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**IN RE JANUARY 11, 2013 SUBPOENA BY
GRAND JURY OF UNION COUNTY, N.J.**

SUPERIOR COURT OF NEW JERSEY

CRIMINAL DIVISION: UNION COUNTY
PROSECUTOR'S CASE NO. 13-0001

DOCKET NO:

MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE TO
QUASH GRAND JURY SUBPOENA ON TINA RENNA

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INTRODUCTION

This matter involves a straightforward application of the New Jersey Newsperson's Privilege, N.J.S.A. 2A:84A-21, et seq. ("the Privilege" or "the Shield Law"), a law that is both comprehensive and absolute in its protection of the editorial process and the news media's use of confidential sources. The Union County Prosecutor's Office seeks to compel Tina Renna, the primary writer and editor of the web news blog "County Watchers," part of the Union County Watchdog Association website, which reports on alleged waste, corruption and mismanagement in Union County, N.J. government, to testify before a grand jury and divulge unpublished information and the source(s) of a news story she reported and published in County Watchers in December 2012 concerning the use of county-owned generators by county employers during Superstorm Sandy. The subpoena directly contravenes the protections of the Shield Law and is precisely the type of subpoena that courts of this State routinely quash.

As the Court will see, there can be no dispute that the Privilege applies to Tina Renna, whose work with County Watchers is an online approximation of traditional news outlets such as newspapers and news magazines, and therefore falls squarely within the type of new media that the Supreme Court of New Jersey has indicated can be protected under the Shield Law. Too Much Media, LLC v. Hale, 206 N.J. 209 (2011). The subpoena seeks information that Ms. Renna gathered and developed as part of her reporting of the underlying news story regarding misuse of county owned generators during the Hurricane Sandy emergency, which was reported for dissemination to the public via County Watchers. Such activity is absolutely protected by the Shield Law.

Despite clear statutory and case law, the Prosecutor's Office insists upon enforcement of the grand jury subpoena. Accordingly, Ms. Renna respectfully requests that the Court grant the motion not only to quash the underlying grand jury subpoena but to award fees and costs pursuant to N.J.S.A. 2A:84A-21 et seq.

STATEMENT OF FACTS

Tina Renna is the President of the Union County Watchdog Association ("UCWA") a 501(c) 3 organization with a purpose to monitor Union County government and advocate for change to eliminate waste, mismanagement and corruption. She is also one of several writers of a web blog entitled "County Watchers" featured at the WWW.UNIONCOUNTYWATCHDOG.ORG, a non-profit association which is in the business of disseminating news to the general public regarding Union County government and politics. The thrust of her reporting and that of County Watchers is to present to the public facts that are often overlooked, omitted or erroneously printed in other publications, or through official releases. Certification of Tina Renna ("Renna Cert.") at ¶ 2, and attached materials at Exh. A.

Ms. Renna has been publishing County Watchers on a regular basis -- usually at least one article per week, since 2005. The frequency of these news reports depends on the available news to report, and the time she has to report, but on average she works 10-20 hours or more weekly as a reporter and editor. She has personally covered and reported on all facets of Union County government and politics since she began County Watchers about seven years ago, through which her colleagues and she have published at least 1,000 news posts/blogs. A sample of recent news stories are attached hereto as

Exhibit B to the Renna Cert., demonstrating news coverage of issues touching on potential corruption in Union County government, investigations in the county prosecutor's office and activities at other agencies. Renna Cert. at ¶ 3. It is indisputable that this coverage of Union County government is far more in-depth and more frequent than that offered by the state's largest newspaper.

County Watchers is a news and information website, with all the attributes of traditional news media except, because it is a non-profit entity as part of the UCWA, it seeks donations rather than sell advertising. Ms. Renna's purpose in operating and publishing the website and writing on the County Watchers is, and has always been, to gather and compile and disseminate to members of the public information about Union County government. She obtains the information she publishes in the course of her professional activities as the person who writes, operates and publishes the County Watchers blog. Renna Cert. at ¶ 7.

On or about December 12, 2012, the County Watchers blog published a post headlined "Generatorgate – An exciting opportunity to shine a light on our corrupted system of law and order." The subject was the Union County Prosecutor's Office investigation into allegations that county employees took home generators during the Hurricane Sandy emergency. Renna Cert. at ¶ 4. The news blog is attached as Exhibit C to the Renna Cert. and reads as follows:

The Union County Prosecutor's office is "looking into" allegations that county employees took home generators during the Hurricane Sandy emergency. According to an announcement made at a freeholder meeting his response should be due in the coming week.

