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IN THE

SUPREME COURT OF FLORIDA

CASE NO. 69,684

MIAMI HERALD PUBLISHING COMPANY,
a division of Knight-Ridder, Inc.,
SENTINEL COMMUNICATIONS COMPANY,
and FLORIDA PUBLISHING COMPANY,

Petitioners,

vs.

HONORABLE WILLIAM CARTER GRIDLEY,
Circuit Judge of Orange County, Ninth
Judicial Circuit, State of Florida,
PAULA HAWKINS, W.E. HAWKINS,
COWLES BROADCASTING, INC., and
CHANNEL TWO TELEVISION CO. OF FLORIDA,

Respondents.

Answer Brief of Respondents Paula Hawkins and W. E. Hawkins

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INTRODUCTION

In an effort to predetermine the result, the Media Intervenors have mischaracterized this case as one in which they were denied access to the judicial process.[1] But the fact is that the media was never excluded from any proceeding, the media was never denied access to any judicial process and there never was any closure order. The only access that was denied to the media was access to the litigant's lawyer's files.

STATEMENT OF THE CASE AND FACTS

This case was originally filed in January 1986. It proceeded in orderly course until October 21, 1986. During these ten months the media representatives attended hearings and prominently reported events concerning the case. The media quoted from the pleadings and orders of the court and the information was distributed nationwide by Associated Press. (A. 47-55).[2] At no time during that ten month period did the media make any complaints concerning access.

On October 21, 1986, the Orlando Sentinel filed an unprecedented motion, its Motion to Intervene and Compel Access to Records. The Sentinel sought (1) Plaintiffs' Answers to Interrogatories, (2) transcripts of depositions of treating physicians, (3) all medical records, hospital records and hospital bills; and 4) a videotape of the injury incident. (A.

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[1]A review of the briefs filed before this Court by the media parties in Palm Beach Newspapers, Inc. v. Burk, Case No. 67,352, reveals a similar effort to recast the case into a no-lose issue for the media. Such tactics say much about their confidence in the real issues before the Court.

[2]Petitioners omitted material parts of the record from the Appendix they filed. Accordingly, the plaintiffs have filed a Supplemental Appendix A. Its numbering begins at A-47, so that it runs consecutively from the Media Intervenors Appendix A. The newspaper clippings in Plaintiffs' Appendix are intended to be representative but not exhaustive of the media coverage.

56-61). The date was no coincidence -- the general election was only about two weeks away. The Sentinel gave no explanation for why it had waited 10 months until the eve of the election to file such a motion. A week later, the Miami Herald and Florida Publishing Co. (Florida Times Union) filed a similar motion.[3] Although the original defendants are also members of the media -- the owners and operators of the Orlando television station where the injury occurred -- they did not join in the motions and in fact opposed them.

The Media Intervenors sought to intervene in the suit. They further sought to compel both original parties -- plaintiffs and defendants -- to turn over to them the enumerated records.[4] Since none of those records were in the court file -- to which the media always had unlimited access -- the Media Intervenors in reality sought access to the litigants' lawyers' files.

In support of this extraordinary request, the Media Intervenors made numerous unsupported assertions about the plaintiff, all of which are still unsupported in the record. Statements were attributed to the plaintiff without any substantiation and she was accused, again without substantiation, of taking conflicting positions. [Those same allegations are repeated in the brief filed with this Court.]

It was then as it is now, the Media Intervenor's position that, absent a closure order, they have a right of unlimited access to any civil

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[3]The Orlando Sentinel, Miami Herald and Florida Publishing Co. will be referred to herein as the "Media Intervenors."

[4]The Media Intervenors never established that any of the enumerated records in fact existed. However, for purposes of this proceeding the Court may assume that at least some of the records did in fact exist.

litigation and any civil litigant was obligated to turn over to them whatever "records" they wished.

Both plaintiffs and defendants opposed the motions to intervene and compel. On hearing, the trial court granted the intervention but denied the motion to compel. (A. 62-63).

The Media Intervenors then sought review of that order in the Fifth District Court of Appeal. The District Court denied that petition, noting that the Media Intervenors did "not controvert the finding of Judge Gridley that the requested materials have not been filed of record in the circuit court." (A. 45). The district court therefore held:

> Based upon the Palm Beach case and the prior opinion of this court in Ocala Star Banner Corp. v. Sturgis, 388 So.2d 1367 (Fla. 5th DCA 1980), we deny the petition. See also Seattle Times Corp. v. Rhinehart, 467 U.S. 20 (1984).

