

1 THE COURT: Now, moving to the subpoena for the
2 news reporter notes and records.

3 The first issue is whether Mr. William Hughes is a
4 professional journalist under the reporter's shield law
5 Civil Rights Law Section 79 H, that was the first issue that
6 was raised. And based on all the submissions, the Court
7 finds that as a paid freelance reporter who was doing
8 essentially annual articles that were in depth analysis of
9 issues and investigations, the Court thus feels that he
10 falls under the rubric of a professional journalist and
11 therefore finds that the shield law does apply to him.

12 Now, the Court does note that in the People's
13 papers they did raise a valid concern having to do with the
14 fact that the reporter in this case filed an affidavit and
15 while the Court does not minimize that concern, in reading
16 the case law the Court feels that given that he came to this
17 issue as an investigative reporter and when the materials
18 were gathered he was working in that capacity, I think that
19 is the perspective this Court has got to analyze whether it
20 will approve the subpoena or not.

21 Now, with the fact that subsequently after all
22 this work was done a year ago, whatever it was, at this
23 point he files that affidavit.

24 Next point, the Court does agree with the papers
25 arguing that the subpoena is overbroad. I do think a

1 reading of the subpoena would allow for confidential and non
2 confidential materials and the law is crystal clear that
3 confidential materials cannot be turned over or should not
4 be as a general turn over, and that would be the Court's
5 rulings that with regards to anything that is confidential
6 it cannot be.

7 So now that brings us to the next issue, which is
8 whether the non confidential materials being requested can
9 be subpoenaed. And for the Court to make a determination
10 with regards to the non confidential materials there is a
11 three prong test.

12 The first is that it must be highly material and
13 relevant.

14 The second is that it must be critical or
15 necessary to the maintenance of a party's claim, which in
16 this case it would be the People's claim or the People's
17 defense or the People's proof of an issue that is material.

18 And third, whether this material is not obtainable
19 from any alternative source.

20 So let me address the first prong, which is
21 whether it is highly material and relevant. And the Court
22 finds that unquestionably the materials being requested by
23 the defense are highly material and relevant, especially to
24 any statements that Mr. Hincapie may have made -- I misspoke
25 when I said the materials requested by the defense, it is

1 obviously the People that are requesting the materials. And
2 Mr. Hincapie's statements are obviously a crucial and
3 material element of these proceedings.

4 So then let me jump to the third issue, which is
5 whether they are not obtainable from any alternative source.
6 And while I know there was some discussion and some
7 arguments in the papers that these statements could somehow
8 be obtained from the individuals themselves, the Court notes
9 that some of these statements were made a while back and
10 memories do change, abilities to recall exactly what was
11 said, so the Court finds that in this situation in this
12 factual situation it would not be obtainable from any
13 alternative source.

14 And that leaves us then with the second prong,
15 which this Court finds to be the more difficult prong, which
16 is whether it is critical or necessary to the maintenance of
17 a party's claim, defense or proof of an issue material
18 thereto. And the Court finds that with regards to Mr.
19 Hincapie solely it is definitely critical or necessary to
20 the People's position and the Court will grant that.

21 I will do an in camera inspection first just to
22 make sure that the materials that are now relevant are being
23 turned over. So the Court will grant the subpoena as to
24 that.

25 As to the other materials being requested by the

1 People, with regards to the request for the subpoenaed
2 materials in terms of Mr. Luis Montero, do you both have
3 copies of the subpoena with you?

4 MR. HURLEY: I do.

5 THE COURT: Because I will ask you to follow
6 along.

7 MR. KUBY: If brother Hurley has a spare copy I
8 would appreciate it.

9 THE COURT: We can make a copy, because I want
10 everybody to be able to follow.

11 If need be we can make a copy.

12 MR. HURLEY: I don't have another copy.

13 THE COURT: I will ask Mr. Robb to make a copy.

14 MR. HURLEY: I have an unstapled copy if you just
15 need the subpoena.

16 THE COURT: Yes, just the actual subpoena.

17 Counsel, obviously this has been litigated, there
18 has been plenty of submissions, so I will just cut to the
19 chase of what it is I am going to permit. The other stuff
20 that I am not allowing is because I find it to be overbroad.

