	Superior Court of New Jersey Appellate Division Docket No. A-2393-13
North Jersey Media Group, Inc., d/b/a/ Community News, Plaintiff-Appellant, v.	Civil action
Bergen County Prosecutor's Office and Frank Puccio, Records Custodian for the Bergen County Prosecutor's Office, Defendants-Respondents.	On appeal from a final order entered in the Superior Court of New Jersey, Law Division, Bergen County, Docket No. BER-L-6741-13 Sat below: Honorable Peter E. Doyne, A.J.S.C.

Brief and Appendix of *Amicus Curiae* The Reporters Committee for Freedom of the Press and 25 Media Organizations

---

Thomas J. Cafferty
Attorney ID No.: 293721972
Gibbons PC
One Gateway Center
Newark, NJ 07102
Tel: (973) 596-4863
tcafferty@gibbonslaw.com
Local counsel for amici

Bruce D. Brown*
Gregg P. Leslie
Emily R. Grannis
The Reporters Committee for Freedom of the Press
1101 Wilson Blvd., Suite 1100
Arlington, VA 22209
Tel: (703) 807-2100
bbrown@rcfp.org
Of counsel for amici

*Pro hac vice admission pending

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

IDENTITY OF AMICI CURIAE

Amici curiae are The Reporters Committee for Freedom of the Press and 25 media organizations – Advance Publications, Inc., American Society of News Editors, The Asbury Park Press, The Associated Press, Association of Alternative Newsmedia, The Center for Investigative Reporting, Courier News, Courier Post, The Daily Journal, Daily Record, Dow Jones & Company, Inc., Home News Tribune, Investigative Reporters and Editors, Investigative Reporting Workshop at American University, National Newspaper Association, The National Press Club, National Press Photographers Association, New Jersey Press Association, The New York Times Company, News Corp, The Newspaper Guild - CWA, NYP Holdings, Inc., Online News Association, Time Inc., and Tully Center for Free Speech. *Amici* are described in more detail in Appendix A. This brief is filed with a motion to intervene as *amici curiae*.

This case centers on whether a public agency may respond to a records request by neither confirming nor denying the existence of the records. *Amici* are

frequent requesters under state and federal freedom of information laws and therefore have an interest in how those laws are interpreted by the courts. The lower court's decision in this case expands public agency authority and would decrease both the authority New Jersey courts have to oversee the enforcement of public records law, and the recourse available to requesters in this state. *Amici* would be affected by that change in New Jersey should this Court uphold the lower court's decision. *Amici* here seek to expand on North Jersey Media Group's argument that this type of response is not permitted under New Jersey law, and provide a broader perspective on the implications the introduction of a "neither confirm nor deny" response would have on New Jersey freedom of information law.

SUMMARY OF THE ARGUMENT

Freedom of information laws were passed to give the public more insight into the workings of government. They are structured so the government typically has two options: to produce the requested records, or to cite a particular exemption that prevents the release of the records. Unfortunately, New Jersey now seeks to build in a third response option, which does not exist anywhere in the Open Public Records Act, nor in state case law. The state seeks the right to neither confirm nor deny the existence of a record, a tactic known at the federal level as the "Glomar response." Such responses have never been written into a public records statute in the United States, nor have they ever been recognized as an acceptable response at the state level. New Jersey should not be the first to officially allow this technique.

The Glomar response that federal courts have allowed under the Freedom of Information Act, 5 U.S.C. § 552, has been excessively overused and has now expanded to the point that courts have difficulty

exercising their constitutional responsibility to check executive branch actions. The responses deprive the public of information to which it is entitled, complicate the records request process for requesters, and often make it nearly impossible even for a sophisticated requester to challenge an agency's denial in court. The consequences of Glomar responses would undoubtedly appear in New Jersey should this court extend Glomar response rights to public agencies.

Additionally, the lower court in this case did not properly consider whether the state could employ such a response. The court simply analyzed the proposed exemptions that might apply to the records if they did exist. Even if this Court upholds the underlying denial based on a privacy exemption in the New Jersey Open Public Records Act, it should make clear that public agencies do not have the right to issue a "neither confirm nor deny" response to a records request.

