

February 13, 2009

The Honorable Malcolm Booker, Jr., Clerk
Buckingham County Circuit Court
13061 James Anderson Hwy
Buckingham, VA 23921

In re: Thomas L. Garrett, Jr. v. Better Publications, L.L.C., *et al.*
Civil Number: CL08000197-00

Dear Mr. Booker:

Enclosed please find Plaintiff's Motion to Compel Compliance with Subpoena *Duces Tecum* and Opposition to Waldo Jaquith's Motion to Quash in the above-referenced matter.

Should you have any questions, please feel free to contact me.

Very Truly Yours,

THE CREEKMORE LAW FIRM PC


Keith Finch

JRC/lsh
Enclosure

cc: Waldo Jaquith (w/enc.) (via email only)
Garrett M. Smith, Esq. (w/enc.) (via email only)

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BUCKINGHAM

THOMAS L. GARRETT, JR.,)	
Plaintiff,)	
)	
v.)	Case No. CL08000197-00
)	
BETTER PUBLICATIONS, L.L.C., <i>et al.</i> ,)	
Defendants.)	

PLAINTIFF'S MOTION TO COMPEL COMPLIANCE WITH SUBPOENA *DUCES*
TECUM AND OPPOSITION TO WALDO JAQUITH'S MOTION TO QUASH

Plaintiff Thomas L. Garrett, Jr., by counsel, hereby opposes Waldo Jaquith's Motion to Quash of January 31, 2009, and further moves the court for an order compelling Mr. Jaquith to comply with the Plaintiff's subpoena *duces tecum* served upon him (and attached as **Exhibit 1**) (the "Subpoena").

INTRODUCTION

Plaintiff commenced this action on December 22, 2008. The next day, Mr. Jaquith published an article entitled "*The Hook* Sued for Defamation" on his web site, cvillenews.com. (See **Exhibit 2.**) In subsequent days, a number of comments appeared underneath the article on the web site (as Mr. Jaquith's web site apparently permits any reader to post comments with respect to an article). Many of these comments contained material evidencing animus and malice toward Plaintiff. Many comments also evidenced opinions and beliefs stemming from the commenters' reading of the articles of *The Hook* giving rise to this litigation. Ultimately eighty-one comments appeared underneath the article on the web site before Mr. Jaquith apparently closed the article to comments, an action which he took after service of Plaintiff's subpoena upon Mr. Jaquith.

Because of the virulence of the attacks against Plaintiff manifested in the anonymous comments, and because the attention to the article exceeded what one would have expected from disinterested third parties, Plaintiff has reason to believe that many of the comments may have been made by employees or agents of Defendant Better Publications, L.L.C. and/or the other Defendants to this action (referred to collectively hereinafter as "*The Hook*"). Because

the comment period coincided with the Christmas holidays, during which time the offices of *The Hook* were closed, it is likely that such comments were made from individuals' home computers rather than from computers of *The Hook*. If Defendants or their agents did in fact post such comments upon Mr. Jaquith's web site, then these actions would provide evidence of the Defendants' animus and malice toward Plaintiff, as well as of *The Hook*'s lack of journalistic professionalism (despite its claims that its reporters are serious journalists). Additionally, as noted above, comments from third parties, predicated in whole or in part on reading *The Hook*'s articles giving rise to this litigation, provide evidence of the effect of *The Hook*'s defamatory statements on members of the public.

Accordingly, on January 15, 2009, Plaintiff served the Subpoena upon Mr. Jaquith seeking documents and information identifying the posters of the comments and the computers they used to post those comments (information which generally is routinely collected and recorded by computers hosting web pages) as well as other documents in the possession of Mr. Jaquith that might reveal the identities of the persons who posted the comments or that might provide proof of the animus and malice toward the Plaintiff of *The Hook* and its employees or agents.

On January 25, 2009, Mr. Jaquith wrote in another article on his web site, entitled "Tommy Garrett Subpoenas cvillenews.com" (See **Exhibit 3**), referring to the Subpoena, that "I don't intend to give up a thing unless compelled to do so by a court." Subsequently, on January 31, 2009, Mr. Jaquith filed the instant Motion to Quash the Subpoena.

ANALYSIS

A. Paragraph 1 of the Subpoena

Paragraph 1 of the Subpoena requests Mr. Jaquith to produce:

Any and all documents and information relating to persons posting comments on the article entitled "The Hook Sued for Defamation," which presently appears at <http://www.cvillenews.com/2008/12/23/garrett-hook-lawsuit/> (the "Article"), including but not limited to:

- (a) names of persons posting comments on the Article, if known;
- (b) the IP addresses associated with each viewer of the Article;
- (c) the IP addresses associated with each comment posted on the Article;
- (d) the dates and times when each comment on the Article was posted; and
- (e) all computer logs generated in connection with the Article.

In opposition to this request, Mr. Jaquith argues first that these documents should not be disclosed because to do so would "threaten the exercise of fundamental rights" of the

commenters, namely, their First Amendment right to anonymous speech on the internet, and that therefore the Subpoena “is subject to the closest scrutiny.” (Mot. to Quash ¶ 5.) However, the precedents cited by Mr. Jaquith in support of this position dealt with far more weighty constitutional matters than those at issue here. In both *NAACP v. Alabama*, 357 U.S. 449 (1958) and *Bates v. City of Little Rock*, 361 U.S. 516 (1960), governments in the former Confederacy had sought to compel units of the NAACP to disclose their membership lists, thus threatening members’ exercise of their First Amendment rights of free association, and perhaps even threatening their lives. The standard of “closest scrutiny” (sometimes referred to as “exacting scrutiny”) applied in those cases applies to speech only when it touches on prime matters of public political life, such as debate over the qualifications of candidates, discussion of governmental or political affairs, discussion of political campaigns, and advocacy of controversial points of view, in which case such speech is described as the “core” or “essence” of the First Amendment. See generally *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346-347 (1995) (“When a law burdens core political speech, we apply ‘exacting scrutiny’”). By contrast, the comments posted on Mr. Jaquith’s article are almost uniformly tawdry, sophomoric, and spiteful, and touch upon no issues of public or political interest that constitute the “core” of the First Amendment, such as those at issue in *NAACP* and *Bates*. (See generally **Exhibit 2.**)

Of course, even “vulgar or offensive” speech benefits from some First Amendment protection. See *Gooding v. Wilson*, 405 U.S. 518, 520 (1972). However, this protection is not absolute, and it must be balanced against the need of the civil justice system to perform its vital truth-seeking function. Because the era of anonymous internet speech is still quite young, there is little precedent offering guidance in this area, particularly in Virginia. However, in *In re Subpoena Duces Tecum to America Online, Inc.*, 52 Va. Cir. 26, 2000 WL 1210372 (2000), *rev’d on other grounds sub nom. America Online, Inc. v. Anonymous Publicly Traded Co.*, 261 Va. 350 (2001), Judge Stanley P. Klein of the Circuit Court for the County of Fairfax examined precisely this question and proposed the following three-part test:

[B]efore a court abridges the First Amendment right of a person to communicate anonymously on the Internet, a showing, sufficient to enable that court to determine that a true, rather than perceived, cause of action may exist, must be made.

....

Therefore . . . this Court holds that, when a subpoena is challenged under a rule akin to Virginia Supreme Court Rule 4:9(c), a court should only order a non-party, Internet service provider to provide information

concerning the identity of a subscriber (1) when the court is satisfied by the pleadings or evidence supplied to that court (2) that the party requesting the subpoena has a legitimate, good faith basis to contend that it may be the victim of conduct actionable in the jurisdiction where suit was filed and (3) the subpoenaed identity information is centrally needed to advance that claim.

Id. at *7-8. While some facts in *America Online* differ from those in the case before this Court — notably, Mr. Jaquith is not an “Internet service provider” nor is the Subpoena principally directed at discovering the identity of an alleged tortfeasor — Judge Klein’s reasoning is applicable here. In short, the First Amendment is not an unassailable shield that automatically trumps the truth-seeking function of civil process; rather, the First Amendment requires a court only ensure that such civil process is not being abused.

Applying Judge Klein’s test, as Plaintiff’s verified Complaint makes clear, Plaintiff has suffered substantial damage because of the willful and malicious campaign by *The Hook* to harm him through the publication of false statements. Plaintiff therefore has demonstrated “a legitimate, good faith basis to contend that [he] may be the victim of conduct actionable” in Buckingham County. Furthermore, “the subpoenaed identity information is centrally needed to advance” Plaintiff’s claim against *The Hook*, because, if posted by Defendants or their agents, the comments provide evidence that *The Hook* acted with willful disregard for the truth or falsity of its statements and that *The Hook*’s principal aim was to harm Plaintiff, not to report the truth. *See also Philip Morris Cos., Inc. v. Am. Broad. Cos., Inc.*, 1995 WL 1055921, at *2 (Va. Cir. Ct. July 11, 1995)¹ (noting that information sought via subpoena was related to broadcaster’s “state of mind in deciding to air the broadcast” and thus “would bear on ‘actual malice,’ which is an element of [plaintiff’s] prima facie case,” and finding that information therefore was “relevant”). In addition, if posted by third-party readers of *The Hook*’s articles, the comments demonstrate the harm Plaintiff’s reputation has suffered as a result of the defamatory articles published in *The Hook*. In either event, obtaining the identity of the individuals and/or computers from whom or from which the comments were made is necessary. For these reasons, Plaintiff’s access to the subpoenaed information indeed is “centrally needed” for Plaintiff’s case, and Judge Klein’s test therefore has been satisfied.

Mr. Jaquith also argues that disclosure under Paragraph 1 of the Subpoena is “premature” because Plaintiff “has failed to specifically identify a single allegedly false and defamatory statement” in the comments. (Mot. to Quash ¶ 6.) However, this argument is

1. A copy of this unpublished decision is attached for the Court’s convenience as **Exhibit 5**.

misplaced because, as stated above, Plaintiff is seeking to determine the extent to which *The Hook* and its employees or agents made comments on Mr. Jaquith's web site that demonstrate *The Hook's* animus and malice toward Plaintiff, as well as the identities of third parties whose comments were based upon the version of events published by *The Hook* and who therefore are potential witnesses as to the effect of *The Hook's* defamatory articles upon Plaintiff's reputation. The identity information relating to these comments is central to Plaintiff's case, and accordingly Mr. Jaquith's Motion to Quash should be denied with respect to Paragraph 1 of the Subpoena.

B. Paragraphs 2 and 3 of the Subpoena

Paragraphs 2 and 3 of the Subpoena request Mr. Jaquith to produce:

2. Any and all e-mail communications (including all headers and any attachments) and other written communications that you have received or sent on or after December 19, 2008, relating to:
 - (a) the Article;
 - (b) comments on the Article;
 - (c) Thomas Garrett;
 - (d) the above captioned lawsuit referred to in the Article (the "Lawsuit"); or
 - (e) any other articles, blogs, posts or other media relating to the Article, to Thomas Garrett, or to the Lawsuit.
3. Any and all documents and information (including but not limited to work papers, notes, drafts and phone logs) in your possession relating to any and all information obtained, generated or created in writing the Article.

In opposition to these requests, Mr. Jaquith argues that the requested documents are protected by the reporter's privilege. (Mot. to Quash ¶ 4.) However, while Virginia recognizes a *qualified* reporter's privilege, *see Brown v. Com.*, 214 Va. 755, 757 (1974), Mr. Jaquith has not introduced any evidence to prove that he is in fact a journalist. Since Mr. Jaquith asserts the privilege, he bears the burden of proving that the privilege applies to his communications. *See Anderson v. Anderson*, 29 Va. App. 673, 681-682 (1999) ("The party seeking to establish the existence of a privileged communication carries the burden of proof.") However, he has merely asserted "upon information and belief" that the privilege applies (Mot. to Quash ¶ 4.), and has not offered any evidence in support of this assertion.

In any event, it seems unlikely that Mr. Jaquith would be able to carry his burden. Although it appears that no Virginia court has yet articulated a test for determining precisely who is a "journalist" entitled to assert the qualified reporter's privilege, cases from other jurisdictions have held that the law "does not grant status to any person with a manuscript, a

web page or a film.” *In re Madden*, 151 F.3d 125, 129 (3d Cir. 1998). Nor does a person become a journalist merely by proclaiming that he or she is a journalist. *Id.* at 130. As one scholarly commentator has stated:

Any such self-proclaimed journalist could unilaterally decide to place certain information off-limits simply by agreeing to promise confidentiality to a source. This would potentially exclude a huge amount of information from the legal system, and would result in substantial litigation costs as parties battled over the applicability of the virtually boundless privilege.

Randall D. Eliason, *The Problems with the Reporter’s Privilege*, 57 Am. U. L. Rev. 1341, 1367 (2008). Nor is a person considered a journalist if he merely relies upon another party as his sole source of information, uncovers no story on his own, and does not independently investigate any of the information provided to him by that other party. *Madden*, 151 F.3d at 130. Mr. Jaquith therefore cannot benefit from the qualified reporter’s privilege inasmuch as the Article contains no information arising from his own investigative reporting but instead simply recites information provided or uncovered by others, including information provided by *The Hook*. For example, Mr. Jaquith swallowed and parroted back *The Hook*’s false accusation that Plaintiff had never appeared on the cover of *Senior Arizona*, stating:

In writing this blog entry this afternoon, it’s impossible to ignore the really sketchy aspects about this guy. Seriously, look at this magazine that he claims to have been on the cover of. This was obviously patched together in Microsoft Paint. It just screams “bad photoshop job.” (The fact that the magazine doesn’t seem to exist doesn’t help any.)

(Exhibit 2.) Mr. Jaquith made this demonstrably false assertion without even bothering to review the Complaint in this matter, which was then freely available in the public record at the Buckingham County Circuit Court (having been filed the day before publication of the Article), and which included a copy of the cover of *Senior Arizona* that would have made it perfectly clear that the magazine does in fact exist and that Plaintiff was featured on its cover. This is hardly “investigative reporting” of the sort contemplated by the *Madden* test.

Indeed, the only truly original portions of the Article consist of a bare few disparaging references to Plaintiff such as the sentences quoted above, or his description of the Plaintiff as “a train wreck in slow motion,” or his allegation that Plaintiff was using a website hosting service also “[u]sed primarily to host webpages for middle school girls professing their love for boy bands.” **(Exhibit 2.)** Mr. Jaquith merely has appended his own ill-founded attacks to facts spoon-fed to him by *The Hook*. This is not investigative reporting but, rather, immature and sophomoric prose that, perhaps, Mr. Jaquith believes passes for humor.

Even if Mr. Jaquith had advanced evidence proving that he was a journalist, his Motion to Quash with respect to Paragraphs 2 and 3 of the Subpoena should be denied because it amounts to an assertion that the reporter's privilege provides absolute protection for all documents and information under all circumstances, which certainly is not the case. *See, e.g., Clemente v. Clemente*, 56 Va. Cir. 530, 2001 WL 1486150 at *1 (2001) (balancing qualified reporter's privilege against need of litigant for information about opposing party's net worth, and ruling in favor of disclosure). Specifically, any such privilege (if it existed) obviously would not apply to many of the materials sought by these paragraphs of the Subpoena. For example, Paragraph 2(b) seeks communications relating to "comments on the Article." However, because the qualified reporter's privilege arises from its value "as a news-gathering mechanism," *Brown*, 214 Va. at 757, communications to or from a reporter do not become subject to the privilege unless they arise from the reporter's act of gathering news. Any comments necessarily would have post-dated the Article, so any communications relating to the comments (as well as any other communications covered by Paragraphs 2 or 3 that post-date the Article) logically could not have served as a basis for the Article and thus would not be privileged. In addition, any "work papers, notes, drafts and phone logs" that do not identify confidential sources would fall automatically outside the scope of the privilege. The Article also identifies one source (Hawes Spencer, editor and publisher of The Hook) and accordingly the privilege does not apply to this source. *See McKevitt v. Pallasch*, 339 F.3d 530, 533 (7th Cir. 2003) ("When the information in the reporter's possession does not come from a confidential source, it is difficult to see what possible bearing the First Amendment could have on the question of compelled disclosure."). Several categories of materials sought by the Subpoena thus clearly are not subject to any privilege, but Mr. Jaquith nevertheless has asserted the privilege with respect to them. Mr. Jaquith simply is keeping relevant information from the Court and, in so doing, interfering with the truth-seeking function of the civil judicial process.

