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9 WILLIAM GERTZ

10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 CHI MAK, et al.,

17 Defendants.
18
19

Case No. SACR05-293-CJC

**DECLARATION OF CHARLES S.
LEEPER IN SUPPORT OF
MOTION TO QUASH**

[Notice of Motion to Quash;
Memorandum of Points and Authorities
and [Proposed] Order filed concurrently
herewith]

20
21 I, Charles S. Leeper, declare as follows:

22 1. I am an attorney at the law firm of Drinker Biddle & Reath LLP. I am
23 counsel of record for Non-Party Witness, William Gertz ("Gertz"). I have personal
24 knowledge of the facts set forth in this Declaration and, if called as a witness, could
25 and would testify competently to such facts under oath.

26 2. I make this declaration in support of Gertz' Motion to Quash filed
27 concurrently herewith.
28

1 3. Attached hereto as Exhibit A is a true and correct copy of the Gertz
2 Article.

3 4. Attached hereto as Exhibit B is a true and correct copy of pages 1, 7-8,
4 42, and 49 of the Transcript of the May 8, 2006 Hearing in the above-captioned
5 case.

6 5. Attached hereto as Exhibit C is a true and correct copy of the Statement
7 of James B. Comey, Deputy Attorney General, U.S. Department of Justice, for the
8 Committee on the Judiciary, United States Senate, Concerning Reporters' Privilege
9 Legislation (July 20, 2005).


10 6. Attached hereto as Exhibit D is a true and correct copy of the American
11 Society of Newspaper Editors' Statement of Principles, Art. VI.

12 7. Attached hereto as Exhibit E is a true and correct copy of the Radio-
13 Television News Directors Ass'n Code of Ethics and Professional Conduct.

14 8. Attached hereto as Exhibit F is a true and correct copy of the Society of
15 Professional Journalists Code of Ethics.

16 I declare under penalty of perjury under the laws of the United States of
17 America that the foregoing is true and correct.

18 Executed on June 5, 2008, at Washington, D.C.

19 
20 _____
21 Charles S. Leeper

The Washington Times

www.washingtontimes.com

New charges expected in defense data theft ring

By Bill Gertz

THE WASHINGTON TIMES

Published May 16, 2006

Federal prosecutors are expected to add new charges against several people in Los Angeles linked to a covert program to provide China with Navy defense technology and at least one will be charged with espionage, U.S. government officials said.

Defense contractor Chi Mak and his wife, Rebecca Laiwah Chiu, along with brother Tai Mak were arrested last year and charged with failing to register as Chinese government agents after a yearlong counterespionage probe.

Documents obtained after the Oct. 28 arrests provided investigators with new clues about the technology theft ring that included proprietary corporate information and embargoed defense technology related to Navy warships, officials said. Investigators think the spy ring passed the sensitive data to Beijing.

The charges, which will be made public as early as this week, will include a new indictment against Chi Mak, Tai Mak, Mrs. Chiu and a fourth Mak relative. All four will be charged with conspiracy to export defense articles and attempted unlawful export of defense articles.

Additionally, Chi Mak, an electrical engineer with the Los Angeles defense contractor Power Paragon, will be indicted on charges of unlawful export of defense articles and gathering defense information, an espionage charge, the officials said.

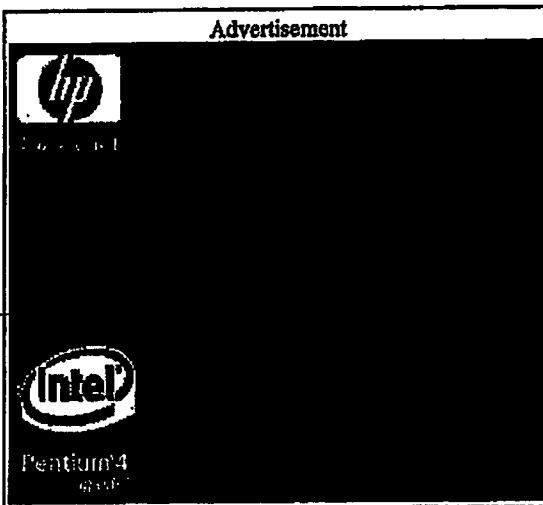
Chi Mak is thought to have supplied China with sensitive information about the electrical systems of U.S. warships and submarines, including details of the Virginia-class submarine, and information on a new electromagnetic catapult to launch jets from aircraft carriers.

A spokesman for the U.S. attorney in Los Angeles declined to comment, but Assistant U.S. Attorney Gregory Staples said in court last week that the government is expected to seek a new indictment in the case. He did not specify the new charges.

Senior Justice Department officials have approved the new charges, which prosecutors will announce in Los Angeles, said the officials, who spoke on the condition of anonymity.

Chi, Tai and Rebecca Mak have pleaded not guilty to the original charges in the case.