ARGUMENT

I. A "neither confirm nor deny" response is not appropriate for state government records requests, as it was developed at the federal level to protect national security interests and has since morphed into a broad and damaging secrecy tool.

The federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, like New Jersey's Open Public Records Act, establishes a limited number of ways that a government agency may respond to a public records request. The agency must either grant the request, deny the request by citing specific exemptions that allow the agency to withhold the information, or indicate that no responsive documents exist. *See* 5 U.S.C. § 552. But since 1975, federal agencies have been using a fourth response type, known as the "Glomar response," named after a CIA-run ship at the center of a case in which the response was first used. *See Phillippi v. Central Intelligence Agency*, 546 F.2d 1009 (D.C. Cir. 1976). The theory behind the Glomar response is that even confirming or denying the existence of the requested record would reveal information that is exempt from disclosure under FOIA.

> In certain cases, merely acknowledging the existence of responsive records would itself "cause harm cognizable under [a] FOIA exception." In that event, an agency can issue a Glomar response, refusing to confirm or deny its possession of responsive documents.

People for the Ethical Treatment of Animals v. National Institutes of Health, 745 F.3d 535, 540 (D.C. Cir. 2014) (internal citations omitted).

But what started as an extra layer of protection in the national security context quickly seeped into other aspects of FOIA law, with government agencies issuing Glomar responses under several of FOIA's nine exemptions. In addition to using Glomar under Exemptions 1 and 3, which address national security concerns, agencies have received approval to use the same type of response to prevent "unwarranted invasions of personal privacy" under Exemptions 6 and 7(C), and to protect the identity of confidential informants under Exemption 7(D). Nathan Freed Wessler, "[We] Can Neither Confirm nor Deny the Existence or Nonexistence of Records Responsive to Your Request": Reforming the Glomar Response Under FOIA," 85 N.Y.U. L. Rev. 1381,

1389 (2010). The federal government has even taken to using Glomar responses to answer requests for information about employee wrongdoing. John Y. Gotanda, "Glomar Denials Under FOIA: A Problematic Privilege and a Proposed Alternative Procedure of Review," 56 U. Pitt. L. Rev. 165, 166 (1994). And at least one federal court has allowed government agencies to issue Glomar responses "when the information sought by [the requester] had already been made public" by other agencies. *See Hunt v. C.I.A.*, 981 F.2d 1116, 1120 (9th Cir. 1992).

Since September 11, 2001, the federal government's use of the Glomar response has increased significantly. In fact, since it was first recognized in *Phillippi*, the Glomar response has come up in about 80 federal court opinions. "Roughly 60 of those cases have been decided since September 11, 2001." Amicus Curiae Brief of Nat'l Sec. Archive in Support of Appellants to Vacate and Remand at 9, *Wilner v. Nat'l Sec. Agency*, 592 F.3d 60 (2d Cir. 2009) (No. 08-4726-cv). The

dramatic rise in use of the Glomar response in the past decade demonstrates how quickly the courts and Congress can lose ground in the FOIA process to the executive branch.

Even federal courts do not always find Glomar to be an appropriate response for the government to issue. *See N.Y. Times Co. v. United States*, No. 13-422(L), 13-445 (Con), 2014 U.S. App. Lexis 7387 (2d Cir. Apr. 21, 2014) (holding "a rigid application of [Glomar] may not be warranted in view of its questionable provenance," and "such a response would only be justified in unusual circumstances, and only by a particularly persuasive affidavit.").

II. No other state recognizes a Glomar-like response under its freedom of information law.[1]

Based on *amici's* research and extensive experience in state open records laws nationwide, it appears that no state court or legislature has allowed a public

[1] While New Jersey courts have not used the term "Glomar" in describing the option of neither confirming nor denying the existence of records, *amici* use it here for simplicity.

agency to use the equivalent of a Glomar response in answer to a public information request. Such an absence of case law on the issue is telling, given that the federal government has been using this type of response for almost 40 years. If state legislatures intended to give state-level agencies the authority to issue a Glomar-style response, they surely could have enacted amendments to state freedom of information laws in that time. Similarly, if public agencies believed this was a legitimate response to freedom of information requests, they certainly would have tried to use a Glomar response during the past 40 years, and in all likelihood, that would have resulted in some litigation and court ruling on the issue. *Amici* could find only two instances of public agencies issuing Glomar-style responses, and both have occurred within the past four years. The first case, *DiMartino v. Pennsylvania State Police*, 2011 WL 10841570, involved the state police citing several specific exemptions to justify withholding information and adding:

> To the extent your request seeks or may be construed to seek PSP records involving covert law enforcement investigations, including intelligence gathering and analysis, PSP can neither confirm nor deny the existence of such records without risk of compromising investigations and imperiling individuals.

