigham J. Bowen  
J. Rory Eastburg

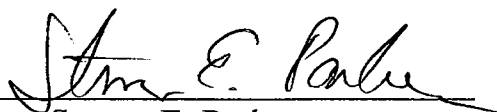
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10th day of March 2008, I directed that true and correct copies of the foregoing Emergency Motion for Leave to File Response of Media *Amici Curiae* in Support of Emergency Motion to Stay Order Holding Non-Party Reporter in Contempt for Refusing to Reveal the Names of Her Confidential Sources be delivered via electronic mail and first class mail, postage prepaid, upon the following:

Robert C. Bernius, Esq.  
Leslie P. Machado, Esq.  
Nixon Peabody LLP  
401 Ninth Street, NW  
Suite 900  
Washington, D.C. 20004

Mark A. Grannis, Esq.  
Thomas G. Connolly, Esq.  
Patrick P. O'Donnell, Esq.  
Harris, Wiltshire & Grannis LLP  
1200 Eighteenth Street, NW  
Suite 1200  
Washington, D.C. 20036-2506

Elizabeth J. Shapiro, Esq.  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, NW  
Room 7152  
Washington, D.C. 20044

  
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Steven E. Parker

## **Interests and Corporate Disclosure Statements of Amici**

### **ALM Media, Inc.**

ALM Media, Inc. publishes 33 national and regional magazines and newspapers, including The American Lawyer, the New York Law Journal, Corporate Counsel, and The National Law Journal as well as the website Law.com. Many of ALM's publications have long histories reporting on legal issues and serving their local legal communities. ALM's The Recorder, for example, has been published in Northern California since 1877; the New York Law Journal was begun a few years later, in 1888. ALM's publications have won numerous awards for their coverage of critical national and local legal stories, including many stories that have been later picked up by other national media.

### **American Society of Newspaper Editors**

The American Society of Newspaper Editors is a professional organization of approximately 750 persons who hold positions as directing editors of daily newspapers in the United States and Canada. The purposes of the Society include assisting journalists and providing unfettered and effective press in the service of the American people. The American Society of Newspaper Editors has no parent corporation and no stock. ASNE is a "trade association" because it is a continuing association of numerous individuals operated for the purpose of promoting the general professional, legislative and other interests of the news media.

### **The Associated Press**

The Associated Press is a global news agency organized as a mutual news cooperative under the New York Not-for-Profit Corporation Law. AP's members include approximately 1,500 daily newspapers and 5,000 broadcast news outlets throughout the United States. AP has its headquarters and main news operations in New York City and maintains bureaus in 240 cities worldwide. AP news reports in print and electronic formats of every kind reach a subscriber base that includes newspapers, broadcast stations, news networks and online information distributors in 121 countries. The Associated Press is not a publicly held corporation and does not have a parent corporation.

### **The Association of American Publishers, Inc.**

The Association of American Publishers, Inc. ("AAP") is the national trade association of the U.S. book publishing industry. AAP's members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses, and scholarly societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, postsecondary, and professional markets, scholarly journals, computer software, and electronic products and services. The Association represents an industry whose very existence depends upon the free exercise of rights guaranteed by the First Amendment.

### **Bloomberg L.P.**

Bloomberg L.P. operates Bloomberg News, which is composed of more than 2200 reporters in 108 bureaus around the world to operate a 24-hour global news service that supplies business, financial and legal news to more than 350,000 subscribers world-wide through the Bloomberg Professional Service, an electronic real-time desktop delivery system. Bloomberg also operates

as a wire service, serving more than 450 newspapers and magazines world-wide. Bloomberg also maintains eleven 24-hour cable television news channels around the world and produces and distributes daily radio programming throughout the world through its 750 radio affiliates. Bloomberg News maintains several full-time bureaus in the Ninth Circuit, including Los Angeles, San Francisco and Seattle. Bloomberg also publishes two monthly magazines, and its Bloomberg Press division publishes more than 50 titles each year. Bloomberg's website at [www.bloomberg.com](http://www.bloomberg.com) receives more than 300 million page visits each month. Bloomberg L.P. has no parent corporations, and Merrill Lynch Pierce Fenner & Smith, Inc. owns 10% or more of its stock.

