No. 03-6747

In The

Supreme Court of the United States

M.K.B.,

Petitioner,

v.

Warden, et al.,

Respondent.

MOTION TO INTERVENE OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS; ABC, INC.; AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION; AMERICAN IMMIGRATION LAWYERS ASSOCIATION; AMERICAN LAWYER MEDIA, INC.; AMERICAN SOCIETY OF NEWSPAPER EDITORS; ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND; ASSOCIATION OF ALTERNATIVE NEWSWEEKLIES; CABLE NEWS NETWORK LP, LLLP (CNN); GANNETT CO., INC.; KNIGHT RIDDER, INC.; HEARST CORP.; MILITARY REPORTERS & EDITORS, INC.; NATIONAL FEDERATION OF PRESS WOMEN; NATIONAL NEWSPAPER ASSOCATION; NATIONAL PRESS CLUB; NEWSPAPER ASSOCIATION OF AMERICA; NEWSPAPER GUILD-CWA; NEW YORK TIMES CO.; PEOPLE FOR THE AMERICAN WAY FOUNDATION; RADIO-TELEVISION NEWS DIRECTORS ASSOC.; SOCIETY OF PROFESSIONAL JOURNALISTS; and WASHINGTON POST CO.

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MOTION TO INTERVENE

The Reporters Committee for Freedom of the Press et al. (movants) respectfully move to intervene as petitioners in the above-captioned matter. Movants are print and broadcast media companies, associations of media companies and journalists, and nonprofit organizations engaged in advocacy for freedom of the press and the rights of immigrants. Movants share strong interests in monitoring and reporting on the judicial proceedings in petitioner's case, including proceedings in this Court, for the benefit of the public. Detailed statements of interest for each of the twenty-three movants are attached as the Appendix.

If granted intervenor status, movants will seek three forms of relief: first, access to unredacted (or less extensively redacted) versions of the filings and to all proceedings before this Court; second, an order that all courts on remand enter public, written findings justifying the need for secrecy in any future proceedings in this case; and third, a similar order requiring findings regarding the filings and the record in all previous proceedings in the courts below.[1] Intervention in this Court — rather than in the district court, as is the usual practice — is uniquely appropriate in this case. Because of the exceptional secrecy surrounding this case, movants were unaware of its very existence when it was being litigated in the district court, and were therefore unable to move to protect their interests by intervening there; indeed, the petition for certiorari, in its redacted form, is the first public filing in this case. Intervention at this stage is therefore justified, and this Court should exercise its discretion to permit it.

[1] Petitioners do not, however, seek access to classified information. *See United States* v. *Moussaoui*, 65 Fed. Appx. 881, 891 (4th Cir. 2003) (granting press intervenors' request that unclassified portions of the filings be unsealed and granting access to portion of bifurcated oral argument concerning unclassified issues). Petitioners note that it is inconceivable that the *entirety* of the proceedings and filings below, and of the many completely redacted pages of the filings in this Court, comprise only classified information.

For several reasons, movants believe that intervention is necessary to protect their interests and those of the public, and that it will also aid this Court in the adjudication of the important legal issues raised by this case. First, in light of the extremely limited information available to them about the facts of petitioner's case — including about petitioner's very identity — movants understandably lack confidence that he will adequately represent their strong First Amendment interests and those of the public. Those interests could easily be compromised by settlement, for example, or petitioner could have an interest in keeping secret some of the details of his case in which the public has a legitimate interest. Moreover, movants assert specific interests not raised by the petition for certiorari: access to part or all of the redacted portions of that petition itself and to other Supreme Court filings and proceedings as well as any subsequent proceedings in this case. Finally, movants note the possibility that the government could raise procedural objections to petitioner's claim. These objections could include mootness or standing objections related to petitioner's release from custody or other developments in his criminal or immigration proceedings, including possible deportation. Indeed, given that they know virtually nothing about the facts or procedural history and posture of the case, movants cannot predict the nature of the objections the government might make, nor will they necessarily even know if the government does make them, since significant portions of the response brief will presumably also be redacted. Permitting intervention may, in any event, allow this Court to resolve the issues in this case on the merits notwithstanding any procedural problems with petitioner's case, since movants clearly have an interest in access to records and proceedings in this case that will persist regardless of any changes in petitioner's circumstances.