"We presented evidence throughout this case that undermines the government's conclusion that these individuals were involved in espionage," Ronald Kaye, Chi Mak's attorney, said in an interview. An attorney for Mrs. Chiu, Stanley Greenberg, said he is confident that his client will be found not guilty. An attorney for Tai Mak could not be reached for comment.



U.S. officials described Tai Mak, an engineer with Phoenix Television, as an intelligence courier for the Chinese military who was carrying an encrypted computer disk holding defense technology data when he was arrested.

Tai Mak also will be charged with aiding and abetting and possession of property to aid a foreign government. He and his wife were arrested at Los Angeles International Airport as they were about to fly to Hong Kong. Tai Mak was carrying an encrypted disk that FBI officials said contained data on a new technology for destroyers known as quiet electric drive.

Earlier charges that Chi Mak, Tai Mak and Rebecca Mak failed to register as Chinese government agents will be kept in the new indictment.

Chi and Tai Mak were born in Guangzhou, China.

The new charges were based on thousands of pages of documents found at the home of Chi Mak, officials said.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

THE HON. CORMAC J. CARNEY, JUDGE PRESIDING

UNITED STATES OF AMERICA,)
)
) PLAINTIFF,)
)
) VS.)
)
) CHI MAK, TAI MAK, REBECCA CHIU,)
) DEFENDANT.)
)

NO. SACR 05-293-CJC

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SANTA ANA, CALIFORNIA
MONDAY, MAY 8, 2006

MARIA BEESLEY-DELLANEVE, CSR 9132
OFFICIAL REPORTER
RONALD REAGAN FEDERAL BUILDING
411 W. 4TH STREET
ROOM 1-053
SANTA ANA, CA 92701
(714) 564-9259

1 COURT THAT OUR INVESTIGATION IS GOING FORWARD. WE UNLIKE, A LOT
2 OF CASES, WE DIDN'T GET THESE DOCUMENTS IN THIS CASE UNTIL SHORTLY
3 BEFORE INDICTMENT.

4 SO AS WE STAND HERE TODAY, THE 40,000 DOCUMENTS, THE
5 GOVERNMENT CERTAINLY DOESN'T INTEND TO INTRODUCE ALL OF THEM OR
6 EVEN A SMALL FRACTION OF THEM, I DON'T THINK. AT MOST, WE MIGHT
7 BE LOOKING AT SOME SORT OF SUMMARY TESTIMONY. THE KEY DOCUMENTS
8 AND THE KEY EVIDENCE IN THIS CASE REALLY BOILS DOWN TO A FEW
9 HUNDRED PAGES OF DOCUMENTS, I BELIEVE, AND ROUGHLY A WEEK OR TWO
10 WORTH OF SURVEILLANCE.

11 THERE IS A LOT OF SURVEILLANCE. THERE'S A LOT OF CLOSED
12 CIRCUIT TV, MICROPHONE CUTS US AND SO FORTH. I WOULD SAY 99
13 PERCENT OF THEM WILL PROVE TO BE, AT LEAST FROM THE GOVERNMENT'S
14 PERSPECTIVE, IRRELEVANT. THE CASE REALLY COMES TOGETHER THE WEEK
15 OR TWO BEFORE THE ARREST AND THE INDICTMENT, AND THAT THE CORE OF
16 THAT EVIDENCE HAS BEEN IN THE HANDS OF THE DEFENSE FOR SOME TIME.

17 I JUST WANTED THE COURT TO BE CLEAR ABOUT THAT. AND
18 ALSO TO BE CLEAR ABOUT WHILE THERE IS A LARGE VOLUME OF
19 DOCUMENTARY EVIDENCE, IT'S CERTAINLY NOT THE INTENTION OF THE
20 GOVERNMENT TO USE MOST OF OR ANY OF IT OTHER THAN PERHAPS IN A
21 SUMMARY FASHION.

22 THE COURT: I APPRECIATE THAT. LET ME ASK YOU A
23 QUESTION. AS YOU STAND THERE TODAY DO YOU HAVE ANY PRESENT
24 INTENTION OF FILING A SUPERSEDING INDICTMENT? OR AS YOU STAND
25 TODAY, THESE ARE THE CHARGES YOU ARE GOING TO GO TO TRIAL ON? THE

1 REASON WHY I ASKED THAT QUESTION, YOU PIQUED MY CURIOSITY WHEN YOU
2 SAID YOUR INVESTIGATION IS GOING ON. I UNDERSTAND THAT GENERALLY
3 INVESTIGATION IS ALWAYS ONGOING UNTIL TRIAL, BUT I DIDN'T KNOW IF
4 YOU ARE SUGGESTING THAT YOU'RE CURRENTLY CONTEMPLATING MAYBE
5 FILING NEW CHARGES.