Finally, Mr. Jaquith's assertion of the qualified reporter's privilege is ineffective, for he has failed to provide a privilege log as required by Rule 4:1(b)(6) of the Supreme Court of Virginia, even though in Paragraph 5 of the Subpoena Plaintiff took pains to advise Mr. Jaquith of the procedure to be followed in identifying and preserving documents and information that he considered to be subject to privilege (and even though Rule 4 is clearly mentioned on the face of the Subpoena itself). Accordingly, by failing to provide a privilege log, Mr. Jaquith has

waived his right to assert the qualified reporter's privilege. *See Mosley v. City of Chicago*, 252 F.R.D. 445, 448-449 (N.D. Ill. 2008) (holding that reporter and magazine waived privilege claim by failing to submit privilege log) (interpreting Fed. R. Civ. P. 45(d)(2)(A), which is similar to Rule 4:1(b)(6) in all material respects). Mr. Jaquith therefore cannot now assert the privilege and his Motion to Quash Paragraphs 2 and 3 of the Subpoena should be denied for this reason.

C. Paragraph 4 of the Subpoena

Mr. Jaquith's Motion to Quash does not mention Paragraph 4 of the Subpoena. Accordingly it would appear that he concedes the propriety of Paragraph 4, though he has refused arbitrarily to comply. Plaintiff therefore requests an order compelling Mr. Jaquith's compliance with Paragraph 4 on this basis and awarding Plaintiff's costs due to Mr. Jaquith's arbitrary failure to comply with a lawful court process.

D. Paragraph 5 of the Subpoena

Mr. Jaquith has objected to producing documents pursuant to Paragraph 5 of the Subpoena. (*See* Mot. to Quash ¶¶ 3 and 4.) However, it was not Plaintiff's intention that Paragraph 5 be construed as requiring the production of documents. Rather, Paragraph 5 was intended to help Mr. Jaquith understand his obligation under Rule 4:1(b)(6) of the Supreme Court of Virginia to compile a privilege log to support the assertion of any privileges that he believed to apply to documents requested under the other four Paragraphs of the Subpoena, and to allow Plaintiff and the Court to assess the merits of any such privilege asserted. This point appears to have been lost on Mr. Jaquith, perhaps because of his failure to seek representation by counsel in this matter. In any event, as outlined in Section C above, Mr. Jaquith's failure to produce the log has resulted in his waiver of any privilege. Plaintiff therefore requests the Court to order compliance with the Subpoena.

E. Virginia Code § 8.01-407.1

Mr. Jaquith also argues that the Subpoena does not comply with Va. Code Ann. § 8.01-407.1, which prescribes certain unique procedural protocols to be followed when third parties seek subscriber information from internet service providers. However, this statute does not

apply to the Subpoena, because (as stated in the very first sentence of the statute) the statute applies only “[i]n civil proceedings where it is alleged that an anonymous individual has engaged in Internet communications that are tortious,” Va. Code Ann. § 8.01-407.1(A), and because the statute applies only to subpoenas sent to an internet service provider, which Mr. Jaquith is not. In this case, Plaintiff is not seeking the identity of those posting comments on Mr. Jaquith’s internet site based on an assertion that those comments, themselves, are defamatory (whether they are or are not is a separate issue altogether). Instead, by his verified Complaint, Plaintiff has alleged that Defendants, whose identities are known, have committed defamation through the publication of other prior statements. That the subpoena may seek to link subsequent anonymous statements with certain of the Defendants, which statements would be admissible as evidence, does not trigger this statute. Furthermore, the forms of notices prescribed by the statute are clearly inapplicable to the Subpoena, since they include a “Notice to Internet Service Provider,” Va. Code Ann. § 8.01-407.1(B), while Mr. Jaquith is not an internet service provider, and refer to “identifying information concerning your client, subscriber or customer,” *id.* Mr. Jaquith does not sell or provide internet service via his website cvillenews.com. This is a further indication that the statute does not apply to the Subpoena, and accordingly Mr. Jaquith’s citation of the statute is inapposite.

F. Plaintiff’s Motion to Compel

Mr. Jaquith has written, in reference to the Subpoena, that “I don’t intend to give up a thing unless compelled to do so by a court.” (**Exhibit 3.**) Mr. Jaquith also has demonstrated contempt for the judicial process, as evidenced by his creation and maintenance of a forum for inane comments such as the following:

Waldo, I wouldn’t presume to give you legal advise, for any number of reasons. Just remember the old joke: “What do you call a lawyer with an IQ of 50?”

“Your Honor.”

‘Course, the guy who told me that one is now on the bench himself.

Posted by James Young on 9 February 2009 @ 1pm

(**Exhibit 4.**) Furthermore, as demonstrated conclusively above, Mr. Jaquith has offered no legitimate basis for his refusal to comply with this process, and the Court should not tolerate his

conduct in this regard. Plaintiff accordingly moves this Court for an order compelling Mr. Jaquith to comply with the Subpoena.

Respectfully submitted,

THOMAS L. GARRETT, JR.

By: Keith Finch
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Counsel for Plaintiff, Thomas L. Garrett, Jr.

The Hook Sued for Defamation

Published by
Waldo Jaquith

December 23, 2008 in Meta News, Business and Law and Justice.

The Hook is being sued for defamation. Tasha Kates writes in this morning's *Daily Progress*, by an aggrieved subject of articles in the weekly, Thomas Lightfoot Garrett—he goes by “Tommy”—is a publicist, author, chicken farmer, radio show host, Buckingham County resident, and relentless self-promoter, but he's also been charged with forgery and convicted of “entering the property of another with the intention of damaging it. It's the latter two points that earned him coverage in *The Hook*. The *Progress* says that Garrett is suing the paper and staff writers Lindsay Barnes and Courteney Stuart:

According to the complaint, the first claim of defamation against all three defendants relates to the alternative newsweekly's coverage of forgery charges filed against Garrett in Buckingham. The complaint claims that Barnes “lampoons Garrett and his attorney over one matter or another” with stories about Garrett's court case and existence of a magazine cover story on Garrett.

The suit's second count of defamation, which is only against Better Publications and Stuart, claims Stuart's April 24 article on Garrett's plea deal made false statements about the facts of the case.

He wants \$5.7M, \$5M of that in punitive damages.

Tracking down Courteney Stuart's article wasn't a problem, but I can't find any article about Garrett by Lindsay Barnes. [3:00 PM Update: Here it is, from February 1 of this year.] Garrett seems to be describing Stuart's April 22, 2008 blog entry in his first claim of defamation. (Kates' article in the *DP* didn't address the substance of the claims, or even compare Garrett's complaint with the original articles, so I'm on my own here. Note that the text of the lawsuit is not available; the *DP* has it, but not *The Hook*, and the daily wouldn't share their copy with the weekly.) Without knowing specifically what Garrett alleges to be inaccurate, it's tough to know whether his suit has any grounding in fact. Though with regard to his first complaint, about being “lampooned,” it's awfully tough to envision any basis in law for such a complaint.

I asked *Hook* editor Hawes Spencer about Garrett's complaint. He told me:

As you know, there have been a few times when we have gotten things wrong in a story. Typically, the subject telephones or emails, and besides offering a profuse verbal apology, we run an earnest correction. However, I've never received so much as a single phone call or email from Garrett or his lawyers telling me what we might have done wrong. [...] I am particularly surprised to be sued when no effort has been made to tell me how our paper might have defamed this person.

Spencer went on to explain that he'd received a letter from another attorney about Garrett back in August, but that Spencer's request for specifics about factual inaccuracies went unanswered. Compare that with Jesse Sheckler's successful lawsuit against NBC-29 a few years ago—the poor guy was reported to have been indicted on a cocaine possession conspiracy charge, and despite his requests, the station wouldn't run a correction. He won a \$10M judgment, and rightly so.

Proving libel requires a) the complainant was identified b) the information was defamatory towards the complainant's reputation c) the information was false, and d) it's the respondent's fault. But libel and slander case law (notably *New York Times Co. v. Sullivan*) has established a basically impossibly-high bar to clear to prove defamation against a famous figure: *actual malice* must be proved, meaning that the information must be published with reckless disregard for the truth. Garrett almost certainly qualifies as a public figure, given his TV appearances, books published (fiction and nonfiction), high-profile media coverage, etc., which means that the odds of him succeeding in such a lawsuit are vanishingly slim, even if *The Hook* published inaccurate information.

I can sympathize with *The Hook* in their continued coverage of him. In writing this blog entry this afternoon, it's impossible to ignore the really sketchy aspects about this guy. Seriously, look at this magazine that he claims to have been on the cover of. This was obviously patched together in Microsoft Paint. It just screams “bad photoshop job.” (The fact that the magazine doesn't seem to exist doesn't help any.) Then there's his PR firm's website, hosted on *Angelfire*. Remember them? The free website hosting service from the mid-90s? Used primarily to host webpages for middle school girls professing their love for boy bands? That's where his company's website is, at the address <http://www.angelfire.com/film/tgj/>. Though the site claims to be at garretticonspr.com, that domain is unregistered. In short, Garrett looks like a train wreck in slow motion, and I get that *The Hook* is just watching and waiting for his big finish.

A friend once told me that you're nobody in this town until you threaten to sue Hawes Spencer. There might be something to that. The thing is, though, you've got to stop at the threat. I guess Garrett didn't get that memo.

81 Responses to “The Hook Sued for Defamation”

1 Duane Gran Dec 23rd, 2008 at 2:34 pm

I know nothing about this case, but I just want to say that reading the line (“Garrett looks like a train wreck in slow motion, and I get that *The Hook* is just watching and waiting for his big finish”) made it for me. Very quotable.

2 Scott Dec 23rd, 2008 at 3:42 pm

Given that the magazine cover contains a made-up word in the first bullet point and a grammatical non sequitur in the last, it does appear a tad suspect.

3 surfer59 Dec 23rd, 2008 at 4:29 pm

I didn't think anyone took *The Hook* seriously. That's like being defamed in *Mad Magazine*, or *National Lampoon*.

4 Rick Dec 23rd, 2008 at 5:24 pm

Why does someone have to “stop at the threat?” If someone had sufficient legal grounds to sue, why would they have to “stop” at the threat of a lawsuit against Mr. Spencer? I don't understand.

5 colfer Dec 23rd, 2008 at 6:11 pm

Well, it's called the Streisand Effect. Unless you really have a good case and want to pursue it. Then it's called the Carol Burnett Exception. <http://query.nytimes.com/gst/fullpage.html?res=9D0CE1DA1139F937A35752C0A967958260>

6 **van** Dec 23rd, 2008 at 6:34 pm

I think, based upon Waldo's assessment, and the Case Law reference, Hawes Spencer has little to fear; although it must become a tad old to be assailed by frequent threats of lawsuit. I'd never sleep.

Presumably The Hook prudently carries appropriate insurance. His premiums, I suppose, would reveal how successful previous suits were. I expect the premiums are not extraordinarily high.

7 **Waldo Jaquith** Dec 23rd, 2008 at 10:27 pm

Why does someone have to "stop at the threat?" If someone had sufficient legal grounds to sue, why would they have to "stop" at the threat of a lawsuit against Mr. Spencer?

Because nobody actually has sufficient legal grounds to sue. I'm not aware of any instance in which the staff of *The Hook* (and much of the same staff, before that, at *C-Ville Weekly*; or, before that, at *C-Ville Review*) has ever stated something untrue about somebody and then refused to correct it. It takes reckless incompetence for a media outlet to lose a defamation case in the U.S.

8 **Waldo Jaquith** Dec 24th, 2008 at 1:58 am

Wow, just a few minutes of googling around about this guy this evening, and his biography just collapses. He describes himself as having "penned three best-selling books.", but his books [1, 2, 3] are all self-published (via Wasteland Press), making that so improbable as to be impossible.

I can't find any evidence that any of these books ever sold well, or even at all. The one review of his latest book that I can find is by one "Roger Hitts," described in his author bio as "two-time United Press International columnist of the year...a veteran celebrity journalist whose by-lines appear in numerous magazines and newspapers in the U.S. and around the world." But there are only 186 hits for his name in Google, such a tiny number that it's hugely improbable that he's the person described. Stranger still, the review appeared in *The Canyon News*, the tiny little Los Angeles newspaper that claims Garrett as a staff writer and editor. The paper published a glowing review of a book by the paper's editor?

Check out that staff listing. Notice something strange? None of the employees have last names. Or phone numbers. Or e-mail addresses.

Garrett emphasizes in his biographical material that "he's represented the likes of classic Hollywood stars such as Clint Walker, Tab Hunter and Ruta Lee." Note that there's a "Ruta" on the staff listing for *The Canyon News*. He also promotes that he "recently completed a pilot for a new TV show, Hollywood Classics, which featured soap opera luminary Eileen Fulton discussing her life and career from her home in New York City." Watch it and see if it doesn't seem odd to you. It's clearly not a pilot, but something more like a five-minute screen test.

It's taken me longer to write this than it did to read up on this stuff. My point is that just about everything about this guy dissolves with the slightest prod. I don't know what it all adds up to, or what the takeaway is, but it's awfully odd. Just watch the segment of "Living with Ed" that includes him. Individually-wrapped chicken eggs? In saran wrap? Something just isn't right here, but I sure can't guess what it is.

9 **Betty** Dec 24th, 2008 at 8:05 am

Waldo, Wouldn't this be thrown out as a frivolous law suit? and why wouldn't the Daily Progress share the suit with the Hook, I thought news organizations were in the business of helping each other?

10 **Chloe** Dec 24th, 2008 at 9:43 am

So much for investigative journalism Jaquith. It took ME less than 15 minutes to find out that while the Angelfire website is about Garrett, he did not create it or authorize it. It is NOT his and he has nothing to do with it. The magazine cover everyone likes to make fun of is NOT genuine. There IS a genuine one but The Hook is not using it. Ruta Lee DOES write occasionally for Canyon News. You mock Garrett about a portion of old Youtube footage with Eileen Fulton and miss the fact that the Living With Ed segment was very much tongue in cheek. Garrett may or may not win his lawsuit but I sure hope he does given the way you lot are so keen to bash him into submission. You're all irresponsible with the power so-called journalism gives you. All of you need to grow up and focus on what matters. Charlottesville reporters seem to have a massive chip on their shoulders. I've seen the same claims printed time and time again, always in support of the Hook stories. Do you keep repeating lies until they are believed to be true? Seems like that's exactly what you are trying to do. And no, I am NOT Tommy Garrett. The same morons always throw that one into the fray and it's getting tiresome.

11 **Waldo Jaquith** Dec 24th, 2008 at 10:58 am

It took ME less than 15 minutes to find out that while the Angelfire website is about Garrett, he did not create it or authorize it. It is NOT his and he has nothing to do with it.

Really? You're telling me that some totally unrelated third party, having nothing to do with him, created a website for his company, specified that it's copyright "T Garrett," maintains a news section, but it's *unauthorized*?

You say that you "found out that...he did not create it." Please, tell the rest of us: How did you find that out? What, specifically, allowed you to learn this? Could you provide us with the website address where you gleaned this information? Please, I'd like to learn about "investigative journalism" from you.

The magazine cover everyone likes to make fun of is NOT genuine. There IS a genuine one but The Hook is not using it.

Really? How do you know that? If there's a genuine one that The Hook has access to, then presumably the rest of us could see it somewhere, too, presumably online. A quick check of EBSCO shows no records that this publication exists. And ditto for Scent of a Woman. Another magazine with precisely the same photo, laboriously redesigned in imitation of the original, rather than just using the original?

Here's a funny thing: the only reference on the whole of the internet to "Spirit of a Woman" magazine is a press release announcing its creation. Weirder still, this press release is dated October 2006, announcing the forthcoming publication...yet the cover of the issue with Mr. Garrett is dated June 2006. And—stranger still—the contact at the bottom of the press release is one Tommy Garrett. So he's sending out a press release to announce a new magazine that he's put himself on the cover of that starts coming out in November, but the cover he's got (which you say he made himself as a facsimile of the original) is from June, before the magazine existed. Huh?

And, speaking of that press release, in it Garrett claims:

Tommy has been invited to the White House twelve times under five presidents.

Really? Carter, Reagan, G.H.W. Bush, Clinton, and G.W. Bush? Now, Carter left office in 1980, and Mr. Garrett says he was born in 1966, so he

was *invited* to the White House some time between the ages of 10 and 14? And all of these visits, they'd show up in the White House visitor logs if I checked...right?

He was friends with Princess Diana and is very close to the Royals of Monaco today.

Um. No. Just...no.

And no. I am NOT Tommy Garrett. The same morons always throw that one into the fray and it's getting tiresome.