(A. 45-46).

The District Court did, however, certify the following question as being one of great public importance:

> Are unfiled discovery materials in a civil case accessible to the public and hence to the press?

(A. 46).

POINTS INVOLVED

I

WHETHER A DESIRE TO HAVE ACCESS TO LITIGANT'S LAWYER'S MATERIALS IS A SUFFICIENT INTEREST TO INTERVENE IN LITIGATION?

II

WHETHER THE PRESS HAS RIGHTS GREATER THAN THE GENERAL PUBLIC TO INTERVENE IN LITIGATION?

III

WHETHER THE FIRST AMENDMENT OR ANY OTHER LAW, REQUIRES THAT ABSENT A CLOSURE ORDER, THE MEDIA BE GIVEN ACCESS TO ALL MATTERS INVOLVED IN CIVIL LITIGATION?

SUMMARY OF ARGUMENT

The general public has no right to intervene in litigation to gather information that might be in the private files of the litigant's lawyers. The media has no rights greater than the general public since it serves only as the public's representative. The trial court should have therefore denied the Media Intervenor's motion to intervene and never considered the motion to compel.

While, as a matter of First Amendment constitutional right and barring special circumstances, the courts are always open to the public, there is no corresponding right of access to pre-trial discovery and non-judicial trial preparation materials. Pre-trial discovery and preparation have traditionally been conducted in private. Public access to the courts is founded on principle that knowledge of judicial proceedings and the basis for court decisions gives assurance and confidence that they are conducted fairly to all concerned. There is no corresponding necessity for access to the private pre-trial preparation of the litigants. To now allow such access would seriously complicate, delay and even jeopardize the ability of the courts to dispense justice. Instead of serving the cause of resolving disputes, the courts would also be required to serve the purpose of gathering news. Irreconcilable conflicts would inevitably arise.

In this case the public and the media have always had access to all court proceedings and the court file. The media has prominently reported matters concerning this case. Since the Media Intervenor's motion sought matters that were not part of the court proceedings and were contained only in the litigant's lawyer's files, the motion to compel was properly denied.

ARGUMENT

INTRODUCTION

Before proceeding to the merits of the Media Intervenor's petition, there is a critical threshold question which should be addressed: did the Media Intervenors have any right to intervene in this litigation in the first instance.[5] That question involves two considerations. First, under the ordinary rules of intervention did the Media Intervenors qualify to intervene? Second, if not, does the status of the Media Intervenors as members of the media bring into play constitutional issues which confer special rights which are greater than those of the general public so that they can intervene even though the general public could not?

I

A DESIRE TO HAVE ACCESS TO LITIGANT'S LAWYER'S MATERIALS IS NOT A SUFFICIENT INTEREST TO INTERVENE IN LITIGATION.

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[5]Although this question was not certified by the District court, once this Court assumes jurisdiction, it has jurisdiction over all issues in the case, particularly if they are briefed and dispositive of the case. See, e.g., Bankers Multiple Line Ins. Co. v. Farish, 464 So.2d 530 (Fla. 1985); Dania Jai-Alai Palace Inc. v. Sykes, 450 So.2d 1114, 1122 (Fla. 1984); Savoie v. State, 422 So.2d 308 (Fla. 1982); Bould v. Touchette, 349 So.2d 1181, 1183 (Fla. 1977); Lawrence v. Florida East Cost Railway Co., 346 So.2d 1012 (Fla. 1977) (Court going on to review and reverse district court finding that the trial court abused discretion in evidentiary ruling).

To be entitled to intervene in litigation, a party must claim "an interest" in the litigation. Fla. R. Civ. P. 1.230. The Media Intervenors did not make even the slightest pretext of complying with Fla. R. Civ. P. 1.230.

The Media Intervenors are complete strangers to this litigation. They have absolutely nothing to lose or gain by the outcome. Indeed, in their motions they make absolutely no claim of having any interest in this litigation. Their only apparent interest is their desire to compel the litigant's lawyers to disclose what is in their files, so they can use that information for their own purposes. Such a desire, no matter the bona fides vel non of their motives, does not authorize intervention.

> It has generally been held that the interest which will entitle a person to intervene under this provision must be in the matter of litigation, and of such a direct and immediate character that the intervener will either gain or lose by the direct legal operation in effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of litigation.