The Prosecutor isn't conducting an "investigation" because I am told that the investigator is opening his interviews by telling the potential witnesses

“There is nothing criminal here, we are only looking into this because Tina Renna put it on her blog.”

“The misuse of generators by public employees during a time when the public is suffering is offensive and unacceptable,” Freeholder Chairman Al Mirabella said in a canned statement.

I find the Union County Prosecutor Theodore Romankow’s tenure to be offensive and unacceptable. From statements reported in the press, and made during freeholder meetings, and other feedback, I’m expecting Union County Prosecutor Theodore Romankow to produce another flim-flam report of what occurred while we were dealing with super storm Sandy, that will perhaps name as little as two employees. He will then wash his hands of it and hand these employees over to the county manager to discipline as he wishes.

I will submit to the State Attorney General’s office that there is more at stake here than misuse of county property. It is an opportunity to shine a light on our corrupted system of law and order. This doesn’t involve just the prosecutor protecting high-level connected employees, this involves high ranking county police officers as well as Sheriff officers.

I believe federal emergency monies may have been involved, and this has been reported to the F.B.I.

I’m prepared to give a list of names of employees who took generators home, as well as a list of witnesses to the State if our corruption busting former U.S. Attorney turned governor Christopher Chrisie is willing to take a stand against this local political corruption. No one should be above the law. And this case is too outrageous to ignore for many reasons.

As many as 16 names have been revealed to me by different sources. People are talking, it shouldn’t be hard for a County Prosecutor to conduct a full investigation, even if it started out as a “looking into” project, it should be quite obvious that more is at stake here. I expect it would be very easy for a State Investigation into any falsehoods the prosecutor produces or information he chooses to leave out. Romankow might be ready to retire, but he isn’t personally conducting this “looking into” investigation.

Prosecutor Romankow’s exit is long overdue. First there was his sham investigation of Musicfest involving Sen. Ray Lesniak’s nephew, followed up almost immediately by a sham county police investigation involving Freeholder Debra Scanlon’s son and missing chainsaws. Not only is the chainsaw investigation allowed to drag on for about a year now, the same

police involved with conducting that investigation are involved with taking generators for personal use.

Also consider that at least 16 generators, worth tens of thousands of dollars, were just lying around the county not being put to public use. More than just generators were taken. There were heaters and gas cans, etc. And some lucky employees even had at home delivery service of generators provided by the county!

Although it is against their official policies, Union County employees are allowed to “borrow” tools, I’ve been told. With no check out and check in system in place.

How many millions in useless equipment do the taxpayers own? I’ve asked this repeatedly at freeholder meetings and never get an answer.

If all that isn’t enough to get the Governor’s boxers in a knot, consider the combined salaries of the employees reported to me so far, and more names are on the way:

\$1,483,409

Did you have the extra cash on hand, and were you lucky enough to be able to find a generator to purchase to keep your family in some comfort or perhaps keep your business running?

Wrap your minds around these salaries, they are rounded off (not including Cadillac health benefits and pensions) and consider if they should be able to afford to buy their own generators on the generous salaries you provide them with and if they should get away with taking your taxpayer property home for their personal use and comfort because they are connected:

\$120,000
\$99,000
\$110,000
\$67,000
\$62,000
\$61,000
\$66,000
\$66,000
\$45,000
\$60,000
\$129,000
\$118,000
\$118,000

\$105,000
\$90,000
\$61,000
\$118,000

The above reads no differently than that of a columnist, such as a Maureen Dowd in the *New York Times* or even a Paul Mulshine in the *Star Ledger*, taking a strong position and revealing news at the same time. It includes bona fide news reporting of the Prosecutor's investigation and then challenges that investigation based on reporting from anonymous sources. It also, metaphorically or otherwise, assures the reader that the writer does have the information and might be willing to provide it to someone other than the Union County's Prosecutor's Office, and she then explains why she believes they are untrustworthy. On or about December 17, 2012, Ms. Renna received a letter from Det. Russo of the Union County Prosecutor's Office referencing the "Generatorgate" blog posting and seeking to interview Ms. Renna. His letter states:

In your blog entry of December 12, 2012 you indicated that, "As many as 16 names have been revealed to me by different sources", regarding the use of county owned generators during the Hurricane Sandy emergency. Please contact the undersigned at (908) 527-4619, so we can arrange for you to come to this Office to speak to the undersigned concerning this matter.

