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JOSHUA WOLF

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re GRAND JURY SUBPOENA dated February 1, 2006.

JOSHUA WOLF,

Subpoenaed Party.

No. CR 06-90064 MISC MMC

SUBPOENAED PARTY'S ANSWER TO OSC RE: CONTEMPT

Judge Alsup

I. THE COURT SHOULD DENY THE GOVERNMENT'S REQUEST TO HAVE MR. WOLF ANWSER THE CIVIL CONTEMPT CHARGES BECAUSE IT HAS UNCEAL HANDS

The government has the burden of disproving the existence of affirmative defenses actually raised. *See, e. g*., *United States v. Hearst*, 563 F.2d 1331 (9th Cir. 1977); cert. denied, 435 U.S. 1000, 98 S.Ct. 1656, 56 L.Ed.2d 90 (1978); *United States v. Carrasco*, 537 F.2d 372 (9th Cir. 1976).

The government seeks to hold Mr. Wolf in civil contempt for allegedly failing to follow the law. A civil contempt sanction is remedial in nature and the sanction issued upon a finding of civil contempt is a judicial sanction that is considered part of a court's inherent authority to enforce its judicial orders and decrees. *See Cook v. Ochsner Foundation Hospital*, 559 F.2d 270, 272 (5th Cir.1977). "The measure of the court's power in civil contempt proceedings is determined by the requirements of full remedial relief." *See McComb*, 336 U.S. at 193, 69 S.Ct. at 500. Therefore, Mr. Wolf evokes this Court's equitable power to determine whether the government has unclean hands in these proceedings.

A basic principal of equity is that the party seeking equitable relief must come to the court with clean hands. "The essence of this doctrine is that no person can obtain affirmative relief in equity with respect to a transaction in which he or she has been guilty of inequitable conduct." *In re Dodd*, 276 B.R. 817 (Bkrtcy.N.D.Ohio,2001) The Supreme Court of the United States explained in *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*:

> [H]e who comes into equity must come with clean hands. This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be the abettor of iniquity. Thus while equity does not demand that its suitors shall have led blameless lives, as to other matters, it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue.

> This maxim necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant. It is not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion. Accordingly one's misconduct need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character. Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim by the chancellor. 324 U.S. 806, 814-15, 65 S.Ct. 993, 997-98, 89 L.Ed. 1381 (1945).

The government has not substantively complied with the law in issuing the grand jury subpoena. *See* 28 C.F.R § 50.10 (e) (No subpoena may be issued to any member of the news media or for the telephone toll records of any member of the news media without the express authorization of the Attorney General). In *Morton v. Ruiz*, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974) the Court stated that "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required." *Ruiz*, 415 U.S. at 235, 94 S.Ct. 1055; *see In re Williams*, 766 F.Supp. at 371 n. 13 (citing *Ruiz*); *Blanton*, 534 F.Supp. at 297 (same). In *Ruiz*, the Court held that, before the Bureau of Indian Affairs could extinguish "the entitlement of ··· otherwise eligible beneficiaries, it must comply, at a minimum, with its own internal procedures" concerning the publication of an "extremely significant eligibility requirement, affecting rights of needy Indians." *Ruiz*, 415 U.S. at 235, 94 S.Ct. 1055. The *Ruiz* Court concluded that the publication requirement was intended to confer a benefit on potential beneficiaries, and therefore declined to affirm the attempt of the Bureau of Indian Affairs to limit the availability of general assistance benefits based upon unpublished eligibility requirements. *See id*. at 236, 94 S.Ct. 1055.

The government has invoked this Court's inherent and statutory authority to hold Mr. Wolf in civil contempt. For the government to seek an equitable remedy it must come to this Court with clean hand. Because the government does not come to this Court with clean hands the Court should deny the governments request to hold Mr. Wolf to answer.

II. THE GOVERNMENT CAN NOT MAKE OUT A PRIMA FACIE SHOWING OF CIVIL CONTEMPT

The government cannot prove that: 1) the grand jury subpoena was authorized by the United States Attorney General; 2) that the materials sought in this criminal cases is not peripheral, nonessential, or speculative information. 28 C.F.R. § 50.10(f)(1); 3) that the information sought is not already in the government's possession; and 4) that the witness has failed to comply with the request. *See In the Matter of Battaglia v. United States*, 653 F.2d 419, 422 (9th Cir. 1981).