#### **Cable News Network, Inc.**

Cable News Network, Inc. ("CNN"), a division of Turner Broadcasting System, Inc., a Time Warner Company, is the most trusted source for news and information. Its reach extends to nine cable and satellite television networks; one private place-based network; two radio networks; wireless devices around the world; CNN Digital Network, the No. 1 network of news Web sites in the United States; CNN Newsource, the world's most extensively syndicated news service; and strategic international partnerships within both television and the digital media. Cable News Network, Inc. is a wholly-owned subsidiary of Turner Broadcasting System, Inc., which itself is a wholly-owned subsidiary of Time Warner Inc., a publicly traded corporation.

#### **CBS Broadcasting, Inc.**

CBS Broadcasting, Inc. produces and broadcasts news, public affairs and entertainment programming. CBS Broadcasting owns and operates broadcast television stations nationwide, and, through its CBS News Division, produces morning, evening and weekend news programming, as well as magazine programs such as "60 Minutes" and "48 Hours." Former CBS News correspondent James Stewart is the subject of a contempt application that remains pending in the district court. CBS Broadcasting is a wholly-owned subsidiary of CBS Corporation, which is a publicly-traded company.

#### **The Citizen Media Law Project**

The Citizen Media Law Project (CMLP) provides education, research, and advocacy on free speech, newsgathering, intellectual property, and other legal issues related to citizen media and online speech generally. The CMLP is building a community of lawyers, academics, journalists, and others who are interested in facilitating citizen participation in online media and in protecting the legal rights of those engaged in speech on the Internet. The CMLP is jointly affiliated with Harvard Law School's Berkman Center for Internet & Society, a research center founded to explore cyberspace, share in its study, and help pioneer its development and the Center for Citizen Media, an initiative to enhance and expand grassroots media. The CMLP is an unincorporated association hosted at Harvard Law School, a non-profit educational institution, and has no parent corporation and no stock.

#### **Cox Enterprises, Inc.**

Cox Enterprises, Inc ("CEI") is a Delaware privately held corporation. CEI's indirect subsidiaries include corporations which have facilities and publish, own, and operate news media, including television stations.

### **Dow Jones & Company**

Dow Jones and Company, Inc., publishes, *inter alia*, The Wall Street Journal, Barron's magazine and other periodicals, and, through its Ottaway Newspapers, Inc. subsidiary, a number of daily and weekly community newspapers. Dow Jones has no parent corporations and no publicly held corporation owns 10% or more of its stock. Dow Jones is a subsidiary of News Corporation.

### **The E. W. Scripps Company**

The E.W. Scripps Company is a diverse media concern with interests in newspaper publishing, broadcast television, national television networks and interactive media. Nationwide, it operates 18 daily newspapers, 10 broadcast television stations, five cable and satellite television programming networks and two interactive Web sites. The E.W. Scripps Company, a publicly traded company, has no parent corporations and no publicly held corporation owns 10 percent or more of its stock.

### **The Hearst Corporation**

The Hearst Corporation is a diversified, privately held media company that publishes newspapers, consumer magazines, and business publications. Hearst also owns a leading features syndicate, has interests in several cable television networks, produces programming for television, and is the majority owner of Hearst-Argyle Television, Inc., a publicly traded company that owns and operates numerous television broadcast stations. The Hearst Corporation is privately owned, has no parent corporations, and no publicly held corporation owns 10 percent or more of its stock.

### **Landmark Communications, Inc.**

Landmark Communications, Inc., a Virginia corporation, is engaged principally in the operation of cable television networks, the publication of newspapers, classified advertising magazines and other publications, the operation of commercial television stations and commercial printing businesses, and the operation of internet sites and other internet businesses.

### **Magazine Publishers of America**

Magazine Publishers of America, Inc. is a national trade association including its present membership of more than 240 domestic magazine publishers who publish over 1,400 magazines sold at newsstands and by subscription.

### **The McClatchy Company**

The McClatchy Company publishes 31 daily newspapers and 46 non-daily newspapers throughout the country, including the Sacramento Bee, the Miami Herald, the Kansas City Star and the Charlotte Observer. The newspapers have a combined average circulation of approximately 2,800,000 daily and 3,500,000 Sunday.

### **The National Association of Broadcasters**

The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts. Our members broadcast news, public affairs, entertainment and other programming to



viewers and listeners throughout the nation, and NAB seeks to preserve and enhance its members' ability to create and disseminate freely programming and information of all types.

#### **National Federation of Press Women**

National Federation of Press Women (NFPW) is a membership organization for communications professionals. Founded in 1937, it has over 1,500 members in journalism, public relations, advertising, freelancing, graphic design, new media, and other communications specialties. Its mission is to promote highest ethical standards in communications, protect First Amendment rights, and promote professional growth for communicators. NFPW is a 501(c) (6) organization based in Arlington, VA. It has no subsidiaries.

