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## Reporters Ordered to Testify and Reveal Government Sources in Hatfill Case

Two federal district judges have ordered six journalists to disclose their confidential government sources in Dr. Steven J. Hatfill's federal Privacy Act lawsuit against the government.

In 2001, the Federal Bureau of Investigations (FBI) and Department of Justice targeted Hatfill, a bioterrorism expert, in an investigation into deadly anthrax mailings. Hatfill's suit, filed against the government in 2003 under the Privacy Act, 5 U.S.C. § 552a, alleges that sources in the FBI and Justice Department illegally disclosed disparaging details about him in "a coordinated smear campaign" during the investigation.

The reporters have thus far cited a qualified reporter's privilege under the First Amendment and under federal common law in declining to reveal the government sources who provided them with information about Hatfill. Although they are not parties to the underlying suit, the reporters may face contempt sanctions such as fines or jail time if they continue to refuse to comply.

On Aug. 13, 2007, D.C. District Court Judge Reggie B. Walton granted Hatfill's motion to compel further testimony from Michael Isikoff and Daniel Klaidman of *Newsweek*; Allan Lengel of *The Washington Post*; Toni Locy, formerly of *USA Today*; and James Stewart, formerly of CBS News.

A month later, Judge Alvin Hellerstein of the U.S. District Court for the Southern District of New York granted a similar motion regarding ABC News' Brian Ross, according to a September 28 story in the *New York Sun*. The litigation involving Ross' sources is proceeding separately in New York because of jurisdictional issues, said the *Sun*.

Hellerstein's order said that Hatfill's interest in learning the sources' identities overcame the First Amendment privilege that protects reporters from testifying about sources, according to the *Sun*.

Since Judge Walton's order was handed down, two of the sources have come forward and identified themselves, according to the *Sun*, which cites a letter filed by Charles Kimmett, a lawyer for Hatfill. The letter identifies the sources only as former Justice Department employees; it does not say to which reporters they spoke.

On October 2, Hatfill filed motions in the D.C. District Court to hold Locy and Stewart in civil contempt. Memoranda attached to the motions say the reporters "willfully disobeyed a clear and specific order which was clearly known to and understood by [them]."

In his August 13 order, Judge Walton declined to recognize a reporter's privilege, saying that even if he were to recognize one, allowing it to extend to the Privacy Act would be "inappropriate," because it would leave Privacy Act violations "immune from judicial condemnation" without deterring potential leaks to reporters.

Walton drew comparisons between Hatfill's suit and *Lee v. Department of Justice*, 413 F.3d 53 (D.C. Cir. 2005), which he said "provides direct and unequivocal guidance and instruction for the Court's assessment of whether Dr. Hatfill's motion to compel should be granted."

Wen Ho Lee, a scientist for the Department of Energy, was the subject of a highly publicized investigation by the FBI and Justice Department on suspicion of espionage on behalf of the People's Republic of China. Lee was eventually cleared of all but one of the 59 charges levied against him, but he sued the investigating agencies under the Privacy Act, saying they had illegally leaked information about him to the media. The D.C. Circuit Court of Appeals upheld Lee's subpoenas of journalists in order to find the sources of the agency leaks.

In 2006, just before the U.S. Supreme Court denied *certiorari* in the case, Lee reached an unusual settlement agreement with the government and five media organizations involved and was paid \$1.65 million. (See "Settlement Reached in Wen Ho Lee Privacy Case" in the Spring 2006 issue of the *Silha Bulletin*.)

The U.S. Supreme Court refused to recognize a reporter's privilege under the First Amendment in the context of grand jury investigations in *Branzburg v. Hayes*, 408 U.S. 665 (1972). Judge Walton quoted the same section of Justice Byron White's majority opinion in *Branzburg* as did the courts in *Lee v. Department of Justice* and *In re Grand Jury Subpoena, Judith Miller*, 397 F.3d 964, (D.C. Cir. 2005):

"The Supreme Court has noted in the context of privilege in grand jury cases that it 'cannot seriously entertain the notion that the First Amendment protects a newsman's agreement to conceal the criminal conduct of his source, or evidence thereof, on the theory that it is better to write about crime than to do something about it,'" Walton wrote.

— PATRICK FILE

SILHA FELLOW AND BULLETIN EDITOR

# Reporter Privilege News

## House Passes Federal Reporter Shield Law

*Bill Still Faces Hurdles in Senate; Bush has Promised a Veto*

**O**n Oct. 16, 2007, the U.S. House of Representatives voted overwhelmingly in favor of the Free Flow of Information Act, a bill that would establish for the first time a federal privilege for reporters and their confidential sources.

The measure passed the House 398 to 21. Despite strong bipartisan support, the bill still has hurdles to overcome, including a Senate vote, possible committee revisions, and a promised veto from President George W. Bush.

The version of the Free Flow of Information Act that passed the house, H.R. 2102, would limit the federal government's power to subpoena journalists to testify or disclose confidential sources or information in civil or criminal proceedings.

The privilege can be overcome, however, when the party seeking the information can prove that all other reasonable sources of the information have been exhausted and the information sought is "critical" to an investigation, prosecution, or defense. The bill empowers federal courts with the authority to determine when "the public interest in compelling disclosure of the information ... outweighs the public interest in gathering or disseminating news or information" and to make determinations concerning the extent of possible harm to national security.

Lawmakers also added a number of specific exceptions to the privilege, which would apply under various circumstances. It may be overcome, for example, when the information relates to a crime under existing federal law that the journalist witnessed or committed, including the unauthorized disclosure of classified information that has caused or will cause "significant and articulable harm to the national security;" disclosure of a "trade secret, actionable under § 1831 or 1832 of title 18, United States Code;" disclosure of "individually identifiable health information;" or of "nonpublic personal information."

The privilege may also be overcome when disclosure of the identity of a source is "necessary to prevent or to identify any perpetrator of an act of terrorism against the United States or its allies or other significant and specified harm to national security" or when the disclosure is "necessary to prevent imminent death or significant bodily harm."

The bill also states that the privilege does not apply in the context of civil defamation, slander, or libel claims, or defenses raised in federal or state courts.

According to the *Los Angeles Times* on October 17, sponsors of the Free Flow of Information Act Rick Boucher (D-Va.) and Mike Pence (R-Ind.) strengthened the bill's national security exceptions in response to concerns raised by the Bush administration and the Department of Justice.

Despite these concessions, however, President Bush released a statement the same day the bill

passed, October 16, threatening to veto it if passed in its current form.

"The Administration believes that H.R. 2102 would create a dramatic shift in the law that would produce immediate harm to national security and law enforcement," the statement said. "The legislation would make it extremely difficult to prosecute cases involving leaks of classified information and would hamper efforts to investigate and prosecute other serious crimes."

Bush's nominee for U.S. Attorney General, Michael Mukasey, echoed those concerns in his confirmation hearing on October 18, according to The Associated Press (AP). Mukasey said he would prefer to adjust Justice Department practices, if need be, rather than adhere to a shield law.

"One thing about internal procedures is that if you need to change them they're relatively easy to change," Mukasey said. "It becomes much harder when it's etched in stone in the form of legislation. And that is part of the reason for my unease."

Mukasey also said the Free Flow of Information Act defines those covered by the shield too broadly and might inadvertently protect, for example, bloggers who are also spies or terrorists.

H.R. 2102 defines a "covered person" as "a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public for a substantial portion of the person's livelihood or for substantial financial gain and includes a supervisor, employer, parent, subsidiary, or affiliate of such covered person."

The bill also explicitly excludes foreign powers, agents of foreign powers, and members of terrorist organizations as defined by federal law.

According to an October 16 article on the Web site Cnet.com, the bill's sponsors tailored the "covered person" definition to exclude "casual" bloggers. Those who report for a blog "regularly" and "for a substantial portion of [their] livelihood or for substantial financial gain," however, would presumably be covered.

Critics of the House bill's definition of "covered person" argue that it is too restrictive and is "means tested." According to Tim Rutten, a columnist for the *Los Angeles Times*, "it's hard to imagine any American court accepting the notion that our Constitution protects only the speech of those who make money from it."

In an October 20 column, Rutten said a shield law that protects traditional print and broadcast journalists but not "citizen journalists" or bloggers "is swimming against the tide of history in a silly – perhaps, even wicked – fashion."

According to *Editor & Publisher* magazine and the AP, advocacy groups, professional organizations, and media who support the bill such as the Reporters

"It's hard to imagine any American court accepting the notion that our Constitution protects only the speech of those who make money from it."

– Tim Rutten  
Columnist  
*Los Angeles Times*

# Reporter Privilege News

## Judge Rules Reporters Need not Testify in Murder Case

A State Supreme Court judge in Brooklyn, N.Y. ruled on Sept. 12, 2007, that two newspaper reporters will not be compelled to testify in a murder case against the parents of the victim.

Reporters Corey Kilgannon of *The New York Times* and Douglas Montero of the *New York Post* interviewed the mother and stepfather of 7-year-old Nixzmary Brown, shortly after she was found beaten and starved to death in her family home in Brooklyn in January 2006. The abusive nature of Brown's death spawned an 18-month long investigation of the Administration for Children's Services in New York.

The reporters interviewed Brown's mother and stepfather about the circumstances of their daughter's death at the Rikers Island prison complex after they were arrested and charged with failing to render medical assistance to the victim.

Prosecutors sought to compel the two reporters to testify because they believed that their unbiased testimony was critical to the prosecution's case against the victim's parents. In an article published Aug. 28, 2007, *The New York Times* quoted Assistant District Attorney Jane S. Meyers speaking at a pretrial hearing. Without the two reporters' testimony, she claimed, "we would have no case against these defendants," adding, "it is hard for me to even imagine something that's as important to our case as these reporters' testimony."

The prosecution argued that the reporters' testimony would be used to demonstrate that the police did not coerce the victim's mother and stepfather to make incriminating statements regarding the circumstances of Brown's death. In order to underscore the voluntary nature of the parents' statements, Meyers wanted to show that they made similar statements to the two reporters about the murder, according to *The New York Times*.

The *Brooklyn Daily Eagle* reported on Sept. 13, 2007 that the victim's stepfather, Cesar Rodriguez, gave a statement to police after Brown's body was discovered in which he admitted to beating the victim regularly and banged her head against a bathtub fixture on the night of her death.

Lawyers for the newspapers moved to quash the subpoenas in the pretrial hearing. They argued that the state's shield law protected the reporters from being forced to testify for the prosecution.

New York state's reporter shield law, codified at New York Civil Rights Law § 79-h, exempts journalists in certain circumstances from being forced to divulge information when they are subpoenaed. *The Times* reported on August 28 that

its Vice President and Assistant General Counsel, George Freeman, asserted that the shield law was intended to protect journalists' credibility from erosion in circumstances such as the Brown case. He stated that journalists are often at the scenes of crimes and can therefore make credible witnesses.

The state shield law provides an absolute protection for confidential sources; it provides a qualified privilege for nonconfidential sources. In the latter case, journalists are compelled to testify if the state can show that their testimony is relevant, critical, and not obtainable from other sources. As Justice L. Priscilla Hall noted in her statement from the bench on September 12, this case was unusual because the prosecution wanted the reporters to testify about unpublished information from nonconfidential sources: the circumstances of the interviews with the victim's parents.

"The problem arises because of unpublished material," said Hall, "and it arises because of the defendant's Sixth Amendment right to question witnesses against him."

Hall ruled that the prosecution demonstrated the relevance of the reporters' testimony, but that it failed to show that the information was critical and could not be obtained from other sources. She also stated that if the journalists took the stand, they would have to divulge information that was not published in their stories.

An article published in the *Post* on Jan. 16, 2006 reported that the victim's mother had not prevented her boyfriend from beating her daughter because she was afraid of him. An article published in *The Times* on Jan. 20, 2006, described the stepfather's vicious "approach to discipline" with the girl, which included physically assaulting her and tying her to a chair all night.

*The Times'* lawyer, Freeman, called Hall's ruling an accurate interpretation of New York's shield law in a *Times* article published Sept. 13, 2007. "Even though reporters typically make very credible witnesses, that is no reason to force them to testify, particularly where, as the judge found, their evidence is not critical to the case," Freeman said.

Assistant District Attorney Meyers disputed that point earlier in a plea to Justice Hall to reconsider her ruling. "It is the difference between these defendants being acquitted and these defendants being convicted and spending 25 years to life in prison," Meyers said.

The District Attorney's office said it will not appeal the ruling.

(In New York state, the Supreme Court is a trial court.)

— AMBA DATTA

SILHA RESEARCH ASSISTANT

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"Even though reporters typically make very credible witnesses, that is no reason to force them to testify, particularly where, as the judge found, their evidence is not critical to the case."

— George Freeman  
*New York Times* Vice  
President and Assistant  
General Counsel

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# Reporter Privilege News

## Reporters Arrested, Released after Printing ‘Grand Jury Secrets’ *Alternative Weekly Allegedly Published Sheriff’s Home Address*

The founders of *The Phoenix New Times*, an alternative weekly newspaper, were arrested Oct. 18, 2007 for publishing a story about an ongoing grand jury investigation.

The Maricopa County (Ariz.) Sheriff released both men on bond within 24 hours, *The New York Times* reported October 20. Authorities also dropped the charges and halted the underlying grand jury investigation on October 19.

Plainclothes sheriff’s deputies arrested *New Times* executive editor Michael Lacey, and chief executive officer Jim Larkin, at their homes October 18 for publishing a story about a grand jury investigation headlined “Breathtaking Abuse of the Constitution” earlier that day, an October 18 story posted on the *New Times* Web site said.

Ariz. Rev. Stat. Ann. § 13-2812 (2007) makes disclosure of any information relating to a grand jury investigation, including its existence, a class one misdemeanor. The maximum penalty for violating the law is six months in jail and a \$2,500 fine.

Lacey and Larkin also control Village Voice Media, the *New Times*’ parent company, the October 18 *New York Times* story said. The company owns several alternative weeklies, including *The Village Voice* in New York City.

In the story that resulted in their arrest, Lacey and Larkin noted that publishing the information might violate the law. “It is, we fear, the authorities’ belief that what you are about to read here is against the law to publish. But there are moments when civil disobedience is merely the last option. We pray that our judgment is free of arrogance.”

The story reported that special prosecutor Dennis Wilenchik, appointed by Maricopa County Attorney Andrew Thomas, had subpoenaed every article, and any documents related to those articles, published by the *New Times* about Maricopa County Sheriff Joe Arpaio after Jan. 1, 2004. Lacey and Larkin included a link to the full text of the Aug. 27, 2007 subpoena in the online version of the story.

In addition to the stories and reporters’ notes, the subpoena sought all documents related to the newspaper’s editing and pre-publication review procedures, the IP address of every computer to visit the *New Times* Web site during that time period, and information detailing the Internet browsing history of those computers.

Wilenchik convened the grand jury to investigate a series of stories about Arpaio published by the *New Times*. According to an October 18 story on the *New Times* Web site, those stories resulted from the newspaper’s ongoing investigation into Arpaio’s real estate holdings and alleged he paid up to \$1 million in cash for some of his investments. One of the stories, which remains posted online, listed the sheriff’s home address in violation of Arizona law.

Ariz. Rev. Stat. Ann. § 13-2401 (2007) makes online publication of a peace officer’s personal

information, including a home address, a class five felony “if the dissemination of the personal information poses an imminent and serious threat to the peace officer’s ... safety or the safety of that person’s immediate family and the threat is reasonably apparent” to the publisher. The statute also covers other public officials including county attorneys and judges, but does not prohibit printed publication of the same information.

After his release, Lacey told reporters gathered outside the Phoenix jail that the story should be the subpoena, and the sheriff’s attempt to suppress stories about his investments, not the arrests. “The fact that they want to have the identity, the browsing habits, the buying habits, what shopping carts people have filled, what sites people have visited on the Web before they came to us, what sites they visited after they left us. The fact that they have subpoenaed that kind of information, all of which is in our paper and on our Web site is what the story’s about. It’s not about me getting out of jail at four in the morning,” Lacey said, according to an October 19 story posted on the *New Times* Web site.

According to an October 19 report in *The New York Times*, Steve Suskin, a lawyer for Village Voice Media, said the arrests escalated an ongoing conflict between the Phoenix newspaper and the local sheriff. “It is an extraordinary sequence of events,” Suskin said. “The arrests were not totally unexpected, but they represent an act of revenge and a vindictive response on the part of an out of control sheriff.”

Shortly after Lacey and Larkin were released from jail on October 19, County Attorney Thomas announced that all charges would be dropped and the underlying subpoena and grand jury investigation would also end, *The New York Times* reported October 20. Thomas said that he did not realize until Lacey and Larkin published their story that Wilenchik’s investigation had been so broad.

“There have been serious missteps in this matter,” he said, according to an October 20 story in *The (Phoenix) Arizona Republic*. “I am announcing that Mr. Wilenchik will no longer serve as special prosecutor.”

“It has become clear to me that this investigation has gone in a direction that I would not have authorized,” he said. *The Arizona Republic* said Thomas said he continued to believe Wilenchik was a good attorney, but that he would no longer be employed by the county on criminal matters. According to a November 1 *New Republic* story, the county has paid Wilenchik’s firm nearly \$2 million in fees since 2005, but mainly in civil matters related to the sheriff’s office.

*The New York Times* reported October 20 that two commentators agreed the subpoena had been out of line. “That subpoena is grossly, shockingly, breathtakingly overbroad,” James Weinstein, a professor of constitutional law at the Sandra

“The arrests were not totally unexpected, but they represent an act of revenge and a vindictive response on the part of an out of control sheriff.”

– Steve Suskin  
Lawyer for Village  
Voice Media

**Reporters Released**, *continued from page 4*

Day O'Connor College of Law at Arizona State University told *The New York Times*. "This is a case of harassment of the press."

Clint Bolick, a litigator at the conservative Goldwater Institute, called the subpoena "the most sweeping deprivation of privacy and First Amendment rights I've ever seen," *The New York Times* reported.

Wilenchik responded to the criticism with an eight-page letter released October 25 and posted on the *New Times* Web site. He explained that the IP addresses of the computers accessing the *New Times* Web site were necessary to prove that the newspaper had reason to know its continued publication of the sheriff's address caused an imminent threat to Arpaio's safety. Wilenchik said he had planned to cross-check the IP addresses of the computers that visited the site against a list of IP addresses from computers owned by people from whom Arpaio had received threats.

Wilenchik said that the *New Times* never turned over any documents, and their motion to quash the subpoena had not been heard by the judge presiding over the investigation. "Had the *New Times* followed the legal process as proscribed [sic] by law, they would have spared many people much unnecessary concern and angst. But that is what the media appears to thrive on rather than reporting the sober truth."

Wilenchik said in the letter that the statute preventing online publication of personal information about public officials was designed to protect those officials. He said Arpaio and other public officials deserved to have the constitutionality of the statute tested in court. "Sheriff Arpaio and his family, who are the victims in the underlying investigation, is [sic] now being victimized more than ever," Wilenchik wrote.

County Attorney Thomas expressed a similar opinion at an October 23 news conference. He said a story posted October 22 to [www.azcentral.com](http://www.azcentral.com), a Web site shared by *The Arizona Republic* and Channel 12 News, contained a link to his home address. He said the appearance of the story on a site that receives more than 1 million hits per day forced him to dispatch armed guards to escort his children to school and protect his home.

"I am stunned some media outlets would jeopardize the safety of my family in this manner," Thomas said. "I will now be forced to take precautions to protect my family and myself."

Thomas said he would not attempt to prosecute the news organizations for violating § 13-2401. "I'm not willing to turn these people into some sort of Peter Zenger, some sort of martyr, they're not," he said. The Web site removed the story shortly after the news conference in response to Thomas' concerns. Editors explained in an October 24 *New Republic* article that the story containing the link had been intended to show personal information is easily accessible on the Internet.

According to the October 20 *New York Times* report, Wilenchik had done extensive work for Arpaio and Thomas prior to the grand jury investigation, and a motion was pending to appoint a new special prosecutor when the investigation was dropped. The Arizona State Bar Association also began an investigation October 19 into accusations that Wilenchik attempted to communicate with the judge outside the courtroom, a violation of the Rules of Professional Conduct governing attorney behavior.

According to *The Arizona Republic*, the *New Times* sent a letter dated November 6 to Arpaio, Thomas, Wilenchik, the Maricopa County Board of Supervisors and Pinal County Attorney James Walsh which announced the *New Times'* intent to pursue legal action for events surrounding the arrests of Lacey and Larkin and demanded that the agencies preserve documents relating to the *New Times* investigation and all financial exchanges between the parties.

*The Arizona Republic* reported November 17 that documents showing how the subpoenas were obtained and executed were missing from a court file. As a result, Presiding Criminal Court Judge Anna Baca ordered the Maricopa County Attorney's Office to find and turn over those documents and appear at a hearing on November 26.

— MICHAEL SCHOEPF

SILHA RESEARCH ASSISTANT

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**Federal Shield Law**, *continued from page 2*

Committee for Freedom of the Press (RCFP) and the Society of Professional Journalists (SPJ) say the impetus for the bill was the more than 40 cases in the past three years where reporters have been asked to identify sources or testify in federal criminal and civil cases.

"This law is in the interest of democracy," said SPJ President Clint Brewer in an October 16 press release. "Journalists must be able to protect confidential sources in order to truly report on the operations of our government. This will allow journalists to do their jobs without fear of prosecution from the very federal government they are covering."

Although October 18 was the first time a reporter privilege bill has come to a vote, it is not for lack of attention to the issue. In 1972, the U.S. Supreme Court ruled in *Branzburg v. Hayes*, 408 U.S. 665 (1972), that journalists who have witnessed criminal activity may not claim a constitutional privilege to refuse to testify or disclose confidential information or sources before a federal grand jury. According to Gregg P. Leslie, Editor of the RCFP publication *The News Media and the Law*, over 100 proposed federal shield bills have been introduced in the U.S. Congress in the last 30 years.