ARGUMENT

I. This Court has broad authority to grant intervention or to add parties of its own initiative.

Although intervention at the Supreme Court stage is unusual — because in most cases, of course, potential intervenors can be expected to be aware of the proceedings from the beginning and to follow ordinary district court intervention procedures — this Court has recognized its broad authority to add parties to its cases, either of its own initiative or by granting a motion to intervene or a motion by an existing party to add parties. This Court has treated motions to intervene or to add parties in its own proceedings similarly to those filed in the courts of appeals. Neither the Supreme Court Rules nor the Federal Rules of Appellate Procedure provide explicitly for intervention or the addition of parties. And, of course, the Federal Rules of Civil Procedure only apply in district courts. See Fed. R. Civ. P. 1. Yet this Court has held that its own grant of a motion to add parties "represented the exercise of an appellate power that long predates the enactment of the Federal Rules," *i.e.*, the power to "make such amendments, as the court below may." *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U.S. 826, 834 (1989) (citing *Mullaney* v. *Anderson*, 342 U.S. 415 (1952)).

Although the power of appellate courts, including this Court, to permit intervention or the addition of parties is not grounded in the Federal Rules of Civil Procedure themselves, this Court has repeatedly held that the policies underlying both Rule 21 and Rule 24 apply at all stages of litigation, and that the standards reflected in those rules may therefore provide guidance. *See International Union* v. *Scofield*, 382 U.S. 205, 217 n.10 (1965) ("[T]he policies underlying intervention may be applicable in appellate courts. Under Rule 24(a)(2) or Rule 24(b)(2), we think the charged party would be entitled to intervene."); *Newman-Green*, 490 U.S. at 834

(stating that the policies underlying Rule 21 apply in appellate courts); *Mullaney*, 342 U.S. at 416-17 (applying the Rule 21 standard). The courts of appeals therefore have applied those standards in considering motions for leave to intervene at the appellate stage. *See, e.g.*, *Pitts* v. *Thornburgh*, 2003 U.S. App. LEXIS 18345, at *2 (D.C. Cir. May 28, 2003) (holding that the "standards for intervention applicable in the district court also apply in the court of appeals" (quotation marks omitted)); *Texas* v. *Dep't of Energy*, 754 F.2d 550, 552 (5th Cir. 1985).

Rule 21 "authorizes the addition of parties 'by order of the court on motion of any party or *of its own initiative at any stage of the action* and on such terms as are just.'" *Mullaney*, 342 U.S. at 417 (quoting Fed. R. Civ. P. 21) (emphasis added). Rule 24(a)(2) allows intervention as of right under certain conditions to protect interests not adequately represented by existing parties. And Rule 24(b)(2) allows permissive intervention "when an applicant's claim or defense and the main action have a question of law or fact in common," providing that the Court should weigh the risk of prejudice to existing parties in the exercise of its discretion. Thus, while Rule 24(b)(2) reflects a policy in favor of intervention where intervenors' interests require their active participation, Rules 21 and 24(a)(2) allow a court to permit intervention, or to add parties on its own initiative, whenever the court deems it appropriate and just, regardless of the interests at stake.[2]

This Court has granted motions to intervene at the certiorari stage, *see, e.g.*, *Banks* v. *Chicago Grain Trimmers Assoc.*, 389 U.S. 813 (1967); *Hunter* v. *Ohio ex rel. Miller*, 396 U.S. 879 (1969), and the merits stage, *see, e.g.*, *Eastern-Central Motor Carriers Ass'n* v. *United States*, 321 U.S. 194, 199 n.5 (1944); *NLRB v. Acme Industrial Co.*, 384 U.S. 925 (1966). It has

