No. 99-1687 and 99-1728

IN THE SUPREME COURT OF THE UNITED STATES

GLORIA BARTNICKI AND ANTHONY F. KANE, JR.,
Petitioners,

v.

FREDERICK W. VOPPER, et al.
Respondents.

UNITED STATES OF AMERICA,
Petitioner

V.

FREDERICK W. VOPPER, et al.,
Respondents.

BRIEF AMICI CURIAE OF MEDIA ENTITIES AND ORGANIZATIONS IN SUPPORT OF RESPONDENTS

FILED October 25th, 2000

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici and their members are involved in the gathering and reporting of news to the American public.[1] The media entities and organizations that submit this brief include the publishers of newspapers, including *The New York Times*, *The San Diego Union-Tribune*, *USA Today*, the *Houston Chronicle*, the *Miami Herald*, the *Denver Rocky Mountain News*, the *Chicago Tribune*, and the *Washington Post*; magazines, including *The New Yorker*, *Business Week*, and *Time*; national broadcast news networks, including ABC, Inc., CBS Broadcasting Inc., National Broadcasting Company, Inc., and Cable News Network; the Associated Press; and associations that defend First Amendment rights, including the Magazine Publishers of America, Inc., the Newspaper Association of America, the Pennsylvania Newspaper Association, the Radio-Television News Directors Association, the Reporters Committee for Freedom of the Press, and the Society of Professional Journalists. A more detailed statement of the *amici* is annexed to this brief.

Amici are vitally interested in and deeply concerned about any ruling that could result in the imposition of sanctions against journalists for reporting truthful matters of public significance about which they become aware as a result of entirely lawful and wholly routine newsgathering efforts. This case raises that spectre and *amici* submit this brief to set forth their views as to why the judgment of the Court of Appeals for the Third Circuit should be affirmed.

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[1] No counsel for any party in this case authored this brief in whole or in part, and no person or entity other than *amici curiae* and its members made any monetary contribution to the preparation or submission of this brief. Sup. Ct. R. 37.6. The parties have consented to the filing of this brief; letters of consent have been filed with the Clerk of this Court. Sup. Ct. R. 37.3.

INTRODUCTION

From the time individuals first consider becoming journalists, two principles are drilled into them. Both are at risk in this case.

The first is that telling the truth about matters of public interest is what journalism, at its best, is all about. Journalists who consult codes of ethics written about their chosen field read the repeated exhortation that their role is to "seek truth and report it"[2] and that "truth is [their] guiding principle."[3] Journalists employed at newspapers, magazines and broadcasters are instructed that "the most important" quality of any story "is accuracy,"[4] that "above all," a publication "must be factually accurate,"[5] and that "[t]he principle[ ] of accuracy" stands "at the very heart of journalism."[6] Journalists who read the writings of the most thoughtful and accomplished leaders of their community learn that while news is "at most a provisional kind of truth, the best that can be said quickly," the judgment journalists make about what is true "stands near the very center of the press's social purpose in a self-governing society."[7] It should come as no surprise, then, that journalists who read opinions of this Court find unsurprising this Court's repeated references to "the overarching public interest, secured

[2] *Society of Professional Journalists Code of Ethics* 1 (revised and adopted, 1996).

[3] *Associated Press Managing Editors Code of Ethics* 1 (revised and adopted, 1995).

[4] *Time Inc. Editorial Guidelines* 11.

[5] *The Business Week Editorial Handbook* 5.

[6] Jay Black, et al., *Doing Ethics in Journalism* 43 (1993).

[7] Jack Fuller, *News Values* 5 (1996); *see also* David S. Broder, *Behind the Front Page* 19 (1987) ("[t]he way we cover news is to dig for facts, in hopes that they will yield an approximation of truth").

by the Constitution, in the dissemination of truth." *The Florida Star* v. *B.J.F.*, 491 U.S. 524, 533 (1989) (citation and internal quotation omitted). That public interest is directly imperiled in this case.

So is the journalistic norm that in the course of gathering news, journalists should affirmatively seek the truth from those who have it—including people who may themselves be subject to constraints limiting their ability to speak. This applies to the gathering of news both about government and about the private sector. To offer only a few examples:

- When journalists who attended a press conference called by a candidate who had lost a judicial election at which the losing candidate played allegedly incriminating tapes of telephone conversations of the victorious candidate, they published the information, notwithstanding that anyone who engaged in wiretapping was plainly guilty of a federal and state crime;[8]
- When the *Virginian Pilot* learned from various participants in a confidential judicial disciplinary proceeding, that charges of incompetence against a juvenile court judge were under consideration, the newspaper published an article identifying the judge notwithstanding that the sources (and the newspaper itself) were subject to criminal sanctions for revealing the information;[9]

[8] *See Keller v. Aymond*, 722 So.2d 1224 (La. Ct. App. 1998), *writ denied*, 742 So.2d 551, 552 (La. 1999), *cert. denied sub nom. Central Newspapers, Inc. v. Johnson*, 120 S. Ct. 397 (1999).

[9] *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978). *See* Appendix at 46a, *Landmark Communications, supra* (No. 76-1450) ("*Landmark Communications* Appendix") (containing article referring to sources). *See also Nicholson v. McClatchy Newspapers*, 177 Cal. App. 3d 509, 223 Cal. Rptr. 58 (Cal. Ct. App. 1986)

- When a journalist was provided with information relating to potentially corrupt conduct of a United States senator based upon documents illicitly (and probably illegally) obtained by one of the senator's aides from the senator's files, the information was duly published;[10]
- When highly classified documents were made available to journalists that revealed information about such subjects as how the United States became embroiled in the Vietnamese conflict,[11] how the FBI's Surreptitious Entry Program routinely breaks into houses, offices, and warehouses,[12] and how the United States had masterminded a 1953 coup d'etat in Iran,[13] the information was published notwithstanding that the sources were not authorized to reveal the information and could have been subject to criminal or civil sanctions for doing so; and
- When the *New York Times* was provided with secret, internal documents of a cigarette company revealing its knowledge of significant health risks of that product far earlier than had previously been publicly disclosed, the newspaper published an article based on the documents

(sustaining demurrer to suit against newspaper and reporters for publishing article about confidential fact that Commission on Judicial Nominees Evaluation had found plaintiff not qualified for judicial appointment).

[10] *Pearson v. Dodd*, 410 F.2d 701 (D.C. Cir.), *cert. denied*, 395 U.S. 947 (1969).

[11] *New York Times Co. v. United States*, 403 U.S. 713 (1971).