Yeah...uh...here's the thing: I'm pretty sure you are. But I can pretend you're not, if that would make you happy.

12 **danpri** Dec 24th, 2008 at 12:01 pm

Clearly there is some pretending going on somewhere. His books did get some interesting reviews on amazon...

http://www.amazon.com/review/product/1933265612/ref=cm_cr_pr_hist_1?encoding=UTF8&showViewpoints=0&filterBy=addOneStar

Some where more positive, but I wonder who the real "reviewer" is on those. They seem just too far at odds with the negative reviews.

13 **Waldo Jaquith** Dec 24th, 2008 at 4:28 pm

Wouldn't this be thrown out as a frivolous law suit?

I'm afraid that these small-picture aspects of the law (which is to say the most important stuff :) are something that I know *nothing* about. This lawsuit is so clearly frivolous that I imagine any judge would toss it out upon first spotting it. The more I learn about Mr. Garrett, the more clear that it is that he'd make a mockery of the courtroom. A court accepting this case would have to deal with the guy, and I'm pretty sure that nobody wants to do that.

and why wouldn't the Daily Progress share the suit with the Hook, I thought news organizations were in the business of helping each other ?

That strikes me as an awfully strange thing to withhold, too. I can see one news organization refusing to share source materials with another when they've got a scoop—which is basically what happened here—but when it's a lawsuit against that other news organization. it seems a bit petty to withhold the text of that suit. (Presumably Mr. Garrett personally provided his legal filing to the *Progress*, which is how they came to have it before either *The Hook* or. quite probably. even the court.)

danpri, those Amazon.com reviews are some the harshest reviews that I've ever read—thanks for posting that link.

14 **Cecil** Dec 24th, 2008 at 6:36 pm

Yeah, the Amazon reviews offer a great thesaurus of synonyms for the word "dreadful."

15 **Bloom** Dec 24th, 2008 at 7:00 pm

Here's a funny thing: the only reference on the whole of the internet to "Spirit of a Woman" magazine is a press release announcing its creation

Well, I also came across a mention of the magazine here — discovered while listening to Tommy stream on an archived Australian radio program.

16 **Bloom** Dec 24th, 2008 at 7:08 pm

More about the Spirit magazine here.

(And, in the background of the photo, is that a copy of the much discussed Senior Magazine with Garrett cover story?)

17 **Chris** Dec 24th, 2008 at 11:03 pm

Wow, this is just quite sad. I realize that's condescending and dismissive in many ways. I don't know the guy so perhaps that's unfair. But it is, indeed, quite sad. I spent far too long poking around on the Amazon reviews noting that virtually every 5 star review lauds Garrett more than the book and almost every person who reviewed the book has reviewed nothing else save Garrett's other book on Amazon. Follow any of the information or claims made by this person further than a half a step and they simply dissolve.

18 **Waldo Jaquith** Dec 24th, 2008 at 11:50 pm

Yeah, I'm coming to the same conclusion. Chris.

19 **Will M.** Dec 25th, 2008 at 12:09 am

Oh man, I'm going to be glued to this thread the next few days waiting for "Chloe" to reappear. I love this.

20 **Tim McCormack** Dec 25th, 2008 at 4:11 pm

Maybe Chloe can get Tommy to weigh in on this comment thread.

21 **Chloe** Dec 25th, 2008 at 9:25 pm

As pretty sure as you are, like I said – I am not Garrett. Not even the same color. But as a close associate and friend of several years. I have access to information and evidence that you do not and will not because you are absolutely biased and wouldn't accept it if it bit you on the ass. Actually. Waldo, yes. A third party did contrive a site for Garrett because she thought she was being helpful. How do I know? I asked him personally when I found two versions of the site online more than a year and a half ago. He cannot remove it if he doesn't own it and if it wasn't doing any harm, why would he bother? As for copyright, doesn't everyone put that on their website just for decoration? You have dedicated a web-page to Garrett right here too. It takes all kinds, I guess.

You're so clever... sneering at me about the original cover. It's public record now. Go take a look at it at Buckingham County Circuit Court Clerk's office if this all means so much to you. Take a magnifying glass if it makes you feel better, Sherlock.

We had a good chuckle over your Diana and the Royals of Monaco jibe when I mentioned it. I would have thought a super sleuth like yourself would know that truth is often stranger than fiction. Too bad for you. I bet you learned about Santa way too early.

Let's hear what the Judge makes of it.
All the rest you and the Hookers have to say is smoke and mirrors.

22 **Easy For You To Judge!** Dec 25th, 2008 at 9:48 pm

Danpri, what books have you written? It's really funny how you idiots have no life going on and only want to talk about someone else's life or lack of one. Shows you have none period. Waldo is dying to become well known so he jumped on the bandwagon of his boyfriend Hawes to try to get sued and attention as well. Look Waldo up on google, it's all self promotion and talking about himself. Sounds like what he's accused Garrett of. I don't have a dog in this hunt but Waldo, keep up the great work, you may end up getting some fame of your own. You've been dying for it for years. So sad and pathetic!

23 **Chloe** Dec 25th, 2008 at 10:13 pm

Actually, E4U2J. I wasn't going to bring up the Little Submarine's extra-curricular activities with upstanding citizen Hawes because it's a little off topic but I suppose it does explain why he is trying so hard to bitch-slap Garrett. If he shows support for his ol' flame, things might go back the way they were and they can heat up the shadowy corners of the 216 Gay Club in Charlottesville once again. There's always a reason for men behaving badly that isn't so obvious at first.

24 **Voice of Reason** Dec 25th, 2008 at 10:40 pm

Sooooo, the two of you, in an effort to discredit Waldo and Hawes, make what you perceive as derogatory comments about their being gay. With each other. At Club 216. Chloe, seriously? THAT'S how you want your comments to be perceived????

Niiiiice. Totally, absolutely, the correct way to bolster your case that the lawsuit has merit or that Garrett's claims are true. Calling people gay on the Internet as a way to make a point? As Amy Poehler and Seth Meyers would say, "Really? Really?"

You can argue and discuss the merits of the case and the validity of Garrett's claims (I know nothing of the details and didn't really care one way or the other), but trying to make your point via the Gay card? Now, without even knowing Waldo or Hawes, I absolutely, totally believe everything they have to say since you two resorted to the lowest common denominator of Internet discussion. Well done. Sigh.

25 **Waldo Jaquith** Dec 25th, 2008 at 10:48 pm

Well, this just keeps getting weirder and sadder.

26 **Chloe** Dec 25th, 2008 at 11:04 pm

Not really Waldo. What is the difference between you denying something online and Garrett denying something online? Then again, you didn't actually deny it per se. VoR thinks it's a cheap shot that doesn't have a place in all this. I think it does. I think Waldo is being a mouthpiece for Hawes because they did have a thing. It's not a secret. Everything thrown at Garrett so far has been in the realm of the lowest common denominator so don't think you'll shame with that one.

27 **Loki** Dec 26th, 2008 at 12:26 am

This thread is so very, very entertaining.

28 **Chloe** Dec 26th, 2008 at 1:37 am

I forgot to thank Voice of Reason for correcting me on the name of the gay club. Luckily he/she set me straight. I'm not terribly familiar with it myself.

29 **Voice of Reason** Dec 26th, 2008 at 1:40 am

Chloe said: "What is the difference between you denying something online and Garrett denying something online? Then again, you didn't actually deny it per se."

Neither did Garrett. Where is he in all of this? You are denying things on his behalf, but at least Waldo, and Hawes on the Hook site, are addressing the issues and putting forth opinions with their real names. Where is Garrett, other than old press releases? Unless, of course, you ARE Garrett? Duh dun duh dun duh.

30 **Chloe** Dec 26th, 2008 at 1:59 am

VoR, you're up so late. Are you readying yourself for a night out at the club?

I get the biggest laugh out of all you dorks who say I'm Tommy Garrett. No matter how many times I say it, nobody believes it. There's going to be some serious egg face if somebody tries to sue him for anything I might say too. Good luck with that. I'm tempted to DARE someone. Don't get all holier than thou regarding real names. Why would I give the Charlottesville Cheer Squad any more ammunition and another angle of attack?

Actually you are WRONG! Garrett denies just about all of it. He keeps denying it. Where did you get the screwed up idea that he never denied it? Is that another Hook story I missed. Where is Garrett? He's probably sleeping. Only clubbers stay up this late.

31 **Voice of Reason** Dec 26th, 2008 at 2:14 am

So now I'm gay too and that's a bad thing?????

Chloe, I asked a simple question: where online has Garrett denied any of this? You made a point of defending things said online and I don't see Garrett in any of this. You are defending him anonymously, others have opinions using their real names. Where is he?

Also, glass houses, ya know? We're both up late, could be for various reasons, doesn't matter. We're having a discussion. If you want to make derogatory comments about me, because I disagree with you, you'll have to do better than "gay", 'cuz I'm not insulted by that. Even though I'm not gay, I don't consider homosexuality as a derogatory comment. Moran (get it?) might be better.

32 **Voice of Reason** Dec 26th, 2008 at 2:21 am

Oh jeez, just saw this comment by Chloe in the previous post: "Only clubbers stay up this late."

Irony or the worst way to argue on the Internet? Not sure, close call.

33 **Chloe** Dec 26th, 2008 at 2:32 am

Sorry to disappoint you VoR.... I am not 'up late' at all. You're all by yourself on that one.
Also sorry to get you so NOT angry that you call me a moron and spell it wrong. That's funny.
If you can stand it, trawl through the Hook links and see the many times Garrett's lawyers have denied the claims made against him. You guys sure are big on using online links as proof of truth.

34 **danpri** Dec 26th, 2008 at 7:39 am

Ummm....I wrote the internet.

35 **Waldo Jaquith** Dec 26th, 2008 at 10:31 am

Normally I give a series of warnings and eventually block somebody for trolling. In this case, it's so foolish that I can't see the harm, given that I'm the target at this point.

Looking through the site's logs, I see that Mr. Garrett has been having a hard time keeping his usernames, IP addresses, and e-mail addresses straight between his sock puppets ("Chloe" and "Easy For You To Judge!"). I imagine it's hard keeping those straight.

36 **Majunga** Dec 26th, 2008 at 11:59 am

Any publicity is good publicity, in today's world, I guess?

37 **T.J.** Dec 26th, 2008 at 12:15 pm

I have sworn upon the altar of God, eternal hostility against every form of tyranny over the mind of man

38 **Chris** Dec 26th, 2008 at 12:20 pm

Waldo, the sock puppet is Easy For You To Judge, right? (Helpfully abbreviated by Chloe to E4U2J.) Voice of Reason is a fairly frequent commenter here I think.

39 **Waldo Jaquith** Dec 26th, 2008 at 12:44 pm

Waldo, the sock puppet is Easy For You To Judge, right? (Helpfully abbreviated by Chloe to E4U2J.) Voice of Reason is a fairly frequent commenter here I think.

Yes, that's right—I'm sorry for that mistake. I've gone back and corrected my comment, to avoid confusion.

FWIW, I have no way of knowing for a certainty that these two sock puppets are, in fact, Mr. Garrett, but that seems like the unescapable conclusion. But I do know that they're both coming from the same computer.

40 **Bloom** Dec 26th, 2008 at 1:57 pm

But I do know that they're both coming from the same computer.

From within the palace for the royals of Trabazon?

41 **Waldo Jaquith** Dec 26th, 2008 at 2:12 pm

Oh my Lord. That is a *hoot*, Bloom.

42 **Bloom** Dec 26th, 2008 at 2:49 pm

In the background image for the first "royal" page, I see again a copy of a cover of *Senior Magazine (Arizona)*.

Is this one a signed and/or dedicated copy from Tommy?

43 **Will M.** Dec 26th, 2008 at 4:30 pm

Waldo, I'm sorry, but from now on I'm going to have to start addressing you as the Little Submarine.

44 **Chloe** Dec 26th, 2008 at 6:29 pm

Oh, I see how it works now Waldo. If I agree with you, I can stay and play on your website, but if I DISAGREE with you for attacking my friend, who's character is better known to me than to you, then you call me a troll and threaten to ban me. How typically Hookish. That's an outright lie that the posts came from the same computer. I did NOT post under the name E4U2J or anyone else. If you want to lie about the small details, where do you draw the line? You couldn't mistake a detail like that. It was a deliberate lie on this blog. OK... you got me! I can't deny it any longer. I'm Tommy Garrett. OK? Denying it doesn't work so here I am... Hey everybody, I'm Tommy Garrett!!! I've got nothing better to do than visit Waldo's blog. Knock yourselves out, damn

45 **Cecil** Dec 26th, 2008 at 7:54 pm

Chloe, maybe he wants to boot you because you're a nasty homophobe?

46 **Chloe** Dec 26th, 2008 at 9:42 pm

Homophobe? Me??? Hilarious!! Where'd you get that idea? I'm merely pointing out that Waldo has an ulterior motive for supporting Hawes in his unfair Garrett bashing. If Waldo can honestly say there's never been anything between him and Hawes and that he's never been to that particular club then I suppose my information could be inaccurate. I'll take it all back if they stop bashing Garrett. Simple really. I never called VoR gay either. He jumped to conclusions while I was merely pulling his chain.

47 **danpri** Dec 26th, 2008 at 9:50 pm

So Tommy, you do know that your IP is unique and that a computer geeky dude like Waldo knows what he is talking about and anyone who uses Angelfire is not taken seriously by the world.

48 **Majunga** Dec 26th, 2008 at 11:03 pm

danpri, if u were yourself a "computer geeky dude", u'd know that your statement isn't too informed, because it's so completely easy to spoof

IPs and DNS. Not that Chloe knows that, but if u're gonna make techie statements, u should know what's what.

49 **Loki** Dec 26th, 2008 at 11:08 pm

Yeah. but what would be the purpose of "Chloe" or "Easy For You To Judge!" to do so?

Here's a hint: they are the same person. And that person is most likely Tommy.

50 **Waldo Jaquith** Dec 26th, 2008 at 11:53 pm

danpri, if u were yourself a "computer geeky dude", u'd know that your statement isn't too informed, because it's so completely easy to spoof IPs and DNS.

It's actually pretty tricky to spoof IPs. The confessed Mr. Garrett (who seems to have forgotten his confession) is going through an anonymizing proxy, but I'm cleverer than it is. As I've written, you're basically never really anonymous on the internet.

51 **Chloe** Dec 27th, 2008 at 1:34 am

I've never tried to be too tricky Waldo. I don't reserve the proxies just for you. No need to feel special. I'm merely defending my good friend who has been hounded for 2 years by the same people who wrongly reported strip searches out in the open with traffic driving past. I didn't realize this was a serious pissing contest. Go ahead and be as clever as you can possibly be. You'll see that the best you can do is throw virtual marshmallows at me unless you want to really start parting with some cash. No doubt you've been comparing your log with Hawes - not that there's anything wrong with that - but other posters might start to wonder about THEIR info ... or maybe there's a little something extra in the cookie you dumped on my PC. I should charge you a storage fee for that btw. I do get it... calling me Tommy Garrett constantly is supposed to annoy me. It's a bit cliched. don't you think? How many times can you say it before you get bored? I just find it amusing.

52 **Loki** Dec 27th, 2008 at 1:54 am

Props on the "comparing your log" joke. it made me laugh. But diss on the whole cookie thing because, lol. you don't know how Web Technologies work.

I guess that's why you stick with Angelfire. right?

53 **Waldo Jaquith** Dec 27th, 2008 at 10:49 am

Waldo has an ulterior motive for supporting Hawes in his unfair Garrett bashing. If Waldo can honestly say there's never been anything between him and Hawes and that he's never been to that particular club then I suppose my information could be inaccurate. I'll take it all back if they stop bashing Garrett. Simple really.

I suppose we can all now see how Garrett came to accuse the owner of a funeral home of necrophilia—his M.O. is to attack people with outlandish claims in order to intimidate them into silence. That much is clear with this line: "I'll take it all back if they stop bashing Garrett." In my case, though, I'm not in any line of business where such wild-eyed claims could affect me, and Garrett's credibility is at zero now, anyway.

54 **Guess who this describes?** Dec 27th, 2008 at 11:35 am

THE MALIGNANT PERSONALITY:

First, to recognize them, keep the following guidelines in mind.