6 MR. STAPLES: THAT'S A FAIR STATEMENT, YOUR HONOR. WE
7 ARE. AGAIN, UNLIKE MOST CASES, BECAUSE THE GREAT VOLUME OF
8 EVIDENCE DID NOT COME TO US UNTIL JUST BEFORE THE INDICTMENT, AND
9 ALSO BECAUSE OF THE NATURE OF THE EVIDENCE, UNLIKE A LOT OF
10 CLASSIFIED EVIDENCE WHERE IT MAY BE SO-AND-SO IS AN UNDERCOVER
11 OPERATIVE FOR THE UNITED STATES, WHERE IT'S PLAIN ON ITS FACE WHY
12 IT MAY BE CLASSIFIED, THIS IS ALL VERY TECHNICAL WRITING DEALING
13 WITH ELECTRICAL ENGINEERING FOR NAVAL WARSHIPS.

14 I HAVE LOOKED AT A NUMBER OF DOCUMENTS AND I CAN TELL
15 YOU JUST IN GENERAL WHAT THEY DEAL WITH. BUT CERTAINLY NO LAYMAN
16 AND NO ONE ON THIS SIDE OF THE COURTROOM ANYWAY CAN SIT THERE AND
17 TELL YOU WHAT THE SIGNIFICANCE OF THIS INFORMATION IS, LET ALONE
18 DECIPHER THE MATHEMATICS INVOLVED WITH IT.

19 SO IN THAT SENSE IT'S A LITTLE MORE COMPLICATED THAN
20 YOUR AVERAGE CASE AS FAR AS THE ONGOING INVESTIGATION. WE CAN'T
21 SIMPLY DO IT OURSELVES. WE HAVE TO RELY UPON ENGINEERS TO GET
22 BACK TO US AND TELL US WHAT THIS ACTUALLY NEEDS.

23 THE COURT: IT SOUNDS TO ME YOU ARE CONTEMPLATING
24 BRINGING MORE SERIOUS CHARGES THAN THE SAME TYPE OF CHARGES.

25 MR. STAPLES: THAT IS CORRECT. I BELIEVE THAT'S ALL I

1 CONCERN THAT I HAD AS I LISTENED TO THIS DISCUSSION.

2 THE COURT: I UNDERSTAND YOUR CONCERN. IT'S WELL TAKEN.

3 MR. STAPLES, THE LAST THING I WANT TO DO IS NECESSARILY
4 INTERFERE WITH WHAT YOUR RIGHTS AND DUTIES ARE, BUT AT THE SAME
5 TIME I DON'T WANT TO PREPARE FOR A CERTAIN TYPE OF CASE AND ALL OF
6 A SUDDEN FIND OUT, NO, WE'RE GOING TO BE LITIGATING A MUCH MORE
7 DANGEROUS, SERIOUS CASE. NOT THAT THIS CASE ISN'T DANGEROUS OR
8 SERIOUS.

9 MR. STAPLES: YOUR HONOR, IT'S A DIFFICULT QUESTION TO
10 ANSWER. WHAT I CAN SAY IS PENDING NEW CHARGES WOULD BE BASED ON
11 THE EVIDENCE ALREADY PRODUCED TO THE DEFENSE. IN OTHER WORDS,
12 WE'RE NOT CONTEMPLATING BRINGING IN A NEW SET OF CHARGES WITH
13 ANOTHER ADDITIONAL 40,000 DOCUMENTS.

14 THE COURT: DO YOU ANTICIPATE IN THE NEAR FUTURE MAKING
15 A DECISION, ONE WAY OR THE OTHER, OF WHETHER TO BRING NEW CHARGES
16 OR NOT? OBVIOUSLY, IT'S NOT CARVED IN STONE. BUT IF THE POWERS
17 THAT BE ARE GOING TO ANALYZE THIS AND MAKE A DECISION ONE WAY OR
18 THE OTHER, IS THAT GOING TO BE HAPPENING IN THE NEAR FUTURE?

19 MR. STAPLES: YES.

20 THE COURT: WHEN IS THAT? JUST THE TIME PERIOD.

21 MR. STAPLES: I WOULD SAY WE'RE TALKING A MATTER OF
22 WEEKS.

23 THE COURT: OKAY. WHAT I'M INCLINED TO DO IS WE
24 PROBABLY NEED TO GET A TIME WAIVER FROM ALL THE DEFENDANTS TO
25 VACATE THE CURRENT TRIAL DATE. THEN I WOULD SET ANOTHER STATUS

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CERTIFICATE

I HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28,
UNITED STATES CODE, THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT
OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE
ABOVE-ENTITLED MATTER.

DATE: MAY 23, 2008

MARIA BEESLEY, U.S. COURT REPORTER
CSR NO. 9132



**STATEMENT OF
JAMES B. COMEY
DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE**

**FOR THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

**CONCERNING
REPORTERS' PRIVILEGE LEGISLATION: ISSUES AND IMPLICATIONS
S. 340 AND H.R. 581, THE FREE FLOW OF INFORMATION ACT OF 2005**

JULY 20, 2005

Introduction

This statement will focus on S. 340, the "Free Flow of Information Act of 2005." An identical bill has been introduced in the House of Representatives as H.R. 581. S. 340 would establish a Federal shield law that would preclude the Federal government from issuing compulsory process to obtain information about sources from members of the news media. It would shift from the Department of Justice to the courts the authority to evaluate requests for subpoenas to members of the media and make final decisions during criminal investigations and prosecutions as to whether subpoenas should be issued. It would create a bar against any subpoena issued to certain third parties that reasonably could be expected to lead to the discovery of the identity of a source. It would apply to all forms of Federal compulsory process, including court orders and national security letters used in terrorism and espionage investigations, to selected categories of news and informational outlets. The bill would create serious impediments to the Department's ability to effectively enforce the law and fight terrorism.