[12] David Burnham, *Above the Law* 130-34 & n. 1 (1996).

[13] James Risen, *The C.I.A. in Iran—A Special Report: How a Plot Convulsed Iran in '53 (and in '79)*, N.Y. Times, Apr. 16, 2000, at A1.

notwithstanding the claims of the company that the documents had been stolen by a paralegal and were subject to a judicial protective order that bound at least the paralegal.[14]

We wish to be clear: As this Court is well aware, journalists do not publish every scrap of truthful information they receive, even if the information is newsworthy.[15] But they do proceed on the understanding that they are entitled to seek information from those that have it and that they may print or broadcast the truthful and newsworthy information that they lawfully gather.

For journalists, then, the notion that liability may be imposed upon them for doing nothing more or less than reporting truthfully about newsworthy events is deeply disturbing. While not all journalists are aware of the judicial provenance of Justice Stewart's observation that "[t]hough government may deny access to information and punish its theft, government may not prohibit or punish the publication of that information once it falls into the hands of the press . . . ,"[16] they are well aware

[14] Phillip J. Hilts, *Tobacco Company Was Silent on Hazards*, N.Y. Times, May 7, 1994, at A1.

[15] To cite only two examples, no journalistic organization published the fact (which was well known in the journalistic community) that during the lengthy period in which Iranian "students" held many Americans hostage after the revolution in that country in 1979, some Americans were being protected in the Canadian embassy in Teheran. Nicholas Lemann, *Keeping the Secret: Many Reporters Were Silent On Escapees' Whereabouts*, Wash. Post, Jan. 31, 1980, at A1. Similarly, newspapers and broadcasters, at the request of the CIA, refrained from publishing truthful information in their possession about ongoing efforts of the United States to recover Soviet hydrogen-warhead missiles and code books from a sunken Russian submarine. *See* Tom Wicker, *On Press*, 213-23 (1978).

[16] *Landmark Communications*, 435 U.S. at 849 (Stewart, J., concurring).

of the applicability of that principle to their professional lives. Yet that concept too is at risk in this case.

Here, two union leaders (one the union's president, the other its chief negotiator), engaged in a telephone call in which the union's president told his colleague that unless a sufficient pay increase was offered by city officials, "we're gonna have to go to their, their homes . . . to blow off their front porches, we'll have to do some work on some of those guys. . . ." Joint Appendix at 46.

There can be no doubt that a broadcast accurately reporting that threat is highly newsworthy. Indeed, there can be no doubt that if someone who was concealed (inadvertently or purposefully) near the union's president had heard him make that threat and had advised a journalist of what he had heard, that no liability could possibly be imposed on the *journalist* for accurately publishing the threat. Here, however, radio stations and a journalist have been sued for doing no more than broadcasting a tape of the conversation that all agree was made by an unknown third person who made it available to an opponent of the teachers' union who, in turn, made it available to the stations.

The central issue presented by this case is thus straightforward. It is whether journalists and their organizations may be sanctioned for doing nothing more than accurately recounting wiretapped conversations made available to them, which they had no direct or indirect role in obtaining. We believe that they may not and that the decision of the Third Circuit should be affirmed.

SUMMARY OF ARGUMENT

This brief maintains that the decision below should be affirmed based upon the analysis set forth by this Court in the line of cases culminating in *The Florida Star* v. *B.J.F.*, 491 U.S. 524 (1989). The rule of the *Florida Star* line of precedent is that "where a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a State interest of the highest order . . . ." *Id.* at 541; *see also Smith* v. *Daily Mail Publishing Co.*, 443 U.S. 97 (1979); *Landmark Communications, Inc.* v. *Virginia*, 435 U.S. 829 (1978); *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975). (Point I.A., *infra.*)

In this case, the conduct of the media respondents falls well within the zone of the First Amendment protection articulated in *Florida Star*. The wiretapping statute at issue violates the First Amendment since it is not narrowly tailored to a state interest of the highest order. The interests asserted in defense of the wiretapping statute—primarily that of protecting the privacy of telephone conversations—are plainly significant but are no more compelling than the interests at issue in *Cox Broadcasting* (privacy of the identity of rape victims); *Florida Star* (same); *Landmark Communications* (reputational interests of judges and judicial integrity); and *Daily Mail* (anonymity of juvenile offenders for purposes such as rehabilitation). Moreover, the legislative history does not support the proposition that Congress viewed publication or disclosure of wiretapped materials by unrelated third parties as central to the purpose of outlawing wiretaps. The broad ban on *any* dissemination by *anyone* coming into possession of the materials regardless of the circumstances establishes a *per se* rule of liability that cannot coexist with the First Amendment. Finally, the legislative landscape is far from uniform in the states: twenty-one states do not provide any civil remedy against third parties who disseminate wiretapped communications. (Point I.B., *infra.*) If there is any case in which liability could constitutionally be imposed on the

press for truthfully reporting newsworthy information that it lawfully obtained, it is not this one.

Petitioners' argument that the *Florida Star* line of cases is rooted in this Court's concern over content-based statutes misses the mark. Nothing in this line of authority even discusses such a concern. Instead, the *Florida Star* line of precedent is based upon "the overarching public interest, secured by the Constitution, in the dissemination of truth." *Florida Star*, 491 U.S. at 533-34. (Point II.A., *infra.*)

Finally, we demonstrate that Petitioners likewise fail in their effort to establish that the information at issue here was "unlawfully obtained" by the media respondents. There is no issue here of the media respondents acting in concert with the original source. Nor does the statute at issue make unlawful the receipt of wiretapped information. *See Florida Star*, 491 U.S. at 536 (noting likewise that Florida had not taken the step of proscribing the receipt of information). Moreover, sanctioning the press for publishing information that may ultimately have been unlawfully obtained by a source unconnected to the press would violate the First Amendment. (Point II.B., *infra.*)

ARGUMENT

I. THE DECISION OF THE THIRD CIRCUIT SHOULD BE AFFIRMED BASED ON *FLORIDA STAR*

We start with the ruling in *Florida Star* itself. In that case, this Court considered the constitutionality of a Florida statute making it unlawful to " 'print, publish or broadcast . . . in any instrument of mass communication' " the name of a rape victim. *Florida Star*, 491 U.S. at 526. The case presented a painful conflict between the

First Amendment and the privacy interests asserted by the rape victim. Those interests were substantial. They included not only the privacy of victims of sexual offenses but the physical safety of such victims and the goal of encouraging victims to report such crimes without fear of exposure (*id.* at 537). Nonetheless, after reviewing relevant precedent, this Court held as follows:

> "[W]here a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order . . . ."