A. The Grand Jury Subpoena Was Not Authorized By The United States Attorney General

The government has not obtained the authorization of the United States Attorney General before issuing the subpoena to a journalist in violation of 28 C.F.R § 50.10 (e). Congress has delegated to Justice Department the power to give meaning to statutory provisions and to promulgate standards, regulations adopted by Justice Department in exercise of that delegated authority has the force of law, and they are bound by their own regulations. *See U.S. v. Krieger*, 773 F.Supp. 580, 584-585 (S.D.N.Y.1991); *U.S. v. Blanton*, 534 F.Supp.295, 297 (S.D. Fla. 1982) [government must follow the Department of Justice guidelines]; *cf. In re Williams*, 766 F.Supp. at 371 (stating that the court had "considered" the Guidelines in arriving at the decision to quash a grand jury subpoena directed at a reporter and observing that "[i]t is manifestly clear that the government has not discharged the obligation imposed by these regulations"). Therefore Mr. Wolf can not be held in contempt because the first element of the prima facie showing of civil contempt can not be met at this stage of the proceedings.[1]

B. The Government Can Not Demonstrate That The Records Sought Are Particularly Relevant To Its Specific Investigation Pursuant To Rule 17(C).

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[1] The government will argue *In re: Grand Jury Subpoena, Judith Miller*, 397 F.3d 964, 975 (D.C. Cir. 2005) which has no precedential value to the Ninth Circuit, but more importantly it is distinguishable because the court found that the special counsel had complied with the guidelines. Id. at 1152.

The government has a "particularized relevance" standard under Fed.R.Crim 17(c) because of the First Amendment concerns involved in subpoenaing the information from a journalist. *See, R. Enterprises,* 498 U.S. at 304 (declining to address whether there is a "particularized relevance" standard under rule 17; *In re Grand Jury Subpoena*, 829 F.2d at 1296-1301 (applying heightened scrutiny in Rule 17(c) balance because of First Amendment concerns). The government is allegedly investigating a possible crime under 18 U.S.C. ¶ 844(f). The government admits that it has obtained Mr. Wolf's "recordings of the July 8th protest activity". Finigan's Dec. 2:4-5. The government has argued that it is seeking peripheral, or speculative information in violation of the law.[2] See , Hearing Transcript before Maria Elena James, 11:19-25. The reason the government is arguing based on speculative information is because it has failed to exhaust all other sources based on the recording they do have before seeking information from Mr. Wolf. The government can learn what Mr. Wolf knows by replicating Mr. Wolf's knowledge, e.g., speaking to witnesses identified in the edited video tape, speaking with the SFPD and reviewing the preliminary hearing in state court of people being prosecuted for the July 8, 2005 events. *See Zerilli v. Smith*, 656 F.2d 705, 712-14 (D.C. Cir. 1981); *United States v. Ahn*, 231 F.3d 26, 37 (D.C. Cir. 2000); *Carey v. Hume*, 492 F.2d 631, 636-37 (D.C. Cir. 1974); 28 C.F.R § 50.10 [emphasizing the balancing of the need for the evidence, and exhaustion of alternative sources]. The subpoena is not particularly relevant to the investigation of 18 U.S.C. ¶ 844(f) in therefore is in violation of Rule 17(c) because the government already has the recording and it has not exhausted alternative sources before trying to infringe on Mr. Wolf's First Amendment rights.

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[2] "In criminal cases, there should be reasonable grounds to believe, based on information obtained from nonmedia sources, that a crime has occurred, and that the information sought is essential to a successful investigation-particularly with reference to establishing guilt or innocence. The subpoena should not be used to obtain peripheral, nonessential, or speculative information." 28 C.F.R. § 50.10(f)(1).