- (1) They are habitual liars. They seem incapable of either knowing or telling the truth about anything. They will use aliases to mask their true intentions (aka "wolves in sheep's clothing").
- (2) They are egotistical to the point of narcissism. They really believe they are set apart from the rest of humanity by some special grace.
- (3) They scapegoat; they are incapable of either having the insight or willingness to accept responsibility for anything they do. Whatever the problem, it is always someone else's fault.
- (4) They are remorselessly vindictive when thwarted or exposed.
- (5) Genuine religious, moral, or other values play no part in their lives. They have no empathy for others and are capable of intimidation, extortion and/or violence. Under older psychological terminology, they fall into the category of psychopath or sociopath, but unlike the typical psychopath, their behavior is masked by a superficial social facade.

55 **blockhead** Dec 27th, 2008 at 3:06 pm

wow! haven't seen such toxic sludge on the local internets since that hook blog about the closing of the prism a couple yrs back. if i remember right, it went on for well over a week and just got more and more snarky as it went. happy new year y'all.

56 **Chloe** Dec 27th, 2008 at 6:28 pm

Loki, you underestimate the power of the Dark Cookie. You must go to Cville if you are to learn the ways of the Farce. Truly I have never dealt with Angelfire other than the occasional site I might have passed through while browsing. I can't make you believe it if you don't want to. Same thing as them calling me Garrett. I'm 100% not. Never have been. Never will be. It would be a neat trick though. Sigh...

I'm not quite sure... is the malignant personality describing Waldo or the Hookers? It's a fine line. The resemblance is scary though.

Waldo. You refer everyone once again to another Hook story that is supposed to show Garrett's evil ways to prove your point. It's a Hook link FFS! You would further your case much better if you used external sources who are not associated with The Hook and who are not merely copying the story from The Hook. Surely if Garrett is such a monster, he has left a trail of destruction that every other newspaper in the country has sent reporters out to investigate and they've all come to the same conclusion. I haven't seen or heard of them. Why is the Hook so special? Why is The Hook the ONLY paper to spend serious effort in destroying this man's credibility and career? Has Tommy Garrett personally attacked any single one of you? I'd sure like to know. It's at odds with everything I know about him.

57 **Loki** Dec 27th, 2008 at 7:35 pm

[quote]Has Tommy Garrett personally attacked any single one of you? I'd sure like to know. [/quote]

Tommy Garrett kicked my dog.

58 **dave** Dec 27th, 2008 at 7:44 pm

The craziness of this saga is just ... crazy. So the fellow is obviously a habitual liar and con-man, I'm curious as to whether there was malice or some kind of moneymaking scam involved in any of this. Anyone know?
An aside: The idea of a magazine devoted to Seniors with a random goofy looking guy on it and the tagline "Who is he and what does he do?" makes me laugh and laugh.

59 **Voice of Reason** Dec 27th, 2008 at 7:57 pm

Chloe, first of all, I wasn't calling you a moran (it's an Internet meme, check it out, just Google "images moran"), I was saying you would do better trying to insult me by calling me a moran than gay. I don't try to make points/discuss things on a blog by insulting other people.

In any event, you said:

"Surely if Garrett is such a monster, he has left a trail of destruction that every other newspaper in the country has sent reporters out to investigate and they've all come to the same conclusion. I haven't seen or heard of them. Why is the Hook so special? Why is The Hook the ONLY paper to spend serious effort in destroying this man's credibility and career?"

'Cuz he doesn't really have a career? 'Cuz no one outside of Charlottesville cares? 'Cuz maybe his claims are so incredulous and his reach so miniscule that it doesn't matter to papers outside of Cville?

As I said earlier, I don't know Waldo, Hawes, or Garrett. But I CAN look stuff up about Waldo and Hawes. When I look stuff up about Garrett, I see shameless (seriously shameless) self-promotion. He was friends with Princess Diana? Fine, even if I believe that, where, on the Internet are any of his verifiable accomplishments? I am seriously asking this question. Please note I am not slamming you. You are asking why people are attacking him. The answer is: his claims are unbelievable with no documented backup.

60 **Chloe** Dec 27th, 2008 at 9:03 pm

Well thank you VoR. Finally a reasonable response. I can accept that and I take it on board.
Tommy does actually have all the documentation required and all the letters and correspondence he needs to prove he has or had ongoing friendships with the people he says he has. He does self-promote. He's a publicist. He also promotes his clients from behind the scenes. Tommy is better known in LA than Charlottesville so the comment about not being known is not exactly true.

61 **danpri** Dec 27th, 2008 at 9:31 pm

So...perhaps a Variety Link? Anything besides the sad looking stuff I have seen so far.

62 **Chris** Dec 27th, 2008 at 11:18 pm

Chloe, you're calling on others to provide links to documentation or other sources. Will you provide any? Right now, anyone reading this blog has the information linked here or written here to go on. That includes links to Amazon.com reviews, various other websites that have nothing to do with this blog or the Hook. I think most readers and commenters here are drawing their own conclusions and inferences rather than simply accepting what was/is written in the Hook or written here by Waldo. I drew my own interim conclusions based on reading through the Amazon reviews of Mr. Garrett's books and the handful of websites that have been linked to here. I'm completely open to having my thoughts changed but so far I haven't seen anything that would lead me to believe any of Mr. Garrett's claims. You say you have such information and that such documentation exists but you don't offer any of it nor do you point to any place that any of us can find it or look at it. Absent some ability to actually see anything that would support Mr. Garrett's claims, how can we believe them? I don't know you any more than I know Waldo, so I have no reason to simply take anything either of you say entirely at face value in the absence of any outside source. Especially if you're going to call for additional sources on Waldo's part, you should be willing/able to offer such things yourself.

63 **Chloe** Dec 28th, 2008 at 8:05 am

Here's the thing, Chris... and I no longer care who believes what because I speak what I believe to be truth... Tommy Garrett's good deeds go largely unnoticed because contrary to popular belief, there IS actually a world outside of the Internet. It existed before there was Internet and it still exists now if we care to look outside the box. People like Waldo and the Hookers have gotten so used to clicking a mouse button that they just expect anything of value to them will be online. The Hook has gone all out to label Tommy a self-promoting ne'er-do-well but the fact is he does many things the old fashioned way - OFFLINE - and he spends an enormous amount of time and his own money providing care packages for the troops in Afghanistan and writing hand-written letters to so many lonely soldiers who have no-one to send them letters from home. Hundreds of them! Try handwriting hundreds of letters and see how long it takes you. He provided plentiful supplies to the troops so they could enjoy a stress-free night of Halloween celebration before being deployed out to God knows where. He still has the replies of gratitude from those soldiers. They will be available if needed in court to prove it happened. Any of you with family posted overseas might understand the effort Tommy went to just to make their lives a little bit easier for a short while. He was presented with a US flag by George Bush to thank him for his tremendous effort. Did the Hook print that? No! It's because he didn't make a big deal about it. He COULD have but the self-promoting 'terror' somehow kept himself in check. They did manage to print when he held a charity event to collect clothes and shoes for kids in the war zones but that's all. Wait, they also printed that he was featured in 2 of the biggest Soaps magazines in the US then proceeded to mock him about it. He has also been featured in 'In Touch Weekly'. That's no small feat. Show me a list of people from Cville who have appeared in that.
The mistake VoR and everyone else is making is that you all expect the documented proof to be online and available at your fingertips. It isn't online, or at least is hard to find if it is. I've seen the photos and letters but my anonymous word means little as I'm constantly reminded. The deeds of Tommy Garrett are recorded mostly the old fashioned way, in photos and on paper and readily available when he needs them for his day in court.

Bottom line: Tommy didn't start all this. Colbert did. It backfired on Colbert and it's taken years for him to get revenge. We're so caught up with these stupid blogs, we almost forget the original reason for being here.

64 **T.J.** Dec 28th, 2008 at 8:27 am

Public figures get lampooned all the time. Look at the comics of George and Barak and our own local officials and public personalities. I'm sure they also do a lot of good deeds. Since when is this illegal?

65 **T.J.** Dec 28th, 2008 at 8:53 am

to expand on my previous comment I just read this in our illustrious paper the Daily Progress (A7) 'Magic Negro' song causes RNC uproar

The chairman of the Republican National Committee said Saturday he was "shocked and appalled" that one of his potential successors had sent committee members a CD this Christmas featuring a 2007 song called "Barack the Magic Negro."

In the wake of RNC Chairman Robert M. "Mike" Duncan's admonishment, former Tennessee GOP leader Chip Saltsman said that party leaders should stand up to criticism over sending out the song on a CDE. He earlier defended the song as "lighthearted political parodies" from Rush Limbaugh's radio show.

A spokesman for President-elect Barack Obama, Ben LaBolt, declined to comment on the matter

66 **Cecil** Dec 28th, 2008 at 9:46 am

To present a short paraphrase of Chloe's latest answer to calls for evidence: "there's tons of it, but I can't show it to any of you, and you won't be able to find it yourself, but really, trust me, it's there." Interspersed with grandiose claim after grandiose claim, none of them supported by evidence.

67 **Guess who this describes?** Dec 28th, 2008 at 12:27 pm

_____ is a person that either kills, or destroys their victim's name or character solely to steal their possessions, money, and devastate/destroy them in the process. By employing the use of a pathological defense mechanism known as "projective identification", this person creates and builds a case against an intended victim(s) in order to appear "justified". Tragically, the victim is totally unaware of what is happening and realizes criminal activity only after the fact. Persons like _____ are masters of deception and manipulation; they are pathological liars, coldly calculating and are constantly parsing their environment for new victims.

68 **Chloe** Dec 28th, 2008 at 6:08 pm

Cecil, you are exactly the kind of need-it-now net-junkie I was talking about. Wait for the damned court case. I suppose Tommy kicked YOUR dog too.

Buckingham County Circuit Court is where this will all be sorted, not here where Waldo and the Hookers pull the strings.

What a bitter lot you all are. Cville has got to be the country's focal point of miserable sods. All negatives, no positives. Who'd want to live there?

All this angst caused by a tiny little newspaper in Cville and an even tinier blog.

If none of you care the slightest about Tommy Garrett, why did you all spend your Christmas thinking about him enough to need to give your 2 pennies worth here?

69 **Soulfriere** Dec 28th, 2008 at 9:27 pm

Waldo and Hawes will be glad to hear they pull the strings in Charlottesville. It will, of course, be news to everyone else. When someone spends many words telling you how small you are it always reveals more about the person saying it. I am willing to wait to see what possible help all these impressive friends will give you. A fundraiser for your legal defense fund perhaps?

Chloe, your work is done. Perhaps the Grimaldi's will give you citizenship after you win this massive lawsuit.

70 **Chloe** Dec 29th, 2008 at 3:55 am

Soulfriere, I meant they control what appears on their sites or in the paper. Otherwise they are nothing.

The Hook had many posts in the past that were pro-Tommy and gave background on the shady characters involved in making claims that Tommy was a thief but those posts were removed quickly before too many people could begin to doubt the Hook's 'reliable' sources. The Hook reported that Tommy sued Colbert for fondling corpses. The Hook is wrong. That information came out about Colbert during the trial and was backed by 2 other employees and 1 or 2 of Colbert's wives. Colbert claims he won a settlement over Tommy. It never happened. It sounds good in print - but is absolutely FALSE. The truth is on public record in Fluvanna. These things are printed as fact by the Hook - but they are 100% false. Kimbell was mentally impaired and under the influence of Colbert's 'friendship' when he suddenly got the idea that Tommy was stealing from him. It's not hard to figure out where the idea came from. The Hook took Colbert and Kimbell's word for their story and went to town on Tommy when he refused to play their game. They never counted on the fact that Colbert was lying and Kimbell didn't know if he was on Earth or Venus. They've gone too far with it to say they were wrong so they have to bash Tommy into the dust or die trying.

71 **Soulfriere** Dec 29th, 2008 at 8:32 am

Why does the rest of the world hate Tommy so? Is it jealousy, envy, or just plain evil? Why does Tommy gain such close friendships with these people and why do these people take him to court?

How do we know Kimball is mentally impaired; has this been determined by a court or is Chloe now defaming Kimball? How do we know that Colbert was influencing Kimball?

But the biggest question is what game is Tommy refusing to play? Does that game involve uniforms?

Turn in for the next installment of the "Hawes and Waldo" take over the world show

72 **Chris** Dec 29th, 2008 at 9:17 am

Chloe, you've got your views and beliefs and that's great. Voicing them is also great.

Would you please not declare that people are "nothing" and stop calling people names? It's got no place in adult discourse.

One other note: the fact that you're writing these posts on Waldo's site while also taking shots at Waldo for controlling what's on his site sort of renders that line of argument moot, at least for cvillenews.com

73 **Majunga** Dec 29th, 2008 at 9:36 am

I've met several Grimaldis. I've worked for Nancy Reagan. But I can't say we're friends, because I doubt they even would remember me. Me thinks Garrett is simply a gold digger. But hey, that's very commonplace. What exactly makes this guy worse than, say, every lame and exasperating Oxyclean man in America today?

74 **T.J.** Dec 29th, 2008 at 9:37 am

When I read the Hook articles all they are doing are quoting what people have told them. You say Chloe, "Colbert claims he won a settlement over Tommy. It never happened. It sounds good in print - but is absolutely FALSE. The truth is on public record in Fluvanna. These things are

printed as fact by the Hook – but they are 100% false.” Well, the Hook is just reporting what Colbert or Kimbell told them. It seems that if you are upset about what these people are saying you should be suing them. Reporters quote people saying things all the time that aren’t necessarily true. Remember the Iraq war and everything we were told in the press about weapons of mass destruction.

A well educated public is skeptical about what they read unfortunately we are falling down in our country on the well educated part.

75 **Jackson Landers** Dec 29th, 2008 at 12:11 pm

Tommy/Chloe/various other fake names,

You are exhibiting behavior consistent with someone who is mentally ill. You’ve constructed an elaborate fantasy world and persona for yourself which may have been fun for a while but is now spilling out over the side and negatively affecting other people.

Please just go and get yourself some professional help. I mean this in the kindest possible way. You clearly have some talents for promotion and a desire to get things done. These are potentially good traits that are being hopelessly overshadowed by your bizarre and embarrassing behavior. Get some help from a mental health professional.

76 **Waldo Jaquith** Dec 30th, 2008 at 10:39 pm

This Australian blog has some informative commentary about this case, noting that even the text of the lawsuit contains lies about Garrett. The suit claims that Garrett worked for a radio show with “over seven million listeners.” In a nation of 21M people, that’s vanishingly unlikely. In fact, the show isn’t even broadcast nationally, and has a market share of 8.8% of all radio listeners. Pretending that everybody in the entire country listens to the radio during his show every day, that would mean a maximum theoretical listenership of 1.8M people. In fact, it’s probably just a fraction of that, probably hundreds of thousands of people.

The blogger also points out that Garrett also accused *him* of having homosexual affairs when he dared question Garrett, and posted a series of comments in which he claimed to not be himself. I guess a pattern has emerged here.

77 **Voice of Doom** Jan 4th, 2009 at 11:10 am

Being blissfully out of the loop. I’ve been working hard to figure out why this matters to anyone. More important than this slop is the fact that this “Voice of Reason” character is using my “Voice of” shtick. Voice of Reason, if everyone does this, then the joy will be gone forever, as we’ll have, among others, Voice of Love, Voice of Hate, Voice of Waldo, and Voice of Crotchety Know-it-all. Please desist.

78 **Donner Pass** Jan 4th, 2009 at 8:00 pm

What’s all the fuss over a hack writer who believes his own miniscule (and self-generated) hype? Personally I see another frivolous lawsuit clogging the system, and a guy mistaking The Hook for Time Magazine.

Moving on...

79 **Tim McCormack** Jan 6th, 2009 at 7:48 pm

Chloe, please take a moment to look at this post of yours:

Chloe Dec 26th, 2008 at 2:32 am

Sorry to disappoint you VoR... I am not ‘up late’ at all.

Do you see the timestamp? Do you see your claim? If you are writing from within the Eastern Time zone, then your claim is quite silly.

Another amusing bit:

Here’s the thing. Chris... and I no longer care who believes what because I speak what I believe to be truth...

I am curious about this. If you do not care “who believes what”, what is the point of using inflammatory language on this blog to defend your claims?

If you believe you speak the truth, you must make your claims, calmly respond to reasonable challenges, and make your peace.

80 **Chloe** Jan 10th, 2009 at 10:05 am

Well done Tim... you win a cigar.
My claim was therefor NOT silly.

81 **Chris** Jan 12th, 2009 at 9:50 pm

Good work, Tim. You’re well on your way to slowly killing yourself with tobacco products now. And for free!

Which has to be better than having spent time on this particular issue. I know I’d like the collective hour or so I spent on it back. Poor decision making by me.

Comments are currently closed.