Miracle House Corp. v. Haige, 96 So.2d 417 (Fla. 1957); Citibank v. Black Hawk Heating & Plumbing Co., 398 So.2d 984 (Fla. 4th DCA 1981). Examples of permitted intervention are: by the pledger of notes when only the pledgee was a party, Cracowaner v. Worthington, 101 Fla. 756, 135 So. 304 (1931); by a contract vendee of a party when receiver sold the property, Miracle House v. Haige, supra, 96 So.2d 417; by a property owner in a zoning district when the city was enjoined from enforcing the ordinance, Wags Transportation System v. City of Miami Beach, 88 So.2d 751 (Fla. 1956); a city in an action to enjoin a nuisance, Wojisch v. Tiger, 193

So.2d 187 (Fla. 4th DCA 1966); and by an owner in an action to remove subdivision restrictions, Baker v. Field, 163 So.2d 42 (Fla. 2d DCA 1964).

A showing of indirect, inconsequential or contingent interest is wholly inadequate. Faircloth v. Mr. Boston Distiller Corp., 245 So.2d 240 (Fla. 1970); Winkler v. Neilinger, 153 Fla. 288, 14 So.2d 403 (1943); Morgareidgo v. Howey, 75 Fla. 234, 78 So. 14 (1918); Oster v. Cay Const. Co., 204 So.2d 539 (Fla. 4th DCA 1967).

Since the Media Intervenors do not claim "an interest" in the outcome of this case and, indeed, have no interest in its outcome, their motion to intervene should have been denied.

Additionally, the motion to intervene should have been denied because the Media Intervenors made it plain that they did not intend to act as intervenors. One who intervenes in a pending suit must ordinarily come into the case as it exists, conform to the pleadings as he finds them, and take the case as he finds it. United States v. State, 179 So.2d 890 (Fla. 3d DCA 1965). But the Media Intervenors desired to do just the opposite. They did not want to accept the status of the case as it was. Indeed, their sole purpose for intervention was to interfere with the case and to force it into a different posture; one in which they can gain access to information concerning the plaintiff that they otherwise had no right to.

Thus, under the ordinary rules of intervention, there is no right for anyone to intervene solely to gather information. Under the ordinary rules of intervention, the trial court should have denied the Media Intervenors motion to intervene and therefore never even considered the motion to compel.

II

THE PRESS DOES NOT HAVE ANY RIGHTS GREATER THAN THE GENERAL PUBLIC TO INTERVENE IN LITIGATION.

Although the general public has no right to and could not intervene in this litigation to merely gather information, the Media Intervenors take the position, apparently because of First Amendment considerations, that they have some rights greater than that of the general public. They are wrong.

The First Amendment is without question a fundamental right of all citizens. It does not, however, confer any unique or greater rights on the media. This important fact, which the Media Intervenors conveniently ignore, was recognized by the district court below. (A. 46). It is only the public that has the right of access. The media only exercises that right. The United States Supreme Court has made that clear.

In Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978) the Supreme Court expressly held that the First Amendment did not confer any rights on the media concerning a trial greater than that of the general public.

> The First Amendment generally grants the press no right to information about a trial superior to that of the general public...."[T]he line is drawn at the courthouse door; and within, a reporter's constitutional rights are no greater than those of any other member of the public."

Id. at 609. It is stating the obvious to say that a general member of the public would have no right whatsoever to intervene in this litigation much less compel production of materials from the litigant's lawyer's files.

No general member of the public has any right, constitutional or otherwise, to compel any other person to provide them information so they

can publish it. So also with the media. As the Supreme court has plainly stated:

> The [First Amendment] right to speak and publish does not carry with it the unrestrained right to gather information. Zemel v. Rusk, 381 U.S. 1, 17 (1965).
>
> [T]he First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally. Branzburg v. Hayes, 408 U.S. 665, 684 (1972).

It is true that this Court has recognized that the media has standing to oppose closure orders, even though not a party to the litigation. However, that standing derives from the fact that the media is viewed as the public's "surrogate". Miami Herald Pub. Co. v. Lewis, 426 So.2d 1, 7 (Fla. 1983). It is not in any respect due to some inherent "right" on the part of the media that is greater than that of the general public. Indeed, when the media does participate in closure hearings, it is not as intervenors but rather because they must be given notice as the public's representatives:

> A member of the press...may be properly considered as a representative of the public insofar as enforcement of the public right of access to the court is concerned....(Emphasis added.)