Thirty-three states and the District of Columbia have some form of shield law. Forty-nine states and the District of Columbia have recognized at least a qualified reporter privilege in the common law.

For more on the development of the Free Flow of Information Act of 2007, see "Proposed Federal Shield Law will go to House Floor; Justice Department and Big Business Offer Criticism," in the Summer 2007 *Silha Bulletin*.

— PATRICK FILE

SILHA FELLOW AND BULLETIN EDITOR

# Media Access/FOIA

## California High Court Decision a Win for Public Access to Government Employees' Salaries

California's highest court ruled Aug. 27, 2007 that public employees have no reasonable expectation of privacy in their annual salaries, limiting two lower court decisions that had raised questions about whether salary information was public.

In *International Federation of Professional and Technical Engineers v. Superior Court*, 165 P.3d 488 (Cal. 2007), the court ordered the City of Oakland to release the name and salary of every city employee who made more than \$100,000 in the 2003-2004 fiscal year.

The suit began in 2004 after Oakland reversed a long-standing policy and refused to release the information to the *Contra Costa Times*. The newspaper filed suit against the city in California Superior Court, and unions representing police officers, fire fighters, and other public employees joined the city as interveners.

The court's opinion began by recognizing the presumption of access to government documents entrenched in the California Constitution, Cal. Const. Art. 1, § 3(b)(1), but also the exceptions to disclosure enacted by the legislature to safeguard individual privacy, Cal. Gov. Code § 6254. Under California law, unless the party seeking to withhold "public records" can prove an exception applies, the records must be released, Cal. Gov. Code § 6255(a).

Acknowledging that public employee salary information constitutes a public record, the court looked to a statutory exception which prohibits the release of "[p]ersonnel ... files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Cal. Gov. Code § 6254(c). The court held that regardless of whether salary information constitutes personnel files, disclosure does not amount to an "unwarranted invasion of personal privacy" because public employees have no reasonable expectation of privacy in their salaries.

"[W]e recognize that many individuals, including public employees, may be uncomfortable with the prospect of others knowing their salary and that many of these individuals would share that information only on a selective basis ... . Nonetheless, in light of the strong public policy supporting transparency in government, an individual's expectation of privacy in a salary earned in public employment is significantly less than the privacy expectation regarding income earned in the private sector," Chief Justice Ronald M. George wrote for the court.

All seven justices agreed that as a general rule, governments must release public employee salary information, but two justices dissented in part, arguing California law safeguards salaries of police officers.

George also dismissed the constitutional argument raised by the employee unions based on the same reasoning. The California Constitution guarantees a right to privacy, but only where there is a "reasonable

expectation of privacy under the circumstances." Here, public employees have no "reasonable expectation of privacy in the amount of their salaries," George wrote.

Moving to a statutory argument raised by the police officers union, the court held that salary information is not "personal data." Cal. Penal Code §§ 832.7, 832.8. The California Penal Code prohibits disclosure of "personal data" related to police officers. George held that while the salary information relates to a specific person, "it is a matter of public interest and not a matter of the individual's private business." The Penal Code exemption was intended to protect information like advancement, appraisal, discipline, and complaints; not salary.

Finally, the court limited two appellate court decisions on which the city and the interveners had relied. The decisions created confusion about the proper interpretation of California's statutes and constitutional provisions related to privacy and open government, the high court said.

In the first case, *Teamsters Local 856 v. Priceless*, 3 Cal. Rptr. 3d 847 (Cal. Ct. App. 2003), the appellate court upheld the grant of a preliminary injunction sought by public employee unions to prevent the release of salary information tied to names. The court held that salary along with the position would provide enough information, and there was no reason to release the names.

George dismissed *Priceless*, calling its precedential value "slight." In *Priceless* the media presented only "speculative" arguments that names tied to salary information would expose "improprieties." Here, the *Contra Costa Times*, along with other local and national newspapers that joined as *amicus curiae*, presented "numerous examples of articles" that used salary information to "illustrate claimed nepotism, favoritism, or financial mismanagement in state and local government."

The court cited a newspaper article that revealed a city department manager's wife earned \$80,000 as an information technology specialist in his department, while a budget shortfall in that department forced layoffs of other employees.

George also repudiated the second decision, *City of Los Angeles v. Superior Court*, 3 Cal. Rptr. 3d 915 (Cal. Ct. App. 2003). In *City of Los Angeles*, the appellate court reasoned that "payroll information is personal" and thus protected by the California Constitution, but upheld a subpoena of police officers' financial records. Because the court ultimately released the records, George dismissed the argument as dicta and expressly rejected the case to the extent it remained inconsistent with the current case.

Two justices wrote separately, concurring in part and dissenting in part. Both agreed with the majority that public employee salary data are public records. However, the dissenters argued that police officers'

"[I]n light of the strong public policy supporting transparency in government, an individual's expectation of privacy in a salary earned in public employment is significantly less than the privacy expectation regarding income earned in the private sector."

– Chief Justice Ronald M. George  
California Supreme Court



# Media Access/FOIA

## Minnesota Considers Cameras in Trial Courtrooms

The Minnesota Supreme Court Advisory Committee on General Rules of Practice considered a proposal to improve electronic media access to courtrooms at two meetings this fall. A coalition of media organizations, including the Minnesota Newspaper Association, Broadcasters Association, and Society of Professional Journalists (SPJ), petitioned the state Supreme Court in March 2007 asking for a change in the rule.

The current Minnesota rules allow cameras or other electronic media only if the judge and all the parties consent. According to the media coalition, that amounts to a complete ban on still cameras, video cameras, and audio recorders in Minnesota's courtrooms because attorneys are reluctant to change the status quo.

"[E]xperience demonstrates that virtually all of the criticisms once leveled at [electronic media] coverage are largely lacking in substance. Indeed, such coverage has been shown to produce distinct dividends, not simply for the news media, but for the public and the courts as well," the petition said. According to Rick Kupchella, a reporter for KARE-11 and SPJ member, 36 states have less restrictive laws governing electronic media access to courtrooms.

"It's been 20 years since the Supreme Court last looked at the issue," said Mark Anfinson, a lawyer for the media coalition at the Sept. 21, 2007 committee meeting. "The current rule just doesn't work."

Judge Patrick R. Grady, a trial judge in Iowa's Sixth Judicial District, told the advisory committee that Iowa's rule allows electronic media access to court proceedings without disrupting the judicial process.

Iowa's rule, adopted in 1984, provides: "Broadcasting, televising, recording, and photographing will be permitted in the courtroom and adjacent areas during sessions of the court ... ." Iowa Court Rule, chapter 25, gives the judge authority to remove the cameras, but requires the reason for removal be included in the record. The rule prohibits media coverage of juvenile cases, jury selection, and other proceedings where rules or statutes require privacy.

Grady praised the rule for its emphasis on judicial discretion and ability to enhance public confidence in the judiciary by showing the public how real courts operate. He said the public's impression of the judiciary comes from watching "Judge Judy" on television. "They think we're the most caustic, abusive, sarcastic group of people," he said. "We look better the more people know about us."

Cameras do not lead to grandstanding lawyers or fearful witnesses, Grady said. Good judges keep control of their courtrooms with or without an electronic media presence, he added.

Minnesota Supreme Court Justice and committee member Barry Anderson asked Grady whether the media provided enough coverage to give the public an accurate impression, or simply showed emotional testimony without substance. Grady acknowledged

that two minute spots condensing hours' worth of testimony were "the nature of the beast." But he said he believed the media provided fair coverage of judicial proceedings in Iowa.

Sawyer County Wisconsin Circuit Court Judge Norman L. Yackel told the committee at its Oct. 24, 2007 meeting that Wisconsin's rule vested discretion in judges to allow or prohibit cameras.

He said new technology has allowed for the unobtrusive presence of cameras in courtrooms. He cited remote operated video cameras mounted behind the judge to film the attorneys, defendant, and audience as well as "mufflers" to silence the "click, click, click" from the still photographers.

"It's no big deal. No one even thinks about it," he said.

Yackel presided over the 2005 trial of Chai Soua Vang, the Minnesota deer hunter who killed six people in the woods near Hayward, Wis. in November 2004. The incident, and ensuing trial, brought national media attention to Sawyer County, population 16,000 Yackel said. Court TV broadcast much of the trial live and provided film to other journalists.

Like Grady, Yackel said the rule works because it leaves the judge discretion to manage the courtroom and provides for a "media coordinator" to ensure all interested journalists gain access to the footage. Both Wisconsin and Iowa establish a media coordinator for each district to coordinate press pools and access to footage. Both states appoint a local journalist to the position.

Yackel said that electronic media access worked well in Wisconsin, but Minnesota must make decisions about access on its own. "Every State is different, every legal community is different, and I am sure you will do what's best for you," he said.

After Yackel concluded his comments, committee chairwoman Elizabeth Hayden, a Seventh District Judge in Stearns County, asked for comments from committee members. Steven Cahill, a Seventh District Judge, said it was time for Minnesota to join its neighbors and allow electronic media access to court rooms.

However, other members voiced reservations and called for more meetings and comments from the public and attorneys in states where cameras are allowed. Many committee members suggested a restriction on access to juvenile proceedings, family court, and jury selection. Others worried about how to define a journalist, and who should be able to take pictures and record audio in courtrooms.

"We need to get on the table what kind of restrictions we think are appropriate," Anderson said.

The committee will hold a public hearing on Jan. 11, 2008, from 9 a.m. to noon.

Anderson said he hoped the committee would find speakers who opposed a rule change for the next meeting. He said the committee should not rush to a decision and should work to hear all sides of the story.

— MICHAEL SCHOEPF  
SILHA RESEARCH ASSISTANT

"It's been 20 years since the Supreme Court last looked at the issue [of cameras in courtrooms]. The current rule just doesn't work."

— Mark Anfinson  
Media coalition  
attorney

# Media Access/FOIA

## Court Access: Federal Law would Allow Cameras in U.S. Courts

The House Judiciary Committee passed the Sunshine in the Courtroom Act (H.R. 2128) Oct. 22, 2007, despite a lukewarm reception from federal judges and prosecutors at a September 27 committee hearing.

The bill would not force judges to allow cameras in federal trial courts, but it would give them the discretion to allow cameras in their courtrooms so long as the presence of cameras does not violate either party's due process rights. At the trial level, the bill allows witnesses to request that their identity be obscured and prohibits filming jurors. The provision allowing cameras in district courts will expire after three years, but the appellate provision would remain in place.

Pursuant to a March 12, 1996 resolution of the Judicial Conference of the United States, Circuit Courts of Appeal may vote to allow cameras in courtrooms. Both the 9th Circuit and the 2nd Circuit currently allow cameras in their courtrooms.

The new law would give a "presiding" appellate judge the authority to allow cameras into a courtroom over which that judge presides. In the case of a three-judge circuit court panel, the most senior active judge would make the decision; when a circuit sits *en banc*, the chief judge would decide. Chief Justice John Roberts would decide whether to allow cameras into U.S. Supreme Court proceedings.

"Cameras in the courtroom offer an alternative – an unedited, unfiltered, unvarnished glimpse of the judicial process as it really is," said Rep. Bill Delahunt (D-Mass.), one of the bill's sponsors, in an October 25 news release issued by his office. "The goal of this legislation is to enhance our confidence in the American justice system."

At the September 27 hearing, one U.S. district judge opposed the measure as a potential threat to fair trials, while another praised the bill as a way to provide meaningful access to the judicial system and educate the public about how courts work.

Judge John R. Tunheim from the District of Minnesota opposed the bill on behalf of the Judicial Conference of the United States. "Appearing on television could lead some trial participants to act more dramatically, to pontificate about their personal views, to promote commercial interests to a national audience, or to increase their courtroom actions so as to lengthen their appearance on camera," he said, according to the transcript of the hearing.

Tunheim also expressed concern about a camera's potential to intimidate witnesses, litigants, and jurors. He cited a 1994 Federal Judicial Center study that found 64 percent of judges who had presided over trials where cameras were present said "witnesses were more nervous in the presence of cameras, [and] many reported witnesses being intimidated or distracted by the cameras."

The study found 46 percent of judges believed witnesses were less likely to appear if they knew cameras were present, and 41 percent of judges believed cameras distracted witnesses, he said.

"The concern about the impact on witnesses is at the heart of the Judicial Conference's opposition to the bill," Tunheim said. "Despite the fact that the bill gives the trial court judge discretion over permitting cameras – an inclusion which the conference appreciates – it is impossible to determine in advance how witnesses will react to the presence of cameras."

Judge Nancy Gertner, District of Massachusetts, spoke in favor of the bill. "I come to this issue both as a judge and ... as a former litigator; I was a trial lawyer for 22 years and participated in state court trials which were televised," she said, according to the transcript.

Gertner said cameras maintain meaningful access in the modern media climate where people get their news from television and the Internet. Cameras also paint a true picture of the judiciary and instill public confidence.

"I believe that we're at a point where judges in one sense have to prove their legitimacy, have to demonstrate their legitimacy; it's no longer assumed by the public," Gertner said. "And I would rather prove that legitimacy in my own voice with my own face and my own words than have my words described by a late night TV anchor."

During questioning, Gertner responded to Tunheim's assertions that cameras intimidate and distract witnesses. She said technological advances since the 1994 study was conducted have made cameras less intrusive.

She also said the media generally cover only high-profile trials. "I think that the question is, are witnesses more nervous in high-profile cases because of the presence of the camera or because the case is a high-profile case? And I'm not sure that one can disentangle one from the other..." she said.

The House Judiciary Committee ordered the bill reported by a vote of 17 to 11. It has not been referred to any additional committees.

"Cameras in the courtroom offer an alternative – an unedited, unfiltered, unvarnished glimpse of the judicial process as it really is."

– Rep. Bill Delahunt  
(D-Mass.)

– MICHAEL SCHOEPF  
SILHA RESEARCH ASSISTANT



# Media Access/FOIA

## Court Access: Connecticut Newspaper Publishes Details About Jurors; Defends its Decision

The (Bridgeport) *Connecticut Post* has defended itself against criticism for publishing personal information about 18 jurors and alternates in a story about a high profile murder case in the region. The information appeared in a Sept. 9, 2007 front page graphic that showed 18 empty chairs with the name, occupation, and hometown of the jurors written on them.

The trial court empaneled the jurors to sentence Russell Peeler Jr., who was convicted of ordering his brother to kill Karen Clarke and her 8-year-old son Leroy Brown to cover up the murder of Clarke's boyfriend. The *Post* covered the story extensively. More than 40 stories and several letters to the editor appear in online archives dating from September 9 to the jury's October 15 recommendation that Peeler receive the death penalty.

After the September 9 story, Judge Robert J. Devlin Jr. dismissed one juror and one alternate who expressed safety concerns due to the publicity, *The New York Times* reported September 17. Several *Post* readers wrote letters to the editor critical of the decision to publish the graphic. The letters argued that publishing personal information about jurors would endanger their safety, expose them to intimidation from groups on both sides of the death penalty debate, and make people reluctant to serve on juries.

James H. Smith, editor at the *Post*, defended the decision to publish the jurors' names in a September 10 story in the *Post*. "We set out to write an article about how a jury is picked for a death penalty case. It's about life and death. It's an important issue and the article went a long way to showing our readers how those jurors are selected. American juries have always been public. It is only exceptional cases when they are not," he said.

But Erskine McIntosh, a lawyer for Peeler, criticized the *Post's* decision to publish the jurors' names in his closing arguments before the jurors, the *Post* reported October 10. "Something has been taken from you, it was taken by the *Connecticut Post*. Your right to have your verdict [be] the product of your cool, calculated deliberation of the evidence without corrosion. Editor James Smith, who lives with his family in Oxford, is no editor, he is a spell checker – a journalist would have known better," he told the jurors.

Two journalism professors interviewed by *The New York Times* suggested that editors should be more careful about publishing sensitive information in cases like this one.

Christopher Hanson, a journalism ethics professor at the University of Maryland, told *The Times* that newspapers should balance the public's right to know against the risk of harm to the jurors. Robert M. Steele of the Poynter Institute, and a member of the Silha Center advisory board, suggested an alternative: publish the substantive information about the jurors, but withhold their names.

– MICHAEL SCHOEPF  
SILHA RESEARCH ASSISTANT

"We set out to write an article about how a jury is picked for a death penalty case. It's about life and death. It's an important issue and the article went a long way to showing our readers how those jurors are selected. American juries have always been public."

– James H. Smith  
Editor, *Connecticut Post*

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### California Access, continued from page 6

names, unlike the names of other public employees, are exempt from disclosure under the Penal Code.

Police officers' names are "personal data" protected by the penal code, Associate Justice Ming W. Chin wrote. Thus, a request for salary information linked to officers' names should be denied under the statute. "[H]owever, the request [that] identifies officers by name and asks for disclosure of their salaries" is not precluded by the Penal Code.

*Contra Costa Times* executive editor Kevin Keane said he was pleased with the outcome. "Unfortunately, it's been the instinct of many government bureaucrats nowadays to slam the door on inquiries for public information, and the *Priceless* decision always gave them the ammunition they needed," he said in an August 28 *Contra Costa Times* story. "Monday's court ruling put *Priceless* in its rightful place. It's a great win for the First Amendment."

But Duane Reno, a labor union lawyer, questioned the court's commitment to privacy rights, the *Contra Costa Times* reported. "The California Supreme Court doesn't think it's important if you have people calling you when you don't want to be called," he said referencing the union's argument that disclosure of the names and salaries would expose well-paid public employees to commercial solicitation.

– MICHAEL SCHOEPF  
SILHA RESEARCH ASSISTANT

## Media Access/FOIA

### Court Rules President Johnson's CIA Briefings can Remain Secret

A federal appeals court ruled on Sept. 4, 2007, that the Central Intelligence Agency (CIA) may refuse to grant public access to briefings it gave to President Johnson over 40 years ago.

In *Berman v. CIA*, 501 F.3d 1136 (9th Cir. 2007), the 9th Circuit U.S. Court of Appeals held that two of the President's Daily Briefs (PDB), documents containing summaries of the most timely intelligence information relating to defense and foreign policy, were exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The FOIA sets out a policy of government disclosure of records subject to certain exemptions, one of which is for intelligence sources and methods.

PDBs are classified documents that the CIA has prepared for the president and his advisors since the Kennedy administration.

On Sept. 4, 2007, a three-judge panel of the 9th Circuit Court of Appeals ruled unanimously that the CIA did not have to release two PDBs delivered to President Lyndon Johnson, one from 1965 and the other from 1968, because their disclosure would implicate national security concerns. Judge Raymond C. Fisher wrote "the CIA has provided ample justification that the disclosure of the ... PDBs would reveal protected intelligence sources and methods." There were no dissenting opinions.

A number of PDBs have been released to the public, some by mistake and others deliberately, according to the court's opinion. Two PDBs were released by the CIA in connection with the 9/11 Commission Report. Fifteen PDBs from the Johnson administration have also been declassified and released in redacted form.

According to a *New York Sun* article published on July 11, 2007, plaintiff Larry Berman, a University of California-Davis political science professor, requested the documents for his research on the reaction of American political leaders to developments in the Vietnam War.

Berman requested access to the two PDBs from the CIA in 2004, but the documents' release was denied. A letter from the CIA's Acting Information and Privacy Coordinator dated April 15, 2004 informed Berman that the PDBs requested contained "inherently privileged, predecisional and deliberative material for the President." Moreover, the letter stated that the briefings were protected by three Freedom of Information Act exemptions concerning national defense or foreign policy.

Berman filed a suit in federal district court in Sacramento in December 2004 demanding the release of the PDBs, according to *The Davis (Calif.) Enterprise* in an article published Sept. 5, 2007. In July 2005, the district court dismissed the suit, and Berman appealed the decision.

According to the opinion, Berman argued before the 9th Circuit that there was no evidence disclosed in now publicly-available Johnson-era PDBs

justifying nondisclosure of the two PDBs at issue in the case. According to the plaintiff's appellate brief, the previously released Johnson-era PDBs include information about countries and regimes that no longer exist.

Berman also argued that much of the information contained in the PDBs was "similar if not identical to" information contained in the Central Intelligence Bulletins (CIBs), which are publicly available, according to the majority opinion. CIBs are summaries of intelligence information that are distributed to senior officials in the executive branch.

Berman's appellate brief also stated that the CIA had failed to demonstrate specifically what impact the PDBs would have upon national security if they were released "beyond the vaguely defined process of conveying intelligence to the President." This lack of judicial scrutiny of the dangers of disclosure, Berman argued in his brief, could give rise to a "particularly illusive expansion of governmental power to deny access to public records."

The CIA argued that PDBs were too sensitive to become part of the public domain because they contain information that would expose technical methods of collecting intelligence, according to the opinion. The release of such information, claimed the CIA, could have a chilling effect on potential sources of intelligence information in the future, causing them to reconsider sharing valuable information with the CIA for fear of having their identities disclosed. The CIA argued that even in redacted form, PDBs can provide significant contextual information that could be sufficient to identify sources and methods. Moreover, because the briefings contain the most current information "fresh from the field," the briefings could reveal sensitive information such as an understanding of the kind of intelligence that is most important to the President and senior CIA officials at a given time.

The 9th Circuit's holding accorded broad deference to the CIA's advocacy of restricted access to the PDBs despite the lack of specific detail in the CIA's arguments. The court accepted the CIA's assertion that identification of the specific harms that would result if the documents were disclosed might allow foreign intelligence agents to determine the contours of CIA intelligence and possibly discern the agency's intelligence sources and targets in other countries.

The 9th Circuit refused to apply a *per se* status exemption to all PDBs, however. The CIA had argued, according to the opinion, that PDBs should be accorded a *per se* status exemption because they are themselves protected intelligence methods. The 9th Circuit rejected this argument, finding that whether a document used by the CIA is an intelligence method depends upon the content of the document itself.

— AMBA DATTA

SILHA RESEARCH ASSISTANT

Berman's appellate brief said the lack of judicial scrutiny of the dangers of disclosure could give rise to a "particularly illusive expansion of governmental power to deny access to public records."