Tommy Garrett Subpoenas cvillenews.com

Published by
Waldo Jaquith

January 25, 2009 in Site News and Law and Justice.

Chicken farmer and faux celebrity Tommy Garrett has subpoenaed me for evidence in his lawsuit against *The Hook*. In the incredibly overbroad subpoena, his attorney asks for full documentation about any time I have ever communicated with anybody, ever, about Garrett or the lawsuit, along with everything I know about everybody who posted a comment to my blog entry about the case: names, e-mail address, IP addresses, etc. The idea that I could have any information relevant to this case is absurd, since I hadn't written a word about the matter (or even heard of Garrett) until after his lawsuit had been filed.

What Garrett and his attorney may not know is that I've got a bit of a history of not taking any guff on the legal front—I was among the plaintiffs who took the youth curfew case up to the Supreme Court in the mid-90s, and I prevailed when Mattel came after me in federal court in 2000. So rest assured that I don't intend to give up a thing unless compelled to do so by a court. Unfortunately, "hiring a lawyer to quash a subpoena" doesn't appear in our household budget, so I'm acting as my own attorney here. But, hey, I've been exploring getting a law degree, so here's a chance for a crash course. The requested information appears to be variously irrelevant, unnecessary to the case, confidential, and privileged.

I'd chalked up Garrett as a harmless kook, and pitied the guy enough that I'd resolved to basically ignore this matter save to cover the aspect of a local media outlet being sued. But my perspective is now considerably less charitable.

89 Responses to "Tommy Garrett Subpoenas cvillenews.com"

1 **colfer** Jan 25th, 2009 at 9:55 pm

What crazy lawyer takes this case for Garrett? Doesn't he/she feel nervous about sanctions?

2 **Voice of Reason** Jan 25th, 2009 at 10:20 pm

Waldo, here's my IP address, to save you the trouble:

71.207.151.96

Hostname: c-71-207-151-96.hsd1.va.comcast.net

ISP: Comcast Cable

Organization: Comcast Cable

Proxy: None detected

Type: Cable/DSL

I'm sure Comcast will provide my personal info posthaste.

My email and actual personal info? That will require a court order. See you there! This could be fun (except not, and a waste of time.)

3 **Will M.** Jan 26th, 2009 at 2:17 am

What a loon. I'd think it was funny if Garret hadn't crossed the line into inconveniencing and obnoxious.

4 **Stan** Jan 26th, 2009 at 7:00 am

Call the ACLU, they will help you out

5 **surfer59** Jan 26th, 2009 at 8:37 am

Attaboy...give 'em hell Waldo!

6 **Betty** Jan 26th, 2009 at 9:12 am

If not the ACLU how about the Rutherford Institute ?

7 **Lisa** Jan 26th, 2009 at 9:27 am

No way! Go Waldo Go! I hope you have fun – even though it sounds like a bit of a time killer. Let me know if you need any help. I have zero legal skills but am still willing to help if needed.

8 **Frivolous Lawsuit** Jan 26th, 2009 at 11:43 am

Once again, some moron filing lawsuits, just because they can. How many other kooks out there have filed lawsuits and subpoenaed records from the Hooks blogs, cvillenews, etc? Do we know?

9 **danpri** Jan 26th, 2009 at 12:07 pm

I thought this guy was a PR specialist. Is this part of the PR machine? And if so, what am I missing?

Please forward all my mail to Attys. Dewey, Cheetham and Howe.

10 **perlogik** Jan 26th, 2009 at 3:00 pm

Waldo, if you have to put up a pay pal account to pay for this nonsense I would drop in some cash. This is BS and I hope you counter sue for damages.

11 **Cecil** Jan 26th, 2009 at 5:21 pm

Help me understand if this analogy is accurate: imagine Waldo owns a club or a bar at which members of the public like to spend time talking. The Hook does a story on Tommy Garrett, and the people at Waldo's Place read that story in The Hook and discuss it one night at Waldo's

Place. Tommy Garrett decides to sue the Hook over it's story, and as part of the lawsuit he demands that Waldo furnish the names, phone numbers, email addresses, etc., of everyone who was in the bar that night talking about the Hook story AND the security camera recordings of everything those people said.

Is that accurate as an analogy? And if it is, is that not fricking absurd? Who would demand that a bar-owner (a private business owner) furnish private information about patrons in his business as well as records of their conversations?

12 **Demopublican** Jan 26th, 2009 at 8:40 pm

Cecil, it's all about libel. Any person can be held accountable for any remark they make in The Hook Bar or in Waldo's Bar. A person has no freedom of speech when their spoken or printed words are libelous to another person. I myself have successfully sued two people so far who made absurd and extremely libelous remarks about me in public forums. And while the two I sued felt they were expressing their opinion via their "freedom of speech", they were taught differently real quickly. Plus interest until paid in full.

And Waldo, you mention the fact you don't intend to give up a thing unless compelled to do so by a court. Be very careful and examine the subpoena thoroughly. I suspect the subpoena was issued by a court and is a legal court order on it's face. If this is the case, you can't simply ignore it and hope it goes away.

13 **Waldo Jaquith** Jan 26th, 2009 at 10:36 pm

Cecil, it's all about libel. Any person can be held accountable for any remark they make in The Hook Bar or in Waldo's Bar.

Nobody's accused me or anybody here of libel. I think Cecil's example is a good one.

I suspect the subpoena was issued by a court and is a legal court order on it's face. If this is the case, you can't simply ignore it and hope it goes away.

Well, no. :) I might not be an attorney, but I'm also not insane. :)

14 **Demo** Jan 26th, 2009 at 11:40 pm

Hey Demo/Sick- Isn't it true that in your cases that the reason you won the suits is because the parties did not show up for court or respond to the suit? Tell the truth now, because this is public record.

15 **Demopublican** Jan 27th, 2009 at 8:08 am

No.

16 **surfer59** Jan 27th, 2009 at 8:43 am

I wonder what the cuisine and beverage service would be like at Waldo's Place? Grilled sole fish with sprouted moong and a nice Chardonnay? Or a shot and a beer with an order of Buffalo Wings? I vote for the latter.

17 **Majunga** Jan 27th, 2009 at 10:58 am

Although I am 100% repugs' continuous attempt to disqualify litigation at the front entrance, this case shows why and how they have examples of bad use of courts.

Give Garrett a nasty time Waldo. Let us know if we can help.

18 **Majunga** Jan 27th, 2009 at 10:59 am

I meant to write "100% against" above...

19 **DF** Jan 27th, 2009 at 11:39 am

btw: Libel is written. Slander is spoken.

20 **DandyTiger** Jan 27th, 2009 at 1:38 pm

Wow, this is amazingly stupid. Best of luck Waldo with this. I hope some of the attorneys here would offer some help for the public good. And if you can't get the pro bono and need to hire counsel, definitely put up a paypal for a legal fund. Also talk to the Electronic Frontier Foundation (eff.org) as well as the ACLU. Both organizations help with this sort of thing, especially EFF.

My opinion is that with this action, Garrett is showing what he is made of, his lack of character. At least that's the impression I get. There, now sue me too. :-)

21 **Cville Eye** Jan 27th, 2009 at 8:33 pm

Let me get in it, too!

22 **Cville Eye** Jan 27th, 2009 at 8:36 pm

In lawsuits for libel or slander, does "malicious intent" have to be shown?

23 **Waldo Jaquith** Jan 27th, 2009 at 8:47 pm

I wrote a bit about that in the blog entry in question:

Proving libel requires a) the complainant was identified b) the information was defamatory towards the complainant's reputation c) the information was false, and d) it's the respondent's fault. But libel and slander case law (notably *New York Times Co. v. Sullivan*) has established a basically impossibly-high bar to clear to prove defamation against a famous figure: *actual malice* must be proved, meaning that the information must be published with reckless disregard for the truth. Garrett almost certainly qualifies as a public figure, given his TV appearances, books published (fiction and nonfiction), high-profile media coverage, etc., which means that the odds of him succeeding in such a lawsuit are vanishingly slim, even if *The Hook* published inaccurate information.

In short, Garrett must argue that he is not, in fact, a famous figure. But that would require that he argue that *The Hook* is *correct* in their claims that he's not famous. As a result, I can't see any way that this case moves forward.

24 **Cville Eye** Jan 27th, 2009 at 9:00 pm

Maybe his intent is to keep his name in the media.

25 **Cville Eye** Jan 27th, 2009 at 9:12 pm

Just found this "United States law dictates that for something to be considered libel it must be proven that the one making the libelous charges did so with malicious intent and with full knowledge that the statements were false. Furthermore personal opinion is protected as a First Amendment right. Therefore being careful to state the facts of a personal experience in non-malicious language, followed by words like, "therefore in my opinion..." will go a long way towards protecting yourself against charges of slander or libel."
<http://www.wisegeek.com/what-is-the-difference-between-slander-and-libel.htm>

26 **Lonnie** Jan 28th, 2009 at 2:23 pm

To add to this, I also understand that speech is protected if no one could reasonably find it to be literally true. For example, you could say someone is a "slime-ball" because no one would really believe that someone was, in fact, a ball of slime.

27 **Bruce** Jan 28th, 2009 at 3:55 pm

Demopublican: "Cecil, it's all about libel."

No it isn't. It's about casting an absurdly wide net in a fishing expedition for evidence in a case to which neither Waldo, the site, nor anyone posting comments on that article are parties.

Giving everyone with a legitimate claim his or her day in court is one thing, but Garrett is plainly in the habit of using the threat of groundless but expensive litigation to harass and intimidate anyone who might say something he'd prefer they didn't say, and that's another thing altogether. Defamation law is meant to deter people from making harmful factual allegations they know to be untrue or unreliable, not to protect everyone from having their precious widdle feelings hurt.

28 **weirderandweirder** Jan 28th, 2009 at 7:32 pm

I love this from the Canyon News website, especially #2. Waldo has already written a bit about the connections among Garrett, Canyon News, and Roger Hitt here

Declaration of Principles

We promise:

- To provide a community newspaper that tells all the news honestly without any political agenda, slant or spin.
- To allow commentary writers the freedom to express their opinions and views without interruption, censorship, or persuasion.
- To provide members of the community (rich or poor) with the truth and a place to voice their concerns.
- To abstain from printing anything demeaning, calumnatory or potentially harmful to any living being.
- To maintain the highest level of journalistic integrity.

Things get really wacky if you search Amazon for "Tommy Lightfoot Garrett" There is a book on Buckingham County with a review that includes numerous mentions of how great Tommy Garrett is. That review was written by a "Jason Crawford," of San Francisco, who when his profile is viewed seems to be none other than Tommy Garrett. John O'Dowd, who reviews Garrett's books is a fellow BearManor Media author who likes to go into attack mode in his negative reviews in way that is remarkable similar in tone to Garrett.

I wonder if Amazon has been sued. And did they have to turn over data about all of their users too? Ouch! "Give me my money back" one reviewer writes.

I can't imagine a judge is going to let this lawsuit go too far, but I'm willing to cough up a few bucks to the defense fund if it becomes necessary.

29 **Steve** Jan 28th, 2009 at 9:41 pm

When a subpoena requests information without regard to whether the information is relevant or privileged. You should first ask the requester to withdraw or modify the subpoena (ie. narrow the scope of the request). If they fail to do so, you then ask the court to quash or grant a protective order, because the subpoena is overbroad, sweeping for information without regard to relevance to the suit.

There are many cases of overly broad subpoenas being quashed by the courts. The courts also take a dim view of these and have at times sanctioned the attorneys that request them.

30 **Steve** Jan 28th, 2009 at 10:04 pm

What strikes me funny is that the subpoena even requests the privileged information if you claim that the information is privileged. Wow!

Anyway, since you are a Web Journalist, wouldn't ALL of the information that is not public on your website be protected and therefore privileged?

31 **Voice of Doom** Jan 28th, 2009 at 10:06 pm

I know this is against the flow, but, knowing nothing about Mr. Garrett, I must say that it at least seems that he's trying to live an interesting life. It's not the same old same old birth school work death routine. It may all be BS, but it's layers and layers. You go, boy!

32 **Voice of Doom** Jan 28th, 2009 at 10:10 pm

I don't mean "you go, boy" in regards to the subpoena, of course, just to all the other stuff he has going on.

33 **Majunga** Jan 28th, 2009 at 11:40 pm

Voice of Doom - no, see. It's one thing to want to get out of the "ghetto", but it's another all together by doing it using whatever means. Life is about the journey, not the mansion you retire in.

34 **Cville Eye** Jan 28th, 2009 at 11:49 pm

When was a ghetto created in Buckingham County?

35 **Chloe** Jan 29th, 2009 at 4:33 am

C'mon guys... get it together will you. All this talk about ghettos and stuff is wasting time. Waldo needs you all to pool your resources and do his homework for him. It's a tricky business this law stuff and he's bending over backwards, fighting the good fight for sodomy to be OK so he can't do it all himself. When Waldo says JUMP, you guys better do it - or else he'll write something about YOU too. You know he will. He's got a blog and he ain't afraid to use it.

VoD, yes, Tommy IS living an interesting life and all through his own hard work. but some of your local 'heroes' would like to bring him down a peg or three. Why? Who knows? Maybe it's just for 'fun'.

You can't blame the KKK for what THEY do either. In the end, it's just "a bunch of good ol' boys, havin' fun". Where's the harm in that you might ask.

36 **Will M.** Jan 29th, 2009 at 5:59 am

Hi, Tommy!

37 **Chloe** Jan 29th, 2009 at 8:26 am

DUH... Gosh darn it Billy, you sure got me there. I never thought any of you Sherlocks would see through my crafty disguise. There's no fooling the mental giants at Waldo's World. Anyone else wanna say 'Hi Tommy' so we can get it out of the way and avoid the repetition? yawn

38 **Majunga** Jan 29th, 2009 at 8:54 am

Cville Eye

Jan 28th, 2009 at 11:49 pm

When was a ghetto created in Buckingham County?

—> Since you spend some time there?

39 **Majunga** Jan 29th, 2009 at 8:57 am

HI TOMMY! No, really. wat up?

40 **Chad Day** Jan 29th, 2009 at 9:36 am

Tommy IS living an interesting life

May he live in interesting times.

41 **Lonnie** Jan 29th, 2009 at 9:53 am

I had no idea that Tommy was transgendered. At least thanks to this blog, he can now live proudly and publically as "Chloe".

42 **Demopublican** Jan 29th, 2009 at 11:22 am

I'm going to finally stick my two cents in here, something I haven't really done up until now in the various Garrett threads in local blogs. I conducted a business transaction with Tommy several years ago. There was no ill intent or deception from Tommy in way way whatsoever. It was an easy and pleasant transaction, with him and I both living up to our end of the agreement. I really can't understand why so many people have such a negative attitude towards Tommy. And as far as the lawsuits, depositions and subpoenas, let the chips fall where they may. If he feels his reputation and character has been damaged, I support him 100% in his having a competent court hear his claims. He and his attorney, like every other citizen in this country, has the right to exercise the tools to guarantee himself a fair and impartial trial. If one of these tools is determining the identity of who said what, more power to him - a power granted by the legal system of course. Libel is a pretty serious form of irreparable damage to one's character and reputation. Been there, done that myself. I still have three \$4 million dollar lawsuits pending which involve libel causing irreparable damage to my character and reputation in the community as one of many claims.

43 **Sam Bayard** Jan 29th, 2009 at 12:10 pm

I work for the Citizen Media Law Project (<http://www.citmedialaw.org/>) at the Berkman Center for Internet and Society at Harvard Law School. We create legal educational resources for bloggers, non-traditional journalists, and other online publishers, and we are also compiling a database of legal actions against bloggers and other "citizen media" creators. I'm interested in creating a database entry for and blogging about the subpoena you received.

Toward that end, I was wondering if you could give me a little more information about the subpoena (as opposed to the attachment which is published online) — is there a return date on it (the date by which you're required to respond)? Is there a notice in boldface informing you that you must inform the commenters whose identifying information has been requested (referencing a statute - Va. Stat. § 8.01-407.1)? Would you be willing to share a copy of the subpoena with me (I'd refrain from publishing it or redacting your personal information, if you wish.)

Also, although the Citizen Media Law Project cannot take on clients or act as your lawyer, we may be able to help you find a media/internet lawyer who would be willing to take on your case on a pro bono basis. Would you be interested in that?