S. 340 would significantly impair the flexibility of the Executive branch in enforcing Federal law, both by imposing inflexible, mandatory standards in lieu of existing voluntary ones and by applying its restrictions on the use of compulsory process more broadly than existing regulations. The bill is bad public policy primarily because it would bar the Government from obtaining information about media sources – even in the most urgent of circumstances affecting the public's health or safety or national security – and would place an unreasonable burden upon the Government to justify to the court, in a public evidentiary proceeding, that it requires non-source information from the media in connection with sensitive grand jury investigations.

The Department of Justice recognizes that the media plays a critical role in our society. The freedom of the press is a hallowed American right, and in a time when news can be sent around the world almost instantaneously, it is as important as ever that the American people be kept informed of what is happening overseas, in Washington, and in their hometowns. For this reason, the Department's disciplined approach to subpoenas directed towards members of the news media carefully balances the public's interest in the free dissemination of ideas and information with the public's interest in effective law enforcement and the fair administration of justice.

For the last 33 years, the Department of Justice has authorized subpoenas to the news media only in the most serious cases. The guidelines set out in 28 C.F.R. § 50.10 require the Attorney General personally to approve all contested subpoenas directed to journalists, following a rigorous multi-layered internal review process involving various components of the Department.

S. 340 would disrupt the Department's ability to balance the competing interests involved in a decision to subpoena a member of the media and would strip the Department of its ability to obtain crucial evidence in criminal investigations and prosecutions. It would also effectively overrule the Supreme Court's decision in *Branzburg v. Hayes*, 408 U.S. 665 (1972), which held that reporters have no privilege, qualified or otherwise, to withhold information from a grand jury. *Branzburg* has been followed consistently by the federal courts of appeals, and was recently reaffirmed by the United States Court of Appeals for the District of Columbia in *In re Grand Jury Subpoena, Judith Miller*, 397 F.3d 364 (D.C. Cir.), cert. denied, 2005 U.S. Lexis 5190 (June 27, 2005). Indeed, the bill would give more protection to the reporter's "privilege" – which has not been recognized by the Supreme Court – than exists for other forms of privilege that are recognized, e.g., the attorney-client privilege or the spousal privilege.

These results are completely unjustified and would pose a great threat to public safety. In the absence of a credible demonstration that the subpoena power is being abused by the Department in this area, such that sources have dried up, with the result that journalists are unable to do effective investigative reporting, there is no need for a legislative fix that substantially skews the carefully maintained balance against legitimate law enforcement interests. The next part of this statement will address the specific provisions of the bill.

Section 2

Section 2 of the bill is intended to codify the requirements of 28 C.F.R. § 50.10 by preventing the Department from issuing subpoenas to members of the news media unless a court determines by clear and convincing evidence: (i) that there are reasonable grounds to believe, based upon non-media evidence, that a crime has occurred; (ii) that the testimony or document sought is essential to the

investigation or prosecution; and (iii) that the Department has unsuccessfully attempted to obtain the evidence from non-media sources. While, to some degree, subsection 2(a) is similar to the guidelines the Department follows in its governing regulation, the bill departs dramatically from the regulation's requirements, first, by requiring the Department to make its case before a court, after providing the news media an opportunity to be heard, and, second, by imposing a new "clear and convincing standard" to meet the section's requirements. In effect, this provision would require public mini-trials whenever the Department seeks relevant information in a criminal grand jury investigation or to justify a trial subpoena.

The bill would seriously jeopardize traditional notions of grand jury secrecy and unnecessarily delay the completion of criminal investigations. To meet the bill's "clear and convincing" standard, the Department frequently will have to present other evidence obtained before the grand jury. It is unclear how the Department can present such justifying evidence consistent with its secrecy obligations under Rule 6(e) of the Federal Rules of Criminal Procedure. Further, the provision would require that in order to issue to the media a trial subpoena for non-source information, such as a reporter's eyewitness testimony or video outtakes, the Department must showcase its evidence prematurely. These new burdens could significantly cripple effective law enforcement and thereby wreak havoc on the public's interest in the fair administration of justice. We note that media outlets often are happy to provide certain types of non-sensitive information to the Federal government, but are more comfortable doing so in response to a subpoena. By making it quite difficult to issue almost any type of subpoena, the bill would make it more difficult for media outlets to cooperate with the Federal government.