[2] Although no *right* to intervene exists at the Supreme Court stage, movants believe that the fact that their strong First Amendment interests may not be adequately represented by petitioner here means that the policies underlying Rule 24(a)(2) support permissive intervention here.

also granted motions to add parties, particularly to avoid potential mootness or standing problems. *See Mullaney*, 342 U.S. at 416-17 (granting a motion to add plaintiffs in order to "remove the matter [of original plaintiffs' standing] from controversy"); *Rogers* v. *Paul*, 382 U.S. 198, 199 (1965) (granting a motion to add plaintiffs to avoid the risk of mootness). In short, this Court has treated its own authority to add parties as broad and flexible enough to account for the interests of justice and judicial economy in each particular case. As set forth below, those interests counsel in favor of movants' participation here.

II. Movants plainly have filed a "timely application" for leave to intervene, since they could not have intervened earlier in the proceedings.

It would be hard to imagine a case in which intervention in this Court is more clearly justified. From the beginning, petitioner's habeas corpus proceedings have been cloaked in the most extraordinary degree of secrecy, completely inconsistent with longstanding Anglo-American tradition, with petitioner's own rights, and with the rights of the press and the public in access to criminal proceedings. Indeed, the case's existence was initially not acknowledged in *any way* on the district court's docket, and even now that docket merely reads "In re Petition for Writ of Habeas Corpus," with no further identifying information, and with each of the sixty-three docket entries listed as sealed. Nor was any further information made available by the court of appeals, which also sealed its proceedings entirely.

Given that the courts below deliberately made it impossible for movants to learn of the proceedings' nature, content, and indeed existence, movants could not reasonably have been expected to follow the ordinary procedures for intervention in the district court set forth by Rule 24 of the Federal Rules of Civil Procedure. Even after the vague docket entries were added, far too much information about the case was unknown — for example, that the case related to the

post-September 11 detainments that unarguably constitute a matter of significant public and media interest.[3] And media intervention at that stage would obviously have been futile, given the courts' apparent determination to shield the case from even the most minimal public scrutiny.[4] Furthermore, by that point, the proceedings in the district court and court of appeals had apparently been concluded; the petition for certiorari was the next court action taken at any point, so far as movants are aware, and movants filed this motion promptly thereafter.

For these reasons, movants clearly satisfy the "timely application" requirement that Rule 24 applies to intervention in the district court. *See NAACP* v. *New York*, 413 U.S. 345, 365-66 (1973) (holding that timeliness is a discretionary determination based on "all the circumstances" including whether applicants "knew or should have known of the pendency" of the suit). Movants also meet the requirement imposed by some courts of appeals — though never previously by this Court — that would-be appellate intervenors demonstrate "exceptional circumstances" justifying their failure to seek intervention in the district court. *See*, *e.g.*, *United States* v. *Bursey*, 515 F.2d 1228, 1239 n.24 (5th Cir. 1975) (stating that the "exceptional circumstances" test for appellate intervention is satisfied where intervenors have an interest that cannot be adequately represented by existing parties and "where their lack of timely intervention

[3] Due to a court clerk's error, word of the case's existence spread to at least one media outlet, the Daily Business Review, which published a story about it on March 12, 2003. *See* Dan Christensen, *Secrecy Within*, MIAMI DAILY BUS. REV., Mar. 12, 2003, at A1. Due to the high level of secrecy surrounding the case, including a gag order on all participants, this article contained considerably less information even than the limited amount now contained in the redacted public version of M.K.B.'s petition for certiorari. It contained no details whatsoever as to the facts, the legal issues, or the history and procedural posture of the case — all vital information for any party considering intervention — beyond inferences from the case name. In any event, when a case is unacknowledged by the very courts that are hearing it, a single news story in a local publication cannot possibly be considered sufficient to put potential parties on notice that they need to intervene to protect their interests.