Just FYI, last year a similar third-party subpoena involving a lawyer named Kathleen Seidel got a lot of attention, especially after the court sanctioned the lawyer who sent it. Here's our database entry on the case — <http://www.citmedialaw.org/threats/sykes-v-seidel>

44 **Sam Bayard** Jan 29th, 2009 at 12:13 pm

A small correction to what I wrote above — Kathleen Seidel, who was involved with a similar subpoena issue last year, is a blogger, not a lawyer.

45 **Majunga** Jan 29th, 2009 at 1:33 pm

Sam - as you know, it is particularly important to support free speech and by extension, blogging, because it is often the only valid recourse and resource for the "average Joe". Of course, it is equally important to not support blatant defamation w/o cause, and that's why there's got to be a legal environment to wade through it all.

Unfortunately, the legal process we have is not up to the task and I hope one day we'll see a specialized system, fair and equitable (?), to handle these case with expedited speed and efficiency due to its inherent competency and conception of fairplay.

46 **Chris** Jan 29th, 2009 at 2:33 pm

Sam, why choose the comments section in a blog as a place for communication of such information and questions? It would seem that a private email would be a far more appropriate first step. I suppose some notion of conducting business in the open could potentially have some merit but this just seems odd.

47 **Chloe** Jan 29th, 2009 at 3:49 pm

There you go Sam... you can see for yourself what Tommy is up against. You try to do something nice to help out poor old Waldo and Chris immediately starts hinting that there's something fake about you. If you want to help these tools out, be my guest but keep in mind that Tommy's reaction was forced after 2 years of harassment by the likes of these. This isn't about freedom of the blog, it's about calling a person a crook and ruining his reputation by a guy who admits he doesn't even know Tommy.

48 **Waldo Jaquith** Jan 29th, 2009 at 7:02 pm

Chris, Sam e-mailed me, too. I actually prefer to conduct such things out in the open—hence posting the subpoena publicly.

"Chloe," Chris didn't say a word about Sam being "fake." But *you* are a jackass *and* a fake, so there's that. Luckily, the former is opinion and the latter is demonstrably true, so there's nothing about that statement that's actionable.

49 **danpri** Jan 29th, 2009 at 7:45 pm

Which is it!

<http://www.youtube.com/watch?v=TJN3PGqDRNg&feature=related>

or

<http://www.youtube.com/watch?v=WrBONyFBcPc>

50 **Chris** Jan 29th, 2009 at 9:45 pm

Good to know, Waldo; totally makes sense then. As I noted (though skeptically, to be sure) conducting business out in the open might make some sense. I'm very glad to hear he emailed you, too. I'd have thought that it went without saying (especially since I didn't say or write it) that I didn't for a moment think Sam was a fake or was anything less than sincere.

Chloe: "Tool?" Really? I think on the previous story/post/thread about "Tommy" on cvillenews.com I made some comment about the whole thing being sad. Amazingly, it seems more sad now. Sad and desperate and pitiful.

51 **Chloe** Jan 29th, 2009 at 10:47 pm

Rubbish! Chris's comment can easily be interpreted the way I did. He called Sam's method 'odd' as if a REAL offer could not possibly be made this way. Apparently my opinion doesn't matter either. Gotta love that free speech you prattle on about. Sticks and stones, Waldo. Call me what you like. I'm not the one doing the suing. Actually I haven't been called a jackass before. I kind of like it. Hmmm.. fake? What makes ME a fake? I am dedicated to defending my friend. How does that make me a fake? Ohhhh.. you mean 'Chloe'... well that's not fake either, see. It's not my name as I've said before. It's an acronym that I find amusing when dealing with you lot. Cvillians take things so seriously.

What did you think I meant, Chris? Tools are items used to get a job done. THAT's what I meant. You guys are so willing to jump to do Waldo's bidding, and for what? What do you possibly get in return? Brace yourself Chris... I'm sure we haven't hit rock bottom yet.

52 **Cville Eye** Jan 29th, 2009 at 10:59 pm

Waldo, I'm trying to unsubscribe to this thread by I got this message "You may not access this page without a valid key" when I clicked on the link "Manage your subscriptions" below. Can you help me. This game is drying up my Dorian face.

53 **Waldo Jaquith** Jan 30th, 2009 at 8:08 am

You're all set now, Cville Eye.

54 **Will M.** Jan 30th, 2009 at 12:35 pm

Sorry, Chloe, free speech only means you can say what you like. It doesn't mean people will think what you say "matters". Furthermore, a personal blog's comments section isn't governed by free speech. I'm sure you'll just say I'm "jumping to do Waldo's bidding" (whatever that is), but really I just understand basic law. Unlike, it seems, Mr. Garrett and his attorney.

55 **Majunga** Jan 30th, 2009 at 4:45 pm

Funny: Garrett / Chloe is actually proving they are not in the slightest 'famous', because everyone knows any exposure is good exposure, except if you're no one! Ipso facto.

Also, Chloe, all you have demonstrated with your latest comment is that YOU interpret EVERYTHING as harassment and defamation. Again, just shows what kind of small-fry with latent "Folie des Grandeurs" disorder.

56 **Bloom** Jan 30th, 2009 at 4:51 pm

Can anyone identify the suit pin in Tommy's headshot on the perhaps official (. . . you've been warned) website here?

And what's the movie poster in the background?

57 **Will M.** Jan 30th, 2009 at 5:17 pm

Holy shit, I hadn't looked at Tommy's books. Cosmic's Adventure has my new favorite book cover.

58 **Waldo Jaquith** Jan 30th, 2009 at 6:03 pm

What a hoot—he's even faked his own headshot! What a ghastly Photoshop job.

59 **Cecil** Jan 30th, 2009 at 6:09 pm

The Amazon reviews of *Cosmic's Adventures* are priceless.

60 **weirderandweirder** Jan 30th, 2009 at 6:52 pm

Will M.

Did you look at the reviewer profiles for *Cosmic's Adventures*?

Jason Crawford, is pretty clearly Tommy, or for some strange "cosmic" reason, his reviews are mostly if not all listed as being posted by Tommy Garrett.

Frederick Dunn is a chicken farmer who actually has an interesting website with real useful chicken raising information. Coincidence that Tommy Garrett also raises chickens...?

John Dowd is also of the "BearManor Media" stable and the numerous glowing reviews for his book "Kiss Tomorrow Goodbye: The Barbara Payton Story" are mostly 5 star reviews from people who have only reviewed a single book. That is with the exception of a great review by none other than the aforementioned "Jason Crawford," who seems to think he is Garret himself.

The other reviewers of "Cosmic's Adventures" seem to mostly review books by Tommy Garrett.

It is hard to know without someone doing some real investigation, but a huge amount of the interconnected stuff on the internet which is related to this seems to be the work of one or very few people. Maybe some more information will come out if this does go to trial.

I'm really baffled by why someone with so much energy and obvious creativity would bother with such trivial crap. As wacky and sad as it all is though, it is oddly fascinating enough there may well be the makings of a good book in telling the story behind it all.

61 **Chloe** Jan 30th, 2009 at 9:42 pm

wow... that's a lot of effort expended to research all that. You could have been sharing quality time with your family instead. It's almost like you work at the Hook or something. Then again, maybe I'm just suffering from a bad case of the majungas...

By the way, 'jung', you are absolutely correct. I am in no way or ever have been famous, but with your help, the odds are increasing all the time.

Keep up the good work.

62 **Sad Situation** Jan 30th, 2009 at 10:38 pm

What's really sad is that Tommy/Chloe is getting exactly what he wants here — i.e., attention. He doesn't care if it's positive attention or negative attention, he just wants to make sure that people are talking about HIM. And that's precisely what we're all doing. Sigh... Good luck to you, Waldo. The frauds and charlatans of this world need to be exposed for who they are and the truth-tellers like you deserve our thanks and support.

63 **Sad Situation** Jan 30th, 2009 at 10:42 pm

By the way, I think it was a beautiful thing that Steve Shiflett (Demopublican) rose to Tommy/Chloe's defense. They really are made for each other.

64 **weirderandweirder** Jan 31st, 2009 at 1:16 am

Sad, I was wondering earlier if Demopublican/Sick was the same person as Chloe/Tommy, but after thinking a bit about it, I concluded otherwise. I thought Sick's comment a few weeks ago on the Hook site that said something to the effect of "most people here know who I am," as if most people actually cared, was a lot like Tommy's apparent belief that any one cares enough to conspire against him. We may be seeing the signs here of the first disease caused by the internet.

Chloe(T), I wasn't kept from my family at all, far from it. We all sat around and had a night of great laughs reading fake book reviews to one another. My kids did a great job of finding stuff I had missed. My family all thinks Waldo has a great forum here and if we can find information that might help him keep it going unmolested, we think that's the least we can do to help out. The internet is a great tool for collaborative truth seeking. That's part of why I check in here on a regular basis.

65 **Chloe** Jan 31st, 2009 at 4:52 am

Where are my manners? Thankyou Demopublican for speaking up about your pleasant experience dealing with Tommy. You experienced what most people experience when dealing with him. You must have known you'd be flamed for it, yet you did it anyway. What a guy! You would appear to be in the unique position here of knowing what it's like to be falsely accused and copping the flack from the know-it-all brigade on blogs like this. Tommy has nothing to hide. He wants justice done just the same as you do and I wish you the greatest success in your endeavors. I'll be sure to tell him there is a speck of light in the darkness of Cville. These people attacking Tommy are ill-informed at the very least. They don't think so, but they are. It'll all come out in the wash shortly. The clock is ticking...

66 **Chloe** Jan 31st, 2009 at 6:02 am

W&W, you must have a wonderful family life, teaching your kids how to hate a man they've never met based on the hearsay of others you've probably also never met. When your kids have grown weary of reading out the BIG words for you, maybe you can read them Wacky Waldo's Guide to Sodomy. That should give them a real big laugh too. You can joke about Tommy's book reviews till your cow comes home but it doesn't affect me... they're not my books. What it does prove is that the Hook's original articles and Waldos extension of them have caused people (and you) to attack Tommy based on the false image of what he must be like thanks to said articles. Sadly, even if Tommy wins his case, all the die-hard supporters of Waldo and the Hook will refuse to believe Tommy was right all along. Somehow it'll be Waldo and his bosom buddy Hawes who have suffered injustice.

67 **The "Un-Chloe"** Jan 31st, 2009 at 11:00 am

Don't you worry your little head now "Chloe" because Tommy is a professional in the art of "victimhood". He's going to USE THE TOOLS at his disposal to redirect the general public sympathies toward him so that he can (at least in his own mind) obtain satisfaction at being the

"invincible victim".

"Chloe" it seems your "service" to Tommy must keep your hands free to type an awful lot. LOL!!! :)

68 **Waldo Jaquith** Jan 31st, 2009 at 11:04 am

Tommy, you do realize that many of your comments about me are libelous. subject to both discovery and legal action...don't you? The fact that you are simultaneously subpoenaing me in a libel case and making libelous accusations against both me and the subject of your lawsuit is a bit stunning.

Luckily for the both of us. I don't care. It would be one thing if you were accusing me of something actually defamatory, because there was a chance that people might believe it was true. (Like when you accused the mortician of sexually violating corpses.) That would actually be harmful. The foolishness that you're slinging around only makes you look like a dope. Happily, you're so disconnected from reality that you can't realize that.

69 **Will M.** Jan 31st, 2009 at 12:46 pm

I forgot all about "Chloe's" insinuation that Waldo and Hawes are gay lovers. I haven't heard that sort of retort since my days at Walker Upper-Elementary. Given how amused I was by that 5th grade throwback, I'd suggest "Chloe" switch from chicken farming to comedy, but it's a bit of a handicap to think your made-up stories are true rather than just entertaining.

70 **Demopublican** Jan 31st, 2009 at 3:20 pm

Yes Chloe, I am condemned in local blogs if I say anything bad about anybody. And I am condemned in local blogs if I say anything good about anybody as well. A few people love to hate me. no matter what I say. And a few really get offended knowing I speak the truth when I talk.

Sad Situation. do you have a reading comprehension problem? I defended Tommy Garrett's right to seek justice through the courts if he feels he has been damaged in any way by anybody. The steps in this justice process include subpoenas, discovery, depositions, hearings, judge or jury trial, etc... IMHO, the subpoena to Waldo is pretty much seeking to identify anonymous people hiding behind new and random screen names they create day to day, people who seem to think they can spew about whatever they want to say on the Internet, ya know. their alleged "freedom of speech." I can understand why Waldo might be a tad upset or concerned, because answering the subpoena is a royal PITA. But why are the rest of you little new and anonymous screen names every day so upset? Do you have something to hide? Once some of the bloggers are identified, they are most likely going to end up sitting in the Buckingham Circuit Court courthouse all day awaiting their depositions being taken. Then they could very well spend another two or three days (or longer) in the same courthouse once a subpoena is issued for them to appear at the actual trial in the lawsuits. The moral of this entire thread is "never say anything you can't back up or prove". And anticipate proving it in front of a judge or jury if it's something that shouldn't have been said or done in the first place. In other words, if it isn't true, don't submit it to a blog discussion. I never say anything bad about any person unless I know it to be a fact and I can prove it once challenged. And if anybody wants to challenge anything I say, they have the same right to use the justice system that Tommy Garrett has. And the same right I exercised in issuing subpoenas and identifying several people when I sued them for libel recently.

71 **Waldo Jaquith** Jan 31st, 2009 at 4:25 pm

IMHO, the subpoena to Waldo is pretty much seeking to identify anonymous people hiding behind new and random screen names they create day to day, people who seem to think they can spew about whatever they want to say on the Internet, ya know, their alleged "freedom of speech." I can understand why Waldo might be a tad upset or concerned, because answering the subpoena is a royal PITA.

Oh. no. it's asking for a great deal more than that.

For starters, one cannot simply subpoena people's identities without first accusing them of something. The subpoena doesn't identify a single libelous statement made by anybody here and, consequently, Garrett has no right (legal or moral) to demand their identities.

The subpoena requests any information that I generated and any communications that I had in preparation for writing about this case. Virginia has what's known as "the reporter's privilege," which is the right for journalists (professional or citizen) to keep their sources secret, along with their notes. Garrett has zero right to any of that data.

It requests any communications that I ever had with anybody, ever, about Garrett or his lawsuit. I'm not a party to this lawsuit. My communications about him or his lawsuit are absolutely none of his business. He has no right (again, legal or moral) to that information. I've got nothing to do with this lawsuit, and I've been accused of no wrongdoing.

No, this isn't merely inconvenient. It's a huge, huge overreach, well outside of the bounds of what is legally, ethically, or morally permissible. Harvard's Citizen Media Law Project explains that far more capably than I can.

72 **Demopublican** Jan 31st, 2009 at 9:19 pm

I just read the subpoena again. Even though I am nowhere close to being an attorney, this is what I see. And a novice guess at what might happen:

#1- Appears to be seeking the identity of people. People, as in those posting comments, remarks, or libel. This of course is attempted by using the IP addresses. I'm pretty sure the court would grant this request. There is no guaranteed right to anonymity on the Internet. Far too many people think there is though. They often call it "Freedom of Speech" while hiding behind a screen name or user name.

#2- e-mails of Waldo - I don't know what to expect here, whether you will have to give them up or not. But I can definitely say I was able to obtain personal and confidential e-mails exchanged between cops in a recent lawsuit. The e-mails were not exempt as "personal, confidential or private communications" between the cops since I was personally being discussed and mentioned in them. Had the case not been settled, I would have loved to have seen the look on the jurors faces as they read some of these e-mails. This is the important part here -> E-mails of cops not directly named in the lawsuits or accused of wrongdoing were also ordered by the court to be included and provided. Because they were of course communicating with the cops accused of wrongdoing. The production of these records took place after the 911 tapes were "accidentally" destroyed. I guess they were reluctant to press their luck after the stink about the 911 tapes surfaced.

#3- documents in Waldo's possession generated or created in writing the "Hook Sued" article. I have no idea how the court would rule on this. But we have all seen a lot of reporters and journalists go to jail until they agree to provide their sources. I don't think we will see this much drama in these cases though.

#4- posts, comments or other writings of Waldo. I think this would be permissible. All they are asking is what you said and where you said it.

#5- basically asks for what you are refusing to give up, and why. That there is a big can of worms.

73 **Waldo Jaquith** Jan 31st, 2009 at 9:44 pm

Appears to be seeking the identity of people. People, as in those posting comments, remarks, or libel. This of course is attempted by using the IP addresses. I'm pretty sure the court would grant this request. There is no guaranteed right to anonymity on the Internet.