21 So with regards to Mr. Montero, which is the first
22 request in the subpoena, I will allow Subdivision 1. I will
23 not allow Subdivision 2, Subdivision 3, Subdivision 4,
24 Subdivision 5. I will allow Subdivision 6 and Subdivision
25 7.

1 That is with regards to Mr. Montero.

2 This will be for in camera inspection as to the
3 other witnesses that are not Mr. Hincapie.

4 Once I get the materials, I will then decide
5 whether or not to turn any of that over immediately or
6 whether once the witnesses are called at whatever point I
7 think it may be relevant, to turn it over to the People.

8 The second request is with regards to Mr. Johnny
9 Hincapie. So Subdivision 1 I will allow. Subdivision 2 I
10 will allow, with the modification only as to what happened
11 on that date, meaning on the date of the incident here.
12 Subdivision 3 I will not allow. Subdivision 4, no.
13 Subdivision 5, no. Subdivision 6, no. Subdivision 7, and
14 there are two 7s, both of them are no. Subdivision 8 is no.
15 Subdivision 9 is no. On 9, however, I will allow
16 communications made by Mr. Hincapie with regards to
17 subdivision 9 and only any statements he made directly to
18 Mr. Hughes with regards to this subject matter.

19 Next in the subpoena is the request having to do
20 with regards to the former attorney Mr. David Richman, and
21 at this stage the Court will not allow that. If in the
22 midst of the hearings the Court is persuaded to reconsider,
23 I will. But at this point the Court will not allow the
24 subpoena to go forward with regards to number three
25 regarding the former attorney Mr. David Richman.

1 Similarly for number four, which is materials
2 being requested for former attorney Vivian Shevitz, the
3 Court will not allow that. Unless as I stated as we go
4 through the proceedings somehow I am persuaded to reconsider
5 this ruling.

6 With regards to number five, which is the
7 materials having to do with Mr. Anthony Anderson, I will
8 allow both Subdivision 1 and Subdivision 2. But note that
9 it will be limited to only statements made by Anthony
10 Anderson and those that he made directly to Mr. William
11 Hughes. And that is again for in camera inspection at this
12 stage.

13 With regards to the sixth request having to do
14 with the materials made by or the statements made by Pascal
15 Carpenter, the Court will grant Subdivision 1 and
16 Subdivision 2. The Court will not allow Subdivision 3. And
17 once again, I will allow them with regards to any statements
18 made by Mr. Carpenter directly to Mr. Hughes. And that is
19 for in camera inspection.

20 Number seven, with regards to the request having
21 to do with Mr. Ricardo Lopez, the Court will allow
22 Subdivision 1 and Subdivision 2. But once again limited by
23 any statements Mr. Ricardo Lopez made directly to Mr.
24 Hughes, William Hughes.

25 With regards to the eighth request in the subpoena

1 having to do with statements made by Emilio Fernandez a/k/a
2 Emiliano Fernandez, the Court will allow both Subdivision 1
3 and Subdivision 2. Again only with regards to statements
4 made directly by Mr. Fernandez to Mr. William Hughes and
5 again for in camera inspection.

6 And with regards to number nine, the subpoenaed
7 materials having to do with the statements made by Yull Gary
8 Morales, the Court will grant Subdivision 1 and Subdivision
9 2. Once again limited to the extent that these are
10 statements made directly to Mr. Hughes. And so that we are
11 clear, again for in camera inspection.

12 And when I say statements, I mean anything that
13 may have been videotaped, audio statements or notes having
14 to do with regards to those statements. And those will be,
15 and that is with regards to all of the materials being
16 requested.

17 That completes the Court's ruling on the subpoena.
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19 I, Vikki J. Benkel, a Senior Court Reporter in and for
20 the State of New York, do hereby certify that the foregoing
21 transcript is true and accurate to the best of my knowledge,
22 skill and ability.
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Vikki J. Benkel