Renna Cert. at ¶ 5. Subsequently, she received another letter from Russo dated December 27, 2012 asking her to contact him. Both letters are attached to the Renna Cert. as Exhibit D.

On or about January 4, 2013, Ms. Renna was served with a Subpoena to appear before a Union County Grand Jury on January 11, 2013 at 9 am to "Provide testimony Re: In re the Investigation into the Improper Use of County Generators." It appears from the letters and the Subpoena that the Grand Jury Subpoena is designed to obtain information Ms. Renna gathered—regarding the improper use of county generators—in

the course of her professional activities, as well as the sources of her information. Renna Cert. at ¶ 8 and Subpoena attached thereto as Exhibit E.

The information sought by the Subpoena involves confidential information gathered as part of the news process and subject to the Newspersons' Privilege as set forth in N.J.S.A. 2A: 84A-21 et seq., and N.J. R. Evid. 508, which privilege Ms. Renna invokes and which information she respectfully refuses to produce or disclose as a witness.

LEGAL ARGUMENT

I. The Shield Law's Protections are Both Comprehensive and Absolute.

New Jersey has one of the most far-reaching Shield Laws in the country, providing the "strongest possible protection" to the newsgathering and news reporting activities of the media. In re Venezia, 191 N.J. 259, 269 (2007); see also Too Much Media, supra, 206 N.J. at 228 ("Our State's Shield Law statute is among the broadest in the nation."). The Newsperson's Privilege appears both in N.J.S.A. 2A:84A-21 and N.J. R. Evid. 508. The law "is both comprehensive and absolute and extends to cover the editorial process." Prager v. American Broadcasting Cos., 569 F. Supp. 1229, 1239 (D.N.J. 1983), aff'd, 734 F.2d 7 (3d Cir. 1984). The operative language of the privilege reads as follows:

Subject to Rule 37[Rule 530], a person engaged on, engaged in, connected with, or employed by news media for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public or on whose behalf news is so gathered, procured, transmitted, compiled, edited or disseminated has a privilege to refuse to disclose, in any legal or quasi-legal proceeding or before any investigative body, including but not limited to, any court, grand jury, petit jury, administrative agency, the Legislature or legislative

committee, or elsewhere.

a. The source, author, means, agency or person from or through whom any information was procured, obtained, supplied, furnished, gathered, transmitted, compiled, edited, disseminated, or delivered; and

b. Any news or information obtained in the course of pursuing her professional activities whether or not it is disseminated.

N.J.S.A. 2A: 84A-21

Through the Shield Law, “it is clear that the [New Jersey] legislature has continually acted to establish the strongest possible protection from compulsory testimony for the press.” In re Schuman, 114 N.J. 14, 24 (1989). Indeed, our State Legislature has repeatedly strengthened the Shield Law, providing the press with the strongest possible protection against compulsory testimony or production of materials. See, e.g., id. (“[I]t is clear that the legislature has continuously acted to establish the strongest possible protection from compulsory testimony for the press”); In re Woodhaven Lumber & Mill Work, 123 N.J. 481, 487 (1991) (“Our strong tradition of legislative and judicial decision-making over the past decade reflects a commitment to expanding the press freedoms.”); In re Venezia, 191 N.J. 259, 271 (2007) (“Over the years, the Legislature has expanded the breadth of the privilege and thus expressed its intent to provide the press with the greatest possible means of protecting both confidential sources and, more generally, the manner in which it gathers information.”).

The free flow of information, so engrained in our state and federal constitutions, is endangered by the compelled testimony of news reporters, whether in civil or criminal cases. “Every compelled production chills confidential sources.” State v. Boiardo, 83 N.J. 350 (1980). Therefore, the Shield Law “affords newsmen a broad privilege against compulsory disclosure of the information they gather and the identities of the

sources of that information.” In re Schuman, 222 N.J. Super. 387, 390 (App. Div. 1988), rev’d on other grounds, 114 N.J. 14 (1989).

Further, the compelled production of a reporter’s resource materials can constitute a significant intrusion into the newsgathering and editorial processes and like the compelled disclosure of confidential sources, “it may substantially undercut the public policy favoring the free flow of information to the public that is the foundation for the privilege.” United States v. Cuthbertson, 630 F. 2d. 139, 147 (3d Cir. 1980).

