IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DIANE BOND,)
)
Plaintiff,)
) No. 04 C 2617
v.)
) Judge Joan Humphrey Lefkow
CHICAGO POLICE OFFICER)
EDWIN UTRERAS, et. al.,)
) Magistrate Judge Arlander Keys
Defendants.)

NOTICE OF FILING

TO: Mary S. McDonald
Assistant General Counsel
City of Chicago
30 North LaSalle Street
Chicago, Illinois 60602

Craig B. Futterman
Mandel Clinic
6020 South University Avenue
Chicago, Illinois 60637

PLEASE TAKE NOTICE that on July 6, 2006, we filed with the Clerk of the United States District Court for the Northern District of Illinois, the "Motion of Non-Party Jamie Kalven for Partial Reconsideration and Modification of Order of June 27, 2006," a copy of which is attached hereto and served upon you.

JAMIE KALVEN

By: s/ David P. Sanders
One of his attorneys

Thomas P. Sullivan (#2773112)
David P. Sanders (#2452359)
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350
(312) 527-0484

CERTIFICATE OF SERVICE

David P. Sanders, an attorney, hereby certifies that he caused a copy of the foregoing **Notice of Filing** and **"Motion of Non-Party Jamie Kalven for Partial Reconsideration and Modification of Order of June 27, 2006"** to be served on the persons identified in the Notice of Filing, by faxing a copy to them on July 6, 2006, and by depositing a copy to them in the United States mail, proper first-class postage prepaid, at One IBM Plaza, Chicago, Illinois, on July 6, 2006.

s/ David P. Sanders
David P. Sanders

CHICAGO_1416723_2

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Plaintiff,	)	
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	)	Judge Joan Humphrey Lefkow
CHICAGO POLICE OFFICER EDWIN	)	
UTRERAS, et. al.,	)	
	)	Magistrate Judge Arlander Keys
Defendants.	)	

MOTION OF NON-PARTY JAMIE KALVEN FOR PARTIAL RECONSIDERATION AND MODIFICATION OF ORDER OF JUNE 27, 2006

Non-party Jamie Kalven ("Mr. Kalven") respectfully moves this Court for the entry of an order reconsidering and modifying its order of June 27, 2006, by deleting the portion requiring him to produce the notes of his conversation with plaintiff Diane Bond.

In support of this motion, Mr. Kalven states as follows:

1. On June 27, 2006, this Court issued its Memorandum Opinion and Order (the "Order"), which ruled on defendants' petition for a rule to show cause and their motion to compel Mr. Kalven to answer certain deposition questions. The Order denied the defendants' petition and motion, except that the Court ordered Mr. Kalven to turn over any notes or tapes "documenting his conversations" with plaintiff to the extent that they exist and have not yet been turned over. (Order, p. 14; 15.)

2. For the reasons stated in this motion, Mr. Kalven respectfully requests that the Court reconsider the portion of the Court's order requiring him to turn over the notes of his conversations with plaintiff and upon reconsideration, eliminate that requirement from the Order.

3. The apparent bases of this portion of the Order are (1) Ms. Bond, as plaintiff, had "no legitimate expectation that her discussions with Mr. Kalven would remain off the record" (Order, p. 14), (2) that Mr. Kalven shared with Mr. Futterman his conversations with Ms. Bond when he asked Mr. Futterman if Mr. Futterman thought Ms. Bond had a "case" (*id*, pp. 4; 14), (3) that Mr. Kalven assumed his conversations with plaintiff would be subject to disclosure to defendants (*id*, p. 14), and (4) that Mr. Kalven has turned over any notes or tapes documenting his conversations with Ms. Bond (*id*, p. 14).

4. Factor (1) – that Ms. Bond had no legitimate expectation of privacy that her discussions would be off the record – is not a basis to compel Mr. Kalven to turn over his notes, because they are his journalistic work product. The cases cited by Mr. Kalven in the briefing on defendants' petition and motion establish that a journalist's notes and outtakes of an interview are not discoverable even where the interviewee is a party to the litigation and her identity already has been disclosed.