[4] Even this Court's docket does not mention the proceeding below, nor identify which circuit the petition for certiorari is from — information also stricken from the public version of the petition.

below may be justified by the district court's action without notice"); *Amalgamated Transit Union Int'l* v. *Donovan*, 771 F.2d 1551, 1552 (D.C. Cir. 1985) (reasoning that it would be unfair to allow potential intervenors to "lay in wait until after the [trial and appeal] before deciding whether to participate" — something movants clearly did not do here); *In re Grand Jury Investigation into Possible Violations of Title 18*, 587 F.2d 598, 601 (3d Cir. 1978).

III. Movants have a strong interest in the proceedings that is not adequately represented by the petitioner.

As media organizations committed to coverage of judicial proceedings generally and those associated with the government's post-September 11 detentions especially, movants have an obvious, strong interest in this case. The rights of the press and the public to attend and report on criminal trials and related proceedings are well established. *See, e.g.*, *Press Enterprise Co.* v. *Superior Court*, 464 U.S. 501 (1984) (recognizing a right of access to voir dire proceedings); *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555 (1980) (recognizing a right of access to criminal trials); *see also* Cert. Amicus Br. of the Reporters Committee for Freedom of the Press at 4-7 (collecting cases and discussing the scope of this right). This case presents the question whether that right extends to habeas corpus proceedings; movants will argue on the merits, if permitted to participate, that it does. In any event, regardless of how this Court eventually decides the merits issue, it is plain that movants have a significant interest in its outcome. Courts have recognized this interest, permitted media intervention, and ordered records unsealed in other terrorism cases wherein the government asserted a national security interest in limiting access. *See, e.g.*, *United States* v. *Moussaoui*, 65 Fed. Appx. 881, 891 (4th Cir. 2003); *see also In re Washington Post Co.*, 807 F.2d 383, 391-92 (4th Cir. 1986) (holding that the "procedural requirements set forth in *Knight Publishing* are fully applicable in the context of closure motions

based on national security"). More generally, courts routinely grant media intervention for the purpose of seeking access to court proceedings in civil as well as criminal cases. *See, e.g.*, *SEC* v. *TheStreet.com*, 273 F.3d 222, 234 (2d Cir. 2001) (affirming a district court order permitting media intervention and ordering judicial records unsealed in a civil case); *Jessup* v. *Luther*, 227 F.3d 993, 997 (7th Cir. 2000) (reversing district court's refusal to allow media intervention in a civil case and noting that "every court of appeals to have considered the question has come to the conclusion that Rule 24 is sufficiently broad-gauged to support a request of intervention for the purpose of challenging confidentiality orders").

In particular, movants seek access to three aspects of the proceedings in petitioner's case: first, the unredacted versions of all parties' Supreme Court filings (or, at least, versions minimally redacted only as truly required for national security purposes); second, any actual court proceedings that take place in the future, including in this Court and the courts below; and third, the records of the proceedings that have already taken place at the district and appellate court. At least as far as the redacted petition for certiorari reveals, petitioner seeks only the third. Movants therefore seek to protect distinct, though related, interests that petitioner does not even purport to represent.

In addition, to the extent that the interests of petitioner and movants overlap, movants nonetheless have reason to believe that petitioner cannot represent those interests adequately. Although no details are available, movants assume that petitioner may well be engaged in ongoing immigration and/or criminal proceedings with the federal government. Petitioner thus may have a strong interest in settling his claims here in exchange for some consideration in those matters. In addition, as far as movants know, petitioner may not be challenging the sealing of the records below to the full extent that would movants. Because those records involve personal