Here, the grand jury subpoena seeks to compel Ms. Renna to divulge her sources and/or other unpublished information referred to in the December 12, 2012 news story regarding personal use of county owned generators by county employees during Superstorm Sandy. That the Union County Prosecutor’s Office may claim that this information is central to their investigation is of no moment. The absolute protections of the Shield Law apply, regardless of whether they seek sources or any unpublished information collected as part of the newsgathering process.

The policy reasons for the Shield Law’s stringent protection, even in the criminal context, are well established. For example, protecting the press from compelled disclosures to the prosecution stops any “public perception that a reporter . . . is actually an ‘arm of the prosecution[,]’” which perception would likely make news sources fearful and “hinder the free flow of information from newspapers to the public.” Woodhaven, supra, 123 N.J. at 492 (quoting Schuman, supra, 114 N.J. at 29). Further, if the press were not protected from subpoenas such as the one here, “reporters might be unable or unwilling to research and publish crime stories, in turn removing an often valuable source of information for law enforcement agencies.” Woodhaven, supra, 123 N.J. at 492

(quoting Schuman, supra, 114 N.J. at 29).

This State's Courts and its Legislature have both emphasized the strength of the privilege by tailoring it as an absolute privilege, with three very limited exceptions, which are not present here. The privilege can be overcome (1) when a journalist is a witness to bodily harm or property damage, (2) it can be waived only to the extent materials are released outside of the publishing context, and (3) when a criminal defendant subpoenas a news entity for exculpatory evidence, that entity or reporter might be compelled to testify or produce evidence, but only where the defendant's "need for the information is 'manifestly compelling.'" Woodhaven, supra, 123 N.J. at 490. This limited exception to the Shield Law is based upon "constitutional and statutory provisions unavailable to prosecutors." Schuman, supra, 114 N.J. at 28. None of these exceptions can be invoked by the Union County Prosecutor's Office here.

New Jersey Courts have not hesitated to quash subpoenas by prosecutors in criminal contexts. In Schuman, for example, our Supreme Court held that a reporter did not have to testify for the State at trial. 114 N.J. at 15. There, the reporter had interviewed the defendant in a kidnapping-murder trial and published an article that quoted the defendant. The prosecution viewed the quoted material as an admission and sought to call the reporter as a trial witness to testify that the defendant had, in fact, said the words he was quoted as saying. Id. at 18. The Supreme Court quashed the subpoena. It did not matter that the article had already been published, or that the State sought to limit its use of the reporter's testimony only to authentication. The Court observed that "the free flow of information from press to public" is "encumbered" regardless of whether the reporter is called to testify about information already published. Id. at 31-32.

Thus, the reporter could not be compelled to testify and the subpoena was quashed.

The Schuman Court also recognized the breadth of the information protected by the Shield Law. On its face, the Shield “encompass[es] all sources of information, regardless of whether the information was disseminated, and . . . cover[s] all information gathered in the scope of professional activities, whether or not that information was disseminated.” Id. at 22. Ms. Renna’s reporting, gathering of information, and communications with her sources all fall directly within these protections. She therefore cannot, consistent with the Privilege, be compelled to testify before the grand jury.

II. Renna is Well Within the Privilege Afforded by the Shield Law.

To sustain the Privilege, the claimant must make a *prima facie* showing that:

[s]he is [1] engaged in, connected with, or employed by a news media [2] for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public or on whose behalf news is so gathered, procured, transmitted, compiled, edited or disseminated, and that [3] the subpoenaed materials were obtained in the course of pursuing [her] professional activities.

N.J.S.A. 2A:84A-21.3 (internal numbers added).

As explained by the State Supreme Court in Too Much Media, the Shield Law does not protect only members of the traditional media. Instead, the Shield Law extends protection to other news outlets, so long as those outlets are “similar”—meaning they “hav[e] characteristics in common” or are “alike in substance or essentials”—“to newspapers, magazines, and the like.” 206 N.J. at 233 (quoting Webster’s Third New Int’l Dictionary 2120 (1981)). “A single blogger[,]” the Court noted, “might qualify for coverage under the Shield Law provided she met the statute’s criteria.” Too Much Media, supra, 206 N.J. at 237. Ms. Renna, who is not a “single blogger” but part of a team of correspondents, falls solidly within those three criteria (“the Three Criteria”): (1)

connection to a news media; (2) a purpose to gather or disseminate news; and (3) a showing that the materials sought were obtained in the course of professional newsgathering activities. Id. at 241-242.