# Media Access/FOIA

## Two States Propose Changes to Access to Prisons for Media

Prison officials in California and Rhode Island have proposed new regulations that would significantly alter the news media's access to prison inmates in their respective states. California officials have proposed easing restrictions, but Rhode Island might make its prison access rules more rigid.

In California, the proposed regulations would allow reporters to bring pens, pencils, and notebooks to interviews with inmates, according to The Associated Press (AP) on Aug. 15, 2007. However, no revision has been suggested to rules that prohibit media representatives from conducting face-to-face interviews with specific inmates on prison tours scheduled with the California Department of Corrections and Rehabilitation (CDCR). Under the current rules, if reporters wish to conduct an interview with a specific inmate, they must contact the inmate in writing prior to visiting the prison and be put on the inmate's list of approved visitors.

The AP reported that the proposed regulations would require a quicker turnaround time of two days for the CDCR to respond to reporters' requests for prison tours. In addition, they would explicitly prohibit prison officials from retaliating against inmates who grant interviews to reporters.

CDCR spokesman Seth Unger told the AP Aug. 15, 2007, "The goal of these regulations is to provide for the most transparency possible. There definitely is a perception that our prisons are closed to the media, when every day of the year we have reporters and cameras going through our prisons."

According to the AP, these are the first formal changes to the CDCR's media access regulations since 1995. The current CDCR rules, posted on its Web site at [http://www.cdcr.ca.gov/News/Media\\_Policies\\_Adult.html](http://www.cdcr.ca.gov/News/Media_Policies_Adult.html), indicate that reporters may visit CDCR facilities with prior approval from an institution's warden. They may only conduct interviews with inmates randomly encountered during such visits.

The CDCR proposed the revisions to the media access rules on August 3, according to the AP. Unger told the AP that, in the absence of major revisions, the proposed regulations could become effective by November 2007.

The CDCR's proposals come close on the heels of California Gov. Arnold Schwarzenegger's July 27, 2007 veto of legislation designed to ease the state's rules with respect to media access to prisons. Senate Bill 304, introduced by State Sen. Gloria Romero (D-Los Angeles), would have allowed media representatives to conduct interviews with prison inmates using paper, pens, and recording devices. The bill would also have enabled members of the media to contact a prison warden to request an interview with a specific inmate. The bill specified a 48-hour turnaround period for the warden to grant or deny the request. The text of the bill can be found on Romero's Web site at <http://dist24.casen.govoffice.com/>.

Schwarzenegger vetoed the bill because of

concerns that "these bills would allow the media to glamorize murderers and thereby once again traumatize crime victims and their families," according to his veto message.

However, the governor also stated in the veto message that he had directed the CDCR to adopt new regulations to address media access issues. While Schwarzenegger conceded that the regulations would not go as far in increasing media access as Senate Bill 304, he stated that he felt they "provided more clear and appropriate access to our prisons and preserve the balance with crime victims and their families."

California news outlets have long sought to loosen the state's rules with respect to prison access, according to an AP story from July 13, 2007. Legislators like Romero have pushed for years to pass legislation that would facilitate interviews between reporters and prison inmates, according to the Sacramento *Capitol Weekly News* from March 30, 2006. The AP reported on July 13, 2007, that the latest bill, SB 304, was the fourth incarnation of the bill to go to Schwarzenegger for approval.

Proponents of increased media access to prisons say that loosening restrictions on interviews with prison inmates is in the public interest, according to the *Capitol Weekly News*, because increased media coverage of the California prison system allows the public to understand its problems.

Assemblyman Mark Leno (D-San Francisco) voiced his support for SB 304 to the AP in the July 13 article. "It's about time the taxpayers get to know how the dollars are being spent within our prison system," Leno said.

Some critics of lifting restrictions on media access to inmates believe that security concerns should be paramount in any assessment of such proposals. Assemblyman Rick Keene (R-Chico) told the AP that lifting restrictions on media access to prison inmates could lead to copycat crimes from individuals who want the attention increased media coverage could confer.

Meanwhile the Rhode Island Department of Corrections is considering increasing its restrictions on media access to its prisons. Proposed new regulations would grant prison officials broad discretion to prohibit reporters from interviewing inmates. The proposals would also allow prison officials to review reporters' notes and require a corrections official to be present during interviews, according to a Sept. 9, 2007 AP story.

In a public hearing held Sept. 10, 2007, prison officials came under fire for the proposals, which American Civil Liberties Union director for Rhode Island Steve Brown told the AP "puts the Department of Corrections, in many respects, in the role of censor."

In the wake of strong criticism from journalists and civil libertarians, spokeswoman Tracey Poole said that the Department of Corrections will be revising its proposed media-access policy,

**State Prison Access**, continued on page 12

"Prisons in general are one of the most unchecked arms of government. The proposed language [of new Rhode Island Dept. of Corrections media access policy], I think, only serves to perpetuate a system that's already cloaked in secrecy."

– Tim White  
Reporter WPRI-TV,  
Providence, R.I.



## Media Access/FOIA

### New CIA Rules for FOIA Fees Give Bloggers a Price Break

The Central Intelligence Agency (CIA) announced effective July 18, 2007 that when processing Freedom of Information Act (FOIA) requests, it would redefine the term “news media” to include bloggers.

In a mid-July announcement in the Federal Register, the official daily publication for rules, proposed rules, and notices from federal agencies and organizations, the CIA said that it had decided to broaden its definition of “news media” after it received both criticism and positive comments concerning rules the agency proposed on Jan. 8, 2007 which would have required some bloggers to pay FOIA search and copy fees.

Under the Freedom of Information Reform Act of 1986, (Pub. L. No. 99-570, §§ 1801-1804, 100 Stat. 3248), different fee provisions have been set out for four categories of document requesters. Members of the news media and from the educational or scientific category pay no document search fees and can copy up to 100 pages for free. “Commercial use” requesters must pay fees for document searches, copying, and review. Other requesters are restricted to two hours of free search time and can receive 100 pages for free.

The CIA announcement in the Federal Register stated, “After a review and consideration of all of the comments, it was clear that there was no way to reconcile the positive and negative comments into a refinement of our approach that was workable. . . . Since there was no support to proceed with the proposed rule as originally drafted, rather than implementing the sweeping changes set forth in the proposed rule, we have a more modest change by simply adopting the definition of ‘news media’ contained in the March 27, 1987, Office of Management and Budget FOIA Guidelines.”

The 1987 Office of Management and Budget FOIA Guidelines’ definition of “news media” encompasses representatives of “alternative media” who primarily disseminate news through “telecommunications services.”

The announcement also said that the CIA changed its rule in order to avoid the “sterile and unproductive technical litigation” that would have resulted from its previous interpretation of the term “news media.”

Meredith Fuchs, general counsel for the National Security Archive, a research institute and library at George Washington University, said that the CIA changed its definition in order to preempt a court ruling that the intelligence agency’s existing regulations were illegal. The National Security Archive filed a suit against the CIA in the Federal District Court for the District of Columbia in June 2006, according to the July 18, 2007 edition of *Government Executive*, a business news daily for federal employees. The National Security Archive’s suit challenged a CIA decision that it did not qualify as “news media” for purposes of a FOIA request.

“We hope these changes will minimize CIA efforts to discourage news media FOIA requesters in the future,” Fuchs said.

*Government Executive* reported that the CIA declined to comment on whether the new rule was a product of the lawsuit.

– AMBA DATTA

SILHA RESEARCH ASSISTANT

“We hope these changes will minimize CIA efforts to discourage news media FOIA requesters in the future.”

– Meredith Fuchs  
General Counsel,  
National Security  
Archive

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#### State Prison Access, continued from page 11

according to *The Providence Journal* on Sept. 11, 2007. Poole did not specify the nature of the changes planned by the Department.

*The Providence Journal* also reported that critics at the public hearing attacked the proposed regulation that would allow prison officials to bar media access to prison inmates if the interview was deemed insufficiently sensitive to the needs of crime victims.

WPRI-TV reporter Tim White said at the meeting, “Prisons in general are one of the most unchecked arms of government. The proposed language, I think, only serves to perpetuate a system that’s already cloaked in secrecy.”

Former Adult Correctional Institute inmate Peter Slom also attended the meeting and told *The Providence Journal* that he feared inmates would be wary of speaking about problems in the prison system if a prison official was present during an interview with a reporter.

Poole told *The Providence Journal* that the proposed regulations reflect the department’s practices over the past year. A prison official has sat in on all interviews of prison inmates by media representatives, she stated. The AP reported on September 9 that the Department’s media policy has not been revised since 1987.

The degree of media access to state prison inmates varies from state to state. Rhode Island, Poole told the AP, places fewer restrictions upon the media’s access to its prison system relative to other states.

In federal prisons, wardens may create policy with respect to media interviews. Although the U.S. Bureau of Prisons stipulates that wardens may deny media requests for interviews only during an “institutional emergency,” in practice, federal prisons may be restricting media access at other times as well, according to the *Denver Westword News* on Aug. 16, 2007. The *Westword News* reported that corrections officials at Colorado’s U.S. Penitentiary Administrative Maximum prison, which houses mobsters and terrorists, denied every single media request for a face-to-face interview with specific inmates over a five-year period from January 2002 to May 2007.

– AMBA DATTA

SILHA RESEARCH ASSISTANT

# Media Access/FOIA

## Off-the-Record NSA Seminars Meant to Help Reporters Keep National Security Secrets

### *Seminar Materials Included NSA-Approved, Edited Versions of Stories*

The National Security Agency (NSA) reportedly hosted “off-the-record” seminars for journalists between 2002 and 2004 to limit intelligence leaks and to caution reporters about revealing information about the agency’s electronic surveillance work.

The *New York Sun* reported on Sept. 27, 2007 that during the seminars, high-ranking NSA officials demonstrated to reporters that they could rewrite articles, omitting details about the agency’s techniques, without sacrificing the “overall thrust” of the articles. The NSA officials edited stories from *USA Today*, *The New York Times* and Knight Ridder that detailed previous intelligence breakthroughs, proposing that substituted language or an “innocuous rewrite” would reveal less about the agency’s spying techniques.

The *Sun* obtained draft course outlines for the seminars through a Freedom of Information Act request regarding leaks about NSA intercepts that may have contained information about the Sept. 11, 2001 terrorist attacks.

The *Sun* article did not identify journalists who had attended the seminars. Mediabistro.com blog “Fishbowl DC,” which covers Washington, D.C. media, asked any journalists who had attended the seminar to contact them in a September 27 posting. Manhattan gossip and media news blog Gawker.com featured a posting on October 2 speculating that the fact that no journalist had come forward to claim attendance at one of the seminars indicated that they had probably signed confidentiality agreements in order to participate.

According to the *Sun*, the half-day seminars were labeled “SIGINT 101,” a title that represents NSA shorthand for signals intelligence, a type of intelligence-gathering method requiring interception of signals between people, machines, or both. An agency spokeswoman told the *Sun* that the seminars were held a number of times between 2002 and 2004.

The seminars were held at Fort Meade, Md. and were apparently meant to help reporters understand the damage that could be caused by press leaks of intelligence. The syllabus released to the *Sun* stated: “Course Objective: to convey the fragility of SIGINT and to increase editors’ and reporters’ understanding that there are other ways to express similar thoughts in an article without compromising the story and without compromising SIGINT.”

According to the syllabus, presenters included the director of the NSA, Gen. Michael Hayden, the NSA’s general counsel, Robert Deitz, and the head

of signals intelligence, Maureen Baginski. Baginski, who is no longer an NSA employee, told the *Sun* that she could not remember being a part of such seminars. When the class content and rewriting of articles was described to her, she “chuckled and said, ‘it’s an interesting approach.’”

In an attempt to instill a “chummy” atmosphere into one seminar, according to the *Sun*, journalists were treated to tea and pastries and shown a clip from the movie “Top Gun.” The syllabus instructed officials to enlist reporters in the agency’s attempt to shield its intelligence. “Reporters go to great lengths to protect their sources, as do we,” said one talking point. “We need your help.” According to the syllabus, journalists were also to be forbidden from taking notes during one discussion.

Articles that were identified as problematic by the NSA and rewritten during the seminars included a 1999 *USA Today* article by Jack Kelley on the use of a satellite to intercept Osama bin Laden’s telephone calls; a Knight Ridder article from 1998 reporting that interception of signals from Osama bin Laden’s communications network had confirmed his involvement in the bombing of American embassies in Kenya and Tanzania; and a 1998 *New York Times* story reporting that eavesdropping on bin Laden’s conversations had yielded intelligence about a possible attack on American interests in the Persian Gulf.

The language that the NSA had proposed to substitute for the damaging information in the articles had been included in the syllabus, but was deleted in the copy provided to the *Sun*.

Reporter Neely Tucker, who wrote the Knight Ridder story, told the *Sun* that he was never invited to an NSA seminar and did not know that the Agency had considered his story damaging.

The seminars were concluded in 2004, according to NSA spokeswoman Marci Green, because of staffing changes in the NSA’s public affairs department.

The *Sun* noted that in 2005, the Bush administration adopted a more openly confrontational stance towards news media leaks. This renewed opposition was initiated by a *New York Times* story published in that year on the secret program for wiretapping of telephones. (See “New York Times Held Story About Domestic Spying Program Over a Year” in the Winter 2006 issue of the *Silha Bulletin*.) Then-U.S. Attorney General Alberto Gonzales stated that he would consider the possibility of prosecuting journalists for writing stories based on leaked intelligence.

— AMBA DATTA

SILHA RESEARCH ASSISTANT

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In an attempt to instill a “chummy” atmosphere into one seminar, journalists were treated to tea and pastries and shown a clip from the movie “Top Gun.”

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# Media Access/FOIA

## News Organizations Fight Limits on Access to Sports Events

News organizations are battling for the ability to report independently and objectively as major sporting events have sought tighter control over coverage and placed limits on news gathering.

On July 18, 2007, the National Press Photographers Association (NPPA) reported that the National Football League (NFL) passed a new rule requiring sideline photographers to wear red vests emblazoned with logos for league sponsor Canon and apparel licensee Reebok. The story quoted a number of photographers who called the rule “alarming” and expressed fears of becoming “walking billboards.”

The story also noted that wearing corporate logos might violate parts of the NPPA Code of Ethics, which requires that photo journalists “avoid political, civic, and business involvements or other employment that compromise or give the appearance of compromising one’s own journalistic independence.”

The Society of Professional Journalists (SPJ) sent letters to the NFL and its 32 franchises as well as Canon and Reebok demanding the rule be abandoned. “For the sake of the almighty dollar, the NFL is clearly willing to compromise press freedom and independence. The League should be ashamed,” wrote SPJ National President Christine Tatum.

NFL Vice President for Public Relations Greg Aiello responded to the SPJ and NPPA, stating that issuing similar vests had been common practice at the Super Bowl and among more than half of NFL franchises as a means of identification for security purposes prior to the creation of a league-wide rule. Moreover, Aiello wrote, the logos are very small and “not intended to be visible to the television audience.”

Aiello also said that the “size, placement and positioning of the logos on NFL vests is less intrusive than what is considered accepted practice in much of the sports world.”

Photographers and editors quoted in the NPPA report said that other sporting events like the Olympics require that media personnel wear colored vests for safety reasons. Some suggested turning the vests inside out or covering the logos with tape as a solution.

Other critics suggested that the vest rule was another step towards the professional sports leagues exercising tighter control over images and reporting on their events.

In February 2006, photographers boycotted the first round of the Ladies Professional Golf Association (LPGA) Fields Open in Hawaii tournament over a copyright dispute. According to the *Honolulu Star Bulletin*, new restrictions required that the newspaper ask the LPGA for permission to use their own photos, even if it was in a news context and not for commercial purposes.

Dave Tomlin, assistant general counsel for The Associated Press (AP), told the *Star Bulletin* at the time, “If a golfer is photographed at the Fields Open,

for example, and two months later is involved in a boating accident or is otherwise in the news, use of the Fields image to illustrate that subsequent story would require LPGA permission.”

The boycott led the LPGA to back off its restrictions.

The NFL has sought greater overall control over “what fans see, read and hear,” according to *USA Today* on Sept. 6, 2007.

*USA Today* reported that new NFL rules this season require that news organization Web sites not affiliated with the league or its teams are limited to 45 seconds of video and or audio clips per day of team personnel at team facilities. This includes material from interviews, news conferences, and practice footage. The video clips may not remain online for more than 24 hours and links to NFL.com and team Web sites must also be posted. The Web sites of TV partners Fox, CBS, NBC and ESPN, which collectively pay the NFL an average of \$3.75 billion per year, do not have to comply with the 45-second rule, said *USA Today*.

The new rule is part of an attempt by the league to drive more fans and advertising money to the league’s NFL Network cable channel and Web site, NFL.com, *USA Today* reported.

According to Eric Grubman, the NFL’s executive vice president of finance and strategic transactions, the new rule is meant to impose the league’s definition of when a media outlet is delivering news and when it is creating entertainment content for its own moneymaking purposes. Before this season, Web sites not affiliated with the NFL were free to post a “reasonable,” amount of video highlights from stadiums, locker rooms, practice fields, and team offices, said *USA Today*.

The Washington Redskins organization has been among the most successful at limiting media access to create new revenue, *Houston Chronicle* columnist John McClain told *USA Today*.

The team produces its own television news content in its own production studio, which it then sells to local media. The team has also purchased six radio stations in the Washington D.C. area, which broadcast the Redskins games and can carry team-produced programming, according to *USA Today*.

The team also does not allow local newspapers to carry video clips on their Web sites.

Emilio Garcia-Ruiz, assistant managing editor/sports for *The Washington Post*, acknowledged that they post no Redskins video clips on their Web site.

“I think it hurts the fans,” Garcia-Ruiz told *USA Today*. “I think the fans should be able to get as much objective reporting as possible.”

Meanwhile, an 11th hour agreement on September 7 averted a near-total media boycott of the 2007 Rugby World Cup in France, as news organizations protested similar limits on coverage of the event.

**Sports Access**, continued on page 15

“I think the fans should be able to get as much objective reporting as possible.”

– Emilio Garcia-Ruiz  
Assistant Managing  
Editor/Sports, *The  
Washington Post*



## Media Access/FOIA

### Illinois Press Association Sues High School Sports Association Over Image Controls

#### *Lawsuit Says the Public Entity's Restrictive Practices Are Unconstitutional*

The Illinois Press Association (IPA) filed a lawsuit against the Illinois High School Association (IHSA) on Nov. 1, 2007 over new rules that limit access for photographers at the Illinois High School state football tournament and limit the use of the images from state sports tournament events.

The lawsuit, which was filed in Springfield, Ill. in the Sangamon County Circuit Court, asks for a temporary restraining order against the IHSA's contract with Visual Image Photography Inc. which grants the company "exclusive and unlimited access to IHSA tournament locations and photo opportunities" as well as a rule which states, as a condition of receiving a media pass, newspapers are required to sign an agreement limiting the "secondary use" of photos not printed in the traditional newspaper.

According to the complaint, the IHSA has not defined the term "secondary use," but state officials have intimated that it means any use outside of a traditional print newspaper story, including advertising and marketing, as well as on newspaper Web sites.

Under its contract with the IHSA, Visual Image Photography pays for the privilege of unlimited access and "other preferential treatment" at IHSA tournament events, according to the complaint. The IHSA promotes Visual Image Photography as "the official photographer of the IHSA," and the photographer also offers to sell its photographs to participating schools and the families of team members.

The complaint said "the IHSA has no purpose, aside from promoting its own commercial interest, in limiting [the IPA's] ability to take or make use of photographs at IHSA tournament events."

According to the IPA, the IHSA rules also limit Internet broadcast of games to "regularly scheduled" newscasts not to exceed 30 seconds per clip or two minutes of total game time within any one-hour period without the consent of the IHSA. Highlights cannot be used for any purpose for two days following the event.

In its complaint, the IPA says that because the IHSA is a state actor, and not a private entity like Major League Baseball or the National Football League, the rules and contract are an unconstitutional prior restraint as well as a violation of the equal protection clause of the Illinois State constitution. For more on professional sports organizations limits on coverage, see "News Organizations Fight Limits on Access to Sports Events" on page 14 of this issue of the *Silha Bulletin*.

— PATRICK FILE

SILHA FELLOW AND *BULLETIN* EDITOR

"The IHSA has no purpose, aside from promoting its own commercial interest, in limiting [the IPA's] ability to take or make use of photographs at IHSA tournament events."

— Illinois Press Association complaint

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#### **Sports Access**, *continued from page 14*

The International Rugby Board (IRB), the sport's governing body, initially required journalists to sign a 10-page list of restrictions in order to be accredited to cover the event, according to the *International Herald Tribune* on September 5. Some journalists refused, objecting specifically to a number of the restrictions, especially a limit of 40 photographs posted online per match, and a limit of three minutes of press conference or locker room interview footage posted on Web sites during matches, according to *The Guardian* of London. The limits were designed to protect the rights of the tournament's licensed television carriers.

The AP, Reuters, and Agence-France Presse (AFP) announced a suspension of coverage on September 6 because they found the rules unacceptable, according to the AP. On September 7, they were joined by a number of other major news organizations, including the U.K.'s *Guardian*, *Times*, and *Sun* newspapers as well as the French sports daily *L'Equipe*, *The Guardian* reported.

One hour before kickoff of the first match of the tournament, on Friday, September 7, news organizations and the IRB struck a deal which raised the limit on photographs to 200, and the boycott was called off. In a meeting that concluded the following Monday, September 10, the three-minute per day video limit was also scrapped, according to *The Guardian* on September 11.

*The Guardian* reported that the compromise allowed reporters to file an unlimited number of news stories each day with audio-visual footage, but with a limit of five minutes of footage of any single event. The deal covered only "non-matchday" press conferences, training sessions, and events, and did not extend to official press conferences or matches.

A joint statement released after the meeting said the compromise would "enable full news coverage of Rugby World Cup 2007 according to normal editorial judgment," *The Guardian* reported.