Id. at 541. The Court then ruled that even the weighty interests urged by the State in that case failed to meet this demanding standard. *Id.* As set forth below, the determination in *Florida Star* should lead this Court to rule similarly.

A. This Court's Jurisprudence Culminating in *Florida Star*

A trilogy of cases led to *Florida Star*. In each, a different state interest of substance was asserted as a basis for making truthful speech illegal. In each, the statute at issue was held unconstitutional. The first of the three was *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975). In that case, this Court considered the constitutionality of a Georgia statute that made it a misdemeanor to publish or broadcast the name of a rape victim. A reporter covering the underlying rape/murder trial had learned the name of the victim through examining the indictments that were part of the public record, and included the victim's name in a news report that was broadcast. *Id.* at 473-74. This Court noted the "powerful arguments" that could be made to protect the privacy of individuals and the "strong tide running in favor of the so-called right of privacy." *Id.* at 487-88. Nonetheless, in the "face-off" between the devel-

oping concept of privacy and "the constitutional freedoms of speech and the press" (*id.* at 489) rooted in the Constitution's protection of the "dissemination of truth," (*id.* at 491, quoting *Garrison* v. *Louisiana*, 379 U.S. 64, 73 (1964)), the Court resolved the conflict in favor of the First Amendment. Without reaching the ultimate issue of whether privacy interests could ever trump the right of the press accurately to report on matters of public concern, the Court held the statute unconstitutional on the ground that "the First and Fourteenth Amendments will not allow exposing the press to liability for truthfully publishing information released to the public in official court records." 420 U.S. at 496.

In *Landmark Communications, Inc.* v. *Virginia*, *supra*, the Court again considered a clash between an asserted need for confidentiality and the First Amendment. At issue was Virginia's statutory scheme regarding judicial disciplinary procedures, which were deemed confidential by law until a formal complaint was filed. Virginia provided that "divulging" or "publishing" confidential information from the Judicial Inquiry and Review Commission by anyone, including third parties not themselves involved in the proceedings, was a criminal violation. 435 U.S. at 836. The rationale asserted for confidentiality was three-fold: to encourage the filing of complaints; to protect judges from the injury that might result from the publication of unwarranted complaints; and to protect judicial integrity. *Id.* at 835.

The *Virginian Pilot*, a Norfolk newspaper, published a truthful article about a pending confidential inquiry by the Commission into charges of incompetence made against a juvenile court judge. The article accurately named the judge under investigation and published a photograph of him. The material in the article about the confidential proceeding was based upon information pro-

vided it by unidentified sources who were themselves barred from revealing what they knew—including one that the article described as "a lawyer subpoenaed to appear at the hearing."[17] The newspaper was found guilty of violating Virginia law. *Id.* at 832. In striking down the statute, this Court concluded that: "[T]he publication that Virginia seeks to punish under its statute lies near the core of the First Amendment, and the Commonwealth's interests advanced by the imposition of criminal sanctions are insufficient to justify the actual and potential encroachments on freedom of speech and of the press which follow therefrom." *Id.* at 838.

A year later, in *Smith* v. *Daily Mail Publishing Co.*, *supra*, the Court addressed the constitutionality of a West Virginia statute that made it a crime for a newspaper to publish the name of a youth charged as a juvenile offender without the approval of the juvenile court. There, reporters for two papers, through interviewing witnesses, the police, and attorneys, learned the name of a youth charged with murder at a school and their newspapers published the youth's name. At the outset of its analysis, this Court noted that "[o]ur recent decisions demonstrate that state action to punish the publication of truthful information seldom can satisfy constitutional standards." 443 U.S. at 102. The Court then examined its decisions in *Cox Broadcasting*, *Landmark Communications*, and *Oklahoma Publishing Co.* v. *District Court*, 430 U.S. 308 (1977),[18] and concluded that these cases:

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[17] *Landmark Communications* Appendix at 46a.

[18] In *Oklahoma Publishing*, this Court struck down a state court injunction prohibiting the news media from publishing the name or photograph of a young boy being tried in juvenile court. 430 U.S. at 311-12. The juvenile court had permitted reporters into the hearing where they learned the information, despite a state statute closing such trials to the public. *Id.* at 309.

> "suggest strongly that if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order."

Daily Mail, 443 U.S. at 103. The Court held that the state's interest in protecting the anonymity of youthful offenders—an interest that was not only of an immediate reputational nature but that related to the ability of the child to rejoin society after the imposition of any sanction imposed by the juvenile court—was not of sufficient magnitude when weighed against the First Amendment. *Id.* at 104.

In *Florida Star*, this Court again reviewed the constitutional principles set forth above within the context of a conflict between privacy and the First Amendment. In *Florida Star*, a newspaper reporter learned the name of a rape victim from a police report that was left by error in the police department's press room. The newspaper published a news account of the rape in its "Police Reports" section, including the name of the victim. A Florida statute at the time made it unlawful to "print, publish, or broadcast . . . in any instrument of mass communication" the name of the victim of a sexual assault. In a lawsuit brought by the victim, damages were awarded against the newspaper for negligently violating this provision. 491 U.S. at 528-29.

In holding that the Florida statute could not be applied consistent with the Constitution, this Court again articulated the First Amendment principle set forth in *Daily Mail* and its synthesis of prior case law: " '[I]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish the publication of the information, absent a need to further a state interest of the highest order.' " *Florida Star*, 491 U.S. at 533 (quoting *Daily Mail*, 443 U.S. at 103). The Court found that interests said to be served by the Florida statute—the protection of the privacy of victims, the protection of the physical safety of victims, and the encouragement of victims to report such crimes (491 U.S. at 537)—were insufficient in the context of the case to constitute a state interest of such magnitude so as to trump the First Amendment. *Id.* at 537-41.