There certainly is a right to anonymity on the internet. There's a three-prong test that governs whether anonymous individuals can have their identity revealed, and this fails all of them. To simply subpoena a big list of people to see who they are is what's known as a "fishing expedition," and it's not permitted. Garrett would need to demonstrate that each individual has stated something libelous, and the subpoena would need to be for the purpose of discovering their identity in order to file a lawsuit against them. In this case, Garrett's attorney informed me that he wants those records in order to determine if anybody from The Hook posted any comments. But he didn't subpoena any comments posted from The Hook's IP address. He subpoenaed *all* comments. He doesn't get to do that. That's overly broad or, again, a fishing expedition.

More important, this is seeking a list of everybody who even *read* the article. This is *breathtakingly* over-broad. Can you imagine suing a newspaper for a list of all of their subscribers after they published a letter that was not to the taste of a reader? That would be nuts.

#2- e-mails of Waldo - I don't know what to expect here, whether you will have to give them up or not. But I can definitely say I was able to obtain personal and confidential e-mails exchanged between cops in a recent lawsuit.

These cases are very different. I have been charged with no wrongdoing, ergo I cannot be compelled to give up my e-mails. Again, Garrett's attorney told me that he wanted any e-mails exchanged between me and The Hook. That is properly obtained from The Hook, a subject to the lawsuit, not me. A basic test for a subpoena duces tecum is that the information "is not available elsewhere." In this case there is zero question that it is.

documents in Waldo's possession generated or created in writing the "Hook Sued" article. I have no idea how the court would rule on this. But we have all seen a lot of reporters and journalists go to jail until they agree to provide their sources.

No, we haven't. We've seen *one*. It's extraordinary rare. In well over 99% of cases, the judges agree that reporters' privilege is a far more compelling interest than whatever issue is at stake in the lawsuit. Can you imagine if the government could simply subpoena the identities of whistleblowers? That would be a disaster for this nation.

posts, comments or other writings of Waldo. I think this would be permissible. All they are asking is what you said and where you said it.

There is absolutely no argument to be made that this is permissible. I am not a subject of this lawsuit and, as such, what I have written about this case is absolutely of no consequence whatsoever. This is requesting all private communications. If I wrote an e-mail to my grandmother (as I do routinely) explaining the lawsuit, I'd be obliged to enter that into the court's record.

Remember, Demopublican—I have nothing more to do with this lawsuit than you do. Subpoenaing me and forcing me to turn over all of my communications about it makes no more sense than asking you to do the same. I've been accused of no wrongdoing and, consequentially, these requests are utterly inapplicable and inappropriate. Read my Motion to Quash—I think it makes really quite clear that this subpoena is totally inappropriate. Remember here that no less an authority than *Harvard Law School's* own organization dedicated to dealing with inappropriate subpoenas has called it the most flagrant violation of the power of the subpoena that they've seen in a year's time. I'm guessing they know more about the law than you or I. :)

74 **Demopublican** Jan 31st, 2009 at 10:43 pm

I wasn't aware of the Harvard Law School statement. Guess I haven't been paying close attention. And I am absolutely sure they know more than I do, that is a given. :)

75 **Steve** Feb 1st, 2009 at 2:25 am

Waldo, give some thought in asking the court to sensor the attorney that wrote the subpoena, stating what the Harvard Law School said about it.

76 **Chloe** Feb 1st, 2009 at 3:41 am

Waldo@11:04am Kindly list the libelous comments you say 'Tommy' has made about you. It would be most enlightening. While you're at it, you and your pathetic little army can make a list of all the things Tommy has personally done to any of you that is worth such contempt and hatred. After viewing the disgraceful thread where you encouraged your mini-mes to show contempt for the law process by printing abuse in different languages including Chinese, Vietnamese and even Rot13 (David Sewell - not even giggle worthy. Why do geeks think they are all so clever?) I can see that you are flailing, Waldo. I was particularly impressed by your mother's grasp of the Tard dialect though. She nailed it. She bloomed! What makes dear ol' Janis feel so secure that she can join in with impunity? Even your 'twin' Jackson Landers was full of bluster as he spouted off at poor Tommy. I could almost imagine him stamping his foot and shaking his fist as he roared it. What do you suppose a court of law is going to make of all that hostility and contempt? You've made some BOLD but incorrect claims so you better be able to prove them when the time comes.

What is TRULY stunning is that you've publicly flogged Tommy Garrett right here on your blog and you don't even care that you could be wrong about lots of things. Your Kung Fu is weak, old man.

77 **Waldo Jaquith** Feb 1st, 2009 at 10:28 am

Kindly list the libelous comments you say 'Tommy' has made about you. It would be most enlightening.

Nah. You can pay your attorney to explain that to you. I won't be saving you any money.

78 **Waldo Jaquith** Feb 1st, 2009 at 10:42 am

And I am absolutely sure they know more than I do, that is a given. :)

And I'm really, really hoping that they know more than I do. :)

79 **The "Un-Chloe"** Feb 1st, 2009 at 12:42 pm

" Waldo Jaquith

Feb 1st, 2009 at 10:28 am

Kindly list the libelous comments you say 'Tommy' has made about you. It would be most enlightening.

Nah. You can pay your attorney to explain that to you. I won't be saving you any money."

Touché Waldo! (You just gave "Chloe" a roundhouse kick in the wallet... seems like your 'Kung Fu' ain't so bad after all!) :^)

80 **Demopublican** Feb 1st, 2009 at 2:12 pm

I'm not so sure about the roundhouse kick in the wallet thing, but it sure sounds cool on the Internet. Most experienced and competent attorneys take "good" cases on a contingency basis. All said and done, from 1996 to 2009, legal representation in various court cases has never cost me one single penny out of my pocket. I'm also 100% confident that the remaining cases I still have pending as a plaintiff, which should be concluded in 2009 and 2010 hopefully, will not cost me one red cent as well.

None of this is meant to imply that Tommy Garrett has a "good case". I simply do not know. It's for a judge or jury to decide, not me.

81 **colfer** Feb 1st, 2009 at 3:33 pm

Or, as you say, for an attorney willing to take it on a contingency basis. If that is the case here.

82 **Chloe** Feb 1st, 2009 at 3:54 pm

Un-Chloe, that's pretty lame. Trust me, it's costing everyone else a lot more than it's costing me. You were obviously talking to me while Waldo has some issues with character recognition. What's a roundhouse kick btw? Is that some kind of redneck pass-time? I wouldn't know what rednecks get up to in their spare time.

Demopublican continues to be a solid citizen at this point. More of you should be like him.

83 **Voice of reality** Feb 1st, 2009 at 3:57 pm

Sayeth the ever-charming Chloe: "Tard dialect..."

Girlfriend, you're a real piece of work. Keep it up, Miss Thing... your rhetoric is unfailingly entertaining!

84 **Demopublican** Feb 1st, 2009 at 5:39 pm

There's a handful of people that would certainly debate Demopublican being a solid citizen. The vast majority of them have been served with a roundhouse kick in the mouth. The rest are still awaiting service. But, Thank God, none of the handful that would certainly debate Demopublican being a solid citizen have ever been appointed a judge in a Virginia courthouse. Our judges in Virginia are among the most competent and honest in the entire USA. Especially when we have judges who will look a small group of cops right in the eye and announce in open court that half of them are nothing but total liars. While commending the other half for being truthful and honest. You don't see this happen much, not even on TV and in the movies.

85 **Chloe** Feb 2nd, 2009 at 8:40 am

Hey VoR, you're backeth!

Did you actually see what Waldo's mommy wrote in the other thread? It wasn't too clever. Janis obviously isn't the brightest bulb in the chandelier and I would have expected a whole lot better from someone of her vintage. Maybe I should pity Waldo. NAHHHH!

Hey there DP, I made the effort to learn more about your plight. You certainly were shafted. You are being fair and fairness is all Tommy has ever expected. He has never once attacked the people here but look at the contempt they fire at him. Big mouth Jackson Landers needs to pull his head in. Tommy has done NOTHING to him. Now THERE'S a bully who needs a roundhouse kick. Be vewwy qwiet... I'm hunting steamwabbits.

And VoR(CE).. I'm not your girlfriend.

Frjryy'f enpvfg wbxrf

ba gur arg jvyy pbzr

onpx gb unhag uvz.

86 **Chloe** Feb 2nd, 2009 at 8:49 am

- a different VoR. My mistake. The sentiment remains the same.

87 **Demopublican** Feb 2nd, 2009 at 9:18 am

Oh yes, my character and reputation in the community was indeed shafted. There's a small handful of cops who should be serving time in prison for conspiracy and perjury. But instead of the criminal justice system going after them, they actually condoned their "Blue Wall of Silence" and coverups.

88 **Will M.** Feb 3rd, 2009 at 12:48 am

...it's costing everyone else a lot more than it's costing me.

Gosh, "Chloe", it sounds a whole lot like you're speaking as if you're Tommy. Good thing we all know you're not, though!

89 **Chloe** Feb 3rd, 2009 at 2:04 am

Gosh Billy, you sound like a broken record (or is it a scratched CD these days?) I know it's difficult for you but consider for a moment that I am not actually Tommy Garrett. Where does that leave all the posters, including Wildo, who ridiculed, insulted and defamed him across multiple threads for things Tommy never said. Will HLS or CMLP give instruction on how to deal with apologies and damage control? I doubt it. I understand that many are just following Waldo's lead due to some misplaced loyalty or whatever but he is wrong on multiple counts and it's going to be shown soon enough.



Waldo Jaquith

Motion to Quash in Garrett v. Better Publications.

On 31 January 2009 with 20 comments

Today I submitted [a Motion to Quash the subpoena issued to me in *Thomas L. Garrett, Jr. v. Better Publications, LLC*](#). It took a couple of weeks of legal research to learn how to quash a subpoena, to study the subpoena to look for legal flaws, and then to manage to write this three-page document. What became clear to me while writing it is that this subpoena was just reprehensible. Call me trusting, but I find it surprising that it's (apparently) acceptable for an attorney to issue such a recklessly over-broad, inappropriate subpoena. In [the words of Sam Bayard, Assistant Director of Harvard's Citizen Media Law Project](#):

[T]he subpoena requests are so broad and poorly tailored to the underlying litigation between Garrett and *The Hook* that one suspects the subpoena is meant to gather information for a potential new lawsuit or to harass Jaquith for making critical comments, rather than to obtain evidence for *The Hook* case.

The last couple of weeks have been hugely educational. I owe particular thanks to [Mark Blacknell](#), Josh Wheeler, and Paul Levy, of [Public Citizen](#), all of whom provided invaluable legal advice, editing, and support. I'm also grateful to Sam Bayard of the Citizen Media Law Project for providing his organization's resources, and for connecting me with Paul.

The next step, as I understand it, is going to be me arguing this before a judge in Buckingham County. Having never done this sort of thing before, I'll have to prepare like a doctoral candidate defending his thesis. That'll be an adventure. (In the meantime, unfortunately, I've had very little time for [Richmond Sunlight](#). Normally I'd be spending 2–4 hours on it each day, but it's been more like 30 minutes daily for the past couple of weeks. Sorry, folks—I don't like it, either.) It's a lot of work, but I don't like being pushed around by bullies, and I like even less bullies who want to push around my readers.

My motion to quash follows as HTML or, if you prefer, it's available [via Scribd](#). It's really interesting, I don't mind saying—plus, I put a lot of time into it—so I recommend reading it.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BUCKINGHAM

Thomas L. Garrett, Jr.,	:	
	:	
Complainant,	:	
	:	
v.	:	Case No. CL08000197-00
	:	
Better Publications, L.L.C.,	:	
	:	
Respondent.	:	

MOTION TO QUASH

Waldo Jaquith, appearing pro se and a non-party in the above-captioned case, hereby moves this Court pursuant to Va. Code § 8.01-277 to quash the subpoena *duces tecum* which was served on him, at the request of the complainant, to be returned on February 2, 2009 at 5:00 p.m. A copy of this motion is being provided to the attorney who issued this subpoena.

In support of his motion, Mr. Jaquith states as follows:

1. He is a journalist, working as Web Editor for the *Virginia Quarterly Review* and privately operating *cvillenews.com*.
2. He is not a party to *Thomas L. Garrett v. Better Publications, L.L.C.*
3. Upon information and belief, he has a duty to maintain the confidentiality of the material sought to be compelled by sections 1, 2, 3 and 5 of the subpoena *duces tecum*.
4. Upon information and belief, the information sought to be compelled by sections 2, 3, and 5 of the subpoena *duces tecum* are protected as a privileged communication (*Brown v. Commonwealth*, 1974; *Philip Morris v. American Broadcasting Company*, 1994; and *Hatfill v. New York Times*, 1996). "[A]n individual successfully may assert the journalist's privilege if he is involved in activities traditionally associated with the gathering and dissemination of news, even though he may not ordinarily be a member of the institutionalized press" (*Von Bulow v. Von Bulow*, 811 F.2d 136, 1987).
5. Upon information and belief, this Motion to Quash the production of information sought under section 1 of the subpoena *duces tecum* deserves the highest deference, because in addition to being unduly burdensome and unfair, movant is not a party to the underlying litigation,

nor has he been accused of any wrongdoing. A court order is a form of state action and thus is subject to constitutional limitations (*New York Times Co. v. Sullivan*, 376 U.S. 254, 265, 1964; *Shelley v. Kraemer*, 334 U.S. 1, 1948). An order to compel production of a person's identity in a situation that threatens the exercise of fundamental rights "is subject to the closest scrutiny" (*NAACP v. Alabama*, 357 U.S. 449, 461, 1958; *Bates v. City of Little Rock*, 361 U.S. 516, 524, 1960). Courts have ruled repeatedly and clearly that this protection extends to anonymous speech on the Internet. "People who have committed no wrong should be able to participate online without the fear that someone who wishes to harass or embarrass them can file a frivolous lawsuit and thereby gain the power of the court's order to discover their identities" (*Colombia Insurance Company v. Seescandy.com*, 185 F.R.D. 573, 578 (N.D. Cal. 1999)).

6. Upon information and belief, production of information under section 1 of the subpoena *duces tecum* is premature, given that the complainant has failed to make the showing required to obtain a subpoena. The qualified privilege to speak anonymously requires that a court review complainant's claims to ensure that complainant has a valid reason for piercing the speaker's anonymity (*Mobilisa v. Doe*, 170 P.3d 712 (Ariz. App. Div. 1, 2007); *Doe v. Cahill*, 884 A.2d 451 (Del. 2005); *Doe v. 2theMart.com*, 140 F. Supp.2d 1088, 1093 (W.D.Wash. 2001); *Dendrite v. Doe*, 342 N.J. Super. 141 (2001)). Courts require complainants to quote the exact statements by each anonymous speaker that allegedly violate their rights. (*Id.*) Complainant has failed to specifically identify a single allegedly false and defamatory statement from *cvillenews.com*.

7. Upon information and belief, the subpoena fails both procedurally and substantive to comply with the requirements of Virginia law governing subpoenas to identify anonymous Internet speakers (Virginia Code § 8.01–407.1). Although Complainant has not sued the anonymous speakers, movant believes that Complainant is trying to obtain their identities in order to proceed against them for their speech, and Complainant should not be able to evade the strictures of the statute by not (yet) identifying the anonymous speakers as defendants. The subpoena was not served at least thirty days in advance, the specific communications have not been set out verbatim, and none of the substantive showings set forth in the statute has been made prior to service of the subpoena, as required.

8. Upon information and belief, the information sought to be compelled by the subpoena *duces tecum*—public and private statements from Respondent regarding Complainant—is available elsewhere, most notably from Respondent. Complainant must demonstrate with substantial evidence that the information is relevant and not available elsewhere, and that its need for the information is compelling (*Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 726, *as modified*, 628 F.2d 932 (5th Cir., 1980); *In re Selcraig*, 705 F.2d 789, 792, 799 (5th Cir., 1983)).

9. Upon information and belief, the information sought to be compelled by the subpoena *duces tecum* is totally unnecessary and irrelevant to the proceeding. Mr. Jaquith never communicated with Respondent with regard to Complainant prior to the filing of the complaint in this action; nor, indeed, had he ever heard of Complainant prior to the initiation of this court action. Complainant's subpoena *duces tecum* is an apparent effort to gain all materials that he can possibly access, and is improper under the Supreme Court of Virginia's decision in *Farish v. Commonwealth* (2 Va.App. 627, 346 S.E.2d, 736, 1986), (holding that "[a] subpoena *duces tecum* should not be used when it is not intended to produce evidentiary materials but is intended as a 'fishing expedition' in the hope of uncovering information material to the defendant's case," citing *Bowman Dairy Co. v. United States*, 341 U.S. 214, 221, 71, S.Ct. 675, 279, 95 L.Ed. 879, 1951).