The statement said the agreement was a temporary solution meant to avert the boycott, and it was not meant to apply to future Rugby World Cups or other major sporting events, according to *The Guardian*.

"Both sides will enter into talks after Rugby World Cup 2007 to discuss ways to ensure that the needs of the tournament, rights holders and the news media can be met," the statement said.

— PATRICK FILE

SILHA FELLOW AND *BULLETIN* EDITOR

## FCC News

### FCC Fines 'Fake News' Produced by Undisclosed Sponsors

For the first time ever, the Federal Communications Commission (FCC) has proposed fines against a cable television company for failing to disclose to viewers that segments it aired as news were actually produced by corporations. Some commentators have said the fines may signal a broader crackdown.

On Sept. 24, 2007, the FCC announced it had issued a Notice of Apparent Liability for Forfeiture, along with a proposed fine of \$4,000, against Comcast Corporation for violating § 76.1615 of the Commission's rules, which requires cable operators to make sponsorship identification announcements when they air "Video News Releases" (VNRs) in return for "money, service, or other valuable consideration." VNRs are often created by corporations to gain publicity for products or by the government to garner support for policies. The Center for Media and Democracy, a media watchdog group, has dubbed VNRs "fake news."

On September 26, the FCC issued a second notice alleging four more violations by Comcast, bringing the total in fines to \$20,000.

The alleged violations were made by CN8, a regional cable network in the Eastern United States affiliated with Comcast, which in fall 2006 aired material from VNRs for "Nelson's Rescue Sleep" sleep aid, the General Mills-sponsored "Wheaties Fit to Win Challenge," Allstate Insurance, Trend Micro Software, and General Mills' "Bisquick 75th Anniversary" without identifying the sponsors of the material.

According to the FCC's September 26 notice, the agency's sanction came in response to a joint complaint filed by two organizations: the Center for Media and Democracy and Free Press. *Broadcasting & Cable* magazine reports that there are over 100 such complaints currently pending before the FCC.

In August 2006, the FCC sent letters to 42 holders of 77 television broadcast licenses asking whether their stations had properly identified VNRs prior to broadcast as § 76.1615 requires. The letters followed a study released by the Center for Media and Democracy that identified the 77 violations over a 10-month period.

The Radio-Television News Directors Association (RTNDA) called the study flawed and asked the FCC to back off of the investigation. (See "FCC Investigates Video News Releases" in the Fall 2006 issue of the *Silva Bulletin*.)

Following the issuance of the Sept. 24, 2007 notice, FCC Commissioner Jonathan Adelstein said in a statement that he "applaud[ed] the [FCC] Enforcement Bureau's decision to enforce our sponsorship identification rules, and to propose, for the first time, a forfeiture for the failure to disclose the sponsor of a video news release."

Comcast is likely to appeal the notice and fines. A September 24 Associated Press (AP) story said

the company had released a statement saying it was "perplexed" by the FCC's action.

According to the AP, Comcast said it should not be subject to § 76.1615 because cable entities are not covered by the rule. Moreover, the company said, CN8 should not be subject to the notice or fines because it received no payment or benefit from using the VNRs.

Comcast spokeswoman Sena Fitzmaurice told *The Washington Times* on October 3, "The FCC's preliminary findings are legally unfounded and factually distorted ... We expect that our judgments will ultimately be vindicated."

The Society of Professional Journalists (SPJ) has joined the Center for Media and Democracy and Free Press in condemning the use of VNRs without sponsorship identification, but it has cautioned against urging the FCC to act.

In a statement following the release of the August 2006 study, SPJ Ethics Committee co-chair Fred Brown said, "It's never a good idea when government tells journalists what they can and cannot do. We would oppose any expansion of the FCC rule. Instead, we would call on television to clean up its own act."

A year later, some have said the CN8 fine may only be the beginning of a broader crackdown.

Kevin Foley, who runs a video public relations company and is president of the National Association of Broadcast Communicators (NABC), which represents video news release companies, called the notice and fine of CN8 "a first step" toward investigations of other cable companies.

"We think the government should refrain from getting involved with TV news decision-making," Foley said in an Oct. 1, 2007 story in *Broadcasting & Cable* magazine.

Brendan Holland, an associate at Davis Wright Tremaine LLP, said on the firm's Broadcast Law blog that the notice and fine of CN8 "could very well signal the beginning of a number of forfeitures aimed at cracking down on" the practice of using VNRs without attribution.

"Given that the decision seems to cross into the territory of a cable operator's or broadcaster's editorial and journalistic discretion protected by the First Amendment, one can imagine that the cable operator (and any broadcasters fined in the future) will attack vigorously the FCC's interpretation," Holland said.

Adding to the pressure on the FCC to monitor television advertising, two members of the U.S. Congress have proposed stricter scrutiny of entertainment program sponsorship. House Telecommunications and Internet Subcommittee Chairman Ed Markey (D-Mass.) and Government Oversight Subcommittee Chairman Henry Waxman (D-Calif.) wrote to FCC Chairman Kevin Martin on September 26 encouraging a broad inquiry into product placement in entertainment programming.

"It's never a good idea when government tells journalists what they can and cannot do. We would oppose any expansion of the FCC rule. Instead, we would call on television to clean up its own act."

– Fred Brown  
SPJ Ethics Committee  
co-chair

'Fake News' Fined, continued on page 17

# FCC News

## Cable Companies Fined for Airing Paid-for Punditry

### *Armstrong Williams' Programs Continue to Raise Controversy*

The Federal Communications Commission (FCC) has proposed fines totaling \$76,000 against two cable companies for failing to disclose that segments they aired featuring conservative pundit Armstrong Williams had been sponsored by the U.S. Department of Education.

According to a notice of apparent liability and forfeiture issued by the FCC on Oct. 18, 2007, Sonshine Family Television, Inc. of Bethlehem, Pa. and Sinclair Broadcasting Group, Inc. of Baltimore violated sponsorship-identification rules when they aired 10 shows in 2004 in which Williams talked about President Bush's No Child Left Behind Act, 20 U.S.C. § 6301 *et seq.*, without disclosing the nature of the programs' sponsorship. The rules on sponsorship identification are codified at § 317(a)(1) of the Communications Act of 1934, as amended, and § 73.1212(a) of the FCC's rules. (For more on the FCC sponsorship-identification rules, see "FCC Fines 'Fake News'" on page 16 of this issue of the *Silha Bulletin*.)

The FCC notice says Sonshine Family Television is liable for a total fine of \$40,000 for 10 airings of five individual episodes of "The Right Side with Armstrong Williams" on its licensee station, WBPH-TV of Bethlehem, Pa. Sinclair Broadcast Group's proposed fine is \$36,000 for airing a single episode of "America's Black Forum" on nine licensee stations, from Milwaukee to Tallahassee, Fla., in September of 2004.

According to the FCC notice of apparent liability, Sonshine Family Television told the FCC its agreement with Williams "called for payment of a nominal fee of \$100" to the station for each broadcast, and therefore should not be considered sponsorship. The FCC countered that the small fee did not excuse the broadcaster from informing viewers that the program was sponsored, as both the Communications Act of 1934 and FCC rules "expressly provide that broadcast stations must identify the sponsor of material whenever they accept 'money, service or other valuable consideration' to air the material."

Meanwhile, Sinclair Broadcast Group argued that "it simply did not know, and had no reason to know, that ['America's Black Forum'] required any identification," according to the notice of apparent liability. The FCC responded that although Sinclair was not paid to air the program, § 73.1212(d) of the FCC rules states that broadcast stations must identify the sponsor of any materials or services furnished for use in connection with "any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance ... ." The fact that "America's Black Forum" was political in nature, said the FCC, meant it required sponsorship identification.

Williams himself was criticized in early 2005 when it was revealed that he had signed a \$240,000 contract with the Department of Education to promote No Child Left Behind on his syndicated television news and commentary shows and in newspaper columns. Williams did not disclose the arrangement to the distributor of his shows and columns. (For more on the Armstrong Williams ethics scandal, see "Problems in Media Ethics: Commentator's Promotion of NCLB Leads to Questions of Ethics" in the Fall 2004 *Silha Bulletin* and "Pundit Williams Settles with Justice Department" in the Fall 2006 *Silha Bulletin*.)

Some have said the FCC has signaled a crackdown on stations that air sponsored news content without clearly identifying it as such. In a joint statement released after the FCC issued its notice, commissioners Michael Copps and Jonathan Adelstein said the action "places the industry on notice that the commission will act to ensure the public is protected from special interest groups who attempt to trick the public."

— PATRICK FILE  
SILHA FELLOW AND *BULLETIN* EDITOR

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"[The penalty] places the industry on notice that the commission will act to ensure the public is protected from special interest groups who attempt to trick the public."

— Michael Copps and  
Jonathan Adelstein  
FCC commissioners

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#### "Fake News" Fined, *continued from page 16*

Markey and Waxman's letter cited a recent episode of the program "7th Heaven" which featured Kraft Foods Inc. Oreo cookies as a central plot point as an example of product placement.

According to Bloomberg news service, a spokesman for CW, the network on which "7th Heaven" appears, said the sponsorship was disclosed. The spokesman said it is CW's policy to disclose product placements at the end of a show.

According to Davis Wright Tremaine's Holland, the CN8 complaint is one of dozens of inquiries with similar facts pending before the FCC.

Craig Aaron, communications director for Free Press, told *Broadcasting & Cable* that his organization was "eager to see the FCC respond to all of the complaints."

— PATRICK FILE  
SILHA FELLOW AND *BULLETIN* EDITOR



# Media and the Iraq War

## Truth of 'Baghdad Diarist' Stories Challenged

**T**he *New Republic* has said it stands behind most of the claims made by its "Baghdad Diarist," an American soldier in Iraq writing under a pseudonym, despite a proven mistake, military denials, and criticism from conservative bloggers.

Scott Thomas Beauchamp, writing under the name Scott Thomas, wrote three controversial columns for *The New Republic* which were published by the bi-weekly print magazine between the February 5 and July 23, 2007 issues. The first, "War Bonds," described the author's interaction with a local boy who wanted to move to California and liked to be called James Bond. Beauchamp reported that Shia militia or police cut off the boy's tongue for talking with Americans too much.

In "Dead of Night" Beauchamp described finding a pack of dogs eating the brain out of a decaying corpse and blocking the street. The story reported that the dead man had been tortured and killed by a police officer to make a point. As the soldiers drove away, leaving the corpse in the street, they joked about the dead man being an organ donor.

The final story, "Shock Troops," began with the description of a woman disfigured by an "improvised explosive device," or IED. While the woman sat near the soldiers in the "chow hall" they ridiculed her until she ran out of the building. The story also described soldiers stumbling upon a mass grave and one "infamous ... joker" who wore a skull "like a crown." It ended with the description of a "private who really enjoyed driving Bradley Fighting Vehicles" and made a game of running down dogs in the street.

*The Weekly Standard*, in a July 18 post on its Web site, challenged bloggers to research the claims of *The New Republic*'s "Baghdad Diarist." By July 30, *Weekly Standard* editor William Kristol seemed convinced *The New Republic* columns were fabricated. "Its slander of American soldiers appears to be fiction presented as fact, behind a convenient screen of anonymity," he wrote.

Kristol reported that "within a day" of the July 18 post on *The Weekly Standard*'s Web site "dozens of active duty soldiers and veterans had come forward to point out errors, implausibility, and indeed the well-nigh-impossibility" in Beauchamp's stories. Kristol and *Weekly Standard* Online Editor Michael Goldfarb argued that it would be impossible for any soldier to maneuver a Bradley vehicle the way Beauchamp described, and that soldiers who had been at the base where the disfigured woman was alleged to be had never seen her.

On July 26 Beauchamp revealed his identity in a statement posted to *The New Republic*'s Web site. In addition to his real name, Beauchamp revealed that he is a private in the U.S. Army and the spouse of a *New Republic* staffer, Elspeth Reeve. "It's been maddening, to say the least, to see the plausibility

of events that I witnessed questioned by people who have never served in Iraq," the statement said.

After questions about the veracity of the claims surfaced, *The New Republic* launched an investigation of its own into the reports. According to a statement posted on August 2 to the magazine's Web site, the report contained only one mistake. The camp where the soldiers had ridiculed the disfigured woman was Camp Buehring in Kuwait, not Forward Operating Base Falcon in Iraq.

"Editors and staffers spoke numerous times with Beauchamp. We also spoke with current and former soldiers, forensic experts, and other journalists who have covered the war extensively. And we sought assistance from Army Public Affairs officers. Most important, we spoke with five other members of Beauchamp's company, and all corroborated Beauchamp's anecdotes, which they witnessed or, in the case of one soldier, heard about contemporaneously. (All of the soldiers we interviewed who had first-hand knowledge of the episodes requested anonymity.)," the online statement said.

"We care a lot about our journalistic reputation and integrity, and when people raise questions, I think we have to do everything in our power to make sure we get it right," said *New Republic* editor Franklin Foer, in an interview with *The New York Observer*.

Foer also told *The New York Times* that the investigation had been hampered by the Army. After Beauchamp revealed his true identity, the Army took away Beauchamp's phone and laptop computer and launched its own investigation into his claims. According to an August 8 story in the *Times*, the Army concluded all of Beauchamp's stories were false.

"We are not going into the details of the investigation," Maj. Steven F. Lamb, deputy public affairs officer in Baghdad, wrote in an e-mail message to the *Times*. "The allegations are false, his platoon and company were interviewed, and no one could substantiate the claims he made."

Citing an anonymous source, *The Weekly Standard* reported August 7 that Beauchamp signed a sworn statement admitting that he fabricated the columns.

According to an October 24 report in *The New York Observer*, Matt Drudge briefly posted a document on the Web site [www.drudgereport.com](http://www.drudgereport.com) that purported to be a transcript of a September 6 telephone conversation in which Beauchamp refused to confirm or retract his columns. That conversation between Beauchamp and Foer took place in the presence of an Army official, *The Washington Post* reported October 25. Foer told the *Post* Beauchamp later confirmed his story in a private telephone conversation.

Foer told the *Observer* that the transcript must have come from the Army. He said *The New Republic*

**Baghdad Diarist**, continued on page 19

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"It's been maddening, to say the least, to see the plausibility of events that I witnessed questioned by people who have never served in Iraq."

– Scott Thomas  
Beauchamp  
'Baghdad Diarist,' *The  
New Republic*

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# Media and the Iraq War

## U.S. Confiscates AP Footage at Scene of Baghdad Bombing, Detains Photographer, Citing Iraqi Law

The U.S. military detained Associated Press (AP) photographer Ayad M. Abd Ali Oct. 3, 2007, and held him handcuffed and blindfolded for 40 minutes after he was found filming the aftermath of a car bomb attack in Baghdad.

U.S. military personnel also confiscated videotape and a memory card from Abd Ali in an apparent effort to uphold an Iraqi law that bans photographers from bombing scenes for one hour after the explosion, according to an October 3 AP report. Iraqi officials call the law a necessary measure to protect journalists and prevent terrorists from using the media to verify the success of attacks, but critics argue the law's real purpose is to control public opinion by preventing dissemination of violent images. (For more on the law, see "New U.S. Military and Iraqi Policies Create Challenges for Journalists Working in War Zone" in the Summer 2007 *Silha Bulletin*.)

The bombing killed at least three people and injured dozens of others including Polish Ambassador Gen. Edward Pietrzyk, the apparent target of the attack, according to an October 3 AP story. The military dispatched a helicopter operated by civilian contractor Blackwater USA to rescue the ambassador. Abd Ali filmed the aftermath of the attack and Blackwater's rescue operation before being detained by U.S. officials.

According to an October 8 AP story, Abd Ali showed the military personnel who detained him a valid press credential and identification before being detained. He said officials never explained why he had been detained and his video confiscated while other photographers continued documenting the scene.

After the incident, Lt. Col. Scott Bleichwehl, a military spokesman, told the AP that Iraqi law prohibits filming the aftermath of the attack, but later clarified his comments insisting that he did not intend to imply that the U.S. military was enforcing Iraqi law.

Military officials returned the tape and memory card five days later with the content unedited, the AP reported. Maj. Sean Ryan, a military spokesman, told the AP he "hoped it would not happen again." According to the October 8 AP story, Iraqi authorities will sometimes confiscate a reporter's work product, but U.S. officials usually do not.

A lawyer for the news organization said they would take steps to prevent similar incidents from occurring in the future, according to the AP report. "We're glad to have it back, but it should never have been seized in the first place," said Dave Tomlin, the AP's associate general counsel. "We plan to ask for assurances that soldiers aren't actually being told to harass journalists and interfere with newsgathering."

— MICHAEL SCHOEPF  
SILHA RESEARCH ASSISTANT

"We're glad to have [the footage] back, but it should never have been seized in the first place. We plan to ask for assurances that soldiers aren't actually being told to harass journalists and interfere with newsgathering."

— Dave Tomlin  
Associated Press  
general counsel

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### Baghdad Diarist, *continued from page 18*

had made Freedom of Information Act requests for that transcript and other documents, but the Army denied the requests.

The scandal has led some commentators to call for reduced use of anonymous sources. Victor Davis Hanson noted in an August 16 story in the *National Review* that both Beauchamp and the soldiers who *The New Republic* said confirmed the stories refused to be named. Hanson argued that when sources refuse to be named it should raise questions about their credibility with editors.

"Anonymity on rare occasions may have a place in protecting whistleblowers or honest journalistic sources fearful of retaliation. But lately it is being misused in a variety of different contexts to destroy people and institutions – and as a way for authors of all sorts to avoid responsibility for what they write," Hanson wrote.

In a September 7 editorial, *The Providence (R.I.) Journal* recounted the incident and called truth "the first casualty of war." Like the *National Review*, editors called for reduced use of anonymous sources. "His anonymity should have raised eyebrows – and it did, though not among his editors, who spent much time stonewalling."

*The Providence Journal* argued that the scandal undermined Beauchamp's claim that war dehumanizes soldiers. "War is hell. That is a well-known fact. The *New Republic's* 'Baghdad Diarist' had no need to fabricate facts if his goal was to prove what most people already know," the editorial said.

— MICHAEL SCHOEPF  
SILHA RESEARCH ASSISTANT

# Privacy

## Ohio Supreme Court Recognizes False Light Claim

A dispute between neighbors led the Ohio Supreme Court to recognize the tort of false light invasion of privacy June 6, 2007. The 6 to 2 decision in *Welling v. Weinfeld*, 866 N.E.2d 1051 (Ohio 2007), called media concerns “overblown” and argued the pervasiveness of the Internet makes privacy protections increasingly important.

Along with Ohio, 30 states recognize false light claims, nine states (including Minnesota) have expressly rejected the cause of action, and 11 have yet to rule on the issue, according to the Reporters Committee for Freedom of the Press. No state’s high court has considered the issue since Colorado declined to adopt false light invasion of privacy in 2002. (See “Colorado Rejects False Light Invasion of Privacy Tort” in the Fall 2002 *Silha Bulletin*.)

The Ohio case started when Perry Township resident Lauri Weinfeld, owner of a local banquet hall called the Party Center, took issue with her neighbors’ use of yard equipment during events at the center. Weinfeld also believed Katherine and Robert Welling’s son was responsible for a May 2000 broken window at the Party Center.

Weinfeld sued and the Wellings countersued alleging false light invasion of privacy. They cited handbills Weinfeld printed after she discovered the broken window. The handbill offered a \$500 reward for information leading to the conviction of the person who broke the window at the Party Center. Though the handbill did not mention the Wellings’ son, Weinfeld distributed it at the soft drink bottling plant where Robert Welling and his son worked and the school where some of the Wellings’ children attended.

The Wellings claimed the distribution of the handbills at targeted locations “spread wrongful publicity about them that unreasonably placed them in a false light before the public,” wrote Justice Paul E. Pfeifer. At trial, the jury agreed, awarding the Wellings \$5,412.38 in compensatory damages and \$250,000 in punitive damages. The appellate court reversed, noting that Ohio’s highest court had not recognized the tort of false light invasion of privacy. The Wellings appealed to the Ohio Supreme Court.

Pfeifer began the opinion by reviewing the history of privacy torts in Ohio. In *Housh v. Peth*, 133 N.E.2d 340 (Ohio 1956), the court recognized misappropriation, publication of private facts, and intrusion on seclusion, but did not mention false light. The *Restatement (Second) of Torts* recognizes all four privacy torts, as did William L. Prosser in the *California Law Review* article “Privacy,” 48 Cal. L. Rev. 383 (1960).

According to the Restatement, misappropriation requires the “use or benefit [from] the name or likeness of another.” To prove publication of private facts, the plaintiff must show the defendant gave “publicity to a matter” concerning the plaintiff’s private life, and that the subject matter is both

“highly offensive to a reasonable person” and “not of legitimate public concern.” The tort of intrusion requires intentional invasion “upon the solitude or seclusion of another” that is “highly offensive to a reasonable person.”

“Without false light, the right to privacy is not whole,” Pfeifer wrote. The court adopted the Restatement’s version of the tort, requiring the plaintiff prove the defendant gave “publicity” to a matter that shows the defendant in a false light. The false light must be “highly offensive to a reasonable person,” but it need not be defamatory. Also, all plaintiffs must prove “actual malice,” that the defendant knew the information was false or acted with reckless disregard as to the probable falsity of the information.

The majority opinion focused its analysis on the two most recent states to consider whether to adopt false light invasion of privacy, Tennessee and Colorado. In *West v. Media General Convergence, Inc.*, 53 S.W.3d 640 (Tenn. 2001), the Tennessee Supreme Court adopted false light invasion of privacy. One year later, in *Denver Publishing Co. v. Bueno*, 54 P.3d 893 (Colo. 2002), Colorado’s high court reached the opposite conclusion.

Relying on *Bueno*, the Ohio court recognized the two principal criticisms of the tort. Opponents argue that it largely overlaps with the existing tort of defamation, and it chills the constitutional interest in a free press and free speech.