B. The Wiretapping Statute at Issue Is Not Narrowly Tailored to a State Interest of the Highest Order

Considering *Florida Star* together with the trilogy of cases that predated and led to it, it is apparent that the government cannot demonstrate that the imposition of civil and criminal sanctions in the wiretapping statute for any "use" or "disclosure" of any wiretapped information can pass constitutional muster.[19]

For one thing, the interests held insufficient to be characterized as state interest "of the highest order" in the cases we have just summarized are hardly less substantial than those asserted here. Consider the substantiality of the three interests asserted in *Florida Star* itself: the privacy of victims, the physical safety of victims, and the desire to encourage victims to report such crimes. This Court acknowledged their import while nonetheless concluding that "imposing liability for publication under the circumstances of this case" was "too precipitous a means of advancing these interests to con-

[19] *See* 18 U.S.C. § 2511(1)(c)-(d) (1994). The Pennsylvania statute at issue is similar in all material aspects to the federal provisions; thus it will not be separately addressed.

vince us that there is a 'need' within the meaning of . . . *Daily Mail* . . . ." 491 U.S. at 537.[20]

Likewise, in *Cox Broadcasting*, the statutory and common-law provisions were strongly defended based upon the importance of protecting privacy interests. This Court noted that the privacy interests asserted "are not without force, for powerful arguments can be made . . . that however it may be ultimately defined, there is a zone of privacy surrounding every individual, a zone within which the State may protect him from intrusion by the press, with all its attendant publicity." 420 U.S. at 487. Despite this interest and "a strong tide running in favor of the so-called right of privacy" (*id.* at 488), this Court sustained the First Amendment right to publish information located in official court records, even if sensitive, embarrassing, or otherwise protected from disclosure by state law. *Id.* at 496.

In *Daily Mail*, the Court considered the privacy-related interest of protecting the anonymity of the juvenile offender, as well as the related interest in rehabilitation of the youth. 443 U.S. at 104. While the Court did not question the preservation of anonymity as a matter of policy, it nevertheless held that "[t]he magnitude of the State's interest in this statute is not suffi-

[20] The Court in *Florida Star* provided as a related supportive citation the ruling in *Landmark Communications*, which it described parenthetically as "invalidating penalty on publication despite State's expressed interest in nondissemination, reflected in statute prohibiting unauthorized divulging of names of judges under investigation." 491 U.S. at 537-38. It is noteworthy that in *Landmark Communications* itself, Justice Stewart concluded that "[t]here could hardly be a higher governmental interest than a State's interest in the quality of its judiciary." 435 U.S. at 848 (Stewart, J., concurring). Justice Stewart then concluded that notwithstanding the significance of that State interest, the statute still could not be sustained.

cient to justify application of a criminal penalty to respondents." *Id.*[21]

Here too, we urge the Court to hold that the privacy interests asserted by Petitioners are not "narrowly tailored to a state interest of the highest order . . . ." *Florida Star*, 491 U.S. at 541. Not only are the interests asserted here no more powerful than those asserted in *Florida Star* and its companion cases—why, after all, is the right of a rape victim not to have her name disclosed *less* significant than that of a union official not to have a telephone call disclosed in which he threatened to engage in criminal conduct?—but for each of the following reasons, this is not the "extraordinary situation, if any" in which the First Amendment should be deemed to permit punishment of the publication of truthful information.

First, the legislative history of the wiretapping law leaves considerable doubt that Congress viewed the need to bar *publication* of wiretapped materials by third parties who did not themselves engage in the wiretapping as at all central to the achievement of the purpose of barring wiretaps themselves. Not a word of legislative history appears even to refer to the ban on disclosure of wiretapped data by third parties—media or otherwise. Not a word of that history asserts that to effectuate the

[21] The State interest was not insubstantial. West Virginia not only relied upon cases such as *In re Gault*, 387 U.S. 1, 24 (1967), which had stated that it was "the law's policy 'to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past,' " Brief for Appellant at 12, *Smith v. Daily Mail Publishing Co.*, *supra* (No. 78-482), but an *amicus* brief of the Juvenile Defender Attorney Program argued that a ruling holding the State statute unconstitutional "would be a substantial set-back of the efforts of the State to foster rehabilitation of juvenile delinquents and to prevent future delinquency of countless thousands of children accused of acts of delinquency. . . ." Brief for *Amici Curiae* at 4.

purposes of barring wiretapping, it is necessary to ban publication by third parties of wiretapping materials. Not one example is cited in the legislative history of publication by a third party of wiretapped material that could be said to have caused the wiretapping in the first place. And there is no talk at all in the legislative history—as there is in the briefs of all the parties seeking to sustain the statute[22]—that a ban on publication is needed to prevent those who wiretap from "laundering" their criminal activities or to dry up the market for such communications.

The United States relies on a single page from the Senate Report to bolster its position.[23] But the entire paragraph from which the government's quotation is extracted makes plain that the Senate's expressed desire to deal with "all aspects of the problem" referred not to the use of unlawfully intercepted material but the statute's ban on the manufacture, distribution, possession and advertising of interception devices. *See* 18 U.S.C. § 2512.[24] Here, then, as was true in *Landmark Commu-*

[22] Private Petrs.' Br. at 37, 45; United States' Br. at 37-38.

[23] The United States' reference to the Senate Report was as follows:

> "In framing Title III, Congress concluded that merely prohibiting interceptions would not be sufficient. It observed that '*[o]nly by striking at all aspects of the problem' could 'privacy be adequately protected.*' "

United States' Br. at 5 (quoting S. Rep. No. 90-1097 (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2156) (emphasis added).

[24] The paragraph in its entirety, reads as follows:

> "Prohibition. Virtually all concede that the use of wiretapping or electronic surveillance techniques by private unauthorized hands has little justification where communications are intercepted without the consent of one of the participants. No one quarrels with the proposition that the unauthorized use of these techniques by law enforcement agents should be prohibited. It is not enough, however, just to prohibit the unjustifiable interception, disclosure, or use of any wire or oral communications. *An attack must also be made on the possession, distribution, manufacture, and advertising of interception devices. All too often the invasion of privacy itself will go unknown. Only by striking at all aspects of the problem can privacy be adequately protected.* The prohibition, too, must be enforced with all appropriate sanctions. Criminal penalties have their part to play. But other remedies must be afforded the victim of an unlawful invasion of privacy. Provision must be made for civil recourse for damages. The perpetrator must be denied the fruits of his unlawful actions in civil and criminal proceedings. Each of these objectives is sought by the proposed legislation."

S. Rep. No. 90-1097 (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2156 (emphasis added).

nications, the government "has offered little more than assertion and conjecture to support its claim that without criminal sanctions the objectives of the statutory scheme would be seriously undermined." 435 U.S. at 841.