C. The Government Admits As It Must That It Already Has In Its Possession The Information Being Sought

Under Federal Rule of Criminal Procedure 17(c), a subpoena that is unreasonable and oppressive is unenforceable. The subpoena in this case is oppressive. The government has the published video footage[3], the state police report, the help of the state investigators, and now has the state preliminary hearing transcripts of what occurred on July 8, 2005. There is no compelling reason for the prosecutor to cast his fishing line in Movant's pool that is protected by the First Amendment. The government can learn what Mr. Wolf knows by replicating Mr. Wolf's knowledge, e.g., speaking to witnesses identified in the edited video tape, speaking with the SFPD and reviewing the preliminary hearing transcripts in state criminal proceedings. *See Zerilli v. Smith*, 656 F.2d 705, 712-14 (D.C. Cir. 1981); *United States v. Ahn*, 231 F.3d 26, 37 (D.C. Cir. 2000); *Carey v. Hume*, 492 F.2d 631, 636-37 (D.C. Cir. 1974); 28 C.F.R § 50.10 [emphasizing the balancing of the need for the evidence, and exhaustion of alternative sources].

A civil litigant's ability to overcome journalists' qualified First Amendment privilege should be the exception not the rule, and a rare exception at that. "Indeed, if the privilege does not prevail in all but the most exceptional cases, its value will be substantially diminished. Unless potential sources are confident that compelled disclosure is unlikely, they will be reluctant to disclose any confidential information to reporters." *Zerilli v. Smith*, 656 F.2d 705, 712 (D.C. Cir. 1981). "[R]outine court-compelled disclosure of research materials poses a serious threat to the vitality of the newsgathering process." *Shoen v. Shoen,* 48 F.3d 412, 416 (9th Cir. 1995) (*Shoen II*). *See also Mitchell*, 37 Cal. 3d at 277.

At a minimum, the qualified First Amendment privilege requires that all alternative sources of information be exhausted before the privilege has been overcome and a subpoena may

be directed at a journalist. "The values resident in the protection of the confidential sources of newsmen certainly point towards compelled disclosure from the newsman himself as normally the end, and not the beginning, of the inquiry." *Carey v. Hume*, 492 F.2d 631, 638 (D.C. Cir. 1972). This obligation to exhaust all alternative sources may not be ignored simply because of a fear that it would be "time-consuming, costly, and unproductive." *Zerilli*, 656 F.2d 705. Because the plaintiff in this case has not exhausted all alternative sources of the information they seek, they cannot overcome the qualified privilege.

The Ninth U.S. Circuit Court of Appeals has held that "[o]nce the privilege is properly invoked, the burden shifts to the requesting party to demonstrate a sufficiently compelling need for the journalist's materials to overcome the privilege. *At a minimum, this requires a showing that the information sought is not obtainable from another source*." *Shoen I*, 5 F.3d at 1296 (emphasis added). Even where non confidential information is at issue, the Ninth Circuit's test for overcoming the qualified privilege requires exhaustion. *Shoen II*, 48 F.3d at 416.[5] Requested material must be "(1) unavailable despite exhaustion of all reasonable alternative sources; (2) noncumulative; and (3) clearly relevant to an important issue in the case. We note that there must be a showing of actual relevance; a showing of potential relevance will not suffice." *Id*. The U.S. Department of Justice guidelines for issuance of subpoenas to the news media require that "[a]ll reasonable alternative attempts should be made to obtain information from alternative sources before considering issuing a subpoena to a member of the news media." 28 C.F.R. § 50.10 (b).

Courts that have addressed the exhaustion requirement of the qualified privilege have applied it very strictly. In *Shoen I*, the Ninth Circuit held that the privilege had not been

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[3] Finigan Dec.

overcome because one of the parties had not been deposed, although he had been served with "written interrogatories which produced uninformative answers." 5 F.3d at 1296. "Written interrogatories are rarely, if ever, an adequate substitute for a deposition when the goal is discovery of a witness' recollection of conversations." *Id*. at 1297. In *Zerilli*, the D.C. Circuit found that the privilege had not been overcome because identified witnesses had not been deposed. 656 F.3d at 125-6.