State ex rel. Miami Herald Pub. Co. v. McIntosh, 340 So2d 904, 908 (Fla. 1976).

In sum then, the media has no rights of intervention greater than the general public. The general public has no rights to intervene in litigation to gather information. The trial court therefore should have denied the Media Intervenor's motion to intervene and erred in not doing

so. It follows, that the trial court should not have considered the motion to compel.

III

NEITHER THE FIRST AMENDMENT, NOR ANY OTHER LAW, REQUIRES THAT, ABSENT A CLOSURE ORDER, THE MEDIA MUST BE GIVEN ACCESS TO ALL MATTERS INVOLVED IN CIVIL LITIGATION.

The Media Intervenors argue that the First Amendment, as well as both federal and Florida common law, create a "qualified"[6] right of access to unfiled discovery materials. Their argument is presented in broad strokes since they seek to achieve a declaration of an uninhibited right to pry. They seek to make the courts a tool that they can use to gather information. For the reasons which follow, no such right exists and this Court should not now create such a right.

Before proceeding to the merits of this issue, a clarifying note must be made about the Media Intervenors' continual references to "unfiled discovery materials" and to the Rules of Civil Procedure. These references are a not-so-subtle attempt to create a staking horse. Clearly the materials were not part of the court record. Fla. R. Civ. P. 1.080(e). And, while some of the records sought by the Media Intervenors are materials which can be obtained through pre-trial discovery, these references prove too much.

The reason that these arguments constitute a staking horse is that the same materials could be created and exchanged by cooperating

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[6]Interestingly, although the claim is made that this "qualified" right already exists, the Media Intervenors have spent 10 pages of their brief proposing that the three-pronged Lewis test, Miami Herald Publishing Co. v. Lewis, 426 So.2d 1 (Fla. 1982), be used as the standard for application of this right.

litigants without any reference to the Rules of Procedure. Additionally, the exact same information could be compiled before suit or at an early stage in the litigation and then not exchanged until much later or even not at all. Most important, in this case there has not been any court involvement in any "discovery"--there have been no objections, no motions to compel and no hearings. The litigant's lawyers have acted in a spirit of professional cooperation which has allowed the case to proceed without unduly occupying the court's time and, in turn, the court has had more time to devote to other matters.

Additionally, in this case, the parties did not want the case tried in the newspapers and refused to discuss the case with the media. (A. 48, 51, 62). The Media Intervenors may or may not respect that decision but have no right to force a different course. If there had been a rule that the media could intervene and could compel discovery, these parties could have still achieved their objectives by informally exchanging information without any reference to the Rules of Civil Procedure. And, if such a rule were adopted now, future litigants could do likewise.

No one would seriously expect the media to then abandon its efforts to obtain the information. It would then argue that it should still be entitled to the information since it was made available in the context or within the framework of a judicial case. Thus, the reference to "unfiled discovery materials" and the rules of procedure only serves to hide the real issue. What the Media Intervenors really seek is the ability for themselves to force disclosure of the materials. They wish to be able to invade all civil litigation and independently compel discovery from the litigant's and their lawyers for their own information gathering purposes.

Such a rule portends havoc, is unnecessary and would cause increased litigation in the courts. More important, there is no law or constitutional right that requires such a result.

As a matter of First Amendment right, barring overriding special circumstances, the courts are always open to the public. And, as already noted, the media has standing to enforce that public right of access. That constitutional right is founded in the fundamental principle that public access promotes free discussion by imparting a more complete understanding of the judicial system and the basis for judicial decisions. Such access and understanding gives assurance that the proceedings were conducted fairly to all concerned. Miami Herald Pub. Co. v. Lewis, Id. at 6; Richmond Newspapers, Inc. v. Virginia, 488 U.S. 555 (1980).

In this case, the Media Intervenors failed to offer any explanation as to how access to information concerning the plaintiff's injuries and health would in any way contribute to the public's understanding or confidence in the judicial system. The reason is obvious. It would not. It would only serve the purpose of gathering information for the media.

While the courts have always been open to the public, there has never been any public right of access to the non-judicial pretrial preparation of a case. When the judiciary and the court record is not involved and when no rulings are made, there is no need to probe or dissect the reasons or motives for the litigants' or their lawyer's actions or inactions. The United States Supreme Court has made that point in both Gannett Co., Inc. v. DePasquale, 443 U.S. 368 (1979) and Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984). In DePasquale the Court expressly noted

that under English common law, the public had no right to attend even in-court pretrial proceedings, Id. at 389, and that there was no constitutional right under the Sixth and Fourteenth Amendments for public access to trials. Id. at 391. And, although in DePasquale the Court did not specifically decide whether there was a separate First Amendment constitutionally protected right of public access to trials, Chief Justice Burger noted in his concurring opinion that the draftsmen of the constitution were aware that pretrial proceedings occurred.

