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September 5, 2001

Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530-0001

Dear Mr. Attorney General:

It is time for the Department of Justice to recognize that Houston author Vanessa Leggett is a journalist, should have been treated as such under the department's own guidelines, and should be released from jail immediately. It should be clear by this point that Ms. Leggett is not defying the subpoena out of spite, but out of a genuine commitment to preserving the integrity and independence of the newsgathering process.

Today, Leggett breaks a long-standing record: She becomes the journalist longest incarcerated in this country's history for refusing to testify about confidential work product.

This is a dubious distinction for the Department of Justice, which has never forced a journalist to be held on civil contempt charges for any substantial amount of time. Previous jailings of reporters have almost always come at the request of county prosecutors, including the previously longest-known jailing of 46 days for a *Los Angeles Herald-Examiner* reporter who refused to disclose his source of material related to the Charles Manson trial in 1972.

Your spokesperson has disclosed that the Department did not consider Ms. Leggett a journalist when a request for a subpoena for her work product was forwarded to your office for consideration under the guidelines covering subpoenas to journalists, 28 CFR 50.10. We think it is clear that even under the test the Fifth Circuit said it would follow in this case, Ms. Leggett should be treated as a newsgatherer. In its panel decision of Aug. 17, the court said that it would consider whether the person "(1) is engaged in investigative reporting; (2) is gathering news; and (3) possesses the intent at the inception of the news gathering process to disseminate the news to the public." *In re: Grand Jury Subpoenas*, No. 01-20745, n. 4 (5th Cir., Aug. 17, 2001)(unpublished). The court noted that this test is followed by the second, third and ninth circuits. *Id.*

Ms. Leggett qualifies as a journalist under this test. The arguments against her status as a journalist seem to focus on the fact that she does not make a living as a journalist, does not have a publishing contract for her book, and has not

published a book yet. These simply are not requirements of the federal test, and should not be used by the government to deny an individual protection under the First Amendment.

If the proper test were applied, we think you would find that the subpoena should never have been issued. Under its own guidelines, the Department is required to “strike the proper balance between the public's interest in the free dissemination of ideas and information and the public's interest in effective law enforcement and the fair administration of justice,” 28 CFR 50.10(a). Section (f)(1) requires that the information sought be essential to a successful investigation, and that a “subpoena should not be used to obtain peripheral, nonessential, or speculative information.” Section (f)(4) limits subpoenas to verification of published information, except under exigent circumstances. Section (f)(6) requires that subpoenas “be directed at material information regarding a limited subject matter, should cover a reasonably limited period of time, and should avoid requiring production of a large volume of unpublished material.”

Application of these provisions would not allow for such a sweeping and purely speculative subpoena. An unlimited demand for four years' worth of a reporters work cannot satisfy any of these requirements. Furthermore, a grand jury investigation into whether any crimes have been committed – the broadest, least defined type of investigation possible – cannot qualify as an “exigent” circumstance that negates the requirements of specificity without rendering the guidelines completely meaningless.

The Vanessa Leggett case has already called into question this administration's dedication to First Amendment principles. While one jailing cannot truly indicate a sweeping change in policy, the continued lack of any action or response by you personally can only fuel suspicion that Ms. Leggett's jailing is not of much concern to your department. Furthermore, foreign editorialists are noting that allowing the jailing of an independent journalist for lack of cooperation with federal authorities casts a shadow on this country's credibility as a human rights advocate. And the jailing leaves the United States as one of only two countries, according to the Committee to Protect Journalists, that currently holds a writer in jail for work-product related reasons. The other country is Cuba.

We ask that you apply your department's own guidelines to this case, withdraw the subpoena, and allow Vanessa Leggett to leave jail. It's the right thing to do.

Sincerely,

Lucy A. Dalglish
Executive Director

Gregg P. Leslie
Legal Defense Director