Subsection 2(b) is directed toward codifying 28 C.F.R. § 50.10(f)(4) by limiting compelled evidence from a member of the media to: (i) verifying published information; or (ii) describing surrounding circumstances relevant to the accuracy of published information. But the regulatory provision in subparagraph 50.10(f)(4) has been interpreted consistently to permit compulsion of additional types of evidence if it is apparent that there are no other sources to obtain the information and that the information is otherwise essential to the case. While subsection 2(b) includes language that the limitation is applicable "to the extent possible," it is manifestly unclear under what circumstances the court would allow other types of evidence to be subpoenaed. The provision certainly would substitute the judgment of the court for that of the prosecutor in determining what evidence was necessary in a criminal investigation or prosecution.

Section 4

Section 4 would ban compelling members of the news media to identify their sources of information. It would preclude the Department from compelling a

journalist to identify a confidential source of information from whom the journalist obtained information. More importantly, it also would prevent the compulsion of any information that reasonably could lead to the discovery of the identity of the source. These limitations are not in the Department's governing regulation and represent a significant departure from the state of Federal law.

The effect of this provision cannot be overstated. A provision that bars process that might obtain "any information that could reasonably be expected to lead to the discovery of the identity of . . . a source" might effectively end an investigation, particularly one that involved release of national security information. Moreover, even if the intent of the investigation were not to identify a source, the investigation might be barred because it may compel information that a court may find could reasonably lead to the discovery of a source's identity. This provision would create a perverse incentive for persons committing serious crimes involving public safety and national security to employ the media in the process.

Historically, in applying its governing regulation to requests involving source information, the Department has carefully balanced the public's interest in the free dissemination of ideas with the public's interest in effective law enforcement. The Department's regulation has served to limit the number of subpoenas authorized for source information to little more than a handful over its 33-year history. The authorizations granted for source information have been linked closely to significant criminal matters that directly affect the public's safety and welfare. Section 4 of the bill would preclude the Department from obtaining crucial evidence in vital cases, and would overrule settled Supreme Court precedent that protects the grand jury's ability to hear every person's evidence in pursuit of the truth.

The harm that this provision might cause is demonstrably greater than the purported benefit it may serve. It is essential to the public interest that the Department maintain the ability, in certain vitally important circumstances, to obtain information identifying a source when a paramount interest is at stake. For example, obtaining source information may be the only available means of abating a terrorist threat or locating a kidnapped child. Certainly, in the face of a paramount public safety or health concern or a national security imperative, the balance should favor disclosure of source information in the possession of the news media. For example, on September 11, 2001, the U.S. Attorney's Office for the Northern District of California requested authorization to subpoena facsimiles that were sent to a San Francisco, California television station from individuals who had predicted eight weeks earlier that September 11th would be "Armageddon." Under the bill, the Government would have been unable to obtain that information.

This provision would go far beyond any common law privilege. As the United States Court of Appeals for the District of Columbia Circuit recently held in *Miller*, there is no First Amendment privilege for journalists' confidential sources, and if a common law privilege exists, it is not absolute and must yield to the legitimate imperatives of law enforcement. Further, comparing the bill to existing state shield laws is inapt. None of the states deals with classified information in the way that the Federal government does, and no state is tasked with defending the nation as a whole or conducting international diplomacy. The bill makes no recognition of these critical Federal responsibilities, and would allow no exceptions for situations that endanger the national security or the public's health and safety.

Finally, section 4's definition of a confidential source is overly broad. Under subparagraph 4(1)(B), any individual whom the journalist subjectively claims to be a confidential source automatically would be afforded that status. This is the case although the source may have not sought confidential status with the journalist or even cared whether his or her identity was disclosed.

Section 5

Section 5 appears to be an attempt to codify 28 C.F.R. § 50.10(g), the regulation governing requests to subpoena the telephone toll records of a member of the news media. It would add other business transaction records between a reporter and a third party, such as a telecommunications service provider, Internet service provider, or operator of an interactive computer service for a business purpose.

Taken together with section 4's prohibition against obtaining information that reasonably could lead to the identification of a source, this section largely ends the ability of law enforcement authorities to conduct *any* investigation involving third parties. For example, a ransom demand made to a kidnap victim's family home telephone could be investigated by compulsory process; a ransom demand made by an anonymous person to a media outlet could not be investigated by such compulsory process. This provision is inconsistent with common law and goes far beyond any statute in any State.

Like section 2, section 5 would require a public mini-trial every time the Department sought telephone or other communications service provider records in a grand jury investigation or criminal trial. For the reasons articulated above, section 5 is also bad public policy. While section 5 would establish an exception to the notice requirement if the court determines by clear and convincing evidence that notice "would pose a substantial threat to the integrity of a criminal investigation," there are no built-in mechanisms to protect from public disclosure the very information that the Department would be seeking to protect by resisting notice.

Section 6

Even if the information sought has already been published or disseminated, section 6 of the bill would continue the ban on compelling source material and would continue to require court approval for other media evidence. The purpose of this provision is unclear. Moreover, reporters could use the provision to provide selective testimony; they could choose what facts to disclose in testimony, while every court would be barred from ordering the reporter to provide any information that the reporter chose not to share.

