

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

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UNITED STATES OF AMERICA :
 :
 :
 v. :
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 :
 LAWRENCE ANTHONY FRANKLIN, :
 (Counts 1 through 5) :
 : CRIMINAL NO. 1:05CR225
 STEPHEN J. ROSEN, :
 (Counts 1 and 3) :
 :
 KEITH WEISSMAN, :
 (Count 1) :
 :
 Defendants. :
-----X

**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*
OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS**

The Reporters Committee for Freedom of the Press (“The Reporters Committee”) respectfully submits this motion for leave to file a brief *amicus curiae* before the court related to the defendants’ dispositive motions. When the court resets the briefing schedule at the parties’ October 24 status conference, *amicus* requests that the court include a date for it to file its brief.

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 rights of the news media. The Reporters Committee has provided representation, guidance, and research in First Amendment and freedom of information litigation since 1970 and seeks to weigh in on an issue in this case that has profound implications on the ability of reporters to inform the public about the matters of great importance.

Amicus believes that a memorandum of law may assist the court due to its experience analyzing legal issues that touch on First Amendment rights. While the *amicus* takes no position on whether the charges in this case should be dismissed, it believes that the court should consider the broad implications of the government's use of the statute under which these defendants are charged, especially the extent to which that use would infringe on the rights of the news media.

The indictments in this case raise issues that could well affect the very nature of how journalism can be practiced. The defendant private citizens have been charged for conspiring to "communicate" national defense information "to any persons not entitled to receive it." 18 U.S.C. § 793(d). Overly broad, this language applies to any private party who speaks about national defense information regardless of their intent or whom they speak to. These charges potentially eviscerate the primary function of journalism – to gather and publicize information of public concern – particularly where the most valuable information to the public is information that other people, such as the government, want to conceal. When information is brought to light, the public can participate in and serve as a check on the government. *See, e.g., Westmoreland v. Columbia Broadcasting System, Inc.*, 752 F.2d 16, 22 (2d Cir. 1984) ("a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs.") (citing *Mills v. Alabama*, 384 U.S. 214, 218 (1966)); *Brown & Williamson Tobacco Corp. v. Federal Trade Commission*, 710 F.2d 1165, 1179 (6th Cir. 1983) ("secrecy insulates the participants, masking impropriety, obscuring incompetence, and concealing corruption."). Public scrutiny is crucial in these times as the government increasingly withholds information. *See, e.g., Secrecy Report Card 2005* (OpenTheGovernment.org, Washington, D.C.) at 1, 2, 6-7 (findings include that: (1) the Foreign Intelligence Surveillance Court approved 1,754 orders in 2004 (up from 932 in 2001) but reveals no information about the activities investigated; (2) the federal

government used the state secrets privilege to withhold information only four times between 1953 and 1976, but more than 23 times since 2001).

Journalists are increasingly concerned about recent government actions that have limited the flow of information to the public. While the government certainly has a legitimate interest in keeping national security information out of the wrong hands, an overly aggressive approach that interferes with the flow of information to the public and its ability to hold its government accountable can undermine the democratic principles we all seek to defend. After the 2001 terrorism attacks, Attorney General John Ashcroft concluded that the government needed to more aggressively seek out sources of leaks and enforce existing laws to clamp down on national security. In a letter addressed to Congress received by the Federation of American Scientists, Ashcroft advised Congress that “we must entertain new approaches to *deter, identify, and punish those who engage in the practice of unauthorized disclosures of classified information.*” Letter from John Ashcroft, Attorney General, Office of the Attorney General, Washington, D.C. to J. Dennis Hastert, Speaker of the House of Representatives, Washington, D.C. (October 15, 2002) (emphasis added) at www.fas.org/sgp/othergov/dojleaks.html. The instant indictments are evidence of this new policy. Irrespective of the merits of the defendants’ case, these indictments place reporters in a precarious position.

Amicus the Reporters Committee does not take a position on whether the charges against the two defendants should be dismissed. However, now is the best time for the court to consider the implications of such a broad reading of this statute, when the defendants will soon be asking it to consider the appropriateness of the application of the statute.

Should the court grant the *amicus*’s motion, the government will not be prejudiced by the *amicus*’s submission. The *amicus* would comply with the deadline that the court establishes at

the parties' October 24 status conference that permits the government an appropriate opportunity to respond.

CONCLUSION

For the foregoing reasons, *amicus* respectfully submits that the Court should grant leave to file the proposed brief *amicus curiae*.

Date: October 12, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this Motion for Leave to File Brief *Amicus Curiae* of the Reporters Committee for Freedom of the Press has been delivered by next-day mail, postage pre-paid to:

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