As noted above, County Watchers is “similar” to traditional news media described in the statute; it carries original reporting of news (which many publications do not), as well as investigative journalism (which many publications do not) describing issues at the heart of the First Amendment, i.e., representative government. It is therefore a “news media” under the broad interpretations given the statute by our Supreme Court.

As Ms. Renna certified, she is engaged in and connected with County Watchers. She has been publishing County Watchers on a regular basis, usually at one story per week, since 2005. Renna Cert. at ¶ 3. She works an average of 10-20 hours or more as a reporter and editor each week. Id. She personally has covered and reported on all facets of Union County government and politics since she began this on-line blog about seven years ago, through which she and her colleagues have published at least 1,000 news posts. Id. The sampling of her published blog contained in Exhibit B to the Renna Cert. exhibit more investigative reporting than most other newspapers on topics central to democratic government.

Ms. Renna’s work also qualifies as being “for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public.” N.J.S.A. 2A:84A-21.3. County Watchers is, on its face, a publication that provides individuals with news and information regarding their county government. It has a proven track record, having published approximately more than 1000 news stories as well as video broadcasts, complete with call-in opportunities, over an 18-month period. Renna Cert. at

¶ 3. As Ms. Renna certified: “My purpose in operating, and publishing, County Watchers is, and always has been, to gather and compile and disseminate to members of the public information about Union County government.” Renna Cert. at ¶ 7.

Finally, the subpoenaed testimony here clearly seeks information regarding her published allegations that county employees used publicly-owned generators for their personal use which was obtained in the course of Ms. Renna’s professional activities. As Ms. Renna certified: “I obtain the information I publish in the course of my duties as the person who writes, operates and publishes the County Watchers blog.” Renna Cert. at ¶ 7. From the language of the Subpoena, the letters sent by Det. Russo, and counsel’s conversations with the Assistant Prosecutor, it is indisputable that the Subpoena seeks materials obtained in the course of Ms. Renna’s reporting.

Ms. Renna’s Certification provides a *prima facie* showing that Too Much Media’s Three Criteria have been met, requiring the Union County Prosecutor’s Office to produce evidence to counter that Certification. The example in Too Much Media of “Self-appointed journalists or entities with little track record” does not apply to someone who has met the Three Criteria for more than seven years and who has a proven track record; Ms. Renna is the epitome of a local journalist doing her job.

Thus, we believe it is clear that no further proceeding is necessary. However, to the extent the Court determines that it requires further information to decide whether Ms. Renna qualifies for the Privilege, it may conduct a narrow hearing, limited to the “three relevant standards in the statute[.]” Too Much Media, *supra*, 206 N.J. at 241-242, as described above. The Court’s examination must focus only on determining whether these three criteria have been met. As the Supreme Court warned: “Hearings should not

devolve into extensive questioning about an author's editorial, writing, or thought processes. Likewise, they should avoid exposing the privileged materials the Shield Law is designed to protect." Id.

III. Because There is No Reasonable Basis Upon which the Information is Sought in View of Ms. Renna's Role as a Journalist, the Prosecutor's Office Should be Assessed the Cost of This Motion.

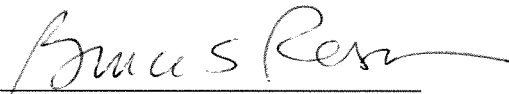
N.J.S.A. 2A:84A-21.8 states that if the Court finds that no reasonable basis for requesting the information has been shown, costs, including counsel fees, may be assessed upon the party seeking enforcement of the Subpoena.

The case law set forth above is testament to the incredibly wide application of the Privilege. Counsel for Ms. Renna attempted to bring the breadth of the Shield Law and its protections to the Prosecutor's Office's attention but the attempt to have that Office drop the matter informally was rebuffed. The Union County Prosecutor's Office cannot, consistent with this State's case law, compel Ms. Renna to testify at the grand jury. There is absolutely no reason for the Subpoena to have been issued in brazen violation of a statute that has existed in its present form for 32 years, especially in view of Too Much Media's clarification of application of the law to bloggers in 2011. Accordingly, Ms. Renna respectfully requests that in addition to quashing the grand jury Subpoena, this Court grant fees and costs, pursuant to N.J.S.A. 2A:84A-21.8.

CONCLUSION

For the foregoing reasons, Tina Renna respectfully requests that the grand jury subpoena in his matter be quashed, and that costs and fees be granted in her favor.

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