10. Upon information and belief, the subpoena has been served on movant as an exercise in intimidation and retaliation for publishing opinions about this litigation, and seeking to send a message that anybody else who expresses opinions publicly about this case can expect to receive a similar subpoena. At the very least, service of the subpoena will have a chilling effect on the public's right to comment on his lawsuit. The public is entitled to be protected from such a misuse of the discovery process.

WHEREFORE, Waldo Jaquith respectfully prays that the Court enter an order quashing said subpoena *duces tecum* and that the Court set for hearing, prior to the issuance of any subsequent subpoena *duces tecum*, the issue of whether or not the material sought to be compelled is privileged or otherwise protected by law.

Dated: January 31, 2009

Respectfully submitted,
/s/
Waldo Jaquith
Pro Se

20 Comments

That's a fine looking Motion, and well written from a lawyerly perspective. The only concern I have is that in paragraphs 6 and 8 you rely on case law that is not binding in Virginia. The 5th Cir. cases in paragraph 8 aren't too big a deal, but citing foreign state cases may not go over well with the Buckingham Cir. Ct. judge.

Did you try to Shepardize the cases to see if there's Virginia case law on point?

Posted by I.Publius on 31 January 2009 @ 7pm

The only concern I have is that in paragraphs 6 and 8 you rely on case law that is not binding in Virginia. The 5th Cir. cases in paragraph 8 aren't too big a deal, but citing foreign state cases may not go over well with the Buckingham Cir. Ct. judge.

I had no idea what the deal with that would be, but it hadn't occurred to me that it might be *bad* to include those, but only that it would be useless at worst. Most of the ones in paragraph six are the landmark cases in the realm of subpoenaing the identities of anonymous participants in online discussions, or as close as there is to landmark in such a small area of the law.

Did you try to Shepardize the cases to see if there's Virginia case law on point?

I did not. But I did just look up the word “shephardize,” and that was kind of interesting. :) The attorneys helping me out were great about pointing out better cases, or when I’d relied on something that I shouldn’t. And I googled around for every case, reading plenty about ‘em before I relied on them. There were a few that, early on, turned out to have been overturned or at least placed in doubt by conflicting rulings in other courts. But thankfully I was able to find some really recent motions to quash, written by people a lot smarter and more lawyerly than me, and that was helpful in clearing some of those citations.

How cool that there’s a semi-automated process to do that. It took me *hours*.

Posted by [Waldo Jaquith](#) on 31 January 2009 @ 8pm

Waldo– Yeah, not to rub this in, but Shepardizing with the brief uploader is about a minute (then you have to go look everything up, but still.).

Related story about my first legal job to make you feel better. I had to do this massive project on the sex offender registry statutes, comparing them state by state. My boss didn’t know, nor did I, that you could run a search on Westlaw to pull all the statutes in one pdf file delivered to your desktop, in under a minute. He wanted me to go to like, state legislature websites via sex offender registry sites. It took for-ev-er. And I could have been done in a day!

I’m still bitter about that.

Hey, but you seem to be enjoying this! Want more practice? ‘Cause I’ve got no less than five papers going right now, and I would *love* to have someone cite check for me. :)

Posted by Genevieve on 31 January 2009 @ 10pm

Yeah, not to rub this in, but Shepardizing with the brief uploader is about a minute (then you have to go look everything up, but still.).

Presumably, though, I don’t have access to any such service. Though it’s just as likely I could have found somebody with access to it. :)

No more practice, thank you. I’m sick, I’m limping around on a cane from sticking a 4” rusty nail in my foot two weeks ago (ER, tetanus shot, x-rays, goofy shoe), and the GA’s in session. I think I’ve got my hands full. :)

Posted by [Waldo Jaquith](#) on 31 January 2009 @ 11pm

Well done, pro se!

Posted by Steve on 1 February 2009 @ 1am

Even though the motion is already filed, you still have an opportunity to find other cases before you argue it. The UVA law library is open to the public, and there will be either staff or student librarians who could quickly show you how to use Shepard’s the old-fashioned way. It would take less than an hour to determine if there are any Virginia or 4th Circuit cases that cite those landmark online anonymity decisions.

As for it being a “bad” idea to cite foreign state cases in circuit courts... the answer is “it depends.” Depends on the judge, on the issue, and on the lawyer doing it. In your case, since you’re pro se, there’s little chance the judge would embarrass you over it.

When you bring up that issue in the hearing, you might mention right away that it’s a very new area of the law, those are the landmark cases, and there’s no Virginia authority... but better make sure there’s no Virginia authority first. And, on the off chance you find some, print them out and bring extra copies for the court and opposing counsel.

Posted by I.Publius on 1 February 2009 @ 6am

“Presumably, though, I don’t have access to any such service. Though it’s just as likely I could have found somebody with access to it. :)”

Well, jeez, when you put it like that... Seriously, you want me to run it through and have the report emailed to you? It won’t let you go into Lexis to look up the cases there, but it’ll give you the list of cases and the treatment of your cite in each case, to go look up online elsewhere or in the UVA law library.

Posted by Genevieve on 1 February 2009 @ 9am

Hey Waldo,
I am sorry that you are being harassed. Life is too short.
Bill

Posted by [bill emory](#) on 1 February 2009 @ 10am

First – Does this count toward time needed to read for the bar?

Second – If you can’t get access to Westlaw or Lexis-Nexus, talk to a currently registered student at UVA. I know that at VCU we had access through the library website to quite a few of those resources that would otherwise have cost an individual way too much to access. It may not be the full services, but it would be a start. Or just bug a lawyer to borrow one of their offices for an hour or so.

Good luck on it all, man.

Posted by [Jaosn](#) on 1 February 2009 @ 10am

As for it being a “bad” idea to cite foreign state cases in circuit courts... the answer is “it depends.” Depends on the judge, on the issue, and on the lawyer doing it. In your case, since you’re pro se, there’s little chance the judge would embarrass you over it.

Well, I’ll spend some quality time researching the judges in this circuit. Since their decisions aren’t online, I’m limited to reviewing those cases that made it to the appeals court, and seeing what they said about the lower court’s ruling, but it’s a start. :) And it’s actually pretty interesting so far. It turns out that a man can be charged with B&E for breaking into his own home, if his wife has kicked him out. Though that’s scant help for this woman, since he tried to kill her just as soon as he got in the house, so I’m not sure that the B&E charge would have deterred him. Anyhow, yeah, it’s been interesting, but I’ll definitely have to learn more about these judges, so I know what I’m in for.

Well, jeez, when you put it like that... Seriously, you want me to run it through and have the report emailed to you?

:) Well, I suspect that’d be real helpful, Genevieve. It hadn’t occurred to me that might be useful now, but given I.Publius’ comments, that might be a pretty great thing. If there’s anything I should do to prepare it first (like stripping out a listing of all of the cases, for instance), I’d be happy to do it. Thanks so much for that!

Posted by [Waldo Jaquith](#) on 1 February 2009 @ 11am

Hey, I misspelled my name! Awesome.

Posted by [Jason](#) on 1 February 2009 @ 11am

Waldo– I say these things, and Lexis is being stupid. I’ll have it to you COB today, but at this moment, Lexis is not wanting to finalize processing the report. Ayy.

Posted by Genevieve on 1 February 2009 @ 11am

I wonder if this Garrett guy knows [Aleksey Vayner](#). I’m curious if this whacko will have to be the court room when you have to present in court or if it will just be his attorney.

Posted by grs on 1 February 2009 @ 12pm

That’s a nicely written motion. It’s great that both CMLP and Public Citizen gave you advice. When I got served, I didn’t hook up with Public Citizen until after I’d filed my motion to quash. My first reactions upon digesting the subpoena were, “Bar the door!” then, “Who has the money for a lawyer?” then, “A double scotch on the rocks, please,” then, “Homework time!” But after I published the motion online, I got all sorts of free advice from lawyers, including advice on where I got it wrong (such as sequence of argument — you’re supposed to start with local court rules, then work your way up to the Constitution, not the other way around). And that’s when I hooked up with Public Citizen.

We online opinionistas are very fortunate to have Paul Levy on our side.

I’m curious — **must** you argue your motion, or is there any chance that the judge will just quash the subpoena without you having to show up in court?

BTW, for free LexisNexis access, find a local public community college with a paralegal program, head to the library and let ‘er rip.

Posted by [Kathleen Seidel](#) on 2 February 2009 @ 8am

I’m curious — must you argue your motion, or is there any chance that the judge will just quash the subpoena without you having to show up in court?

I wish I knew. :) I think I’m in about the same boat that you were at this point, Kathleen—feeling pretty unsure as to what comes next! But here’s hoping that’s the outcome. It’d be a big time-saver.

Posted by [Waldo Jaquith](#) on 2 February 2009 @ 11pm

Waldo — one red herring that you will want to be familiar with is *Branzburg v. Hayes*, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972), which held that there was no journalistic privilege, at least in a grand jury investigation. That was a case where the government wanted to subpoena reporters to a grand jury to disclose who their sources were; the reporters argued that they had a confidential privilege not to disclose their sources. The Supreme Court held that there was no journalistic privilege, at least in a criminal case. They held that, in essence, the grand jury is entitled to everyone’s evidence. But their holding is necessarily only applicable to a criminal case.

But this is not a criminal case; it is a civil case. So *Branzburg v. Hayes* does not apply. The policy arguments in favor of a journalist in a civil case are much stronger than they would be in a criminal case. You’re not trying to hide criminals.

One last point — Judge Blanton, who usually sits in Buckingham, is not a xenophobe; he won’t be turned off by a citation from another state.

Posted by Lloyd Snook on 3 February 2009 @ 2am

I read most of lightfoot’s defamation complaint. It was very interesting...except that the Exhibits were missing or simply not included. Do you know where these can be found online?

Randy

Posted by Randy on 3 February 2009 @ 2pm

Waldo, I wouldn't presume to give you legal advise, for any number of reasons. Just remember the old joke: "What do you call a lawyer with an IQ of 50?"

"Your Honor."

'Course, the guy who told me that one is now on the bench himself.

Posted by [James Young](#) on 9 February 2009 @ 1pm

So when do we hear? I'm really interested in finding out how effective your motion was.

Are you left guessing like the rest of us or is there some date when you expect to find out what the court thinks?

Posted by [franxious](#) on 10 February 2009 @ 10am

I'm afraid I've got no idea of what's next, though as soon as I find out I'll be sure to write about it.

Posted by [Waldo Jaquith](#) on 10 February 2009 @ 12pm

Leave a Comment

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The two major political parties are the Republican Party and the _____ Party. (required, anti-spam)



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Who?



Waldo Jaquith (JAY-kwith) is a website developer and political pundit who lives in the vicinity of Charlottesville, VA, USA. [more »](#)

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Westlaw.

Not Reported in S.E.2d

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Not Reported in S.E.2d, 1995 WL 1055921 (Va. Cir. Ct.), 23 Media L. Rep. 2438

(Cite as: 1995 WL 1055921 (Va. Cir. Ct.))

H

Circuit Court of Virginia, City of Richmond.
PHILIP MORRIS COMPANIES INC., ET AL.
V.

AMERICAN BROADCASTING COMPANIES, INC., ET AL.

CASE NO: LX-816-3.

July 11, 1995.

*1 Before the court are two motions, Philip Morris's Motion to Amend, requesting leave of court to file a Second Amended Motion for Judgment, and ABC'S Motion for Reconsideration of the Court's Order Compelling Disclosure of Defendants' Confidential Sources. The court will consider first the Motion to Amend.

T.J. Markow, Judge.

I. MOTION TO AMEND

In addressing the demurrer with which ABC attacked the Amended Motion for Judgment, in its letter of December 20, 1994, the court analyzed paragraphs 7, 8, and 13 to demonstrate that Philip Morris had indeed, contrary to ABC's argument, "base[d] its cause of action upon the falsity of the assertion that cigarette manufacturers intended to "hook" or addict smokers by the addition of nicotine." The court went on to say that although "not pled that way, the court agrees with Philip Morris' argument that the allegation that it adds nicotine to cigarettes when it doesn't is in and of itself defamatory."

Philip Morris now seizes on that statement and seeks to amend its motion for judgment in such a manner as to eliminate any reference to motive, basing its cause of action solely on the issue whether it adds nicotine to cigarettes. The parties have agreed to consider the broadcast tapes and transcripts as a part of the pleadings, and the court is, therefore, obliged to consider that factual milieu in making a determination on what may be appropriately pleaded. After reviewing the tape and transcript of the broadcast again in light of this motion, the court agrees with ABC that the court's statement in the December 30, 1994 letter is still the framework within which Philip Morris must work:

From the pleadings and from the court's review of the broadcast tapes and transcripts, the gist of the broadcast is that the "fortifying," "spiking," "manipulating," cigarettes with nicotine occurs in the production of reconstituted tobacco. The broadcast implies that nicotine which doesn't belong there; i.e., which is extraneous, is added to the tobacco so as to hook smokers.

The court cannot, and Philip Morris cannot, ignore the entirety of the broadcast, in favor of a selected few words, but must deal with the context. In this case, the court has before it a perfectly preserved memorialization of the alleged defamation, as a part of the pleading, and agrees with ABC that it demonstrates that the allegations of motive cannot be extricated from the allegations of "fortifying." The value-related connotations of the words that ABC employed in its broadcasts - "spiking," "fortifying," "adding" - indicate something more than a recombination of ingredients that had been formerly separated. Therefore, Philip Morris' motion to amend is denied in so far as it requests permission to eliminate the element of motive.

The motion is granted, however, as to the request to add the allegation of a defamatory news release published on February 24, 1994. Since it deals with the same subject matter and similar, if not exactly duplicative, charges by ABC into the conduct of Philip Morris, there should be no prejudice or surprise to ABC by allowing this amendment, and ABC should not need additional time to prepare to meet the count.

***2** If Philip Morris wishes to file a Third Amended Motion for Judgment consistent with this ruling, it may do so on or before July 20, 1995. ABC may respond to any amended pleading within ten (10) days of service upon its counsel.

II. MOTION FOR RECONSIDERATION

Because of the constitutional dimensions of the confidential source issue in this case, the court granted ABC's request to entertain a motion for reconsideration. Concluding that it may have acted without sufficient proof of Philip Morris's compelling need in ordering disclosure of the confidential sources at too early a juncture of the litigation, the court has deliberately delayed making a ruling, assuming that the filing of ABC's "dispositive" motion was imminent and that discovery might obviate the need for confronting this constitutional issue. However, nothing has occurred and it is time to announce the court's conclusions.^{FN1}

FN1. Yesterday, ABC filed a Motion for Summary Judgment. Argument is not scheduled until next month.

Initially, the court wishes to reaffirm its ruling that there does exist a qualified reporter's privilege against disclosure in public figure defamation cases for the reasons set forth in the court's letter of January 26, 1995. Having reached that conclusion, however, the court has determined that prudence suggests that Philip Morris go further to convince the court that its need for discovery of the confidential sources is compelling. At the time that decision was made, insufficient discovery had been completed to enable the court to comfortably reach that conclusion.

In *Branzburg v. Hayes*, 408 U.S. 665 (1972), the Supreme Court described a three part analysis that a court should make before declaring that confidential sources be disclosed.

The first part of the analysis is to determine whether the information is relevant. The court concluded that the information sought was relevant to the issue of ABC's state of mind in deciding to air the broadcast. Therefore, it would bear on "actual malice," which is an element of Philip Morris' prima facie case. That conclusion has not changed.

Next is whether the information sought is available by alternative means. Philip Morris needs to show that it has exhausted other reasonably available sources of the information and has not been able to discover the information likely to be held by the confidential sources. What was shown was the efforts made at a very early stage of discovery.

The third and last part of the test is whether there is a compelling interest in the information sought. Prudence suggests that Philip Morris go further to establish a record that further convinces the court that its need for discovering the confidential sources is, indeed, compelling. There may yet occur, during the course of discovery, the revelation of sufficient information from other sources that it will not be necessary to impinge on the qualified privilege.

***3** Because of the foregoing reasons the court now grants ABC's motion to vacate the order compelling the disclosure of ABC's confidential sources. Two orders, one addressing each of the motions, have been this day entered and a copy of each is enclosed.

Va.Cir.Ct. 1995.

Philip Morris Companies, Inc. v. American Broadcasting Companies, Inc.

Not Reported in S.E.2d, 1995 WL 1055921 (Va. Cir. Ct.), 23 Media L. Rep. 2438

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