Second, the privacy interest said to justify the flat ban on *anyone* disseminating *anything* that *anyone* else said in an intercepted telephone conversation is fatally overbroad. The federal statute applies across the board to all who use the telephone, regardless of what they say or the circumstances in which they say it. It does not matter if the speakers are private or public figures.[25] It does not matter if what they are saying relates to matters of public concern or not. In this very case, it would not matter—and a jury would not even be permitted to consider—that threats of violent conduct were made. Nor is it relevant whether what has been said has previously been disclosed or whether the particular disclosure is one that a reasonable person would find highly offen-

[25] In the instant case, the two union leaders would likely be deemed public figures. *See Miller* v. *Transamerican Press, Inc.*, 621 F.2d 721, *amended by* 628 F.2d 932 (5th Cir. 1980) (union leaders held public figures), *cert. denied*, 450 U.S. 1041 (1981). *Compare Florida Star*, 491 U.S. at 550-51 (dissenting opinion of White, J. referring to rights of "wholly private persons").

sive. Just such overbreadth concerns led Judge Sentelle to conclude that the federal wiretapping statute violated the First Amendment under *Florida Star* in a companion case to this one. As stated by Judge Sentelle:

> "I can envision felonious eavesdroppers . . . obtaining . . . information of critical public importance about, for example, some public official's accepting a bribe or committing perjury or obstruction of justice. Even if those hypothetical felons dumped information of that critical nature . . . into the hands . . . of a newspaper publisher or a television news network, the public could never know of the wrongdoing, because under today's ruling, those news media would be barred from further publication of that information."

Boehner v. McDermott, 191 F. 3d 463, 484 (D.C. Cir. 1999) (Sentelle, J. dissenting), *petition for cert. filed,* 68 U.S.L.W. 3686 (U.S. Apr. 25, 2000) (No. 99-1709). The statute imposes strict liability on *any* publication so long as the publisher knows or has reason to know that the material stems from a wiretap. In doing so, the statute runs afoul of *Florida Star* itself, which made plain that in the effort to justify the "extraordinary measure of punishing truthful publication in the name of privacy" (491 U.S. at 540), "punishment may lawfully be imposed, *if at all,* only when narrowly tailored to a state interest of the highest order . . . " *Id.* at 541 (emphasis added).

More specifically, the Court in *Florida Star* observed that:

> "A second problem with Florida's imposition of liability for publication is the broad sweep of the negligence *per se* standard applied under the civil cause of action implied from § 794.03. Unlike claims based on the common law tort of invasion of privacy, see Restatement (Second) of Torts § 652D (1977), civil actions based on § 794.03 require no case-by-case findings that the disclosure of a fact about a person's private life was one that a reasonable person would find highly offensive. On the contrary, under the *per se* theory of negligence adopted by the courts below, liability follows automatically from publication. This is so regardless of whether the identity of the victim is already known throughout the community; whether the victim has voluntarily called public attention to the offense; or whether the identity of the victim has otherwise become a reasonable subject of public concern—because, perhaps, questions have arisen whether the victim fabricated an assault by a particular person."

491 U.S. at 539.

Precisely the same is true here. Whatever information was previously known, whatever the significance of the information, publication leads automatically to liability. This Court's conclusion in *Florida Star* is directly on point:

> "We have previously noted the impermissibility of categorical prohibitions upon media access where important First Amendment interests are at stake. More individualized adjudication is no less indispensable where the State, seeking to safeguard the anonymity of crime victims, sets its face against publication of their names."

491 U.S. at 539-40 (internal citation omitted).

Third, there is no consensus amongst the states that in the service of preventing wiretapping itself, it is necessary to take the two separate steps of both criminalizing wiretapping *and* providing a civil remedy against third parties that publish wiretapped information. Of the forty-

eight states that ban wiretapping, eight have statutes that prohibit interception but not disclosure[26] and another eleven do not impose civil sanctions for disclosure.[27] The fact that these nineteen states (plus Vermont and South Carolina, which do not have statutes banning wiretapping at all) have not chosen to provide any civil remedy against third parties that disseminate wiretapped material gravitates against any finding that the state interest involved is of the "highest order."[28]

The wiretapping statute is not narrowly tailored to a state interest of the highest order within the meaning of *Florida Star*.

II. THE ARGUMENTS ADVANCED FOR SIDESTEPPING THE *FLORIDA STAR* ANALYSIS ARE WITHOUT MERIT

Petitioners attempt to avoid the inevitable outcome of any analysis applying *Florida Star* by focusing on two arguments. First, Petitioners argue that the *Florida Star*

[26] *See* Ariz. Rev. Stat. Ann. § 13-3005 (West 1999); Ark. Code Ann. § 5-60-120 (1999); Conn. Gen. Stat. §§ 52-570d, 53a-189 (1999); Ga. Code Ann. § 16-11-62 (2000); Mont. Code Ann. § 45-8-213 (1999); N.Y. Penal Law § 250.05 (McKinney 1999); S.D. Codified Laws § 23A-35A-20 (Michie 2000); Wash. Rev. Code Ann. §§ 9.73.030, 9.73.060, 9.73.080 (West 1999).

[27] *See* Ala. Code § 13A-11-35 (2000); Alaska Stat. §§ 42.20.310(a)(2), 42.20.330 (Michie 1999); Colo. Rev. Stat. Ann. § 18-9-303 (West 2000); 720 Ill. Compiled Stat. Ann. 5/14-2, 5/14-6(b) (West 2000); Kan. Stat. Ann. § 21-4002 (1999); Ky. Rev. Stat. Ann. § 526.060 (Banks-Baldwin 1998); Mich. Comp. Laws § 750.539h(b) (2000); N.D. Cent. Code § 12.1-15-02 (1999); Okla. Stat. Ann. tit. 13, § 176.3 (West 1999); Or. Rev. Stat. § 165.540 (1999); R.I. Gen. Laws § 11-35-21 (1999).

[28] *See Butterworth* v. *Smith*, 494 U.S. 624, 635 (1990) (stating that while practices in other states are not "conclusive as to the constitutionality" of a statute, they are "probative of the weight" of the state's interest).

line of cases is inapplicable because the statutes at issue there were content-based while the wiretapping statute at issue here is content-neutral. Second, Petitioners argue that the information was not lawfully obtained by Respondents Frederick W. Vopper, WILK Radio, and WGBI Radio. Both arguments are without merit.

A. The *Florida Star* Line of Authority is Based Upon the Overarching Public Interest in Protecting Truthful Speech

Nothing in the *Florida Star* line of cases indicates that the basis of the Court's decisions was concern about content-based restrictions on speech. The Court said nothing of the kind in any of the cases. In fact, the Petitioners' arguments to the contrary grossly undervalue the actual basis for these rulings. In the words of the Court in *Florida Star* itself, this line of authority is grounded in "the overarching public interest, secured by the Constitution, in the dissemination of truth." *Florida Star*, 491 U.S. at 533-34 (internal citation and quotation omitted).