Pfeifer acknowledged false light claims could often be brought as defamation claims instead, but found two classes of cases in which a plaintiff could prevail on a false light claim but a defamation claim would fail: those cases where the defendant publicized highly offensive information that is false but not defamatory, “for example portraying plaintiff as the victim of sexual harassment [citation omitted], or as being poverty stricken [citation omitted],” and those cases where the publicity portrays the plaintiff “in a more positive light than he deserves.”

The court reasoned that its failure to recognize false light would leave gaps in the state’s protection of individual privacy. “In Ohio, we have already recognized that a claim for invasion of privacy can arise when *true* private details of a person’s life are publicized [publication of private facts]. The right to privacy naturally extends to the ability to control false statements made about oneself,” Pfeifer wrote.

The majority rejected the argument that recognizing false light would chill protected speech, pointing to the high fault standard it had adopted. In order to be liable, reporters and editors must know the information is false or act with reckless disregard for the truth, regardless of whether the plaintiff is a public figure or a private citizen. The standard makes false light more difficult to prove than defamation in the case of a private figure plaintiff.

“Today, thanks to the accessibility of the Internet, the barriers to generating publicity are slight, and the ethical standards regarding the acceptability of certain discourse have been lowered. As the ability to do harm has grown, so must the law’s ability to protect the innocent.”

– Justice Paul E. Pfeifer  
Ohio Supreme Court



# Defamation/Libel

## Illinois Paper Apologizes, Settles Civil Rights Suit against State Chief Justice who Sued It for Libel

**A**n Illinois community newspaper and the state high court's chief justice struck a settlement agreement Oct. 10, 2007 over a libel suit, under which the newspaper apologized, agreed to drop a federal civil rights suit it had filed, and will pay a reduced award of \$3 million to the judge.

Illinois Supreme Court Chief Justice Robert Thomas won his libel suit against the *Kane County (Ill.) Chronicle* and former columnist Bill Page in November 2006. In a series of columns in 2003, Page wrote that, according to confidential sources, Thomas had been lenient in a disciplinary action against a state's attorney in return for political favors. A jury found the statements to be false and defamatory, and awarded Thomas \$7 million in damages, which was later reduced to \$4 million. The newspaper responded by filing a novel federal civil rights suit against Thomas, alleging that his power and influence over the state court system had denied the newspaper a fair trial. (See "Illinois State Supreme Court Justice Awarded \$7 Million Libel Judgment Against Newspaper" in the Winter 2007 issue and "Newspaper, Columnist Sue State Supreme Court Chief Justice in Federal Court" in the Summer 2007 issue of the *Silha Bulletin* for more details.)

According to the *Chronicle*, the parties began settlement negotiations mediated by a federal magistrate judge on Sept. 27, 2007. On October 11, the *Chronicle* reported that Thomas, the newspaper's president and chief executive officer Tom Shaw, and Page had reached the settlement. A joint statement released to the press said, "Mr. Thomas, the *Chronicle*, and Mr. Page have now agreed that the public interest is best served by a spirit of reconciliation and the settling of the dispute."

The statement said that the newspaper and Page "apologize to Mr. Thomas," and that Thomas "affirms his support for the role of a free press in informing the public about all branches of government, including the judiciary, as well as his commitment to equal treatment under law for all litigants in the Illinois courts."

The statement and lawyers did not disclose the settlement amount, according to the *Chronicle*, but various media sources including the *Chronicle*, the *Chicago Tribune*, and The Associated Press (AP) attributed the \$3 million figure to Page.

Page also said he stood by his reporting, which was based on confidential sources who had not been called to testify in the November 2006 trial.

According to the AP, Page denied apologizing to Thomas, despite the statement saying he did so. "That apology runs after my signature," he said. "I stand by everything I wrote, and I would repeat it. I'm not backing down from this."

According to the *Chicago Tribune*, *Chronicle* attorney Bruce Brown said he was pleased the paper had raised broader issues in filing the federal lawsuit.

"It may persuade the next judge who comes along who has a complaint with news coverage that the better approach may be to bring that complaint to the public or bring that complaint to the publisher of the newspaper rather than bringing it to the court system that the judges control," Brown said.

According to the *Chronicle*, Thomas' attorney Joe Power said the chief justice was satisfied with the settlement because the newspaper apologized.

"I think the importance of the case is not only for Justice Thomas, but all the judiciary, that it cannot be open season on judges," Power said. "When you do something like this and you make something up out of whole cloth, there are consequences to it."

— PATRICK FILE

SILHA FELLOW AND *BULLETIN* EDITOR

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A joint statement said that the newspaper and Page "apologize to Mr. Thomas," and that Thomas "affirms his support for the role of a free press in informing the public about all branches of government."

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### Ohio False Light, *continued from page 20*

Pfeifer reasoned that the high fault standard would protect the press even though false but not defamatory statements may be more difficult for editors to recognize and check. "False light defendants enjoy protections at least as extensive as defamation defendants," he wrote.

Finally, the majority argued that the onset of the information age makes protection of personal privacy increasingly important. "Today, thanks to the accessibility of the Internet, the barriers to generating publicity are slight, and the ethical standards regarding the acceptability of certain discourse have been lowered. As the ability to do harm has grown, so must the law's ability to protect the innocent."

The ruling reversed the appellate court and returned the case to the trial court for a new trial on the issue. Two justices dissented but did not issue separate opinions.

— MICHAEL SCHOEPF

SILHA RESEARCH ASSISTANT

## Defamation/Libel

### 'Libel Tourism' Suit Leads Publisher to Destroy Book on Terrorism Funding, Pay Damages and Apologize

British libel laws that favor plaintiffs led one publisher to destroy unsold copies of a book about terrorism financing and to ask librarians to pull it from shelves despite the authors' complaints that "libel tourism" will chill important scholarship.

The contested book, *Alms for Jihad: Charity and Terrorism in the Islamic World*, examines the recent "dramatic proliferation of Islamic charities," according to an overview on the publisher's Web site. "While most are legitimate, considerable evidence reveals that others have more questionable intentions, and that funds have been diverted to support terrorist groups, such as al-Qaeda." The book traces the flow of money from the charities back to terrorist groups in the Middle East. Cambridge University Press published the book in April 2006.

In the spring of 2007, Saudi businessman Khalid bin Mahfouz sued Cambridge University Press in England, claiming the book's allegations that he and his family had financed terrorists were false and defamatory. *The New York Times* reported Oct. 7, 2007 that the publisher agreed in August 2007 to destroy 2,300 unsold copies, pay undisclosed damages and attorney fees, offer a written apology, and ask librarians to remove the book from shelves.

Under English libel law the burden is on the defendant to prove the truth of defamatory passages in a publication. In the United States, the plaintiff must prove the claims are false and, in the case of a public figure, that they were made with actual malice. "Actual malice" means the defendant knew the claims were false or acted with reckless disregard for the truth. The differences make it much easier to prevail on defamation suits in England than in the United States, especially for public figure plaintiffs.

According to the *Times*, the Cambridge University Press determined that the suit would be impossible to defend because bin Mahfouz had already won several libel suits in England against publishers who had printed similar allegations. But authors J. Millard Burr and Robert O. Collins argued that bin Mahfouz is mentioned only 11 times in 350 pages, and the whole publication should not be scrapped because of the complaints of one individual.

Burr, a retired State Department official, and Collins, a history professor at the University of California, Santa Barbara, said they wrote the book after extensive research and stand behind most of their claims. The authors told the *Times* that the book contains two errors related to bin Mahfouz. First, his family is not intermarried with the bin Laden family, and second, he was a director and not chief executive officer of a bank the Manhattan district attorney charged with fraud in 1992. Bin Mahfouz paid \$225 million to settle that case, involving the Bank of Credit and Commerce International, in 1993, but he did not admit fault.

Burr and Collins told the *Times* that they had reacquired the copyright to the book and were looking for a U.S. publishing house to reissue it. However, bin Mahfouz has previously won judgments in English courts against American publishers and authors because the challenged book was available over the Internet in England. He has filed, or threatened to file, so many libel suits in England against foreign plaintiffs that some critics have labeled him a "libel tourist." (For more on international libel tourism cases, see "Appeal in Canadian Libel-Tourism Case Denied" in the Winter 2006 issue of the *Silha Bulletin*.)

In 2004, bin Mahfouz won a default judgment in English courts against Rachel Ehrenfeld, author of *Funding Evil: How Terrorism is Financed—and How to Stop it*. Ehrenfeld wrote and published the book in the United States, but because it was available for sale through Internet retailers in England, the court awarded bin Mahfouz unspecified damages, enjoined publication, and declared the book's allegation to be false. Like Burr and Collins, Ehrenfeld linked bin Mahfouz to organizations that funnel money to terrorist groups.

Rather than fight the lawsuit in England, Ehrenfeld accepted the default judgment and filed suit Dec. 8, 2004 in U.S. District Court in New York seeking a declaratory judgment. She argued the English judgment was unenforceable in the United States because the book was published in the United States, and the claims would have failed under U.S. law.

After nearly three years of procedural wrangling, no U.S. court has reached the merits of Ehrenfeld's case. The 2nd Circuit U.S. Court of Appeals ruled June 8 in *Ehrenfeld v. bin Mahfouz*, 489 F.3d 542 (2d Cir. 2007), that jurisdiction turns on a novel question of state law: whether New York's long-arm statute allows personal jurisdiction over a defendant whose only contacts with the New York are his efforts to enforce an English libel judgment, not federal law.

The 2nd Circuit held that New York's Court of Appeals, the state's highest court, should determine the state law question before federal courts reach any constitutional issues. Under federal law, if a state court may exercise personal jurisdiction over a defendant, so can a federal court sitting in that state so long as it does not violate the defendant's due process rights.

The state court accepted the question from the federal court on June 28, 2007, but as the *Bulletin* went to press, had not yet ruled. If the state high court finds personal jurisdiction over bin Mahfouz, the case would return to the federal district court in New York for a ruling on whether the U.S. Constitution allows for personal jurisdiction over bin Mahfouz, and if it does, whether the First Amendment bars enforcement of English libel judgments in the United States.

The English suits filed by bin Mahfouz have garnered considerable attention in the popular press

The English suits filed by bin Mahfouz have garnered considerable attention in the popular press and raised concerns about the propensity of English courts to sanction American speech.

*Libel Tourism, continued on page 24*

# Defamation/Libel

## British Court Extends 'Reynolds Privilege' to Publishers

### *Privilege Protects Publishing False Information in the Public Interest*

The British Court of Appeal for England and Wales extended qualified protection from libel suits for the authors and publishers of books on Oct. 11, 2007, ruling that they enjoy a qualified privilege so long as they act responsibly. The ruling may make it more difficult for libel tourists to win defamation suits in England.

The case, *Charman v. Orion Publishing Group*, 2007 WL 2941638 (C.A. Civ. Div.) (appeal taken from Q.B.), interpreted the so-called "Reynolds Privilege" or "Reynolds Defense" to protect authors and publishers of books for the first time. The "Reynolds Privilege" protects journalists who fairly report false information, which if true, would have been of exceptional interest and importance to the public. The House of Lords originally recognized the defense in 1999 with respect to newspapers in *Reynolds v. Times Newspapers Ltd.*, (2001) 2 A.C. 127 (H.L.) (appeal taken from Ir.).

*Reynolds* involved a suit by former Irish Taoiseach (Prime Minister) Albert Reynolds against Times Newspapers concerning a story about his 1994 resignation from public office. In *Reynolds*, Times argued all political reports should enjoy a qualified privilege, but the court refused to recognize such a broad privilege. Instead, the court stated the privilege attaches where the timeliness and importance of the information are so great that the press has a duty to report it.

Lord Nichols, writing for the court, identified several factors relevant to the consideration of whether the work should qualify for the privilege including: the seriousness of the allegation, the nature of the allegation (whether it is in the public interest), the source of the information, the steps taken to verify the information, the urgency of the matter, whether the author sought comment from the person defamed, the tone of the publication, the timing of the publication, and whether the publication contained the "gist" of the defamed person's side of the story.

The court held that whether the privilege attaches to a specific publication is a question of fact and law to be determined by the judge based on the particular facts of each case.

According to the House of Lords, if the report qualifies for the privilege, the author and publisher may not be sued for defamation so long as their motives were good. Motives that remove the privilege include intent to injure the plaintiff, knowledge that the report is false, and reckless disregard for the truth.

The *Charman* case arose when a police officer named Michael Charman sued Orion and author Graeme McLagan over allegations contained in the book *Bent Coppers*. The book chronicled the British effort to ferret out police corruption beginning in the 1960s. *Bent Coppers* devoted considerable attention to the 1994 introduction of a secret group of detectives charged with cleaning up Scotland Yard known as the "Ghost Squad."

The book states that shortly after the Ghost Squad's introduction, detectives investigated whether Charman earned £50,000 from a cell phone scam. Though Charman was never charged in the incident, Scotland Yard forced him to resign in May 2004 when a disciplinary panel found he was "likely to bring discredit to the reputation of the force," the Court of Appeal opinion said.

In October 2005 Judge Gary ruled that the book falsely suggested there were "cogent grounds" for believing Charman was involved in the corruption. In December 2006 Gary dismissed Orion's qualified privilege defense.

In a unanimous decision, a three-member panel of the Court of Appeal reversed. The Lord Justices held the book constituted responsible journalism and its subject matter was in the public interest. "*Bent Coppers* is in my judgment an exercise of entirely responsible journalism and as such is entitled, to the protection of the law against what would otherwise be the consequences of its defamatory imputation against the claimant," Lord Justice Sedley said.

The court held that the book contained serious allegations that were within the public interest. The Lord Justices noted McLagan's expertise; he had worked for the BBC since 1971 focusing on Scotland Yard from the late 1970s onward. Because McLagan had expended considerable effort to verify the information he reported, and sought unsuccessfully to interview Charman, he had engaged in "responsible journalism" protected by the Reynolds Privilege.

"Reynolds privilege is concerned to provide a proper degree of protection for responsible journalism when reporting matters of public concern. Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputations of individuals," Lord Justice Ward wrote. Fair and responsible journalism, whether in books, newspapers, or another medium, enjoys qualified protection from libel suits, even if the information later proves to be defamatory, he said.

McLagan's solicitor Caroline Kean called the case "ground-breaking" in an October 11 BBC report. Peter Roche, chief executive officer of Orion said, "[t]his judgment will enable serious investigative works covering matters of public concern to be published in [the] future and increase the freedom of debate in the UK."

"For too long newspapers and book publishers have been deterred from publishing serious investigative journalism by the threat of incredibly complex and expensive libel proceedings if they made the slightest error," Kean said, according to an October 11 report in the *Times Online*.

The Police Federation, which backed Charman, will have to pay the legal costs of McLagan and Orion, the *Times Online* reported. McLagan estimated those costs amounted to at least £1 million.

— MICHAEL SCHOEPF  
SILHA RESEARCH ASSISTANT

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"*Bent Coppers* is in my judgment an exercise of entirely responsible journalism and as such is entitled, to the protection of the law against what would otherwise be the consequences of its defamatory imputation against the claimant."

— Lord Justice Sedley  
British Court of  
Appeal for England and  
Wales

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# Defamation/Libel

## Time Magazine Contests Defamation Ruling for Former Indonesian Dictator

Lawyers for *Time* magazine said they will contest a \$106 million libel judgment handed down by Indonesia's highest court to former dictator Suharto Aug. 31, 2007.

The case arose from the May 1999 cover story "Suharto Inc.: The Family Firm" in *Time's* Asian edition that accused Suharto of corruptly amassing \$73 billion in assets during his 32-year rule.

Suharto gained power in 1966 following a political and military struggle that left 500,000 people dead, according to The Associated Press (AP). He resigned in 1989 in the face of limited public support and mass demonstrations after a downturn in the Asian financial markets lowered the standard of living for Indonesians, according to *The Straits Times* (Singapore).

The 1999 *Time* article accused Suharto and his family of widespread corruption and siphoning government funds. The article accused Suharto of transferring \$9 billion from a Swiss bank account to an Austrian account in 1998 on the eve of his departure from office, and amassing other international assets totaling \$73 billion.

Suharto filed suit in Indonesia against *Time* in 1999 alleging the article defamed him and his family. Two lower courts dismissed the suit but the high court ruled for Suharto, granting him one trillion rupiah (about \$106 million) in damages, and ordering *Time* to print apologies, the AP reported.

According to an article in *The Straits Times*, the ruling contributed to speculation that Suharto still held considerable influence in the Indonesian court system nearly 10 years after his resignation. George Aditjondro, author of two books on Suharto's wealth, told *The Straits Times* that Suharto's son, Hutomo 'Tommy' Mandala Putra, served only five years of what had been a 15-year sentence in 2002 for ordering the assassination of a judge.

According to a September 11 AP report, the three-judge panel of the high court that issued the August 31 ruling for Suharto included a former general who rose through the ranks of Indonesia's military while Suharto led the country.

The Indonesian government tried to charge Suharto for corruption in May 2000, but criminal charges were eventually dropped after doctors ruled he was too ill to stand trial, the AP report said.

After repeated attempts to criminally prosecute the ex-president failed, prosecutors filed a civil suit against Suharto in July 2007 seeking to recover \$1.5 billion in damages arising from the disappearance of money from charitable funds, *The Straits Times* reported. The United Nations (U.N.) made Suharto the subject of a new program to track his international assets on Sept. 25, 2007, *The Straits Times* reported. He also tops the U.N.-World Bank's list of the world's most corrupt leaders.

The AP reported October 11 that *Time* will ask the Indonesian court to review its previous rulings. A statement released by *Time* said they had received a translated copy of the ruling, and it gave "little rationale for either the ruling or the amount of the damages."

"*Time* magazine will take any legal measures available to defend freedom of the press," the AP said. *Time's* lawyer Todung Mulya Lubis told journalists in Jakarta "We believe it is important to uphold justice and the truth."

– MICHAEL SCHOEPF

SILHA RESEARCH ASSISTANT

"*Time* magazine will take any legal measures available to defend freedom of the press. We believe it is important to uphold justice and the truth."

– Todung Mulya Lubis  
*Time* magazine attorney

### Libel Tourism, continued from page 22

and raised concerns about the propensity of English courts to sanction American speech. *The Weekly Standard* reported on Aug. 20, 2007 that the lawsuits could prompt American publishers to stop selling certain titles on the Internet in order to avoid English jurisdiction.

Advance Publications, Amazon.com, the American Society of Newspaper Editors and numerous other publishers and booksellers concerned about Ehrenfeld's lawsuit filed an *amicus* brief urging the court to reach the merits of her case. The *amici* argued that enforcement of foreign libel judgments in the United States would chill protected speech and have "potentially devastating implications for the crucial spread of information and ideas in the public interest."

Two professors at Emory University argued American courts should not allow wealthy businessmen to avoid the First Amendment by enforcing foreign libel judgments in an October 11 *International Herald Tribune* article. "American courts and publishers must take steps to preserve the unique protections American authors and journalists treasure. If they do not, ultimately it is readers who will be deprived of information and ideas," Michael J. Broyde and Deborah E. Lipstadt wrote.

For his part, bin Mahfouz has vowed to continue the fight to "clear his family's name." A statement on his Web site [www.binmahfouz.info](http://www.binmahfouz.info) reads: "The [b]in Mahfouz family has suffered for over a year from unsubstantiated innuendo and inaccurate reporting (much of it corrected or withdrawn too late to be helpful). It is, naturally, distressed that it now faces many of the same untrue allegations in filed civil actions. The family repeats that it abhors and condemns all acts of terrorism and that there is not a shred of evidence to justify the actions and lengthy legal process involved. It will, of course, vigorously contest them."

– MICHAEL SCHOEPF

SILHA RESEARCH ASSISTANT

# Endangered Journalists

## Newspaper Settles Dispute over Seizure of Newsroom Computer and Equipment

Police in New Castle, Pa. seized a computer and several recording devices from the *New Castle News* on July 25, 2007, saying they were used to record telephone conversations illegally with two local public officials.

The computer was returned when the county district attorney and newspaper struck an agreement on August 8 under which police were allowed to copy the machine's hard drive without examining its contents, according to The Associated Press (AP).

Under Pennsylvania law, 18 Pa. Cons. Stat. § 5703 and 5704, both parties to a phone conversation must consent to its being recorded. Failure to obtain consent is a third-degree felony subject to up to a seven-year prison sentence.

The newspaper's attorney James Manolis told the Reporters Committee for Freedom of the Press (RCFP) that he believes case law in the state has made an exception for journalists. For reporters to be convicted of a crime under the law, Manolis said, sources have had to prove that they had a reasonable expectation that their comments were not being recorded.

According to the RCFP, under the August 8 agreement the newspaper will draft a written policy requiring reporters to get sources' consent before recording conversations. Manolis said that the written policy does not represent a change from the unwritten policy the *New Castle News* already had in place.

The *New Castle News* reported that the confiscated equipment belonged to reporter Pat Litowitz, who allegedly recorded interviews he conducted with Northwest Lawrence Regional Police Chief Jim Morris and Mahoning Township Supervisor Francis Exposito. Litowitz was pursuing a story about a proposed police training facility in the New Castle area. Litowitz said he made the recordings to ensure accuracy in his reporting.

According to the newspaper, police chief Morris learned of the recordings from his wife, Debbie Wachter Morris, who is a reporter at the newspaper. Wachter Morris said she found out from another reporter that Litowitz had made the recordings, and alerted her husband that he may have been recorded illegally.

Chief Morris contacted the New Castle Police department, a warrant was issued, and police executed the warrant in an unannounced search of the newspaper office on July 25.

According to an August 3 story in the *New Castle News*, Wachter Morris said she did not believe that her duties as a reporter and the fact that her husband is a police chief raised a conflict of interest.

"I felt an obligation to both," she said. "I felt if my husband was the victim of an alleged crime, and I was seeing it happen, I felt obligated to bring it to the attention of my employer and my husband as the victim."

Manolis and *New Castle News* publisher Max Thomson were critical of the district attorney's decision to pursue the matter.