> At the very least, they could have deposed the four employees who had the greatest knowledge about the logs. It is quite possible that interviewing these four individuals could have shed further light on the question whether the Justice Department was responsible for the leaks. Nor can appellants escape their obligation to exhaust alternatives because they were willing to accept the Justice Department's statement that an internal investigation had not revealed any wrongdoing by employees. Permitting this kind of gamesmanship would poorly serve the First Amendment values at stake here.

Id. The court noted that "the taking of as many as 60 depositions might be a reasonable prerequisite to compelled disclosure." *Id*. at 714 (citing *Carey*, 492 F.2d at 639). *See also Star Editorial v. U.S. District Court*, 7 F.3d 856, 861 (9th Cir. 1993) (finding privilege overcome only when all non-confidential sources had been deposed); *New York Times Co. v. Gonzales*, 2005 WL 427911, 47 (Privilege not overcome when "the government has tacitly acknowledged that it possesses the wherewithal to search its own internal records."); *Condit v. National Enquirer*, 289 F.Supp.2d 1175, 1180 (E.D.Cal. 2003) ("Plaintiff is not required to depose everyone in the Justice department to locate the source, but plaintiff must make some reasonable attempt to exhaust that alternative source."); *Rogers v. Home Shopping Network*, 73 F.Supp.2d 1140, 1145-6 (C.D.Cal. 1999) (Privilege not overcome despite ten depositions, including all eyewitnesses, because other potential witnesses on the premises or with knowledge not deposed); *Food Lion*, 1996 WL 575946, 2 (Privilege not overcome when plaintiff had access to more than 100

identified witnesses and requested discovery of news media records to find discrepancies); *Los Angeles Memorial Coliseum Commission v. National Football League*, 89 F.R.D. 489, 494 (C.D.Cal. 1981) (Privilege not overcome where requesting party failed to show exhaustion); *But see Anti-Defamation League v. Superior Court*, 67 Cal.App.4th 1072, 1095 (Cal. Ct. App. 1998) (Finding exhaustion after defendants, named sources and one other witness deposed, but not requiring further discovery from government agency that was the source of leaked information).

The government in this case has failed to exhaust all alternative sources of obtaining the needed information, so the non-party journalists' qualified First Amendment privilege to prevent disclosure of their confidential sources has not been overcome and OSC re: civil contempt should be denied.

D. The Government Admits Having Mr. Wolf's Recording And Mr. Wolf Has Asserted His First, Fourth, and Fifth Amendment Right Against Self Incrimination As A defense To Compliance

1. Fifth Amendment Right Against Self Incrimination

Mr. Wolf has asserted his Fifth Amendment Right against self incrimination at the June 15, 2006 court hearing and grand jury proceedings of said date. Mr. Wolf once again through counsel invokes his Fifth Amendment Right against self incrimination in this pleading. Mr. Wolf has submitted for in camera review the foundational basis for invoking the Fifth Amendment. The Fifth Amendment privilege against compelled self-incrimination is rooted in the federal Constitution and a defense to a grand jury subpoena. *Branzburg*, 408 U.S. at 689-90, 92 S.Ct. 2646.

2. Fourth Amendment Right

Mr. Wolf is entitled to protection under the Fourth Amendment. The Fourth Amendment requires that the request for the production of documents by subpoena be reasonable and not oppressive. A grand jury cannot compel production of documents through a subpoena duces tecum if that production is unreasonable or oppressive. Federal Rule of Criminal Procedure17(c); *U.S. v. United States District Court,* 238 F2d 713 (4th Cir. 1956), *cert denied*, 352 US 981 (1957). "[I]t is beyond cavil that the touchstone of [the court's] analysis under the Fourth Amendment is always the reasonableness in all the circumstances of the particular governmental invasion..." Justice Sandra Day O'Connor, dissenting in *Atwater v. Lago Vista*, 532 U.S. 318, 360 (2001). A court should "evaluate the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *See* also, *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999).