The paramount importance of protecting—not to say honoring—truth-telling is deeply rooted in our Nation's history and culture,[29] as well as this Court's jurisprudence. Even so calamitous an assault on the First

[29] The protection of truthful speech long predates our own Constitution. As Professor Diane Zimmerman demonstrates in her much quoted and exhaustive analysis on the topic in *Requiem For a Heavyweight: A Farewell to Warren and Brandeis's Privacy Tort*, 68 Cornell L. Rev. 291 (1983), "[t]he historical evidence suggests that the framers of the first amendment would have viewed restraints imposed by tort law on accurate speech—to the extent that they considered the matter at all—as inappropriate, and that the embarrassment that might result from true revelations was not considered a legal or compensable wrong." *Id.* at 311. *See also id.* at 306-08 (discussion of the Ninth Commandment, the Old Testament Book of Psalms, Roman law, ecclesiastical law and other bodies of jurisprudence).

Amendment as the Sedition Act of 1798, 1 Stat. 596, recognized truth as a defense. *See New York Times Co.* v. *Sullivan*, 376 U.S. 254, 274 (1964). Under modern libel law, this Court has made plain that truth is an absolute defense in cases commenced by private figures as well as public figures. *Philadelphia Newspapers, Inc.*, v. *Hepps*, 475 U.S. 767 (1986). And this Court's landmark decision in *New York Times Co.* v. *Sullivan, supra*, itself demonstrates the overriding value placed upon truthful speech. It was only in the service of assuring that truthful speech not be limited regarding public officials that the Court announced the "actual malice" standard that provides some protection even for inaccurate speech. As part of the First Amendment's need for "breathing space," the Court explained that unless some false speech were protected:

> "would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They [would] tend to make only statements which 'steer far wider of the unlawful zone.' "

376 U.S. at 279 (citation omitted). For the same reason, the "knowing or reckless falsehood" standard has been extended to the tort of publication of private facts where the material at issue concerns matters of public interest. *Time, Inc.* v. *Hill*, 385 U.S. 374, 387-88 (1967).

The essentiality of protecting truthful speech has also been recognized outside of the contexts of privacy and libel. Only truthful commercial speech is protected by the First Amendment. *See, e.g., Central Hudson Gas & Electric Corp.* v. *Public Service Comm'n of New York*, 447 U.S. 557, 566 (1980) ("For commercial speech to come within [the First Amendment], it at least must

concern lawful activity and not be misleading."). In *Butterworth* v. *Smith*, 494 U.S. 624 (1990), this Court held unconstitutional a Florida statute that prohibited a grand jury witness from revealing his own grand jury testimony. The Court emphasized the importance of protecting truthful speech in its ruling: "[O]ur decisions establish that absent exceptional circumstances, reputational interests alone cannot justify the proscription of truthful speech." *Id.* at 634. *See also Bates* v. *State Bar of Arizona*, 433 U.S. 350 (1977) (permitting truthful commercial speech in attorney advertising to overcome interest in maintaining professionalism of attorneys); *New York Times Co.* v. *United States*, 403 U.S. 713 (1971) (striking injunction prohibiting truthful speech in the face of asserted national security interests).

Given the centrality of the protection of truth in the First Amendment jurisprudence of this Court, it is not surprising that one leading scholarly work has concluded that truth will "*always*" be "a defense in a defamation or right of privacy action—unless the [defendant] publishes confidential information that he has stolen." 4 Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law* § 20.36, at 495-96 (3d ed. 1999) (emphasis added). Another leading First Amendment scholar has interpreted this Court's case law similarly, observing that:

> "The dissemination of a fact that might otherwise be deemed private (and thus protected, for example, under a newly invigorated version of the tort of publication of private facts), will normally be deemed protected under today's First Amendment standards if the fact was 'lawfully obtained' by the person seeking to disseminate it. Thus, the press may publish private material leaked to it intentionally or through inadvertence, even though the person who leaked the material may have violated some legal duty."

Rodney A. Smolla, *Privacy and the First Amendment Right to Gather News*, 67 Geo. Wash. L. Rev. 1097, 1103-04 (1999).[30]

B. The Tape at Issue Was Lawfully Obtained by the Media Respondents

There can be no serious argument that the media respondents acted unlawfully in obtaining the tape at issue.[31] The media defendants did not wiretap the telephone conversation at issue. Nor is there any suggestion that the anonymous tapper was the agent of the media respondents. Instead, the media respondents simply received a copy of the tape-recorded conversation from

[30] Petitioners' focus on whether the wiretapping statute is content-neutral (a topic dealt with at length in the media respondents' brief) not only misses the driving force behind the *Florida Star* line of authority, but also overlooks a glaring failure of the statutory scheme. Even assuming that it is content-neutral, the statute simply prohibits "too much" speech. *City of Ladue* v. *Gilleo*, 512 U.S. 43, 53 (1994) (striking down ordinance restricting size of signs as applied to resident placing sign on lawn protesting the Persian Gulf war). In *Ladue*, this Court stated: "Although prohibitions foreclosing entire media may be completely free of content or viewpoint discrimination, the danger they pose to the freedom of speech is readily apparent—by eliminating a common means of speaking, such measures can suppress too much speech." *Id.* at 55.

[31] In addition to being lawfully obtained, in order to gain the protection of the *Florida Star* rule, the information at issue must be truthful and concern matters of public importance. There is no challenge to the truthfulness or the public import of the matters discussed on the tape—nor could there be. As the decision below noted, the "markedly contentious" negotiations between the teacher's union and the school district "generated significant public interest and were frequently covered by the news media." *Bartnicki* v. *Vopper*, 200 F.3d 109, 113 (3d Cir. 1999). Matters pertaining to governmental issues, such as taxation and public education at issue here, are at the heart of the First Amendment. *See, e.g.*, *Mills* v. *Alabama*, 384 U.S. 214, 218 (1966) (a "major purpose of [the First] Amendment [is] to protect the free discussion of governmental affairs").

respondent Jack Yocum, who was himself the recipient of an anonymous tape left in his mailbox. Common sense dictates that the media respondents engaged in no unlawful behavior by simply receiving the tape; the wiretapping statutes at issue support this conclusion.

In conjunction with other parts of the wiretapping statute, 18 U.S.C. § 2511(1)(c) permits criminal and civil sanctions to be levied against anyone who:

> "intentionally *discloses*, or endeavors to *disclose*, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection."