"It seems to me the primary reason that ... this investigation is being conducted by the commonwealth is because of a conflict between two reporters and the marital relationship between one of those reporters with a member of law enforcement," Manolis told the newspaper.

Thomson said the investigation "amounts to a monumental waste of investigative and judicial time."

District Attorney John Bongivengo said sources who know they are talking to reporters have a limited expectation of privacy.

"In this situation ... the person [Chief Morris] spoke to is not the actual person who wrote the story. There are other facts involved in this case and to me, whether there's a reasonable expectation of privacy or not, is essentially a jury question," Bongivengo said.

Thomson called the seizure "a dangerous intrusion by police to some very profoundly held First Amendment issues," adding, "There is a large amount of information on the equipment seized that we don't want police officials to be rummaging indiscriminately through."

— PATRICK FILE

SILHA FELLOW AND *BULLETIN* EDITOR

"It seems to me the primary reason that ... this investigation is being conducted ... is because of a conflict between two reporters and the marital relationship between one of those reporters with a member of law enforcement."

— James Manolis  
*New Castle News*  
attorney

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# Endangered Journalists

## China Failing to Deliver on Pre-Olympics Press Freedom Promises According to NGOs' Reports

China promised foreign journalists more freedom to report this year in the prelude to the 2008 Olympic Games in Beijing, but recent reports issued by human rights organizations Human Rights Watch and Amnesty International conclude that these promises remain largely unfulfilled.

Temporary regulations adopted by the Chinese government, effective Jan. 1, 2007 through Oct. 17, 2008, promised foreign reporters unrestricted travel in China and uncensored Internet access. The regulations, published on the Web site for the Beijing Organizing Committee for the 2008 Olympic Games at <http://en.beijing2008.cn/>, also indicate that accredited foreign journalists may interview any consenting Chinese organization or citizen. The 2008 Olympic games are scheduled to begin on Aug. 8, 2008 in Beijing.

The Associated Press (AP) reported on Aug. 7, 2007 that when China made its bid to host the games in 2001 it assured the International Olympic Committee that there would be greater media freedom for foreign journalists during the run-up to the 2008 Olympic Games.

However, the majority of foreign correspondents continue to be subjected to detention, harassment, and intimidation, according to the August 2007 Human Rights Watch report "You Will Be Harassed and Detained." Human Rights Watch based its findings in part on anonymous interviews or written accounts from 36 foreign correspondents.

Bruno Philip, a China correspondent for the French daily newspaper *Le Monde*, was quoted in the report, which is available on the Human Rights Watch Web site, [www.hrw.org](http://www.hrw.org). "We will always be subjected to harassment by local officials," Philip said. "The difference now is that we can at least now call a guy at the Ministry of Foreign Affairs ... but it doesn't do much for access to information or the capacity to work freely."

The reports from both Amnesty International and Human Rights Watch indicate that the continued crackdown on foreign journalists has taken a variety of forms, from detention of foreign correspondents for short periods of time to surveillance by government and security officials during interviews. The Human Rights Watch report found that foreign coverage of politically sensitive topics, including the activities of political dissidents, China's HIV/AIDS epidemic in Henan province, and the government's relationship with Tibet, were more likely to raise the ire of Chinese government officials.

Tim Johnson, China-based correspondent for McClatchy newspapers, wrote on his blog, "China Rises," of a "dressing down" he received from the Foreign Ministry on May 15, 2007 after a visit to Tibet. The posting, entitled "Scolding an Errant Reporter" details Johnson's conversation with a senior government official who told him that comments he had made in the article concerning

China's oppressive policy towards the Tibetans were unacceptable to the government. According to the Human Rights Watch report, such reprimands by the Foreign Ministry are not uncommon for foreign correspondents reporting on potentially sensitive issues.

Other journalists have enlisted the Foreign Ministry's aid in situations where access to sources has been denied, but still have been hindered by local officials in their attempts to report. Philip stated that he was faced with intransigent local officials while reporting on the aftermath of riots in Guangxi province. Despite clearance by the Ministry, which asserted that Philip could talk to anyone, local officials maintained that Philip could talk only to local government representatives, and then failed to direct him to any representatives.

The report also describes the detention of a Beijing-based foreign journalist in early 2007 as she was attempting to report on a murder. The journalist, whose name was withheld in the report, was detained in a facility marked as a military compound and, when she mentioned the new regulations implemented by the Chinese government for foreign journalists, was told by the men who detained her, "Those don't apply here, go back to Beijing."

Some journalists, the Human Rights Watch report noted, believed that the temporary regulations had resulted in improved press access to political dissidents like Bao Tong, former Chinese Community Party Central Committee member and secretary to former Party Chief Zhao Ziyang, who is under house arrest for his support of the Tiananmen Square protests in July 1989. However, the report concluded that there was still "widespread disregard and denial" for the provisions of the regulations for improved media freedom.

The AP reported on August 7 that members of the Paris-based free-press advocacy group, Reporters sans Frontieres (Reporters Without Borders or RSF), had been detained after staging a protest in Beijing on August 6. The RSF protestors accused China of continuing to restrict foreign journalists despite its promises of greater media freedom.

Human Rights Watch recommended at the conclusion of its report that China should extend the temporary regulations indefinitely for foreign journalists and Chinese journalists alike. The temporary regulations are not applicable to Chinese journalists or to Chinese media assistants working with foreign correspondents. According to the Committee to Protect Journalists (CPJ), a non-profit organization dedicated to defending press freedom, the treatment meted out to Chinese journalists who report on politically sensitive issues is much harsher, and they continue to face censorship and reprisals for investigative reporting. At least 29 Chinese journalists are currently imprisoned, according to the CPJ in a report published Aug. 7, 2007 on its Web site, [www.cpj.org](http://www.cpj.org).

"We will always be subjected to harassment by local officials. The difference now is that we can at least now call a guy at the Ministry of Foreign Affairs ... but it doesn't do much for access to information or the capacity to work freely."

— Bruno Philip  
China correspondent  
*Le Monde*



# Endangered Journalists

## Russia: Politkovskaya Investigation Continues; Reporter Detained for Alleged Extortion

The media's relationship with the government in Russia remains uneasy. In August 2007, Russian authorities made new strides in the investigation into Russian journalist Anna Politkovskaya's death, but critics say such developments are illusory and that the mastermind behind the contract killing will never be identified by the government. Russian authorities also detained a journalist in September 2007 on charges of extorting money from a government official, a claim the journalist's newspaper denies.

### **Ten Arrested in Killing of Politkovskaya**

Ten people have been arrested in connection with the killing of Russian journalist Anna Politkovskaya, and investigators say they know who killed her. However, officials continue to claim that although they do not know who ordered the contract killing, the order must have come from outside the country.

The Associated Press (AP) reported on Oct. 8, 2007 that investigators in the Prosecutor General's office have identified Politkovskaya's murderer, who killed her outside her Moscow apartment on Oct. 7, 2006. "As for those who ordered it, we have interesting suggestions, let's put it this way," Senior Investigator Petros Garibyan told the Moscow-based newspaper *Novaya Gazeta*, the newspaper that Politkovskaya worked for.

Prosecutor General Yuri Chaika announced in August that investigators looking into the death of Politkovskaya had determined that "only individuals located outside the bounds of the Russian Federation" could have sought to kill the journalist, according to the AP on August 27. Chaika's comments echoed previous statements made by Russian President Vladimir Putin shortly after Politkovskaya's murder was discovered, according to the *Financial Times* on August 27. Putin blamed Politkovskaya's murder on outsiders trying to discredit Russia. He stated in 2006 that he thought fugitives from justice in Russia were behind the killing. Putin also said that Politkovskaya's death was more damaging to Russia than the impact of her reporting, which he termed "very minor," according to the AP. (See "Famed Russian Reporter Murdered in Contract Killing" in the Fall 2006 issue of the *Silha Bulletin*).

Politkovskaya's death heightened international concern for the welfare of journalists in Russia and the safety of critics of the Kremlin, according to the August 27 AP story. She was known for her strong criticism of Putin and the Kremlin and also drew attention to human rights abuses committed by Russian servicemen in Chechnya. The AP reported that she had written a book criticizing Putin's military involvement in Chechnya and had accused Kremlin-annointed Chechen President Ramzan Kadyrov of using his security forces to torture civilians in the region.

The *Financial Times* reported on August 27 that Chaika indicated that Politkovskaya's killers were members of a criminal group led by a Chechen crime boss. Among the ten detainees, Chaika stated, were former and serving officers of the security services who had monitored Politkovskaya's movements and provided information to the criminal group.

Such arrests mark the first occasion that members of Russia's security services have been implicated in a contract killing, despite widespread public speculation that they take part in such crimes, said the *Financial Times*.

The AP reported on October 7 that the Federal Security Service (FSS), the successor to the Soviet Union's KGB, identified one of the 10 arrested individuals as a lieutenant colonel in the FSB, Pavel Ryaguzov, who reportedly gave Politkovskaya's killers her address.

Politkovskaya's former colleagues believe her murder was ordered by individuals seeking to punish her for her reporting on abuses in Chechnya, according to the *Financial Times*. They also said they believe the Kremlin may name a "suspected mastermind to suit its political interests," according to the AP.

### **Russian Newspaper Reporter Detained**

Russian authorities detained a journalist accused of extorting money from Agriculture Minister Alexei Gordeyev on September 12, according to the AP.

The journalist, who was not identified, is a reporter for the Russian daily newspaper, the *Nezavisimaya Gazeta*, according to the AP on September 13. The newspaper believes that the reporter was detained on September 12 by authorities hoping to pressure the media before the parliamentary and presidential elections in March 2008.

The Interior Ministry told the AP that the journalist was the newspaper's deputy editor. He was accused of blackmailing the Agriculture Minister by threatening to disclose compromising information if the Minister did not give him \$30,000 in monthly payments.

*Nezavisimaya Gazeta* made a statement on its Web site, [www.ng.ru](http://www.ng.ru), asserting that its employee was innocent of extortion. "If the arrest of our employee is an attempt to influence the newspaper's editorial policy, it's useless," the paper commented.

On the day its employee was detained, *Nezavisimaya Gazeta* published an article critical of Gordeyev, the Agriculture Minister, who released unfounded harvest forecasts that led to a rise in grain prices.

*Nezavisimaya Gazeta* said it will continue to publish stories critical of the government, according to the AP.

— AMBA DATTA  
SILHA RESEARCH ASSISTANT

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"As for those who ordered [Politkovskaya's murder], we have interesting suggestions, let's put it this way."

— Petros Garibyan  
Senior Investigator,  
Prosecutor General's  
office

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# Endangered Journalists

## International Roundup: China, Burma, Zimbabwe, Iran

### *Chinese Research Assistant Zhao Yan Released from Chinese Prison*

Zhao Yan, a Chinese research assistant for *The New York Times*, was released from prison in China in September 2007 after serving three years for a fraud conviction.

Zhao was an investigative reporter before he joined the Beijing bureau of *The New York Times* in 2004. He was detained by state security agents in September 2004 on charges of disclosing state secrets to the *Times*. Although the Chinese government did not release details of the charges, it alleged that Zhao was the source for an article that ran in the *Times* on former President Jiang Zemin's plans to step down as Chairman of the Central Military Commission. (See "Endangered Journalists: Journalists in China" in the Fall 2004 issue of the *Silha Bulletin* and "Chinese Journalists Battle Censorship, Yahoo!" in the Fall 2006 issue.)

The *Times* denied that Zhao divulged any state secrets to the newspaper, according to a Sept. 14, 2007 story.

The state secrets charge against Zhao was first dismissed by a Beijing court in March 2006. PA Mediapoint, a British newswire service, reported on Sept. 17, 2007 that the charges were dismissed in an effort to ease strains with Washington before a visit by Chinese President Hu Jintao to the United States in April 2006. According to the *Times*, President Bush and Secretary of State Condoleezza Rice lobbied for Zhao's release with President Hu Jintao. The charges were then reinstated after the Chinese President returned to China, but were again dismissed after trial in June 2006.

A fraud charge was also added to the charges against Zhao after he was detained. The *Times* reported on September 14 that an official in Jilin Province stated that in exchange for a cash payment, Zhao promised to use his political influence to help him in a legal matter.

At trial in June 2006 on both charges, Zhao asserted that he was innocent, even challenging the court to subject him and the witnesses against him to a polygraph test, the *Times* reported on Sept. 14, 2007. Zhao's lawyers were not allowed to cross-examine the prosecution's witnesses, and Zhao was not allowed to call witnesses on his own behalf, according to the *Times*.

In August 2006, the Beijing court dismissed the state secrets charge, but it convicted him on the fraud charge.

According to the *Times*, Zhao's arrest prompted an international outcry over the Chinese government's treatment of media representatives.

Zhao issued a statement after his release from a Beijing detention center. "These three years I have missed my family very much, especially my maternal grandmother, who is now more than 100 years old," the statement said, according to PA Mediapoint on September 17.

### *Japanese Photo Journalist Gunned Down in Rangoon*

Japanese photo journalist Kenji Nagai was shot by a Burmese soldier on Sept. 26, 2007 as he was shooting video of panic-stricken demonstrators protesting against the ruling military junta in Rangoon, according to the National Press Photographers Association (NPPA) in an article posted to its Web Site, [www.nppa.org](http://www.nppa.org), on September 26.

Nagai was standing on the edge of a crowd shooting video of Burmese soldiers advancing on the demonstrators near Sule Pagoda in the center of the Burmese capital when he was shot, according to the NPPA article.

*The Times* of London reported September 28 that footage of Nagai's death was later broadcast on Japanese television networks. Video of a Japanese news broadcast showing the shooting is available online at <http://www.timesonline.co.uk/tol/news/world/asia/article2550369.ece> or at <http://www.youtube.com/watch?v=BUUQi1ooEAs>.

The footage shows a Burmese soldier shoving Nagai to the ground. Lying face up, Nagai was holding his video camera above the ground in his right hand, ostensibly to protect it from damage. The officer shot him at point blank range. According to *The Times*, the official Burmese explanation for Nagai's death was that he was killed by a stray bullet. The footage contradicts this explanation.

Nagai was a contract photographer for the Japanese news agency APF News, his father told the NPPA. He had come to Myanmar two days before to cover the anti-government protests organized by monks and other demonstrators.

Japanese Prime Minister Yasuo Fukuda said that Tokyo would press the junta for an explanation regarding the photo journalist's death, according to *The Times*. The Japanese government is sending the deputy foreign minister to Burma to conduct inquiries.

Japan is the largest foreign donor of development aid to Burma. Foreign ministry sources told *The Times* that its donations to the country are now under review.

### *Zimbabwe Leaks "Hit List" Containing Names of 15 Journalists*

A "hit list" including the names of 15 journalists was leaked in September 2007 from what appear to be official sources within the government of Zimbabwe. The list was published September 26 in the

A Japanese photo journalist was shot at point blank range by a Burmese soldier as he was shooting video of panic-stricken demonstrators protesting against the ruling military junta in Rangoon on Sept. 26, 2007.

### **International Roundup, continued from page 28**

independent Zimbabwean press, according to Newswatch India, a media portal for journalists, in an article dated September 28 posted on its Web site, [www.newswatch.in](http://www.newswatch.in).

The list, dated June 2007, is printed on government letterhead and includes the headline “2008 Presidential and Parliamentary Elections.” The journalists’ names are listed after a subheading, “Targeted Journalists.” Beneath their names is a note stating “The following media personnel and others as discussed in the previous meeting are to be placed under strict surveillance and taken in on the various dates set. They’re working hand in hand with hostile anti-Zimbabwe western governments.”

Several of the journalists on the list have already been the victims of violence. Abel Mutsakani, the former editor of the Zimbabwe daily newspaper *The Daily News*, which was banned in 2003, recently survived an assassination attempt in South Africa, according to the International Federation of Journalists (IFJ) in an article on its Web site, [www.ifj.org](http://www.ifj.org).

Gift Phiri, a correspondent of the London-based weekly newspaper *The Zimbabwean*, was arrested in April 2007 in Zimbabwe, charged with publishing false news and working without proper accreditation, and beaten during four days in police custody, according to the Paris-based free press advocacy group Reporters sans Frontiers (Reporters Without Borders or RSF) in an April 6, 2007 article on its Web site.

Bill Saidi, deputy editor of the newspaper *The Standard*, received threats in January 2007, including an envelope containing a bullet and a message warning him to “watch out,” the IFJ reported.

The Association of Zimbabwe Journalists issued a statement on September 29 calling on government officials to assure the safety of the journalists on the blacklist. It also stated that while it could not vouch for the authenticity of the hit list, “[T]he very existence of the list is cause for great concern as it reflects the hostile and harsh environment that Zimbabwean journalists operate under some of whom have been assaulted, harassed, arrested, tortured and detained in terms of the country’s repressive media laws.”

The IFJ also called on the government of Zimbabwe to guarantee the safety of journalists in an article on its Web site. “The government of President Robert Mugabe must make it clear to the international community that it is not targeting journalists,” said IFJ General Secretary Aidan White. “It can do that by guaranteeing the safety of all the journalists named and all other journalists in Zimbabwe.”

### **Iran Sentences Two Journalists to Death**

Two Kurdish reporters were sentenced to death on July 16, 2007 by an Islamic tribunal on charges of “Moharebeh,” a word used in Sharia law to denote crimes against the religion and Islamic state.

Reporters Adnan Hassanpour and Abdoulvahid (also known as Hiwa) Boutimar were detained in the aftermath of Kurdish protests held in 2005 in Sanandaj, the capital of the western Iranian province of Kurdistan, according to the AP. Protesters were denouncing the killing of a Kurdish activist, Shwane Qaderi, by the Iranian police.

The RSF reported in an article dated August 29 on its Web site, [www.rsf.org](http://www.rsf.org), that the revolutionary tribunal, a special court that tries individuals charged with crimes against national security, sentenced them for spying, “subversive activities against national security,” and “separatist propaganda.”

The official Islamic Republic News Agency had no information as to when or how the sentence would be carried out, according to the AP on July 31, 2007.

Both Hassanpour and Boutimar were writers for *Asu*, a Kurdish language weekly, before it was banned Aug. 4, 2005, according to the Inter Service Press, a non-profit international cooperative of journalists, on Aug. 1, 2007.

Hassanpour also contributed to foreign media such as Voice of America, the U.S. broadcasting service, and the Prague-based Radio Fardo, which broadcasts in Iran in the Persian language, RSF reported.

According to BBC News on July 31, such death sentences are rare in Iran. Government officials usually instead choose to imprison activist writers, journalists, and intellectuals without due process.

On September 7, RSF called on the Supreme Court “to allow a review of [the journalists’] trial and to quash their death sentences.”

— AMBA DATTA

SILHA RESEARCH ASSISTANT

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### **China Press Freedom, continued from page 26**

Sophie Richardson, Deputy Asia Director for Human Rights Watch, said in a May 31, 2007 article on Human Rights Watch’s Web site that “There is no justification for denying to Chinese journalists even the limited freedoms that their foreign colleagues enjoy. If China is genuine about press freedom for the Olympics, it must also emancipate its own journalists.”

The Chinese government has repeatedly come under fire from human rights groups for failing to address its record of abuses. Amnesty International’s 2007 International Report, a summary of human rights violations in countries around the world, cited China’s record of repression and torture of human rights activists, lawyers, and spiritual and religious groups like the Falun Gong spiritual movement.

Amnesty International’s Secretary-General Irene Khan said in a statement issued Aug. 6, 2007, “As the one year countdown begins, time is running out for the Chinese government to fulfill its promise of promoting human rights as part of the Olympics legacy.”

— AMBA DATTA

SILHA RESEARCH ASSISTANT



# Copyright

## Artists Challenge Copyright Extension Law

A recent decision in the 10th Circuit U.S. Court of Appeals may have provided a reprieve for artists, musical conductors, and educators affected by two federal statutes passed in the 1990s which extended copyright protection to works formerly in the public domain and resulted in hefty rental fees.

In *Golan v. Gonzales*, 501 F.3d 1179 (10th Cir. 2007), the 10th Circuit court ruled on September 4 that Section 514 of the Uruguay Round Agreements Act (URAA) may violate the First Amendment by removing material from the public domain and restoring copyright protections.

Judge Robert H. Henry's majority opinion stated that First Amendment scrutiny was warranted on remand because the applicable provision of the URAA "has altered the traditional contours of copyright protection in a manner that implicates plaintiffs' right to free expression."

The plaintiffs, including orchestra conductors, educators, performers, publishers, and film archivists, challenged the constitutionality of the Copyright Term Extension Act (CTEA), Pub. L. No. 105-298, §§ 102 (b) and (d), amending 17 U.S.C. §§ 302, 304, and the URAA, Pub. L. No. 103-465, codified at 17 U.S.C. §§ 104A, 109 because provisions of these laws, by restoring copyright protections for foreign artists, will now require them to pay royalties to use material formerly in the public domain. Such costs, according to the majority opinion, are "prohibitive."

The URAA implements an international agreement on copyright dating from 1886, the Berne Convention for the Protection of Literary and Artistic Works, which requires member countries to grant the same copyright protections to foreign artists that they do to their own authors. In order to comply with Section 514 of the URAA, Congress has removed some artistic works from the public domain and restored copyright protections.

The district court originally dismissed the plaintiffs' CTEA claim and granted summary judgment on their URAA claim, which asserted that the URAA exceeded the scope of congressional power under the Copyright Clause of Article I, Section 8 of the U.S. Constitution. This Clause is the basis of federal patent and copyright laws and gives Congress the power to secure for authors and inventors the exclusive right to their works for "limited times."

In its ruling, the district court relied on a Supreme Court case that affirmed Congress' extension of copyright under the CTEA. In *Eldred v. Ashcroft*, 537 U.S. 186 (2003), the Court also determined that the First Amendment may restrict Congress' power under the Copyright Clause in some circumstances.