details, including potentially damaging ones, about the petitioner, petitioner may well prefer to keep some parts of them secret even though the media and the public may have a legitimate First Amendment right to view them. Indeed, as a general matter, the media, unlike parties to a case who have other interests at stake, can be expected to represent vigorously the public's right to access. Courts therefore permit or invite media organizations to intervene even when one of the parties to the case is already seeking to open the proceedings. *See, e.g.*, *United States* v. *Graham*, 257 F.3d 143, 145 (2d Cir. 2001); *United States v. Brown*, 250 F.3d 907, 910 (5th Cir. 2001). Movants note, finally, that petitioner has expressed to them his opposition to the instant motion to intervene. This opposition adds to movants' apprehension that petitioner's interests may diverge from theirs in important ways that movants cannot identify or predict given the limited information available to them.

For these reasons, movants' interests are not adequately represented by petitioner, and the policies underlying Fed. R. Civ. Proc. 24(a)(2) support intervention.

IV. The interests of fairness and of effective and efficient adjudication counsel in favor of permissive intervention here.

As illustrated by *Mullaney* and *Rogers*, in both of which this Court permitted the addition of parties in order to avoid potential procedural problems, this Court may exercise its power to "make such amendments, as the court below may" (*Newman-Green*, 490 U.S. at 834) for a wide variety of practical purposes, not just in circumstances where the stricter requirements for intervention as of right are met. Indeed, a similar policy of flexibility, accounting for the interests of judicial economy and for those of the existing parties, underlies the permissive intervention standard of Rule 24(b)(2) and the broad authority to add parties conferred on district courts by Rule 21. Movants respectfully submit that their participation in this case, as media

organizations and advocacy groups with a strong interest in and experience with First Amendment and freedom of information issues, will only aid the Court's adjudication, will avoid potential procedural problems, and will not unfairly prejudice any existing party.

Although movants are forced to speculate in light of the limited information available to them, there is a realistic prospect that the government will raise procedural objections to petitioner's claim, and that movants' participation as a party could prevent those objections from precluding this Court's review. These include, most obviously, mootness and standing concerns related to the status of the underlying habeas corpus proceedings, since petitioner has now been released. They also include possible complications relating to petitioner's immigration proceedings; indeed, if petitioner is deported, he may have a difficult time continuing to litigate the case at all. Although none of these problems are certain to arise, neither were the standing and mootness concerns in *Mullaney* and *Rogers*. In *Mullaney*, the Court did not determine that there was in fact a standing problem; instead, it simply noted that a standing objection had been raised for the first time at the Supreme Court stage, and that the respondent's motion to add plaintiffs, which the Court granted, had been brought in order to "remove the matter from controversy." 342 U.S. at 416. And in *Rogers*, a school desegregation case, the Court granted a motion to add plaintiffs to avoid graduation-triggered mootness even though one of the existing plaintiffs had not yet graduated but had merely "entered the last high school grade" at the time of the Court's December decision. 382 U.S. at 199.

Nor will permitting intervention unduly prejudice the rights of existing parties. Petitioner can only be helped by movants' participation in this case, while the United States will be required to address the same central legal issues on the same schedule with or without movants' participation, particularly because petitioner purports to represent the public's interest. *See*

Mullaney, 342 U.S. at 417 (noting that because the additional plaintiffs represent the same interest the original plaintiffs purported to represent, the "addition of these two parties plaintiff can in no wise embarrass the defendant"). Movants will, of course, comply with this Court's briefing schedule and will cause no delay in the litigation. Moreover, strong fairness and judicial economy interests weigh in favor of permitting movants' participation now, rather than forcing them to pursue their claims in separate, likely futile proceedings. In *Scofield*, the Court held that a prevailing party in NLRB proceedings could intervene in Court of Appeals proceedings reviewing the Board decision, even though the governing statute was silent as to intervention. The Court reasoned:

> Permitting intervention also insures fairness to the would-be intervenor. If intervention is permitted, the parties to the Board proceedings are able to present their arguments on the issues to a reviewing court which has not crystallized its views. To be sure, if intervention is denied in the initial review proceeding, the [potential intervenor] would not be bound by the decision under technical *res judicata* rules. Still, the salient facts having been resolved and the legal problems answered in this initial review, subsequent litigation serves little practical value to the potential intervenor.