It is possible that the provision is intended to protect a reporter from disclosing source information that already has been publicly disclosed (inadvertently or otherwise) by someone else. Other well-established privileges are waived under certain circumstances when the information sought to be protected has been disclosed. We believe that the issue of waiver should be determined on a case-by-case basis.

Section 7

The definition of a "covered person" contained in subparagraph 7(1)(A) of the bill raises several distinct concerns. Most significantly, it would extend the bill's protections well beyond its presumably intended objective, that is, providing special statutory protections for the kind of news- and information-gathering activities that are essential to freedom of the press under the First Amendment. For example, "covered persons" protected by the bill include non-media corporate affiliates, subsidiaries, or parents of any cable system or programming service, whether or not located in the United States. It would also include any supermarket, department store, or other business that periodically publishes a products catalog, sales pamphlet, or even a listing of registered customers.

Far more dangerously, it would cover criminal or terrorist organizations that also have media operations, including many foreign terrorist organizations, such as *al Qaida* (which, from its founding, maintained a media office that published a newsletter). Indeed, the inherent difficulty of appropriately defining a "covered person" in a world in which the very definition of "media" is constantly evolving, suggests yet another fundamental weakness in the bill. What could be shielded here is not so much the traditional media – which already is protected adequately by existing Justice Department guidelines – as criminal activity deliberately or fortuitously using means or facilities in the course of the offenses that would cause the perpetrators to fall within the definition of the media under the bill.

In addition, the provisions of the bill reach well beyond the Department of Justice. The bill applies broadly to any "Federal entity," defined under the bill to

include "an entity or employee of the judicial, legislative, or executive branch of the Federal Government with the power to issue a subpoena or provide other compulsory process." The bill also would reach beyond the guidelines in imposing its restrictions upon any requirement for a covered person to testify or produce documents "in any proceeding or *in connection with any issue arising under Federal law.*" Section 2(a). For example, although section 3 of the bill attempts to exclude from coverage "requests for . . . commercial or financial information unrelated to news gathering or news and information dissemination," the meaning of this section is unclear and may not be sufficient to prevent the bill from empowering news companies to block legitimate antitrust investigations into their potentially anticompetitive mergers and business practices.

Conclusion

Recent events no doubt have raised the public's awareness of the issue of compelling evidence from journalists. There are legitimate competing interests involved in the ongoing dialogue on this issue. However, history has shown that the protections already in place, including the Department's rigorous internal review of media subpoena requests coupled with the media's ability to challenge compulsory process in the federal courts, are sufficient and strike the proper balance between the public's interest in the free dissemination of ideas and information and the public's interest in effective law enforcement and the fair administration of justice.

The Justice Department looks forward to working with the Committee on these important issues going forward.

Page Location: [Home](#) » [Archives](#) » [Fundamental Documents](#)

ASNE Statement of Principles

Published: August 20, 1996

Last Updated: November 29, 2006

[Printer-friendly version](#)

ASNE Statement of Principles

ASNE's Statement of Principles was originally adopted in 1922 as the "Canons of Journalism." The document was revised and renamed "Statement of Principles" in 1975.

PREAMBLE. The First Amendment, protecting freedom of expression from abridgment by any law, guarantees to the people through their press a constitutional right, and thereby places on newspaper people a particular responsibility. Thus journalism demands of its practitioners not only industry and knowledge but also the pursuit of a standard of integrity proportionate to the journalist's singular obligation. To this end the American Society of Newspaper Editors sets forth this Statement of Principles as a standard encouraging the highest ethical and professional performance.

ARTICLE I - Responsibility. The primary purpose of gathering and distributing news and opinion is to serve the general welfare by informing the people and enabling them to make judgments on the issues of the time. Newspapermen and women who abuse the power of their professional role for selfish motives or unworthy purposes are faithless to that public trust. The American press was made free not just to inform or just to serve as a forum for debate but also to bring an independent scrutiny to bear on the forces of power in the society, including the conduct of official power at all levels of government.

ARTICLE II - Freedom of the Press. Freedom of the press belongs to the people. It must be defended against encroachment or assault from any quarter, public or private. Journalists must be constantly alert to see that the public's business is conducted in public. They must be vigilant against all who would exploit the press for selfish purposes.

ARTICLE III - Independence. Journalists must avoid impropriety and the appearance of impropriety as well as any conflict of interest or the appearance of conflict. They should neither accept anything nor pursue any activity that might compromise or seem to compromise their integrity.

ARTICLE IV - Truth and Accuracy. Good faith with the reader is the foundation of good journalism. Every effort must be made to assure that the news content is accurate, free from bias and in context, and that all sides are presented fairly. Editorials, analytical articles and commentary should be held to the same standards of accuracy with respect to facts as news reports. Significant errors of fact, as well as errors of omission, should be corrected promptly and prominently.