DiMartino at *2. The court in *DiMartino* did not reach the issue of the Glomar-type response, so there has been no formal approval of the use of that language in Pennsylvania. Additionally, the Pennsylvania State Police added the Glomar language only *after* properly citing several applicable exemptions under the state's Right to Know Law, which allowed the requester to formulate a thorough challenge on appeal to the state court.

A second case, now before a trial court in New York, directly poses the question of whether the New York Police Department should be permitted to answer requests under the state's Freedom of Information Law using a Glomar-type response. *See Hashmi v. N.Y. City Police Dept., et al.*, No. 101560/2013, Sup. Ct. N.Y. County.

The absence of any case law or legislative action in any state approving the use of Glomar-style responses, and the actual movement toward more disclosure of state law enforcement records even in the face of privacy concerns, should indicate that New Jersey would be an outlier in allowing a Glomar-type of response from public agencies.

III. The same problems that afflict the FOIA system now because of the Glomar response would plague New Jersey if this response is accepted.

The introduction of the Glomar response has had a marked negative impact on FOIA law at the federal level. "The Glomar response, as it stands now, allows the government to publicize its successes, to influence policy [. . .] all while also enjoying near-impenetrable protection from the FOIA." Michael D. Becker, "Piercing Glomar: Using the Freedom of Information Act and the Official Acknowledgment Doctrine to Keep Government Secrecy in Check," 64 Admin. L. Rev. 673, 700 (2012). Allowing a similar response at the state level would lead to the same issues of excessive secrecy, lack of court oversight,

and a more difficult process for requesters to navigate.

A. The Glomar response is overused at the federal level, leading to over-classification and increased secrecy.

There are strong incentives for government agencies to use the Glomar response, largely because of the "mosaic theory, which posits that '[e]ven disclosure of what appears to be the most innocuous information . . . poses a threat to national security . . . because it might permit our adversaries to piece together sensitive information.' " Wessler, 85 N.Y.U. L. Rev. at 1397.

> The danger of Glomar responses is that they encourage an unfortunate tendency of government officials to over-classify information, frequently keeping secret that which the public already knows, or that which is more embarrassing than revelatory of intelligence sources or methods.

ACLU v. Dept. of Defense, 389 F. Supp. 2d 547, 561 (S.D.N.Y. 2005). Even assuming Glomar responses are necessary in limited circumstances, the government has used them to the point of absurdity.

In 1999, for example, a former C.I.A. employee requested his personnel file from the agency in an effort to prove he was entitled to retirement benefits. *See Frugone v. C.I.A.*, 169 F.3d 772 (D.C. Cir. 1999). The Office of Management and Budget had acknowledged Eduardo Frugone's former employment status, but indicated the C.I.A. would have his personnel file. *Id.* at 773. The C.I.A., however, issued a Glomar response and refused to confirm or deny the existence of any records on Frugone. *Id.* The U.S. Court of Appeals for the District of Columbia upheld the C.I.A.'s Glomar response, despite the fact that there really was no doubt Frugone had worked for the C.I.A. and another federal agency had, in fact, confirmed his previous employment. *Id.* at 775.

In a more recent case, a federal inmate requested records related to a confidential informant the government used to prosecute him. In spite of the fact that the government had confirmed the informant's status as an informant in open court in an earlier

proceeding, the Department of Justice still issued a Glomar response to the inmate's request. *Pickard v. Dept. of Justice*, 653 F.3d 782, 784 (2011). In that case, the court decided the government had gone too far.

