

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT**

JASON O'GRADY, MONISH
BHATIA, and KASPER JADE,

Petitioners,

vs.

SUPERIOR COURT OF THE
STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA,

Respondent,

APPLE COMPUTER, INC.

Real Party in Interest.

No. H028579

Santa Clara County Superior Court
Case No. 1-04-CV-032178

The Hon. James Kleinberg, Judge

**APPLICATION OF THE REPORTERS COMMITTEE FOR FREEDOM
OF THE PRESS, THE ASSOCIATED PRESS, THE CALIFORNIA FIRST
AMENDMENT COALITION, THE CALIFORNIA NEWSPAPER
PUBLISHERS ASSOCIATION, THE COPLEY PRESS, FREEDOM
COMMUNICATIONS INC., THE HEARST CORPORATION, LOS
ANGELES TIMES COMMUNICATIONS, THE MCCLATCHY
COMPANY, THE SAN JOSE MERCURY NEWS, SOCIETY OF
PROFESSIONAL JOURNALISTS, AND THE STUDENT PRESS LAW
CENTER FOR LEAVE TO FILE A BRIEF *AMICI CURIAE* IN SUPPORT
OF PETITIONERS**

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*Attorneys for The California
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Pursuant to Cal. R. App. Pro. 13(c), The Reporters Committee for Freedom of the Press, The Associated Press, The California First Amendment Coalition, The California Newspaper Publishers Association, The Copley Press, Inc., Freedom Communications, Inc., dba *The Orange County Register*, The Hearst Corporation, Los Angeles Times Communications LLC, dba *Los Angeles Times*, The McClatchy Company, The San Jose Mercury News, Inc., The Society of Professional Journalists, and The Student Press Law Center respectfully request leave to file the accompanying brief *amici curiae* in support of Petitioners Jason O’Grady, Monish Bhatia and Kasper Jade.

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

The Associated Press is a global news agency with headquarters in New York City and bureaus in every state and in more than 100 foreign countries. AP gathers and delivers news reports in text, photographic, audio and video formats to thousands of subscribing, print, broadcast and multimedia news organizations and other customers worldwide.

The California First Amendment Coalition is a non-profit and nonpartisan public interest organization dedicated to enhancing rights to freedom of speech and open government through educational programs, information services, and litigation. Founded in 1988, CFAC is a membership organization whose members include California newspapers and other news organizations, individual journalists, historians and other academics, community activists, and ordinary citizens who care about government access and accountability.

The California Newspaper Publishers Association is a trade association representing the interests of over 650 daily, weekly and student newspapers. For over 120 years, CNPA has worked to defend and enhance the First Amendment rights, freedom of information and the public's right to know.

The Copley Press, Inc. publishes ten daily newspapers in California, Illinois and Ohio, including *The San Diego Union-Tribune*, and operates Copley News Service, an international news service. To insure the accuracy and completeness of their news reports, Copley Press journalists regularly rely on information provided in confidence.

Freedom Communications, Inc., dba *The Orange County Register*, headquartered in Irvine, California, is a privately-owned diverse media company of newspapers, broadcast television stations and interactive media businesses. Freedom's flagship newspaper is *The Orange County Register*, published in Santa Ana,

California, with a daily circulation of more than 300,000.

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

Los Angeles Times Communications LLC, dba *Los Angeles Times*, a wholly owned subsidiary of Tribune Company, publishes the *Los Angeles Times*, the largest metropolitan daily newspaper circulated in California. The *Los Angeles Times* publishes on-line at www.latimes.com. Its journalistic awards include 37 Pulitzer Prizes, five of which are gold medals for public service. Its Times Community News division publishes the *Daily Pilot*, *Glendale News-Press*, *Burbank Leader*, *Foothill Leader* and the *Huntington Beach Independent*.

The McClatchy Company publishes 12 daily newspapers and 18 non-daily newspapers in California and other states including *The Sacramento Bee*, *The Fresno Bee*, and *The Modesto Bee*. The newspapers have a combined average circulation of 1.4 million daily and 1.9 million Sunday.

The San Jose Mercury News, Inc., a subsidiary of Knight Ridder, Inc.,

publishes the *San Jose Mercury News*. *The Mercury News* is published in San Jose, California and circulated in the San Francisco Bay Area and throughout California. It is the premier news publication of Silicon Valley, and is nationally known for its coverage of high technology. Although the *Mercury News* strives to avoid the use of unnamed sources, its reporters often rely on confidential sources to provide important information that otherwise would not reach the public.

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

The Student Press Law Center is a national not-for-profit corporation created to conduct legal research and offer information and advocacy for the purpose of promoting and preserving the free press and freedom of information rights of high school and college journalists. To that end, the Center has collected information on student press cases nationwide and has filed amicus briefs with the United States Supreme Court and various state and federal appellate courts.

The Applicants' interest in this case is in ensuring the free flow of information on matters of public importance and interest by preserving the news media's ability

to pursue its constitutionally protected freedom to gather and report the news, free from intrusion by the government or other litigants. This case involves a number of important questions regarding the news media's ability to perform its constitutionally protected function: whether journalists' privilege to prevent the disclosure of confidential sources may be circumvented by subpoenaing a third-party who holds records of journalists' confidential communications incident to providing services to the journalist; whether journalists' qualified privilege to prevent the disclosure of confidential sources may be overcome without a showing that all alternative sources of inquiry have been exhausted; whether the allegation of a violation of California's trade secret statutes obviates journalists' privilege to prevent the disclosure of confidential sources; and whether journalists may be punished consistent with the First Amendment under California's trade secret statutes for publishing information on a matter of public interest when the journalist did not participate in the illegal misappropriation of a trade secret.

Applicants' participation in this case is desirable because of their combined interest in the issues before the Court, and because their long experience with legal issues relating to the First Amendment and newsgathering will assist the Court in understanding the implications of the questions before it. Applicants' brief argues that allowing journalists' confidential sources to be disclosed by subpoenaing third-party service providers, especially where there has been no showing that the

information is not adequately available from other sources, would substantially impair journalists' ability to gather and report the news by deterring future sources from coming forward and turning journalists into – or at least creating a perception that they are – unwilling investigators for the government and other litigants. Punishing journalists who did not illegally obtain access to trade secrets for publishing information on a matter of public interest would impair the news media's ability to report on the activities of corporations and other businesses. The result will be a restriction in the flow of information to the public, inhibiting the public's ability to make informed choices related to government, industry, health and a host of other subjects that affect people's everyday lives.

For the aforementioned reasons, Applicants respectfully request leave to file the attached brief *amici curiae*.

Respectfully submitted April 7, 2005,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2005, I caused one copy of the foregoing Application to be mailed to the following recipients, an original and one copy to be mailed to the clerk of the Court of Appeals, one copy to be mailed to the clerk of the Supreme Court, and one copy to be mailed to the clerk of the Superior Court via USPS Express Mail in accordance with Cal. R. App. Pro. 40.1, and Cal. R. App. Pro. 44(b)(2):

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