> Yet, no one ever suggested that there was any "right" of the public to be present at such pretrial proceedings as were available in that time; until the trial it could not be known whether and to what extent the pretrial evidence would be offered or received. Similarly, during the last 40 years in which the pretrial processes have been enormously expanded, it has never occurred to anyone, so far as I am aware, that a pretrial deposition or pretrial interrogatories were other than wholly private to the litigants. A pretrial deposition does not become part of a "trial" until and unless the contents of the deposition are offered in evidence.

Id. at 396. The Court did face the First Amendment question, in the context of civil pretrial discovery, in Rhinehart. There the Court noted:

> [P]retrial depositions and interrogatories are not public components of a civil trial. Such proceedings were not open to the public at common law, and, in general, they are conducted in private as a matter of modern practice. Much of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action. Therefore, restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information. (Citations omitted.)

Id. at 33. Seattle Times involved an effort by a party defendant who was a member of the media to publish filed discovery material it had obtained

in the litigation. The Court held that there was no First Amendment bar to prohibiting such conduct. Here the Media Intervenors' position is much more tenuous. If a party litigant who is in actual possession of discovery material has no First Amendment rights to publish, non-parties who are not in possession of the material cannot have any right to compel its production.

In United States v. Gurney, 558 F.2d 1201 (5th Cir. 1977) the media had been denied access to various exhibits and transcripts (not part of the public record), the jury list and the written communications between the judge and jury in a criminal case involving an incumbent United States Senator. The trial court had so ordered without any hearing. The media appealed contending that there had been a violation of First Amendment guarantees. The court of appeals affirmed noting that the media's right

> to gather news has been defined in terms of information available to the public generally.... The Constitution does not...require government to accord the press special access to information not shared by members of the public generally.... The documents sought by appellants were not part of the public record. In keeping with present Supreme Court guidelines, we do not think that the press had any First Amendment right of access to those matters not available to the public. Id. at 1208, 1209.

In their efforts to prevail, the Media Intervenors have cited a number of cases (Petitioners' Brief, pp. 36,37, f.n. 10 and 11) which they claim support a right of access to unfiled materials. However, none of those cases deal with the issue involved in this case. The cases cited by the Media Intervenors all involve access to court hearings or other judicial or quasi-judicial proceedings. Plaintiffs do not quarrel with those decisions. They are simply not dispositive here.

There are, however, three other decisions of the district courts, which reach the identically same result as in this case. They are Palm Beach Newspapers, Inc. v. Burk, 471 So.2d 571 (Fla. 4 DCA 1985),[7] Post-Newsweek Stations, Florida, Inc. v. Florida, 474 So.2d 344 (Fla. 3 DCA 1985),[8] Florida Freedom Newspaper, Inc. v. McCrary, 497 So.2d 652 (Fla. 1st DCA 1986).[9]

Burk involved a pending case of attempted murder. In Burk the press sought to have the trial court order that all deposition notices be filed, that all deposition transcripts be filed and that the press be allowed to attend all future depositions. The trial court refused to do so and was affirmed on appeal.

Based on an exhaustive review of the law, the district court concluded that the press had no right of access until a matter was filed of record, that there was no requirement that counsel transcribe or file depositions and that to create a rule allowing press access to non-judicial, private pretrial proceedings would be frought with difficulty and inevitably lead to increased litigation.

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[7]In Burk, the district court certified two questions to this Court as being of great public importance. Oral argument was held on April 6, 1986. That case is currently pending before this Court, case number 67,352. There is a similarity of issues between this case and Burk, although Burk is a criminal case and the parties did not discuss the probable impact of the media's contention on civil litigation. Burk also does not involve the threshold issue of intervention that is involved in this case.

[8]In Post-Newsweek, the district court also certified a question to this Court. That matter is currently pending before this Court, Case Nos. 67,671 and 67,650.

[9]There is one district court decision to the contrary. It is Short v. Gaylord Broadcasting Co., 462 So.2d 591 (Fla. 2nd DCA 1985).