> The government basically argues that federal law enforcement agencies should be able to develop a case for the United States Attorney, have their agents and confidential informants testify at trial in open court about the identity and activities of those confidential informants, but then refuse to confirm or deny the existence of records pertaining to that confidential informant. We cannot abide such an inconsistent and anomalous result.

Id. at 787-788.

While there are numerous examples of federal agencies using Glomar responses that are never challenged in court, these two appellate decisions illustrate how far the tactic has been stretched at the federal level. It also shows how much more limited the access to government records would be for the people of New Jersey if public agencies are permitted to use a similar response.

B. A Glomar response is harder for a court to review and, at the federal level, has led courts to defer to the government more often than other FOIA denial techniques.

Glomar proceedings are unique in FOIA law because they shift the balance of power from requesters and courts to federal agencies.

> The Glomar response contradicts Congress' intent to provide for liberal information disclosure under the FOIA and allows agencies like the CIA to avoid even searching for records as the FOIA requires. The Glomar response makes de novo review of the agency's classification of records almost impossible.

Danae J. Aitchison, "Reining in the Glomar Response: Reducing CIA Abuse of the Freedom of Information Act," 27 U.C. Davis L. Rev. 219, 253 (1993). Even courts have recognized that this shift is not fair to requesters, but have said they have little power to limit the Glomar response now that it has taken hold. *See, e.g., Pub. Citizen v. Dep't of State*, 11 F.3d 198, 204 (D.C. Cir. 1993) (stating, "Public Citizen's contentions that it is unfair, or not in keeping with FOIA's intent, to permit [the government] to make self-serving partial disclosures of classified information

are properly addressed to Congress, not to this court.").

Part of the difficulty for courts evaluating Glomar responses is that the government tends to submit "increasingly boilerplate" public declarations to justify the response. Becker, 64 Admin. L. Rev. at 689. Courts may review more detailed reasoning behind a Glomar response in camera, but even that is not typically done. "Courts give tremendous deference to agency arguments, accepting them if they are 'logical or plausible.' " Wessler, 85 N.Y.U. L. Rev. at 1393. In fact, reviews of Glomar responses have been so cursory generally that commentators have called on courts to do more in camera reviews, despite the fact that those deliberations are themselves contrary to the goals of openness and government transparency. *See, e.g., id.* at 1409 (suggesting "[c] ourts could also take advantage of their *in camera* review power to demand that agencies produce more evidence to justify their invocation of the Glomar response, including any

underlying records (if they exist) or an admission that records do not exist if that is the case."); Gotanda, 56 U. Pitt. L. Rev. at 181 (acknowledging that the fact that an agency cannot submit a thorough public affidavit if the information is actually sensitive is a " 'catch-22' requirement [that] defeats the central purpose of FOIA, which is 'to open agency action to the light of public scrutiny' " (internal citations omitted)); *cf. Arar v. Ashcroft*, 585 F.3d 559, 577 (2d Cir. en banc 2009) (indicating courts should hesitate before extending secrecy law in such a way that it deviates from the traditional open and adversarial process).

C. Glomar responses are more difficult for requesters to disprove on appeal to the agency or to a court, giving the agency an unfair advantage in the process.

Under normal circumstances, and within the confines of the FOIA statute, requesters have several options for redress if their request is denied. All of those options involve requiring the agency to provide more information to justify the withholding of the

information.[2] But "[t]he Glomar response creates particularly difficult problems for litigants in FOIA suits because, by both depriving them of information essential to litigation and hobbling judicial review, it severely limits litigants' ability to contest agencies' withholding of records." Wessler, 85 N.Y.U. L. Rev. at 1382. In the Glomar context, requesters have no information to adequately challenge an agency's withholding. *Id.* at 1391-1392.

If a court decides an agency used a Glomar response properly, meaning it was "logical or plausible," requesters have only two ways to try to force an agency to confirm or deny the existence of a record. They must either show that the agency has already officially acknowledged the existence of the record (and, as noted previously, *supra* at 10, a different agency's acknowledgement of it is not sufficient), or that the

---

[2] Requesters could file a Vaughn Motion, for example, asking a court to order the government to produce an index describing the documents it is withholding and the justification for withholding each document. *Vaughn v. Rosen (II)*, 523 F.2d 1136 (D.C. Cir. 1975).

agency is acting in bad faith. Wessler, 85 N.Y.U. L. Rev. at 1393. Both of those burdens are high and requesters cannot often meet them. As a result, even if requesters do dedicate the time and expense to take an agency to court, they are unlikely to be able to present a compelling case because under a Glomar framework, all information relevant to their claims has been withheld from them. *Id.* at 1410.