(See "Recent Developments in Copyright Law: Copyright Term Extension Upheld as Constitutional" in the Winter 2003 issue of the *Silha Bulletin*). The First Amendment makes a distinction between ideas, which cannot be copyrighted, and expressions, which can. This is known as the "idea/expression dichotomy." It also allows copyrighted material to be used for teaching purposes, news reporting, and criticism, which are considered "fair use."

Beyond these two safeguards, the Court in *Eldred* articulated a broad test for determining when copyright law should trigger First Amendment review by stating that this scrutiny is not appropriate when "Congress has not altered the traditional contours of copyright protection."

In *Golan*, the 10th Circuit court determined that neither the idea/expression dichotomy, nor the fair use defense would be adequate to protect the public's free speech interest in the material being removed from the public domain. Those doctrines, the majority opinion asserted, govern material from the time a work is copyrighted to the time that a copyright expires. Both doctrines attempt to address the tension between the public interest and the author's interest in protecting his work. *Golan*, on the other hand, arises when copyrighted material has already become part of the public domain. At that time, the author possesses no more claim to the work than a member of the public does.

The plaintiffs in *Golan* relied on the "traditional contours" test from *Eldred* in framing their argument for First Amendment review. According to the blog written by plaintiffs' attorney and Stanford University Law Professor Lawrence Lessig, the plaintiffs argued that Congress had departed from the "traditional contours of copyright protection" by removing material from the public domain and restoring copyright protections. Lessig's blog is available at <http://www.lessig.org/blog/>.

The 10th Circuit held that First Amendment scrutiny was warranted on remand. In its instructions, the appeals court stated that the district court must determine whether Section 514 of the URAA is content-based or content-neutral. In order to uphold a content-based restriction, the government must assert a compelling interest and demonstrate that no less restrictive means could achieve it. A content-neutral interest must be narrowly tailored to achieve a significant government interest.

Lessig called the ruling a "fantastic victory." He told The Associated Press in an article published Sept. 5, 2007, "We're confident that on remand we will convince the district court that Congress went too far in this case."

"[First Amendment scrutiny was warranted on remand because the applicable provision of the URAA] has altered the traditional contours of copyright protection in a manner that implicates plaintiffs' right to free expression."

– Judge Robert H. Henry  
10th Circuit U.S. Court of Appeals

– AMBA DATTA  
SILHA RESEARCH ASSISTANT

# Copyright

## Music Industry Wins First Internet Piracy Case

### *Single Mother Will Appeal \$222,000 Verdict*

A jury levied a \$222,000 fine against a Brainerd, Minn. woman on Oct. 5, 2007 in the first-ever trial over the downloading and sharing of copyrighted music. However, some say the high-priced verdict is unlikely to discourage more downloading.

The Associated Press (AP) reports that over 26,000 people have been sued by record companies for copyright infringement under the Copyright Act, 17 U.S.C. § 101, *et seq.* but *Capitol v. Thomas*, C.V. 06-1497 (D. Minn. Oct. 5, 2007) was the first case ever to go to trial. Most other plaintiffs have settled out of court for an average of \$4,000, *The New York Times* reported.

The six plaintiffs, Sony BMG, Arista Records LLC, Interscope Records, UMG Recordings Inc., Capitol Records Inc., and Warner Bros. Records Inc., alleged 30-year-old Jammie Thomas downloaded 1,702 songs and made them available for download through a Kazaa file-sharing account on the Internet. The award amounts to \$9,250 per song for 24 songs that the record labels chose to focus on at trial.

According to the AP, Thomas had denied any wrongdoing and had testified that she did not have a Kazaa account, but her testimony was inconsistent regarding whether she had replaced her computer's hard drive before or after she was sent a February 2005 instant message warning her that she was violating copyright law.

Although she said in a pre-trial deposition that she replaced the hard drive in 2004, her hard drive was actually replaced in March 2005, the AP said. The hard drive itself was not presented at trial by either party.

According to the AP, during the three-day trial, the record companies called witnesses from an Internet service provider and a security firm who testified that the copyrighted songs were offered by a Kazaa user under the name "tereastarr," an Internet user address which belonged to Thomas.

Brian Toder, Thomas' attorney, argued that the record companies did not prove that Thomas herself had used the address and username to download the songs.

According to the AP, presiding Judge Michael Davis of the U.S. District Court for the District of Minnesota had planned to instruct jurors that the record companies would have to prove someone had copied the songs, not simply that Thomas had made them available online through the file-sharing account, to show copyright infringement.

But Richard Gabriel, attorney for the record companies, cited cases where simply making songs available has been found to be infringement, and Judge Davis instructed the jury to decide accordingly.

Toder told CNN on October 8 that they would appeal the ruling to the U.S. Court of Appeals for the 8th Circuit.

According to Fred von Lohmann, an attorney for the Electronic Freedom Foundation, a San Francisco-based advocacy group which has said it will file an *amicus* brief in Thomas' appeal, an actual download must occur for infringement to be proven under the Copyright Act.

"If I have a file in a share folder and nobody downloads from me, then how am I infringing?" von Lohmann said in a story posted on the *Wired* magazine blog "Threat Level."

On October 15, Toder filed a motion with the District Court saying the court should reduce the \$222,000 fine or grant Thomas a new trial, according to the Minneapolis *Star Tribune*. Toder argued in the motion that the award should have been limited to an amount much closer to the recording industry's actual damages, which he said was 70 cents per song. Toder's motion said case law supports the argument that even if that amount is multiplied to punish infringement, the maximum award for each song should not exceed \$151.20, reported the *Star Tribune*.

According to the AP, Gabriel said he hopes the \$222,000 verdict "send[s] a message that downloading and distributing our recordings is not OK."

The message may not get through, according to some analysts.

Technology and the evolution of digital music marketing are outpacing the record industry's ability to discourage illegal downloading, according to industry experts interviewed for an October 6 story in the *Star Tribune*.

Newer file-sharing software that has replaced older versions like Napster and Kazaa has made illegal downloaders more elusive. Meanwhile online music stores like iTunes and Amazon.com are experimenting with doing away with copy protection measures. SpiralFrog.com offers music to listeners for free if they are willing to watch ads on their computer.

Gene Munster, a digital music industry analyst for Piper Jaffray, an investment bank and institutional securities firm, called the ruling against Thomas "a non-event."

"The war against illegal downloading has long been lost because 85 percent of all downloaded digital music is still illegal copies," Munster told the *Star Tribune*.

Munster said that most people today discover new music online, which may eventually render record labels altogether obsolete.

Linda Deneen, director of information technology at the University of Minnesota - Duluth, said the majority of college students who use file-sharing software do not think they will be prosecuted.

"The culture seems to be, 'I won't be the one to get caught, and everybody else is doing it,'" Deneen told the *Star Tribune*.

According to the *Star Tribune*, 300 University of Minnesota - Duluth students were sanctioned for suspected music piracy and other Internet misuse in 2006 by having their college-provided broadband service interrupted.

Phil Leigh, president of research firm Inside Digital Media in Tampa, Fla. questioned the prudence of record companies suing downloaders. Leigh told the *Star Tribune* "The lawsuits make people angry, and that's not a good relationship to have with customers."

— PATRICK FILE

SILHA FELLOW AND BULLETIN EDITOR

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"The culture seems to be, 'I won't be the one to get caught, and everybody else is doing it.'"

— Linda Deneen  
Director of

Information Technology,  
University of Minnesota  
Duluth

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## Media Ethics

### *Star Tribune* Publisher Barred for One Year, Unlikely to Return

Ramsey County (Minn.) Judge David C. Higgs ruled Sept. 18, 2007 that publisher Par Ridder must leave the Minneapolis *Star Tribune* for one year. The ruling denounced Ridder's actions and called his attitude "cavalier."

The ongoing battle between Minnesota's two largest newspapers tarnished Ridder's reputation, leading some media observers to question his future in the local newspaper industry and others to call for his permanent removal. The *Star Tribune* reported September 20 that it is "unlikely" that Ridder will return after the court-ordered hiatus.

The controversy started in March 2007 when Ridder left his post as publisher of the St. Paul *Pioneer Press* for the same job at the longtime rival *Star Tribune*. The Ridder family owned the *Pioneer Press* from 1927 until 2006 when then-*Star Tribune* owner The McClatchy Company purchased it from Knight Ridder.

The *Pioneer Press* filed a civil suit in April 2007 seeking a temporary injunction to keep Ridder and two other executives who also defected from the *Pioneer Press*, director of niche publications Jennifer Parratt and Senior Vice President of Operations Kevin Desmond, from working for the *Star Tribune* for one year. At an initial hearing in April, the court granted a temporary injunction to stop Parratt from working at the Minneapolis newspaper, but denied the *Pioneer Press*' request regarding Ridder and Desmond. (See "*Pioneer Press Sues Star Tribune After Publisher's Defection*" in the Spring 2007 *Silha Bulletin*.)

All three executives had signed non-compete agreements with the *Pioneer Press*, but argued they had been waived orally by Art Brisbane, then-senior vice president of Knight Ridder, in December 2005.

The *Pioneer Press* reported June 28 that Par Ridder testified that the agreements had been waived for all members of the operating committee to keep them from leaving for other markets, which the non-competes did not prevent. The *Pioneer Press* was for sale at the time and its future was uncertain. Ridder said waiving the agreements was meant to encourage employees to stay at the newspaper knowing they could later leave for a competitor within the same market, which the agreements would not have allowed.

Ridder testified that he instructed a human resources manager to pull the agreements from the files, and later nearly allowed an assistant to destroy them, the *Pioneer Press* reported. He said he recovered the agreements just before he left the paper in March and eventually turned them over to his lawyers.

Judge Higgs ruled that the waiver, if it did occur, was ineffective because it was an oral modification to a written contract. The Statute of Frauds, Minn. Stat. § 513.01, requires that modifications to certain types of contracts be confirmed in writing. Since the non-compete agreements take more than one year to perform, they are within the statute of frauds and any modification requires written confirmation.

However, Higgs held that the non-compete agreements signed by Ridder and Desmond were never valid because they were agreed to after the men

began working for the newspaper. Under Minnesota law, non-compete agreements are only enforceable if they are part of the initial employment contract. To form a valid non-compete with an existing employee, the employer must provide separate consideration, such as a cash bonus or some other favorable contract term.

Unlike Ridder and Desmond, Parratt agreed to be bound by the non-compete agreement when she began work at the *Pioneer Press* in March 2006, so her agreement remained valid and enforceable. Higgs ruled that she may not return to work at the *Star Tribune* until April 19, 2008.

*Pioneer Press* lawyers had also argued that since Ridder suggested the agreement, separate consideration should not be required. Higgs held that Ridder's acquiescence to the agreement showed that "he believed he would gain 'real advantages' by signing" it, but did not prove the newspaper offered any real consideration to Ridder in exchange for the non-compete agreement.

Although Ridder's non-compete agreement was invalid, Higgs nevertheless barred the publisher from working at the *Star Tribune* until Sept. 18, 2008. He ruled that Ridder's continued employment at the *Star Tribune* threatened to cause "irreparable harm" to the *Pioneer Press*. Higgs held that Ridder misappropriated confidential information and breached the common law duty of loyalty, and that he was likely to do so again if he continued to work for the Minneapolis newspaper.

The ruling concluded that Ridder misappropriated confidential information when he brought between 18 and 20 spreadsheets containing the *Pioneer Press*' advertising and financial data with him when he moved across the river to the *Star Tribune* and then shared those spreadsheets with other *Star Tribune* employees. The publisher "knew or should have known" the information was confidential, Higgs wrote. Ridder also admitted during the hearing that the information would be valuable to a competing newspaper, and that he shared the information with *Star Tribune* employees. He also said that he used confidential employment information when negotiating with Parratt prior to her move to the *Star Tribune*.

"Ridder essentially grew up in the newspaper industry and therefore was well aware that newspapers, especially major newspapers, dealt with confidential information," Higgs wrote. "[T]he Court finds that there is a substantial threat that Ridder will further misappropriate confidential *Pioneer Press* information or use the confidential *Pioneer Press* information he has already misappropriated in the future."

Higgs ruled that Ridder's past action caused "irreparable harm" to the *Pioneer Press*, and along with his "cavalier" attitude served as "a good indicator" of the potential for future misconduct. In order to prevent continuing harm, Higgs issued an injunction to bar Ridder from working for the *Star Tribune* for one year from the date of the ruling.

According to a September 18 *Pioneer Press* report,

**Ridder**, continued on page 33

"Ridder essentially grew up in the newspaper industry and therefore was well aware that newspapers, especially major newspapers, dealt with confidential information."

– Judge David C. Higgs  
Ramsey County,  
Minnesota



Ridder, continued from page 32

Ridder left the newspaper's downtown Minneapolis offices just after 8:30 a.m. that morning. There was a "smattering of applause" as word spread around the newsroom that Ridder had left, the report said. Chris Harte, the chairman of the Star Tribune Co., took over as interim publisher.

"Today's ruling is clearly not what we expected," the *Star Tribune* reported Harte wrote in an e-mail to staff. "While we strongly disagree with this ruling, we will of course abide by the court's decision as we evaluate our legal options."

Dean Singleton, vice chairman of MediaNews Group, Inc., owner of the *Pioneer Press*, told the newspaper that he wished a court battle could have been avoided, but it was the only way to protect the St. Paul newspaper.

"I felt the institution had been wronged, its constituents had been wronged and we needed to make things right," the *Star Tribune* reported Singleton said. "I felt betrayed by Par personally because I had known Par a long time. I considered him a friend."

In addition to barring Ridder and Parratt from working at the *Star Tribune* for one year, Higgs also ordered the *Star Tribune* to pay the *Pioneer Press*' legal fees. Singleton told the *Star Tribune* that the St. Paul newspaper's fees were about \$5 million.

Ridder's testimony at the June 2007 hearing started a discussion among journalists about ethics and the effects of Ridder's conduct on reporters. Kate Parry, then reader's representative at the *Star Tribune*, devoted a July 1 column to the subject. Parry said many reporters told her their sources seemed compelled to interview the reporter before the reporter could begin the interview with the source, but most said that it had not affected their reporting.

Reporter Steve Brandt told her the job requires "a certain amount of swagger and self-confidence ... If the institution behind you seems fragile, there's a shadow hanging over it. There's a great relief in being out on a story right now. It takes your mind off what's going on inside."

Reporter Rachel Blount said journalists must hold powerful institutions accountable; a powerful newspaper is no different. "But the essence of our job is not affected. I want to go out and find great stories and write great stories. Nothing is stopping us from going out and doing that."

But reporter Warren Wolfe said he had trouble with a source while reporting on a follow-up story at the Minneapolis Veterans Home, which has had a series of regulatory problems. Wolfe asked an official whether the home was back in compliance. "I don't know," the official replied. "Is your publisher?" I had no answer," Wolfe told Parry.

Newsroom employees also demonstrated their dissatisfaction with Ridder's performance at a July 17, 2007 meeting. One-third of the 320 union members attended the meeting where they voted 108 to 2 in favor of a resolution that said Ridder had damaged the newspaper's credibility and called for his resignation, according to a July 17 *Star Tribune* story. Reporter Dan Browning complained that "people don't take us seriously" and called Ridder's actions "corrosive."

After the September ruling, the *Star Tribune* reported that it would launch a national search to replace Ridder. Harte told reporters at the *Star Tribune* that it was unlikely Ridder would return to the publisher post when the one-year injunction expired, but refused to confirm that statement when asked by The Associated Press.

"For me, this is not giving any joy," said Jane Kirtley, director of the Silha Center and professor of media ethics and law at the University of Minnesota in a September 18 *Pioneer Press* story. "I think it's a very, very sad kind of conclusion to the Ridder years in the Twin Cities. What has happened here is probably not consistent with what would have happened with earlier generations of the Ridder family."

— MICHAEL SCHOEPF  
SILHA RESEARCH ASSISTANT

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## Media Ethics

### Senator Craig Airport Scandal Prompts Questions of Journalism Ethics in Covering Politicians' Personal Lives

The scandal surrounding Sen. Larry Craig's arrest and guilty plea on disorderly conduct in a Minneapolis-St. Paul International Airport restroom led some to raise ethics questions about media coverage of politicians' personal lives.

According to an Aug. 27, 2007 report in Washington D.C.'s *Roll Call*, Craig (R-Idaho) was arrested on June 11, 2007 by a plainclothes airport police officer as part of an ongoing sting investigating lewd conduct in a men's restroom in the Northstar Crossing in the airport's Lindbergh Terminal. Craig was charged with interference with privacy and disorderly conduct and released. On August 8, he pleaded guilty to misdemeanor disorderly conduct in the Hennepin County District Court, according to *Roll Call*. He paid more than \$500 in fines and fees, and a 10-day jail sentence was stayed.

In the days following the *Roll Call* report, other major media organizations followed the story closely. Craig initially said he would resign from his seat in the U.S. Senate, a position he has held since 1990, but later announced he would stay on until his term expires in January 2009.

On October 4, Hennepin County District Court Judge Charles Porter refused Craig's request to overturn the guilty plea. Craig's subsequent appeal filed in the state Court of Appeals on October 25 argues that his foot-tapping and hand gestures in the bathroom stall are protected by the First Amendment and that the Minnesota law under which he was charged is unconstitutional.

According to *Washington Post* media columnist Howard Kurtz, a reporter from the *Idaho Statesman* had been following allegations about Craig's sexual behavior for about eight months prior to *Roll Call*'s August 27 arrest report. Kurtz wrote on August 30 that *Statesman* reporter Dan Popkey had interviewed dozens of people who knew Craig, including college fraternity brothers and his Idaho neighbors, following public allegations about Craig by gay blogger and Washington fundraising consultant Mike Rogers. Popkey also interviewed Craig and his wife about the allegations in May 2007.

According to Kurtz, the *Idaho Statesman* said it initially decided not to publish an allegation by an unnamed 40-year-old man who told Popkey he had had sex with Craig in a men's room at Washington's Union Station, because it could not corroborate the story and Craig denied it. But the *Statesman* published the allegation the day after *Roll Call* published its story based on the Minneapolis Airport Police report.

"The fact that he pleaded guilty corroborated that [earlier] story," Popkey said. "That's what tilted the scales away from our prior decision not to publish."

The Union Station allegation initially appeared on Rogers' blog on Oct. 17, 2006 (<http://www.blogactive.com/2006/10/senator-larry-craig-whats-with-gay.html>). According to a September 4 *Washington*

*Post* profile, Rogers targets politicians who support policy agendas on gay rights that do not match their private homosexual lifestyle, which Rogers calls hypocritical. Rogers pointed out that in 2004 Craig voted in favor of a constitutional amendment that would have banned same-sex marriages. *The Washington Post* said Rogers has published a list of 33 closeted members of Congress, most of them men, 30 of them Republicans.

Rogers' first "outing" was in 2004: then-Virginia congressman Ed Schrock, who opposed gays in the military, same-sex marriage, and gay adoption. Schrock decided not to run for reelection because of the rumors, *The Washington Post* said. Rogers also blogged about Florida congressman Mark Foley in 2005, months before he was forced to resign over inappropriate instant-messages sent to male congressional pages. (For more on the Foley scandal see "Some Media Knew about Foley Messages Since 2005" in the Fall 2006 issue of the *Silva Bulletin*.)

"I write about closeted people whose records are anti-gay," Rogers told *The Washington Post*. "If you're a closeted Democrat or Republican and you don't bash gays or vote against gay rights to gain political points, I won't out you."

According to *Washington Post* columnist Kurtz, journalists often hear allegations about politicians' private lives; deciding whether or not to investigate the rumors as news can be a challenge. Kurtz cited, for example, the long-heard rumors about then-N. J. Gov. Jim McGreevey, who suddenly acknowledged in 2004 that he had had an affair with his state's homeland security director and resigned. Kurtz also pointed to the Foley e-mail, which the *The Miami Herald* and *St. Petersburg Times* both initially opted to sit on rather than report because they had no additional corroboration for Foley's questionable behavior. Kurtz wrote that *The Times-Picayune* of New Orleans did not publish a local brothel-owner's claim that Sen. David Vitter (R-La.) was one of his customers until the day after *Hustler* magazine reported that Vitter's name was in the phone records of alleged "D.C. Madam" Deborah Jeane Palfrey.

Some argued that although there was a newsworthy aspect to the Craig arrest, it was not where the mainstream media focused. On August 29, *The New York Times*' blog "The Lede" highlighted a blog posting by Mark Kleiman that said Craig's actions after his arrest should have drawn more media attention than the actions that led to the arrest. According to the police report, during questioning Craig showed the arresting officer his identification card as a U.S. Senator and said, "What do you think about that?"

"Sen. Craig's attempt to use his official position to intimidate the officer – it's hard to put any other construction on his words in that context – is an abuse of power," Kleiman wrote in a post to the blog "The Reality-Based Community," at <http://www>.

**Craig Scandal Ethics**, continued on page 36

"For journalists and for voters, hypocrisy is always a hanging crime. I don't know if I buy that. Someone's private behavior either is or is not newsworthy. What their politics are is irrelevant."

– Tobe Berkovitz  
Interim Dean, Boston  
University College of  
Communication.

# Media Ethics

## News Consultant Linked to Bogus Interviews

A frequently-cited expert source on terrorism and national security and former consultant to ABC News was discredited after interviews with a host of high-profile figures he had contributed to a French political magazine were proven to be fakes.

Allegations that an interview with 2008 Democratic presidential candidate Sen. Barack Obama (D-Ill.) that appeared in the June 2007 issue of *Politique Internationale* was a fabrication were first reported in another French magazine, *Rue 89*, on Sept. 7, 2007.

*Politique Internationale* credited the interview to Alexis Debat, a regular contributor to the magazine and senior fellow researching terrorism and national security at the Nixon Center, a think tank in Washington D.C.

Debat has become a widely cited source in recent years, quoted on terrorism and national security in stories for the Associated Press (AP), *The New York Times*, and *The (London) Sunday Times* and appearing on ABC World News and PBS' "The News Hour with Jim Lehrer."