Scofield, 382 U.S. at 213. Furthermore, the Court held, "[s]hould we decide to grant certiorari, the first review would seem the more propitious time, since all the parties are then before the Court and the dispute has been fully developed without inconvenience to either private party." *Id.* Similarly, in *Mullaney*, the Court held that to "dismiss the present petition and require the new plaintiffs to start over in the District Court would entail needless waste and runs counter to effective judicial administration." 342 U.S. at 417.

CONCLUSION

For the foregoing reasons, this Court should grant this motion for leave to intervene, or should act on its own initiative to add movants as petitioners.

Respectfully submitted,

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APPENDIX

Statements of Interest of Movants

ABC, Inc. is a broad-based communications company with significant holdings in the United States and abroad. Alone or through its subsidiaries, it owns ABC News, the ABC Radio Network, 62 radio stations and 10 television stations that regularly gather and report news to the public. ABC News produces the television programs *World News Tonight with Peter Jennings*, *20/20*, *PrimeTime Thursday* and *Nightline*, among others.

The American Booksellers Foundation for Free Expression was organized in 1990. Its mission is to inform and educate booksellers, other members of the book industry, and the public about the dangers of censorship and to promote and protect the free expression of ideas, particularly freedom of choice in reading materials.

The American Immigration Lawyers Association (AILA) is a national non-profit voluntary association of more than 8,000 immigration and nationality lawyers. AILA's members seek to protect their clients from being subjected to secret and indeterminate detention and from having secret and closed deportation and habeas corpus hearings. AILA's members also share the media groups' interest in ensuring open judicial proceedings.

American Lawyer Media, Inc. (ALM) is the nation's leading source of news and information for the legal industry. Headquartered in New York City, ALM owns and publishes 27 national and regional legal trade newspapers and magazines, including *The American Lawyer*, *The National Law Journal* and the *New York Law Journal*. The publications have a combined circulation of approximately 300,000.

The American Society of Newspaper Editors is a nonprofit organization founded in 1922. It has a nationwide membership of over 800 persons who hold positions as directing editors of daily newspapers throughout the United States, with members recently being added in Canada and other countries in the Americas. The purposes of the Society include assisting journalists and providing an unfettered and effective press in the service of the American people.

The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a New York-based non-profit organization that defends the civil rights of Asian Americans nationwide through litigation, legal advocacy and community education. After the September 11 tragedy, AALDEF provided legal representation and advice to over 1,000 South Asians and Muslims seeking assistance on immigration matters. Anyone of its clients could have been M.K.B.

The Association of Alternative Newsweeklies (AAN) is the not-for-profit trade association for 123 alternative newspapers in North America, including weekly papers like *The Village Voice* and *Miami New Times*. AAN publications provide an editorial alternative to the mainstream press by covering news and culture from a different

perspective and by presenting that coverage within a wider range of stylistic freedom. AAN members have a total weekly circulation of more than 7 million and a reach of 20 million readers.

Cable News Network LP, LLLP (CNN) is a subsidiary of Turner Broadcasting System, Inc., an AOL Time Warner company. CNN is the world's largest news organization with over a dozen television and radio news networks and websites, as well as several news programming services, provided to affiliates domestically and worldwide. CNN employs more than 4,000 news professionals, who gather news throughout the world.

Gannett Co., Inc. is an international news and information company that publishes 94 daily newspapers in the U.S. with a combined daily paid circulation of 7.7 million, including USA Today, which has a circulation of 2.3 million. Gannett publishes a variety of non-daily publications, including USA WEEKEND, a weekly newspaper magazine with a circulation of 23.6 million. The company also operates more than 100 web sites and a national news service. Gannett's 22 TV stations cover 17.7 percent of the U.S.