If New Jersey agencies are permitted to use Glomar-style responses to OPRA requests, the state courts and New Jersey citizens would likely face the same problems federal courts and FOIA requesters have seen under Glomar. The state should avoid that unnecessary shift toward secrecy and the power imbalance it would introduce between the executive and judicial branches.

IV. The lower court improperly considered whether disclosure of the requested information was appropriate, without first considering whether the state could issue a Glomar response at all.

The lower court seemed to take for granted that the Glomar response was an option under OPRA, when, in fact, there is no indication the legislature or any

other New Jersey court has ever sanctioned such an answer. OPRA gives agencies five options for responding to public records requests:

> (1) to "promptly comply";
>
> (2) to "indicate the specific basis" for a denial;
>
> (3) to "delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and [. . .] promptly permit access to the remainder of the record";
>
> (4) to advise the requester if the record is temporarily unavailable; or
>
> (5) to deny the request if it would "substantially disrupt agency operations" and the agency is unable to reach a compromise with the requester.

N.J.S. 47:1A-5(g). All of those response options by their very wording require the agency to describe very specifically for the requester what is available and what is not, and why. The Glomar response does not provide requesters with that clarity, and so it cannot be assumed that the legislature meant to include such a variation in the law. Given that no Glomar response is included in OPRA, the lower court should have first considered whether it was a valid response at all. The

court failed to do so, and there should be a determination of that issue before the merits of release are considered in order to provide clarity in state law.

CONCLUSION

For the reasons stated above, this Court should reverse the Superior Court's November 15, 2013, order approving the use of a Glomar-like response under New Jersey's Open Public Records Act.

Respectfully submitted,

THOMAS J. CAFFERTY
Attorney ID No.: 293721972
GIBBONS P.C.
One Gateway Center
Newark, NJ 07102-5310
Phone: (973) 596-4500

Counsel for The Reporters Committee for Freedom of the Press, et al.

CERTIFICATE OF SERVICE

I, Thomas J. Cafferty, do hereby certify that I have filed five copies of the foregoing Brief of *Amici Curiae* with the Clerk of Court on July 21, 2014. A true and correct paper copy of the Brief with Certificate of Service has been sent via first-class mail, postage pre-paid to counsel of record.

Thomas J. Cafferty

APPENDIX A

Descriptions of *amici*:

Advance Publications, Inc., directly and through its subsidiaries, publishes more than 20 print and digital magazines with nationwide circulation, local news in print and online in 10 states, and leading business journals in over 40 cities throughout the United States. Through its subsidiaries, Advance also owns numerous digital video channels and internet sites and has interests in cable systems serving over 2.3 million subscribers.

With some 500 members, American Society of News Editors ("ASNE") is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

The Asbury Park Press, the Courier News, the Courier-Post, the Home News Tribune, The Daily Journal and the Daily Record are all daily newspapers circulated throughout various counties the State of New Jersey. The newspapers are owned by Gannett, a leading media and marketing solutions company that reaches millions of people every day through digital, mobile, broadcast and print media.

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper members. The AP's members and subscribers include the

nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 300 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

Association of Alternative Newsmedia ("AAN") is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like The Village Voice and Washington City Paper. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

Dow Jones & Company, Inc., a global provider of news and business information, is the publisher of The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with more than 1,800 journalists in nearly fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation company.

Investigative Reporters and Editors, Inc. is a grassroots nonprofit organization dedicated to improving the quality of investigative reporting. IRE was formed in 1975 to create a forum in which journalists throughout the world could help each other by sharing story ideas, newsgathering techniques and news sources.

The Investigative Reporting Workshop, a project of the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop

publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

National Newspaper Association is a 2,400 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Columbia, Missouri.