Since the revelation of the fake Obama interview, other high profile figures have denied sitting for interviews which were published under Debat's name in *Politique Internationale*, including former President Bill Clinton, New York Mayor Michael Bloomberg, former Federal Reserve chairman Alan Greenspan, Microsoft chairman Bill Gates, House Speaker Nancy Pelosi, and former U.N. Secretary-General Kofi Annan.

According to *Rue 89*, the Obama campaign denied any interview ever taking place with Debat himself or with a third party he claimed to have hired to ask the interview questions on his behalf, calling what was published in *Politique Internationale* "a fake."

Debat initially explained to inquiring news organizations, among them *Rue 89*, the *Washington Post*, and ABC News, that he had paid a man named Rob Sherman \$500 to meet with Obama, interview him and then provide a transcript of the interview. Debat told *Rue 89* that Sherman was a "Chicago-based reporter" who he had met at a party in Washington D.C. in 2003.

No news organizations were able to locate Sherman, however. Debat said Sherman described himself as a former *Chicago Tribune* reporter, but according to the *Washington Post*, no one with that name has had a byline in that newspaper in recent decades. A suburban Chicago newspaper reported to ABC News that an address on a fax that Debat claimed was from Sherman does not exist.

Debat's claim to ABC News that he "was scammed" by Sherman appeared less likely as the list of fake interviews grew and more evidence raised questions about Debat's credentials.

In June 2007, Debat was fired by ABC News, where he had been a consultant on terrorism for five years, because he was unable to verify that he

had a PhD from the Sorbonne as he had claimed. According to the *Washington Post*, Debat's doctoral thesis was available on the Sorbonne's Web site as of September 13, but he had not been awarded a degree because it "hadn't been registered correctly." He said he is suing the French university.

ABC News reported on October 22 that it had concluded an investigation and found all of Debat's reporting was sound. According to *The New York Times*, David L. Westin, president of ABC News, said in a memorandum that ABC will now more thoroughly review claims of prior employment and academic credentials made by its consultants. Westin also wrote that the network's news practices unit will now be involved in all hiring decisions and reporting situations involving consultants, reported *The New York Times*.

Other credentials Debat claimed have also subsequently been debunked.

According to the AP, media outlets in recent years identified Debat as a former French Defense Ministry official or analyst. *The National Interest*, the publication of the Nixon Center, identified him as a "former adviser to the French Minister of Defense on Transatlantic affairs."

However the ministry said Debat's service there amounted only to a five-month internship at a ministry advisory office in 2000 and one month of military service.

Col. Patrick Chanliau, a Defense Ministry spokesman, said that Debat's claim of being an adviser was an exaggeration.

"There is no such thing as intern adviser to the minister," Chanliau said.

*Politique Internationale* editor Patrick Wajzman admitted that the Obama interview was not the first piece by Debat that had caused problems, according to ABC News and *Rue 89*. In 2005, an interview with then-U.N. Secretary General Kofi Annan was pulled from the publication when a deputy communications director told Wajzman the interview was a fake.

A second interview with Annan, which was published this year and attributed to Debat, was actually portions of a speech Annan gave at Princeton University, the deputy communications director told ABC News.

According to the *Washington Post*, Debat resigned from his positions as a fellow at the Nixon Center and writer for *The National Interest* on Sept. 12, 2007.

Wajzman told ABC News he had seen no reason to be suspicious of Debat, even after the warning from the U.N.

"He seemed to be well-connected in Washington, working for ABC and the Nixon center," Wajzman said. "I was a victim of this man."

Wajzman said he has referred the matter to his lawyer for possible action against Debat.

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"He seemed to be well-connected in Washington, working for ABC and the Nixon center. I was a victim of this man."

— Patrick Wajzman  
Editor, *Politique Internationale*

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— PATRICK FILE

SILHA FELLOW AND BULLETIN EDITOR



# Media Ethics

## FEMA Holds Press Conference ... for Itself

A press conference the Federal Emergency Management Agency (FEMA) held on Oct. 23, 2007 praising its own response to the wildfires in Southern California lacked a key attendee: the press. According to *The Washington Post* on October 26, FEMA announced the press conference about 15 minutes before it was set to begin, leaving too little time for any reporters to attend. Reporters were able to listen in on the proceedings on a toll-free telephone line; however, they were barred from asking questions. The press conference was also carried live by several cable news networks, including Fox News and MSNBC.

At the press conference, Deputy Administrator Vice Adm. Harvey E. Johnson, Jr. explained how local, state, and federal entities were working together to provide aid to those displaced by the catastrophic wildfires near San Diego and Los Angeles. He favorably compared the agency's response to the 2005 Katrina debacle. Johnson also took several questions from people off-camera. It was later reported that the questions, such as "Are you happy with FEMA's response so far?" and "What lessons learned from Katrina have been applied?" came from FEMA staffers, not journalists.

When *The Washington Post* first reported the fake press conference three days after it was staged, rebukes came from the Bush administration and other agencies.

According to *The New York Times*, a spokeswoman for Department of Homeland Security director Michael Chertoff said "We have made it clear that such a stunt will never be tolerated or repeated." The Department of Homeland Security oversees FEMA.

According to *The Washington Post*, White House press secretary Dana Perino said on October 26, "It is not a practice that we would employ here at the White House. We certainly don't condone it. They, I'm sure, will not do it again."

*The Washington Post* reported that Johnson issued an official apology shortly after the staged briefing was disclosed. "We are reviewing our press procedures and will make the changes necessary to ensure that all of our communications are straight forward and transparent," the apology said. "We can and must do better, and apologize for this error in judgment."

Journalists also responded swiftly and harshly.

Bob Schieffer, in his October 28 commentary on CBS' "Face the Nation" said, "Somewhere on [FEMA's] employment application form there must be a clause that says, 'Your IQ must be below a certain level to work here.' Fire these people and the people who hired them and then explain to the new people that the best way for a disaster relief agency to get good publicity is to do a good job helping disaster victims."

In an October 29 online chat with readers, *Washington Post* columnist Howard Kurtz said he agreed with Chertoff's assertion that the fake press conference was "the dumbest thing he's seen in government in a long time."

"How anyone at FEMA thought this was a remotely acceptable idea, and thought they could get away with it, boggles the imagination," Kurtz said, adding, "The question I have is whether any heads will roll. This was, after all, a form of lying to the public."

On November 9, *The Washington Post* reported that an internal investigation concluded that the agency's press secretary directed the aides to pose as reporters, secretly coached them during the briefing and ended the event after a final, scripted question was asked. The *Post* said the report did not explain the rushed timing of the briefing, nor did it say whether Johnson was told prior to the briefing that aides would ask him questions. Russ Knocke, the acting director of external affairs who conducted the review, said it "found nothing that indicated malicious or preconceived intent to deceive the media or the public," according to the *Post*.

FEMA press secretary Aaron Walker has resigned effective December 7 as a result of the fake briefing, the *Post* reported, and the agency's director of external communications, John Philbin, was subsequently denied a job as senior spokesman for the Director of National Intelligence.

— PATRICK FILE

SILHA FELLOW AND BULLETIN EDITOR

"How anyone at FEMA thought this was a remotely acceptable idea, and thought they could get away with it, boggles the imagination... . The question I have is whether any heads will roll. This was, after all, a form of lying to the public."

- Howard Kurtz  
Columnist, *The Washington Post*

**Craig Scandal Ethics**, *continued from page 34*

samefacts.com. "Men's room pickups aren't much of a threat to the constitutional order; the arrogance that tells public officials that they're too important to have to obey the law is such a threat."

According to Kurtz, most mainstream news organizations will not publish a story about a public official's private sexual conduct based solely on unnamed sources, which could explain reluctance on the part of the *Idaho Statesman* and New Orleans *Times-Picayune* in such circumstances surrounding Craig and Vitter.

People like Rogers, meanwhile, can use the Internet to try to stir up frenzy outside the mainstream, according to Tobe Berkovitz, interim dean at Boston University's College of Communication.

"You'll always find some blog willing to cover it," Berkovitz told Kurtz in the August 30 column. "And then it catches fire in the new media and leaps into the old media."

Berkovitz also said he does not always agree that the choices media make to publish the personal details of public people are good ones.

"For journalists and for voters, hypocrisy is always a hanging crime," Berkovitz said. "I don't know if I buy that. Someone's private behavior either is or is not newsworthy. What their politics are is irrelevant."

— PATRICK FILE

SILHA FELLOW AND BULLETIN EDITOR

# Media Ethics

## Mohammed Cartoons Draw International Ire

The publication of cartoons featuring the Muslim prophet Mohammed led to death threats against a cartoonist and editor in Sweden and landed several journalists in Algerian court.

### *Death Threats Against Swedish Cartoonist Echo 2005 Controversy*

On Aug. 18, 2007, Ulf Johansson, editor in chief of the Swedish newspaper *Nerikes Allehanda*, published a cartoon drawn by artist Lars Vilks that depicted the prophet Mohammed as a dog. According to *Editor & Publisher*, Johansson published the cartoon alongside an editorial objecting to the refusal of several art galleries to show Vilks's cartoon in relevant exhibitions because of its controversial nature. Johansson wrote in his editorial that "Art galleries let themselves be frightened by a diffuse threat," by refusing to display the illustration. "This sends a signal that it is easy to silence people through scaring them," he wrote.

Muslim groups in Europe and Islamic governments all over the world have condemned the cartoon, and Vilks told *The Times* of London that he had received numerous threatening phone calls and e-mails following the cartoon's publication.

One e-mail, however, Vilks called a "direct death sentence." An e-mail from someone claiming to be Abu Omar al-Baghdadi, head of al-Qaeda in Iraq, offered \$100,000 U.S. to anyone who killed Vilks, and \$50,000 U.S. for Johansson's murder. The e-mail offered a 50 percent bonus if Vilks were "slaughtered like a lamb" (killed by having his throat cut). It stated that if no one apologizes for the cartoon, al-Qaeda will "strike firms like Ericsson, Scania, Volvo, Ikea and Electrolux."

*The Times* reported that the Swedish Embassy in Iraq lowered its flag after the threat was made, and that Ericsson had warned its employees in Iraq to keep a low profile and take extra care when parking their cars.

Muslim Council of Sweden director Helena Benouda condemned the threats, telling *The Times*, "We do not think like this. It is criminal to call to kill somebody. [This letter] is really unnecessary and it is ugly, especially in the month of Ramadan." *The Times* reported that Vilks was calm about the threats, saying that the bounty on his head "makes my art project a little more serious," and joking, "It is good to know what one is worth."

According to *The Times*, Vilks has been put under police protection. He told *The Times*, "We must not give in. I'm starting to grow old. I could die at any time – it's not a catastrophe."

### *Journalists Acquitted After 'Blasphemy' Charge*

On Oct 8, 2007 Sidi M'Hamed magistrate court in Algiers announced that three television station managers and six journalists had been acquitted of charges that they broadcast a "blasphemous" clip of cartoons depicting the prophet Mohammed during their news program, according to a translation of a report from Algerian newspaper *El-Khabar* by the BBC.

*El-Khabar* reported that the prosecution asked for five-year prison sentences for the managers of both Canal Algeria and A3 and three-year prison sentences for the journalists involved with the broadcasts.

According to South African news Web site Independent Online (IOL), both Canal Algeria and A3 ran 10-second clips that showed images of a few of the cartoons, originally published in the Danish newspaper *Jyllands-Posten* in September 2005, which depicted the prophet Mohammed. (See "Controversial Cartoons Lead to Worldwide Concern for Speech, Press Freedom, and Religious Values" in the Winter 2006 issue of the *Silha Bulletin*.) IOL reported that Canal Algeria had argued in court that a "technical error" had led to the transmission of the caricatures because the videotape had not been checked in advance.

According to the BBC transcript of *El-Khabar*'s report, everyone charged in the case was acquitted on the grounds that the broadcast was unintentional.

– SARA CANNON  
SILHA CENTER STAFF

"Art galleries let themselves be frightened by a diffuse threat. This sends a signal that it is easy to silence people through scaring them,"

– Ulf Johansson  
*Nerikes Allehanda*,  
Orebro, Sweden

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# Media Ethics

## Cartoons Cause Community Controversy Across the Country

In September and October 2007, cartoons in one city newspaper and three student newspapers were called offensive for their content and messages.

### *The Birmingham News*

In Birmingham, Ala., protesters met on the steps of St. Joseph's Baptist Church on October 4, alleging that *The Birmingham News* had skewed its coverage of the city mayoral race in order to discredit black candidates. A key motivator for the protest was a cartoon that appeared in the September 16 edition of the newspaper, showing two of the black mayoral candidates patting one of the white candidates on the back and placing signs reading "white" and "Republican" on him while doing so. A version of the cartoon appeared on the newspaper's Web site the same day, in which the signs read "honky" and "Republican." The cartoon was removed from the Web site after a few hours, according to a story *The Birmingham News* published about the incident.

The newspaper called the posting of the cartoon containing the "honky" sign a mistake, and asserted that there was no conspiracy at the paper to influence the election.

### *The University of Virginia*

University of Virginia student journalist Grant Woolard was forced to quit his post at the student newspaper, *The Cavalier Daily*, after a cartoon he drew for the September 3 issue of the paper caused an outcry. Woolard's cartoon ran below the text "Ethiopian Food Fight" and depicted bald, mostly naked, dark-skinned figures fighting over a tree branch, pillow, chair, boot and stool. The Web site "Insidehighered.com" reported that on September 5 over 100 students and faculty marched to the offices of *The Cavalier Daily*, demanding an apology for the cartoon along with Woolard's resignation.

Woolard told *The Washington Post* in a September 12 story that he "was not trying to trivialize famine," and meant only to comment on the current situation in Ethiopia, an issue, he said, that not many people think about. "I will admit that I really lacked the foresight in anticipating the reaction [to the cartoon]," he said.

According to Insidehighered.com, another controversial Woolard comic appeared in *The Cavalier Daily* the previous Friday, August 31, that depicted Thomas Jefferson with a whip, standing before a black woman sitting on a bed. The woman is asking, "Thomas, could we try role-play for a change?" In September 2006, two cartoons by Woolard drew angry rebukes from religious groups and were eventually featured on Fox News' "The O'Reilly Factor," Insidehighered.com reported.

The September 7 *Cavalier Daily* editorial was an apology for the cartoon, reiterating what the paper called its "policy regarding censorship." The policy, the editorial said, "was published in the lead editorial of April 24, 2006 after a different comic sparked similar discussions." The editorial said that standards for the work of columnists or graphic artists is to be examined against three criteria to determine whether it should be censored. "The comic in question clearly violates the third criterion," the editorial said. "It criticizes people for circumstances they cannot change. Not only did the comic violate our own policies, it violated our sense of decency." The full editorial is available at: <http://www.cavalierdaily.com/CVArticle.asp?ID=30639&pid=1607>. The April 24, 2006 editorial can be found at <http://www.cavalierdaily.com/CVArticle.asp?ID=26949&pid=1440>.

### *The University of Kentucky*

On October 5, an editorial cartoon drawn by Brad Fletcher appeared in the University of Kentucky student paper the *Kentucky Kernel*. The cartoon depicted members of campus fraternities "bidding" on a black student chained to a slave auction block. In it, a white auctioneer referred to the black student as a "young buck." Fraternities in the cartoon are labeled "Aryan Omega," "Kappa Kappa Kappa (KKK)," and "Alpha Caucasian." According to the *Lexington (Ky.) Herald-Leader*, the cartoon was intended to satirize the competition among predominantly white University of Kentucky fraternities to win over the few black students that rush them.

The cartoon offended members of the black student community as well as members of campus Greek organizations. Wesley Robinson, a black reporter for the *Kernel* who had been covering discussions of the segregated nature of Greek campus life, was among those who criticized the cartoon. Robinson told the *Herald-Leader* that the scene in the cartoon was "like Cheapside," a nearby area where slave auctions once took place. Brooke Perrin, president of the University's Panhellenic Council, told the *Herald-Leader* that she was "appalled," by the cartoon, and that "it offends the Greek community as a whole," as well as both "whites and blacks on campus."

According to the *Herald-Leader*, approximately 100 to 150 students from the University of Kentucky gathered to protest the cartoon on October 5. The same day, *Kernel* editor in chief Keith Smiley met with a small group of protestors and issued an apology for the cartoon on the *Kernel's* Web site. An apology was also printed in the October 8 issue of the *Kernel*.

*Cartoons continued on page 40*

"I will admit that I really lacked the foresight in anticipating the reaction [to the cartoon]."

– Grant Woolard  
Former cartoonist,  
University of Virginia  
*Cavalier Daily*



# Silha Events

## 2007 Silha Lecture Focuses on Media Violence Regulation

Attempts to legislate violence on television and video games are likely to continue, even though “the kids are all right,” according to the 2007 Silha Lecturer.

Attorney Robert Corn-Revere delivered the 22nd Annual Silha Lecture, titled “The Kids are All Right: Violent Media, Free Expression, and the Drive to Regulate,” to an overflow audience at the University of Minnesota’s Cowles Auditorium on Oct. 1, 2007. A partner with Davis Wright Tremaine in Washington D.C., Corn-Revere has been actively engaged in major media regulatory proceedings since the late 1990s, most recently serving as lead counsel for CBS in *CBS Corporation, v. Federal Communications Commission* (06-3575), the Super Bowl “wardrobe malfunction” case, which he argued before the 3rd Circuit U.S. Court of Appeals on Sept. 11, 2007.

According to Corn-Revere, events such as the grisly mass murder-suicides at Columbine High School in 1999 and Virginia Tech University on April 19, 2007 have led commentators and legislators to blame violent media for youthful rage.

Corn-Revere said that although lobbying groups and legislators have tried in recent years to mandate regulatory regimes for violent content in video games, movies, and music, courts have struck down every such attempt. Most often, Corn-Revere said, legislators have tried to extend the narrow traditionally accepted categories of unprotected speech, such as obscenity, to encompass violent content. State and federal courts have resisted these strategies, however, saying violent media deserve as much First Amendment protection as other forms of literature or entertainment, and citing the practical problem of determining which violent media should be protected and which should not.

Most recently, on Sept. 17, 2007, U.S. District Judge Robin Cauthron (W.D. Okla.) permanently enjoined the enforcement of an Oklahoma law that would have banned the sale of violent video games to minors. The judge said that the law unconstitutionally infringed on the First Amendment rights of game producers and retailers. “There is a complete dearth of legislative findings, scientific studies or other rationale to support passage of the act,” wrote Judge Cauthron.

Corn-Revere said that similar laws have been struck down on the same basis by courts in Indiana, Missouri, Washington, California, Illinois, Michigan, Minnesota, and Louisiana.

Such consistency in the courts notwithstanding, Corn-Revere said, the Federal Communications Commission (FCC) released a report in April 2007 that said that Congress can and should act to limit how much violence children are exposed to on television.

Corn-Revere was critical of the FCC report, which made no direct recommendations addressing the problems of defining excessively violent content, saying instead, “Congress could do so.” Corn-Revere called this “purely a ‘let Mikey try it’ kind of approach to policy.”

One possible solution the FCC proposed was “time-channeling,” creating a safe-harbor period where violent broadcast television would be prohibited. Corn-Revere compared “time-channeling” to the “Maginot line,” a concept that “has become synonymous with a comically ineffective solution to a problem.” Corn-Revere said that modern technology such as cable and satellite television, the Internet, personal video players, and digital video recording (DVR) devices, media which enjoy fuller First Amendment protection than does broadcast television, have made a scheduling-based solution “irrelevant.”

However, Corn-Revere said, “technology ... has also made protections available that simply didn’t exist when the Supreme Court first considered the issue [of broadcast indecency regulation] in *Pacifica* in 1978.” Corn-Revere said that DVRs and most televisions today make it possible for parents to actively monitor the programming their children are exposed to and can even block access to some programs and channels they find too violent.

Corn-Revere also said that the social science research upon which anti-media violence legislation has been based is “often mis-described and mis-cited.” Courts that have closely examined the social science basis for protecting the interests of children have not found it as compelling as the legislators who have passed the laws, Corn-Revere said.

Moreover, Corn-Revere said, social measures focused on youth show that things are actually “tending to get better for people in that age group.” He cited decreasing rates of drug and alcohol abuse among children, decreasing juvenile crime rates, lower youth suicide rates, and fewer fights in high schools.

The Silha Lecture is supported by a generous endowment from the late Otto Silha and his wife, Helen.

— PATRICK FILE

SILHA FELLOW AND *BULLETIN* EDITOR

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Corn-Revere compared FCC-proposed “time-channeling” solutions for television violence to the “Maginot line,” a concept that “has become synonymous with a comically ineffective solution to a problem.”

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**University of Arizona**

The University of Arizona's *Daily Wildcat* also apologized for a cartoon it published in October.

The cartoon, published October 9, pictured a receipt with a 7 percent tip for a meal bearing the signature "Mark Goldfarb." Below the receipt was the message: "Attention Crappy Tipping Jews: Just because you're 'screwing' the server ... does not mean it's a Mitzvah."

The Associated Press (AP) reported that the *Daily Wildcat* received numerous complaints from students calling the cartoon anti-Semitic, and that the university's president wrote an official letter criticizing the cartoon. According to the Tucson *Arizona Daily Star*, Michelle Blumberg, director of the university's Hillel Association, and J. Edward Wright, director of the Center for Judaic Studies, collaborated on a letter to the editor in response to the cartoon. "People have been very clear to me that it has not been a question of First Amendment rights and free speech," Blumberg told the *Star*. "It has been a question of taste and perpetuating a negative stereotype," she said.

*Daily Wildcat* editor in chief Allison Hornick wrote an apology which was published in the paper the day after the cartoon. According to the AP, Hornick said the comic, drawn by Joseph Topmiller, meant "to take common stereotypes and misconceptions and mock not only the stereotype itself, but also the people who believe in them." In her apology, Hornick wrote, "The Daily Wildcat apologizes for the misunderstanding over the comic and does not, in any way, wish to belittle the Jewish community or depict it negatively."

— SARA CANNON  
SILHA CENTER STAFF

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