Post-Newsweek graphically illustrates the extremes to which the media can go. That case involved a criminal prosecution for molestation of a number of young children. The media was not content to obtain copies of the discovery depositions of those children; it wanted to attend and presumably videotape (two of the three petitioners were owners of television stations) the depositions. The trial court ordered that the media could not attend the depositions but did not preclude the media from obtaining copies of the depositions once they were filed.

The media, of course, appealed claiming that the trial court erred in not applying the Lewis test. The district court held, however, that the Lewis test was not applicable because

> there is no constitutional, procedural or substantive right of the public or the media to attend pre-trial discovery depositions in criminal case....

Id. at 344.

McCrary also involved a pending criminal prosecution. In McCrary the press sought access to pretrial transcribed statements taken by the state and furnished to the defendants pursuant to discovery requests. The district court concluded that since the documents had not been filed with the trial court, the press had no inherent right of access.

Although Burk, Post-Newsweek and McCrary all involved criminal cases, they should apply with equal force in civil litigation. Indeed, more compelling arguments for access can be made in criminal cases than ever can be made in civil litigation.

In addition to these decisions, there is also the decision in Tallahassee Democrat, Inc. v. Willis, 370 So.2d 867 (Fla. 1st DCA 1979).

In setting aside an administrative order that would have prevented press access to all filed depositions, the district court noted that the taking of a deposition can hardly be characterized as a "judicial proceeding" that would qualify for access, since ordinarily no judge was present and no rulings are made.

When the rhetoric is stripped away and the substance of their position is exposed, what the Media Intervenors seek is a rule that will apply the Lewis test to all pretrial proceedings, regardless of whether the court is involved or they are conducted in private between the litigant's lawyers. The effects of such a rule could be disastrous. Such a rule portends a staggering increase in the amount and cost of litigation. Since litigants would never know in advance when the media might seek information from them, such a rule would require that in every case consideration be given to such an eventuality. If a party had any conceivably possible reason to need protection, a motion would have to be filed, notice would have to be given to the media and a hearing would have to be held with the court. If the media were dissatisfied with the amount or timing of discovery, other motions may result. The result would be congestion, perhaps even havoc in the system. The costs will be incredible. The amount of judicial time that would be consumed is incomprehensible. The effect on the ordinary process of litigation is incalculable. And, this comes at a time when the courts are already crowded and this Court has issued Administrative Orders to insure the timely disposition of litigation.

There is another more subtle but potentially more insidious effect that such a rule could very easily produce. Such a rule would make

the courts a tool for information gathering. Through the court processes -- subpoenas, contempt orders, sanctions, etc. -- the media would have an extremely powerful club to force the disclosure of information. If such a rule were adopted, "1984" would truly have arrived. What then would happen to the public's confidence in the judicial system?

For all the practical difficulties outlined in Burk, and for all the reasons stated in this brief, such a rule should not be adopted. Respondents pray that this Court not create a special class of rules for the media. Since the media has always had access to all court proceedings and the court file and has no constitutional right to interfere with the process of litigation, plaintiffs would respectfully request that this Court affirm the decision below.

CONCLUSION

The trial court should not have granted the motion to intervene. Having done so, the trial court correctly ruled that there was no right of access to materials that were not filed and therefore not available to the public generally. The district court below should have reversed the order allowing intervention and its failure to do so was erroneous. Nonetheless, the district court correctly affirmed that portion of the trial court's order denying the motion to compel and, in that respect, the opinion below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 17th day of February, 1987, to Alton G. Pitts, Pitts Eubanks Hilyard Rumbley & Meier, P.A., Post Office Box 20154, Orlando, Florida 32814-0154; Richard G. Ovelmen, General Counsel, The Miami Herald Publishing Company, One Herald Plaza, Miami, Florida 33101; Laura Besvinick, Sharpstein & Sharpstein, P.A. 3043 Grand Avenue, PH 1, Coconut Grove, Florida 33133; Harold B. Wahl, Wahl & Gable, 920 Barnett Bank Building, Jacksonville, Florida 32202; Parker D. Thomson, Susan H. Aprill, Thomson Zeder Bohrer Werth & Razook, 4900 Southeast Financial Center, Miami, Florida 33131; Edward Soto, Baker & McKenzie, 4310 Southeast Financial Center, Miami, Florida 33131; and, William G. Mateer, David L. Evans, Mateer & Herbert, 100 E. Robinson Street, Orlando, Florida 32802.