ARTICLE V - Impartiality. To be impartial does not require the press to be unquestioning or to refrain from editorial expression. Sound practice, however, demands a clear distinction for the reader between news reports and opinion. Articles that contain opinion or personal interpretation should be clearly identified.

ARTICLE VI - Fair Play. Journalists should respect the rights of people involved in the news, observe the common standards of decency and stand accountable to the public for the fairness and accuracy of their news reports. Persons publicly accused should be given the earliest opportunity to respond. Pledges of confidentiality to news sources must be honored at all costs, and therefore should not be given lightly. Unless there is clear and pressing need to maintain confidences, sources of information should be identified.

These principles are intended to preserve, protect and strengthen the bond of trust and respect between American journalists and the American people, a bond that is essential to sustain the grant of freedom entrusted to both by the nation's founders.

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11690B Sunrise Valley Drive | Reston, VA 20191-1409 | Phone 703-453-1122

Ethics

Code of Ethics and Professional Conduct

For the Code of Ethics en español, click here.

PREAMBLE

Professional electronic journalists should operate as trustees of the public, seek the truth, report it fairly and with integrity and independence, and stand accountable for their actions.

PUBLIC TRUST: Professional electronic journalists should recognize that their first obligation is to the public.

Professional electronic journalists should:

- * Understand that any commitment other than service to the public undermines trust and credibility.
- * Recognize that service in the public interest creates an obligation to reflect the diversity of the community and guard against oversimplification of issues or events.
- * Provide a full range of information to enable the public to make enlightened decisions.
- * Fight to ensure that the public's business is conducted in public.

TRUTH: Professional electronic journalists should pursue truth aggressively and present the news accurately, in context, and as completely as possible.

Professional electronic journalists should:

- * Continuously seek the truth.
- * Resist distortions that obscure the importance of events.
- * Clearly disclose the origin of information and label all material provided by outsiders.

Professional electronic journalists should not:

- * Report anything known to be false.
- * Manipulate images or sounds in any way that is misleading.
- * Plagiarize.
- * Present images or sounds that are reenacted without informing the public.

FAIRNESS: Professional electronic journalists should present the news fairly and impartially, placing primary value on significance and relevance.

Professional electronic journalists should:

- * Treat all subjects of news coverage with respect and dignity, showing particular compassion to victims of crime or tragedy.
- * Exercise special care when children are involved in a story and give children greater privacy protection than adults.
- * Seek to understand the diversity of their community and inform the public without bias or stereotype.
- * Present a diversity of expressions, opinions, and ideas in context.
- * Present analytical reporting based on professional perspective, not personal bias.
- * Respect the right to a fair trial.

INTEGRITY: Professional electronic journalists should present the news with integrity and decency,

avoiding real or perceived conflicts of interest, and respect the dignity and intelligence of the audience as well as the subjects of news.

Professional electronic journalists should:

- * Identify sources whenever possible. Confidential sources should be used only when it is clearly in the public interest to gather or convey important information or when a person providing information might be harmed. Journalists should keep all commitments to protect a confidential source.
- * Clearly label opinion and commentary.
- * Guard against extended coverage of events or individuals that fails to significantly advance a story, place the event in context, or add to the public knowledge.
- * Refrain from contacting participants in violent situations while the situation is in progress.
- * Use technological tools with skill and thoughtfulness, avoiding techniques that skew facts, distort reality, or sensationalize events.
- * Use surreptitious newsgathering techniques, including hidden cameras or microphones, only if there is no other way to obtain stories of significant public importance and only if the technique is explained to the audience.
- * Disseminate the private transmissions of other news organizations only with permission.

Professional electronic journalists should not:

- * Pay news sources who have a vested interest in a story.
- * Accept gifts, favors, or compensation from those who might seek to influence coverage.
- * Engage in activities that may compromise their integrity or independence.

INDEPENDENCE: Professional electronic journalists should defend the independence of all journalists from those seeking influence or control over news content.

Professional electronic journalists should:

- * Gather and report news without fear or favor, and vigorously resist undue influence from any outside forces, including advertisers, sources, story subjects, powerful individuals, and special interest groups.
- * Resist those who would seek to buy or politically influence news content or who would seek to intimidate those who gather and disseminate the news.
- * Determine news content solely through editorial judgment and not as the result of outside influence.
- * Resist any self-interest or peer pressure that might erode journalistic duty and service to the public.
- * Recognize that sponsorship of the news will not be used in any way to determine, restrict, or manipulate content.
- * Refuse to allow the interests of ownership or management to influence news judgment and content inappropriately.
- * Defend the rights of the free press for all journalists, recognizing that any professional or government licensing of journalists is a violation of that freedom.

ACCOUNTABILITY: Professional electronic journalists should recognize that they are accountable for their actions to the public, the profession, and themselves.