In the case at bar, the government asserts, incorrectly, that it is undisputed that a fire was started beneath an SFPD patrol vehicle on July 8, 2004. In fact, video posted on the internet,[4] available to the government, and in fact already obtained by FBI Special Agent Suzanne G. Solomon, shows bright red-orange smoke – obviously from a smoke bomb, not burning foam – billowing from beside a piece of foam which a police car is parked on top of. Other posted video shows protesters carrying the foam, which was used as a sign. And the fact that police car's front wheels drove over it puts the lie to the claim that it in any way immobilized the police car. It is only several inches high. No police car burned. Not even slightly. It is unclear whether any foam even burned. So the claim that any fire was started – much less started deliberately, in circumstances where two cowboy police officers drove their car at a high rate of speed through a crowd on a dark street, causing people to drop what they were carrying and

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[4] The video is accessible at: http://ia300117.us.archive.org/0/items/JoshWolfAllEmpiresMustFall/AllEmpiresMustFall.mov

scatter for safety, then jumped out and, by theirs and the SFPD's own admission, started swinging their batons indiscriminately, choking one man and punching another – is very much disputed.

The government's subpoena of video from a photographer who submits his work to, among other outlets, indymedia – one of the groups the government has now outrageously and bullyingly labeled a terrorist organization – is a huge, and by its very nature, extremely chilling, intrusion on his liberties in service of an extremely faint government interest – if one actually takes the asserted interest at face value, which for the reasons stated above, one cannot. (Faint because (1) the evidence the government admits to possessing shows that it has no jurisdiction under 18 U.S.C. ¶ 844(f), (2) the San Francisco District Attorney can and is handling the matter, and has recourse to local grand jury proceedings if she wants to use them, and (3) the government admits that it is endeavoring to aid local police and a local prosecution – a plain misuse of the Grand Jury and violation of Fed. R. Crim. P. Rule 6.

3. Branzburg's First Amendment Ruling Does Not Preclude Rule 501's Post-Branzburg Ruling To Develop Federal Common-Law Privileges

Three years after the 1975 *Branzburg* decision, Congress enacted the Federal Rules of Evidence-including Rule 501, which governs evidentiary privileges Rule 501 explicitly establishes new standards that did not exist when the Court decided *Branzburg* and "authorizes federal courts to define new privileges by interpreting 'common law principles… in the light of reason and experience.'" *Jaffee v. Redmond*, 518 U.S. 1, 8 (1996)(quoting Rule 501). As of today, "forty-nine states and the District of Columbia, as well as federal courts and federal government, support recognition of a privilege for reporters' confidential sources." *In Re: Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141, 1172 (D.C. Cir. 2006).

Accordingly, reason and experience demonstrate that the interest at stake here are even more powerful than those in *Jaffee*. Even thought the case did not implicate a constitutional right, the Court in *Jaffee* recognized that the psychotherapist's privilege serves "[t]he mental health of our citizenry," which it characterized as "a public good of transcendent importance." 518 U.S. at 11. But a reporter's privilege foster First Amendment freedoms and serves the health

of our democracy and the ability of our citizenry "to make informed political, social, and economic choices." *Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981).

Allowing prosecutors and grand juries unlimited ability to subpoena reporters for unpublished material, such as a reporter's drafts and notes, raises similar problems. Journalist would be less likely to create and retain detailed records of newsgathering, and sources will speak much less freely in the face of such threats. *See Zerilli*, 656 F.2d at 712. Indeed the United States Department of Justice has recognized this danger and adopted a policy and guideline to respect a reporter's privilege. *See* 28 C.F.R. § 50.10. The Guideline admonishes:

> Because freedom of the press can be no broader than the freedom of reporters to investigate and report the news, the prosecutorial power of the government should not be used in such a way that it impairs a reporter's responsibility to cover as broadly as possible controversial public issues. This policy statement is thus intended to provide protection for the news media from forms of compulsory process, whether civil or criminal, which might impair the news gathering function.

The Third Circuit in *Riley v. Chester*, 612 F.2d 708 (3d. Cir. 1979) recognized a reporter's privilege under Rule 501. "The strong public policy which supports the unfettered communication to the public of information, comment and opinion and the Constitutional dimension of that policy, expressly recognized in *Branzburg v. Hayes*, lead us to conclude that journalists have a federal common law privilege, albeit qualified, to refuse to divulge their sources." Id. at 715.