#### **The National Newspaper Association**

Established in 1885, the National Newspaper Association (NNA) is the national voice of community newspapers. NNA represents owners, publishers, and editors of America's community newspapers and with over 2,500 newspaper members, is currently the largest newspaper association in the United States. The mission of the National Newspaper Association is to protect, promote and enhance America's community newspapers.

#### **The National Press Club**

The National Press Club is a membership organization of journalists and media professionals. The National Press Club promotes and defends First Amendment rights.

#### **National Public Radio**

National Public Radio is a major producer of news for its 285 member stations, who serve all 50 states with noncommercial educational programming. NPR reported on the Anthrax mailings and its reporter was issued a subpoena in this litigation which has been withdrawn.

#### **NBC Universal, Inc.**

NBC Universal, Inc. is one of the world's leading media and entertainment companies in the development, production, and marketing of news, entertainment and information to a global audience. Among other businesses, NBC Universal owns and operates the NBC Television Network, the Spanish-language television network Telemundo, NBC News, several news and entertainment networks including MSNBC and CNBC, and a television stations group consisting of 29 owned-and-operated stations, including NBC Subsidiary (KNBC-TV), Inc., KNTV Television, Inc., and KNSD-TV, a division of Station Venture Operations LP in California. NBC News produces the "Today" show, "NBC Nightly News with Brian Williams," "Dateline," and "Meet the Press." NBC Universal is 80% owned by General Electric Company, with 20% controlled by Vivendi Universal S.A., both of which are publicly held corporations.

#### **Newspaper Association of America**

The Newspaper Association of America ("NAA") is a nonprofit organization representing the interests of more than 2,000 newspapers in the United States and Canada. NAA members account for nearly 90 percent of the daily newspaper circulation in the United States and a wide range of non-daily newspapers. One of NAA's key strategic priorities is to advance newspapers' First Amendment interests, including the ability to gather and report the news.

### **The Newspaper Guild – CWA**

The Newspaper Guild – CWA is a labor organization representing more than 30,000 employees of newspapers, newsmagazines, news services and related media enterprises. Guild representation comprises, in the main, the advertising, business, circulation, editorial, maintenance and related departments of these media outlets. The Newspaper Guild is a sector of the Communications Workers of America. As America's largest communications and media union, representing over 700,000 men and women in both private and public sectors, CWA issues no stock and has no parent corporations.

### **The New York Times Company**

The New York Times Company is the publisher of The New York Times, the International Herald Tribune, The Boston Globe, and 15 other daily newspapers. It has no parent company and no publicly held corporation owns 10% or more of its stock.

### **The Radio-Television News Directors Association**

The Radio-Television News Directors Association is the world's largest and only professional organization devoted exclusively to electronic journalism. RTNDA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTNDA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms. The Radio-Television News Directors Association is a nonprofit organization with no parent company and does not issue stock.

### **The Reporters Committee for Freedom of the Press**

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970. The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

### **The Society of Professional Journalists**

The Society of Professional Journalists is dedicated to improving and protecting journalism. It is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry; works to inspire and educate the next generation of journalists; and protects First Amendment guarantees of freedom of speech and press.

### **Time, Inc.**

Time Inc. is the largest publisher of general interest magazines in the world, publishing over 130 magazines in the United States and abroad. Its major titles include Time, Fortune, Sports Illustrated, People, and Entertainment Weekly. Time Inc. is a subsidiary of Time Warner Inc. Time Inc. is indirectly wholly-owned by Time Warner Inc., a public company.

**Tribune Company, Inc.**

Tribune Company, Inc. operates businesses in publishing, broadcasting and on the Internet. It reaches more than 80 percent of U.S. households. In publishing, Tribune operates nine daily newspapers, including the Chicago Tribune, the Los Angeles Times, The (Baltimore) Sun, Newsday, the Hartford Courant, the South Florida Sun-Sentinel, the Orlando Sentinel, the (Allentown) Morning Call and the (Virginia) Daily Press. In broadcasting, Tribune owns 23 television stations and Superstation WGN on national cable. These publishing and broadcasting interests are complemented by high-traffic news and information web sites. Tribune Company is 100% owned by the Tribune Company Employee Stock Ownership Plan. No publicly held company owns any of its stock.