The National Press Club is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

The National Press Photographers Association ("NPPA") is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA's approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

NJPA is a non-profit organization incorporated in 1857 under the laws of the State of New Jersey. The NJPA membership includes approximately 20 daily newspapers, over 160 weekly newspapers, over 50 digital news

websites, as well as over 60 corporate and non-profit associate members. NJPA has been granted leave to appear before this Court in a number of other cases where important issues relative to freedom of the press have been litigated. Among those matters are the following recent cases in which NJPA was granted leave to appear:

> G.D. V. KENNY, 205 N.J. 275 (2011);
> DURANDO v. THE NUTLEY SUN, 209 N.J. 235 (2012); and
> W.J.A. v. D.A., 210 N.J. 229 (2012).

The New York Times Company is the publisher of The New York Times, The Boston Globe, and International Herald Tribune and operates such leading news websites as nytimes.com and bostonglobe.com.

News Corporation is a global, diversified media and information services company focused on creating and distributing authoritative and engaging content to consumers throughout the world. The company comprises leading businesses across a range of media, including: news and information services, digital real estate services, book publishing, digital education, and sports programming and pay-TV distribution.

The Newspaper Guild - CWA is a labor organization representing more than 30,000 employees of newspapers, newsmagazines, news services and related media enterprises. Guild representation comprises, in the main, the advertising, business, circulation, editorial, maintenance and related departments of these media outlets. The Newspaper Guild is a sector of the Communications Workers of America. CWA is America's largest communications and media union, representing over 700,000 men and women in both private and public sectors.

The New York Post, owned by NYP Holdings, Inc., is the oldest continuously published daily newspaper in the United States, with the seventh largest circulation. It is published in print and online.

Online News Association ("ONA") is the world's largest association of online journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. ONA's more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA hosts the annual Online News Association conference and administers the Online Journalism Awards. ONA is dedicated to advancing the interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence and freedom of expression and access.

Time Inc. is the largest magazine publisher in the United States. It publishes over 90 titles, including Time, Fortune, Sports Illustrated, People, Entertainment Weekly, InStyle and Real Simple. Time Inc. publications reach over 100 million adults, and its websites, which attract more visitors each month than any other publisher, serve close to two billion page views each month.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

APPENDIX B

Of counsel:

Richard A. Bernstein
Sabin, Bermant & Gould LLP
4 Times Square, 23rd Floor
New York, NY 10036
Counsel for Advance Publications, Inc.

Kevin M. Goldberg
Fletcher, Heald & Hildreth, PLC
1300 N. 17th St., 11th Floor
Arlington, VA 22209
Counsel for American Society of News Editors and the Association of Alternative Newsmedia

Karen Kaiser
General Counsel
The Associated Press
450 W. 33rd Street
New York, NY 10001

Mark H. Jackson
Jason P. Conti
Jacob P. Goldstein
Dow Jones & Company, Inc.
1211 Avenue of the Americas
New York, NY 10036
Counsel for Dow Jones & Company, Inc.

Tonda F. Rush
CNLC, LLC
200 Little Falls Street, Suite 405
Falls Church, VA 22046
Counsel to National Newspaper Association

Charles D. Tobin
Holland & Knight LLP
800 17th Street, NW
Suite 1100
Washington, DC 20006
Counsel for The National Press Club

Mickey H. Osterreicher
1100 M&T Center, 3 Fountain Plaza,
Buffalo, NY 14203
Counsel for National Press Photographers Association

David McCraw
V.P./Assistant General Counsel
The New York Times Company
620 Eighth Avenue
New York, NY 10018

Mark H. Jackson
News Corporation
1211 Avenue of the Americas
New York, NY 10036
Counsel for News Corporation

Barbara L. Camens
Barr & Camens
1025 Connecticut Ave., NW
Suite 712
Washington, DC 20036
Counsel for The Newspaper Guild - CWA

Eugenie C. Gavenchak
NYP Holdings, Inc.
1211 Avenue of Americas
New York, New York 10036

Michael Kovaka
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Counsel for Online News Association

Andrew Lachow
Vice President and Deputy
General Counsel - Litigation
Time Inc.
1271 Avenue of the Americas
New York, NY 10020