With respect to unpublished information that does not relate to the identity of a source, the Court should follow California State law reasoning in adopting a qualified privilege, which requires the court to balance competing interests on a case-by-case basis. The California Supreme Court in *Delaney v. Superior Court* (Kopetman) 50 Cal.3d 785, 96-97 summarized the shield law: "Stated more simply, article I, section 2(b) protects a newsperson from being adjudged in contempt for refusing to disclose either: (1) unpublished information, or (2) the source of information, whether published or unpublished." Moreover, "unpublished information" includes "a newsperson's unpublished, nonconfidential eyewitness observations of an occurrence in a public place." Id. at 797. The California Supreme Court in Delaney went on to recognize that in some cases, a defendant might be able to justify piercing the shield law if necessary to

safeguard the defendant's constitutional fair trial rights. Id. at 805. The defendant would first have to show a "reasonable possibility" that the information sought would materially assist his defense. *Id*. at 808. The burden is on the criminal defendant to make that showing. *Id.* at 809. The defendant's showing "must rest on more than mere speculation." *Ibid*. If the defendant meets the threshold requirement of showing a reasonable possibility the information would assist his defense, the court must then balance the defendant's and newsperson's interests. *Id*. at 809. One factor to consider is whether there is an alternative source for information. *Id*. at 811-12. Another factor to consider is whether the information sought "goes to 'the heart of defendant's case.'"

In contrast to the balancing test under *Delaney*, the California Supreme Court has ruled that the shield law is absolute when the district attorney seeks evidence from a newsperson. *Miller v. Superior Court* (1999) 21 Cal.4th 883, 887. The Court in *Miller* considered, and rejected, the prosecution's claim that it had the right to compel a newsperson's testimony: "Nor may we convert an absolute into a qualified immunity merely because it is in accord with a particular conception of the proper balance between journalists' rights and prosecutor's prerogatives. Thus, the absoluteness of the immunity embodied in the shield law only yields to a conflicting federal or, perhaps, state constitutional right. As explained, there is no such conflicting right presented in this case." *Id*. at 901. Thus, the Court ruled that a newsperson could not be held in contempt for refusing to surrender unpublished information sought by the prosecutor.

The Ninth U.S. Circuit Court of Appeals has also recognized a qualified First Amendment privilege. *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993) (*Shoen I*). "Rooted in the First Amendment, the privilege is a recognition that society's interest in protecting the integrity of the newsgathering process, and in ensuring the free flow of information to the public, is an interest 'of sufficient social importance to justify some incidental sacrifice of sources of facts needed in the administration of justice.'" *Id*. (quoting *Herbert v. Lando*, 441 U.S. 153 (1979) (Brennan, J., dissenting) (internal quotation omitted)). "A civil defamation lawsuit is important. But it is not the only thing that is important." *Id*. at 1302 (Kleinfeld, J., concurring).

See also New York Times Company v. Superior Court, 51 Cal.3d 453, 456 (1990) (holding that while the absolute protection provided by California's shield law may be overcome in a criminal case based on a defendant's constitutional right to a fair trial, there is no similar right sufficient to overcome the shield law in a civil personal injury action).

The Ninth Circuit went on to say "[w]e held in Farr that the journalist's privilege recognized in *Branzburg* was a "partial First Amendment shield" that protects journalists against compelled disclosure in all judicial proceedings, civil and criminal alike. *Farr*, 522 F.2d at 467. Nevertheless, we stressed that the privilege is qualified, not absolute, and held that the process of deciding whether the privilege is overcome requires that "the claimed First Amendment privilege and the opposing need for disclosure be judicially weighed in light of the surrounding facts, and a balance struck to determine where the paramount interest lies." Id. at 468." *Shoen*, 5 F.3d 1292-93.

III. CONCLUSION

The California approach resembles the policy endorsed by the Justice Department, and the methodology employed by state legislature and state and federal courts throughout the country. This Court should hold that there is a federal common-law reporter's privilege and Mr. Wolf can not be held in contempt because he has asserted a valid privilege under state and federal law.

July 17, 2006

Respectfully Submitted

Siegel & Yee

By: _____
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