Knight-Ridder, Inc. is the second-largest newspaper publisher in the United States, publishing 31 dailies in 28 markets, with 8.3 million readers daily and 12.1 million on Sunday. It also publishes 22 non-daily newspapers, as well as shoppers and special publications. In addition, Knight Ridder operates the Real Cities network of 83 regional Web sites.

The Hearst Corporation is a diversified, privately held media company that publishes newspapers, consumer magazines and business publications. Hearst also owns a leading features syndicate, has interests in several cable television networks, produces movies and other programming for television and is the majority owner of Hearst-Argyle Television, Inc., a publicly held company that owns and operates numerous television broadcast stations.

Military Reporters & Editors Inc. is a Washington State not-for-profit corporation consisting of more than 150 journalists, journalism educators, and others from around the country involved in reporting on military, national security and homeland defense issues. Military Reporters & Editors Inc. exists: to advance public understanding of the military, national security and homeland defense; to educate and share information with its members and the public on best practices, tools and techniques for such coverage; to represent the interests of working journalists to the government and military; and to assure that journalists have access to places where the U.S. military and its allies operate. Its members heavily rely on public records and proceedings to inform themselves and the public about these issues.

The National Federation of Press Women, founded in 1937, represents more than 2,000 communicators in all aspects of public communications: newspaper and magazine writers and editors, book authors, broadcast journalists, public relations specialists, freelancers and educators. Protecting the First Amendment, promoting ethical journalism

and teaching the next generation the values of the free press are among its missions. NFPW is based in Arlington, VA.

The National Newspaper Association, founded in 1885, represents about 2,500 community newspapers. The membership includes small dailies and weeklies of once- to thrice -weekly frequency. Its newspapers are typically owned by their publishers and editors and cover rural or suburban communities across America. NNA's headquarters is located with the nation's oldest journalism school at the University of Missouri.

The National Press Club, established in 1908, is an organization of journalists and communicators in Washington, D.C., and around the world. It advocates on behalf of First Amendment, press freedom and press access issues, and works to advance the professional standards of journalists.

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

The Newspaper Guild-CWA (TNG-CWA) is a labor organization representing more than 30,000 employees of newspapers, news magazines, news services and related media enterprises. Guild representation comprises, in the main, the editorial, advertising, business, circulation, maintenance and related departments of these media outlets. TNG-CWA has a particular interest in this case since it represents many news reporters and journalists for whom disclosure of, and access to, court proceedings is an abiding professional concern.

The New York Times Company publishes *The New York Times*, which is distributed throughout the United States and around the world. Its weekday circulation is the third highest in the country at approximately 1.1 million, and its Sunday circulation is the largest at approximately 1.7 million. The Company also publishes 18 other newspapers and operates eight broadcast stations.

People For the American Way Foundation ("People For") is a non-partisan citizens' organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of civic, religious, and educational leaders devoted to our nation's heritage of tolerance, pluralism, and liberty, People For now has over 600,000 members and supporters nationwide. One of People For's primary missions is to educate the public on the vital importance of our tradition of liberty and freedom, People For has accordingly been actively involved in public education activities and litigation seeking to ensure accountability and prevent unnecessary and excessive secrecy in the federal government, including with respect to the war on terrorism.

The Radio-Television News Directors Association (RTNDA), based in Washington, D.C., is the world's largest and only professional organization devoted exclusively to electronic journalism. RTNDA is made up of more than 3,000 news directors, news directors, news associates, educators and students in radio, television, cable and other electronic media in over 30 countries.

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970.

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

The Washington Post is a newspaper of general circulation in the metropolitan Washington, D.C. area that reports on matters of local, regional and national interest. It is owned by The Washington Post Company, which, through its subsidiaries, owns six network-affiliated television stations and numerous cable television systems and publishes a weekly magazine, *Newsweek*.