Id. (emphasis added). Another provision addresses the intentional "uses" of the same information. *Id.* § 2511(1)(d). Significantly, the statutory scheme does not make unlawful the mere *receipt* of information obtained in violation of the wiretapping laws. *See Florida Star*, 491 U.S. at 536 (noting that Florida had not taken the step of proscribing the receipt of information). Thus, the media respondents obtained the tape lawfully and are fully deserving of the protection set forth in *Florida Star*.

Florida Star itself involved a similar, although not identical, scenario. There, under Florida law, police reports were not part of the "public record" open for inspection. 491 U.S. at 536. This Court remarked as follows:

> "But the fact that state officials are not required to disclose such reports does not make it unlawful for a newspaper to receive them when furnished by the government. Nor does the fact that the [Police] Department apparently failed to fulfill its obligation under [the statute] not to 'cause or allow to be . . .

published' the name of a sexual offense victim make the newspaper's ensuing receipt of this information unlawful."

Id. Thus, the Court held that the newspaper had lawfully obtained the rape victim's name notwithstanding that the police had "failed to fulfill" its own statutory obligations not to make the victim's name available. *Id.*

Petitioners argue that, even though the information may have been lawfully obtained by the media respondents, the press may still be sanctioned for publishing information that was illegally obtained by the original source, citing footnote 8 of *Florida Star*.[32] (Private Petrs.' Br. at 25-26; United States' Br. at 29.) If it determines to reach this question, *amici* urge the Court to rule that the press should not be equated with its ultimate sources.[33] Such a rule would run contrary to the First Amendment for at least four reasons.

First, the government has at its disposal the ability to punish the initial unlawful behavior, as well as anyone acting in concert with that person. Any subsequent attempt to punish speech (where the speaker is not connected in any way to the acts of the original actor) will necessarily be an overbroad attempt to redress the original wrong—be it theft, breach of a seal of confidentiality, or, as in this case, unlawful wiretapping. *See Schneider* v. *State*, 308 U.S. 147, 162 (1939) ("There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets."). As Judge Sentelle explained in his dissenting opinion in *Boehner v. McDermott*, *supra*, a case also involving the federal wiretap statute at issue here:

> "I do not, however, see that either the United States or the State of Florida has established that an undifferentiated burden on the speech of anyone who acquires the information contained in the communication from the unlawful interceptor is necessary to accomplish the state's legitimate goal or narrowly tailored to serve that end. I do not see how we can draw a line today that would punish McDermott and not hold liable for sanctions every newspaper, every radio station, every broadcasting network that obtained the same information from McDermott's releases and published it again. Not only is this not narrow tailoring, *it is not tailoring of any sort.*"

191 F.3d at 485 (emphasis added). Thus, Judge Sentelle concluded that the question reserved in footnote 8 of *Florida Star* must be answered "against the burdening of publication." *Id.*[34]

Second, punishing the press for publishing newsworthy, truthful information because the *source* of that information obtained it unlawfully will undoubtedly—and quite deliberately—lead the press not to publish such information. As a result, significant truthful information regarding public affairs and governance may

[32] Footnote 8 of *Florida Star* reads as follows: "The *Daily Mail* principle does not settle the issue whether, in cases where information has been acquired *unlawfully* by a newspaper or by a source, government may ever punish not only the unlawful acquisition, but the ensuring publication as well. This issue was raised but not definitively resolved in *New York Times Co.* v. *United States*, 403 U.S. 713 (1971), and reserved in *Landmark Communications*, 435 U.S., at 837. We have no occasion to address it here." *Florida Star*, 491 U.S. at 535 n.8.

[33] It is undisputed that the media respondents' immediate source, Respondent Jack Yocum, did not engage in the original unlawful wiretap in any manner. Thus Yocum also received the information lawfully.

[34] For the reasons stated in Judge Sentelle's dissenting opinion in *Boehner*, the Third Circuit's decision below, and the media respondents' brief, the wiretapping statute fails intermediate scrutiny as well.

never come to the public's attention. *See New York Times Co.* v. *United States,* 403 U.S. 713 (1971); *Boehner*, 191 F.3d at 484 (Sentelle, J. dissenting). *See also supra,* at 3-5. Punishing the press for the publication of such information will necessarily deter the press from informing the public and preserving the free flow of information. *See, e.g., Mills*, 384 U.S. at 218-19 (noting major purpose of the First Amendment is "to protect the free discussion of governmental affairs" and that the press is "to play an important role in the discussion of public affairs").

Third, in its efforts to report the truth and inform the public, the press often encounters sources who may be disabled in some way by the law from passing along the information at issue. *See supra*, at 3-5. The Pentagon Papers case, *New York Times Co.* v. *United States*, 403 U.S. 713 (1971), was one example. The *New York Times* received TOP SECRET information from a source that was not authorized to make it public and that the government later asserted had acted criminally in doing so. Nevertheless, the government failed in its effort to obtain an injunction to stifle the Times' speech, and there was no suggestion in any of the opinions accompanying the decision that the Times' receipt of the information was unlawful.

Landmark Communications, as well, is similar, as the identity of the judge being investigated there was originally known to only members of the Judicial Commission and participants in its activities, all of whom were obliged to keep such information confidential. The newspaper article at issue was based upon information obtained from unidentified sources including "a lawyer subpoenaed to appear at the hearing" who was obviously bound to secrecy. *Landmark Communications* Appendix at 46a. While the case focused on the issue of whether the newspaper could be criminally punished for publishing the name of the judge under investigation, there was never any suggestion that the mere acquisition of information permitting the newspaper to identify the judge could possibly be deemed illegal.

Finally, the very notion of equating the press with its sources and holding the former liable for the conduct of the latter is at variance with judicial as well as journalistic history. This Court has made plain that while the press may not be constitutionally entitled to gather certain information, what it does learn it may print. That is the essence of this Court's ruling in *Houchins* v. *KQED, Inc.*, 438 U.S. 1 (1978), in which the Court, in determining that the press did not have a First Amendment right of access to prisons, stated that "the government cannot restrain communication of whatever information the media acquires—and which they elect to reveal." *Id.* at 10 (plurality opinion of Burger, C.J., White, J., and Rehnquist, J.). This principle is also at the heart of Justice Stewart's similar distinction, quoted *supra* at 5, between the right of the government to deny access and the impermissibility of the press being punished for what it publishes.[35] *Cf.* Alexander M. Bickel, *The Morality of Consent* 79 (1975) ("under the *New York Times* case, if a newspaper had got hold of these documents without itself participating in a theft of them, although somebody else might to its knowledge have stolen them, it could have published them with impunity").