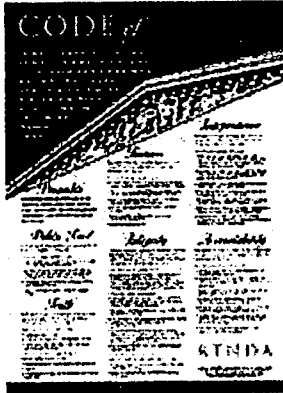
Professional electronic journalists should:

- * Actively encourage adherence to these standards by all journalists and their employers.
- * Respond to public concerns. Investigate complaints and correct errors promptly and with as much prominence as the original report.
- * Explain journalistic processes to the public, especially when practices spark questions or controversy.
- * Recognize that professional electronic journalists are duty-bound to conduct themselves ethically.
- * Refrain from ordering or encouraging courses of action that would force employees to commit an unethical act.
- * Carefully listen to employees who raise ethical objections and create environments in which such objections and discussions are encouraged.
- * Seek support for and provide opportunities to train employees in ethical decision-making.

In meeting its responsibility to the profession of electronic journalism, RTNDA has created this code to

Identify Important issues, to serve as a guide for its members, to facilitate self-scrutiny, and to shape future debate.

Adopted at RTNDA2000 in Minneapolis September 14, 2000.



To order a poster-size copy of the RTNDA Code of Ethics*

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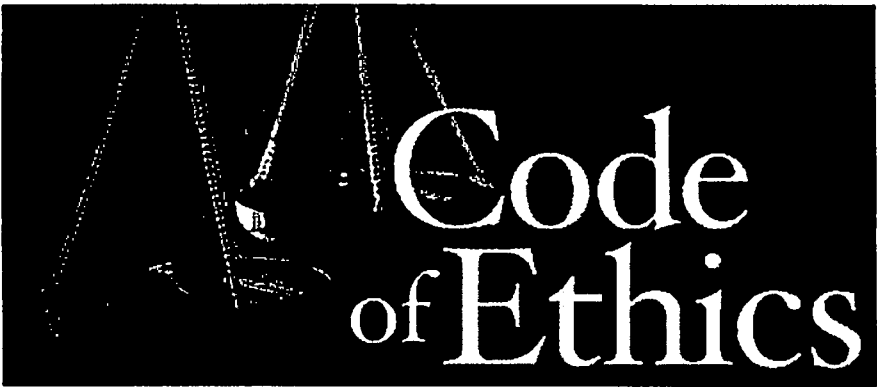
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Preamble

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility. Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.

Seek Truth and Report It

Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.

Journalists should:

- Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.
- Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.

- Legal Advocacy**

- First Amendment**

- Publications**

- Event Calendar**

- Public and the Press**

- SPJ Blogs**

- Discussion Boards**

- Resources for...**
 - Students
 - Freelancers
 - Educators
 - International journalists
 - Arab journalists

- Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- Always question sources' motives before promising anonymity. Clarify conditions attached to any promise made in exchange for information. Keep promises.
- Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not oversimplify or highlight incidents out of context.
- Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.
- Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story
- Never plagiarize.
- Tell the story of the diversity and magnitude of the human experience boldly, even when it is unpopular to do so.
- Examine their own cultural values and avoid imposing those values on others.
- Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.
- Support the open exchange of views, even views they find repugnant.
- Give voice to the voiceless; official and unofficial sources of information can be equally valid.
- Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.
- Distinguish news from advertising and shun hybrids that blur the lines between the two.
- Recognize a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.

Minimize Harm

Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.

Journalists should:

- Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.
- Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.
- Recognize that gathering and reporting information may cause harm or discomfort. Pursuit of the news is not a license for arrogance.
- Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power,

influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.

- Show good taste. Avoid pandering to lurid curiosity.
- Be cautious about identifying juvenile suspects or victims of sex crimes.
- Be judicious about naming criminal suspects before the formal filing of charges.
- Balance a criminal suspect's fair trial rights with the public's right to be informed.

Act Independently

Journalists should be free of obligation to any interest other than the public's right to know.

Journalists should:

- Avoid conflicts of interest, real or perceived.
- Remain free of associations and activities that may compromise integrity or damage credibility.
- Refuse gifts, favors, fees, free travel and special treatment, and shun secondary employment, political involvement, public office and service in community organizations if they compromise journalistic integrity.
- Disclose unavoidable conflicts.
- Be vigilant and courageous about holding those with power accountable.
- Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.
- Be wary of sources offering information for favors or money; avoid bidding for news.

Be Accountable

Journalists are accountable to their readers, listeners, viewers and each other.

Journalists should:

- Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.
- Encourage the public to voice grievances against the news media.
- Admit mistakes and correct them promptly.
- Expose unethical practices of journalists and the news media.
- Abide by the same high standards to which they hold others.

The SPJ Code of Ethics is voluntarily embraced by thousands of writers, editors and other news professionals. The present version of the code was adopted by the 1996 SPJ National Convention, after months of study and debate among the Society's members.

Sigma Delta Chi's first Code of Ethics was borrowed from the American Society of Newspaper Editors in 1926. In 1973, Sigma Delta Chi

| *wrote its own code, which was revised in 1984, 1987 and 1996.* |

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