Thus the reasons set forth by Petitioners for removing this case from the *Florida Star/Daily Mail* framework are without merit.

* * *

[35] *See also Landmark Communications*, 435 U.S. at 849 ("If the constitutional protection of a free press means anything, it means that the government cannot take it upon itself to decide what a newspaper may and may not publish.") (Stewart, J., concurring).

We offer the final thought that there is, in the end, a certain lack of equivalence between the First Amendment interests at stake here and the privacy interests that underlie the wiretapping statute. Both are important but only one is in the written Constitution. It should not be too late to assert that when the First Amendment's protection of truth-telling is pitted against an interest that was only first identified just over a century ago,[36] some deference should be given to the Framers' expressed intentions.

CONCLUSION

The decision of the Court of Appeals for the Third Circuit should be affirmed.

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[36] *Compare* Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890) *with* Harry Kalven, Jr., *Privacy in Tort Law—Were Warren and Brandeis Wrong?*, 31 Law & Contemp. Probs. 326 (1966).

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APPENDIX

DESCRIPTION OF *AMICI CURIAE*

The New York Times Company publishes *The New York Times*, a daily newspaper with a national circulation of 1.1 million daily and more than 1.7 million on Sunday. The company also owns the *Boston Globe* as well as twenty-one regional newspapers, many nationally circulated and distributed magazines such as *Golf Digest*, and eight television stations.

Advance Publications, Inc., directly or through subsidiaries, publishes daily newspapers in twenty-two cities and business journals in thirty-seven cities throughout the United States, as well as eighteen nationally distributed magazines (such as *The New Yorker*) and numerous World Wide Web sites.

ABC, Inc. is a broad-based communications company with significant holdings in the United States and abroad. It owns, alone or through its subsidiaries, the ABC Television Network, the ABC Radio Network, ten television stations, and forty-five radio stations.

Associated Press, the oldest and largest newsgathering organization in the world, is a not-for-profit mutual news cooperative that engages in the collection of news from and distribution of news to its members which include newspapers, television stations, and radio stations.

Cable News Network LP, LLLP, creates, produces and distributes nationally and worldwide thirteen networks which provide television programming services across dozens of platforms, including Cable News Network ("CNN"), Headline News, CNN International ("CNNI"), and CNN Interactive.

CBS Broadcasting Inc. produces and broadcasts news, public affairs, and entertainment programming.

CBS News produces morning, evening, and weekend news programming, as well as news and public affairs magazine shows, such as 60 MINUTES and 48 HOURS. CBS also owns and operates television stations nationwide and, through a related company, Infinity Broadcasting Corporation, owns and operates radio stations throughout the country.

The Copley Press, Inc. publishes *The San Diego Union-Tribune* and ten other daily newspapers in California, Illinois, and Ohio, and operates Copley News Service, an international news service.

Gannett Co., Inc. is a nationwide news and information company that publishes ninety-nine daily newspapers, including *USA Today*. Gannett publishes a number of non-daily publications, including *USA Weekend*, a weekly magazine. The company also owns and operates twenty-two television stations and a national news service.

The Hearst Corporation publishes newspapers, consumer magazines, and business publications, owns a leading features syndicate, has interests in several cable television networks, and produces movies and other programming for television.

Knight-Ridder, Inc., the nation's second largest newspaper publisher in terms of circulation and revenue, publishes thirty-two daily newspapers and twenty-five non-daily newspapers in twenty-eight U.S. markets, reaching 8.7 million readers daily and 12.9 million on Sunday.

Magazine Publishers of America, Inc., founded in 1919, represents 250 of the largest magazine publishers in the United States, who collectively publish more than 1200 of the best known consumer interest titles, on a weekly, monthly, and quarterly basis.

The McGraw-Hill Companies, Inc., is a multimedia publishing and information company which publishes books and magazines, including *Business Week*, and also operates four local television stations.

National Broadcasting Company, Inc. operates a national television network of more than 200 affiliates and several owned-and-operated stations, through which it produces and broadcasts local and national news programming, such as DATELINE NBC. It also owns two national cable news networks, MSNBC and CNBC.

Newspaper Association of America ("NAA") is a nonprofit organization representing the interests of more than 2,000 newspapers in the United States and Canada. Most NAA members are daily newspapers, accounting for eighty-seven percent of the U.S. daily newspaper circulation. One of the NAA's missions is to advance newspapers' interests in First Amendment issues, including the ability to gather and publish truthful newsworthy information of public significance.

Pennsylvania Newspaper Association is the official state trade organization for the newspaper industry in the Commonwealth of Pennsylvania. Its members include over 300 daily, weekly, monthly and college newspapers. It was founded eighty years ago and is considered one of the leading press associations in the nation, having an active membership, a staff of thirty-two and both a for-profit and a not-for-profit subsidiary.

Radio-Television News Directors Association ("RTNDA"), based in Washington, D.C., is the world's largest professional organization devoted exclusively to electronic journalism. RTNDA represents local and network news executives, educators, students and others in the radio, television, cable and online news business in over thirty countries.

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of news reporters and editors, dedicated to protecting the First Amendment interests of the news media and the public. The Reporters Committee has provided representation, legal guidance, and research in virtually every major press freedom case that has been litigated in the United States since 1970.

The E. W. Scripps Company is a diverse media concern with interests in newspaper publishing, broadcast television, cable television programming, and interactive media. Scripps operates twenty daily newspapers, ten broadcast TV stations and three cable television networks. The company also operates Scripps Howard News Service, United Media, a worldwide licensing and syndication company, and thirty-one Web sites.

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, 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.

Time Inc. is the largest publisher of general interest consumer magazines in the United States, including *Time*, *Fortune*, *Sports Illustrated*, *People*, *Money*, and *Entertainment Weekly*. The company also publishes books under imprints including Warner Books, Little Brown and Time-Life Books.

Tribune Company, through its publishing, broadcasting, and interactive operations, publishes eleven market-leading newspapers, including the *Chicago Tribune*,

the *Los Angeles Times*, the *Orlando Sentinel*, and *Newsday*, owns and operates twenty-two major market television stations, and operates a network of local and national Web sites that ranks among the top twenty-five news and information networks in the United States.

The Washington Post Co. publishes newspapers and magazines of national interest such as the *Washington Post*, with a nationwide daily circulation of over 809,000 and a Sunday circulation of over 1.1 million, as well as *Newsweek* magazine.