(a) In *Patterson v. Burge*, 2005 WL 43240 (N.D.Ill. 2005), for example, the defendants served a subpoena on news organizations for their unbroadcast outtakes of an interview they conducted of the plaintiff, who had spoken on camera with the news organizations for broadcast, that is, with no expectation of privacy. Judge Gottschall quashed the subpoenas. She recognized that compelled disclosure of a journalist's outtakes imposed a significant and real burden on journalists, even though the interviewee was a party to the case and was speaking on the record. She concluded that disclosure of even *verbatim* tapes of an interview with the plaintiff would be unwarranted because the tapes "reflect the journalist's thought processes, his or her mode of investigation, and his or her choices about what should be published and what withheld." *Id.* at *4.

(b) Similarly, in *Hobley v. Burge*, 223 F.R.D. 499 (N.D.Ill. 2004), Magistrate Judge Brown quashed a subpoena for the notes that journalist John Conroy made during his interview with the plaintiff. After ordering the reporter to turn over letters that plaintiff had written to the reporter, Magistrate Judge Brown stated, "Conroy's notes, however are different" (223 F.R.D. at 504-05), and that "Nothing in *McKevitt* suggests that a reporter's notes are discoverable in civil litigation simply because the reporter interviewed a party to that litigation" (223 F.R.D. at 505). Magistrate Judge Brown, like Judge Gottschall in *Patterson*, acknowledged the burden on journalists from being compelled to turn over their interview notes. She held that the notes were confidential work product of the reporter.

(c) Mr. Kalven respectfully submits that these decisions are squarely on point, and apply directly to Mr. Kalven's notes of his communications with plaintiff Diane Bond. These cases reflect that when a litigant serves a subpoena on a non-party journalist in civil litigation, the primary interests at issue are the journalist's right to be free of compelled intrusions into his journalistic activities and the protection of journalistic work product. These crucial interests remain irrespective of whether the interviewee has a reasonable expectation of privacy that his or her comments will not be disclosed. These interests will be significantly compromised by this Court's order that Mr. Kalven turn over the notes of his conversations with Ms. Bond. The notes are Mr. Kalven's confidential work product, and their disclosure is as burdensome on him as a journalist as the disclosure would have been on the reporters in *Patterson* and *Hobley*.

(d) In addition, Mr. Kalven's notes of the conversations are not *verbatim* transcripts of his conversations. Rather, plaintiff's comments are interspersed with his work product, such as questions in his mind, points on which he wishes to follow up, his paraphrasing of information for publication, information which he found significant for his reporting ideas for future

publications, *etc.* (See Supplemental Affidavit of Jamie Kalven ("Supp. Aff."), attached hereto as Exhibit 1, ¶ 3.) Mr. Kalven's notes more clearly constitute work product than the actual tapes of the journalist's interview of the plaintiff that Judge Gottschall held to be non-discoverable in *Patterson*, and are like the reporter's notes that the defendants unsuccessfully sought in *Hobley*.

5. The other factors that this Court seems to have considered in deciding that Mr. Kalven should be required to turn over the notes of this communications with plaintiff are either mistaken or do not warrant the production of those notes. Contrary to the Court's apparent belief, Mr. Kalven never compromised the confidentiality of the notes of his communications with Ms. Bond. For example:

(a) Although Mr. Kalven spoke to Mr. Futterman about his understanding of what had happened to Ms. Bond (Factor 2), that does not relieve the burden on him from compelled disclosure of his *notes*, which are his work product. The indisputable fact is that the purpose for Mr. Kalven interviewing plaintiff was journalistic -- he was engaged at the time in reporting news for publication about events at Stateway Gardens, and his notes were an indispensable part of this journalistic process. (Supp. Aff. ¶ 2.)

(b) Similarly, with respect to factor (3), and contrary to the Order, Mr. Kalven did not assume that his notes about his conversations with Ms. Bond would be disclosed to the defense. (Kalven Supp. Aff. ¶ 5).

(c) As to factor (4), the Court's assumption is incorrect: Mr. Kalven has not given or "turned over" (Order, p. 15) to anyone any of his notes relating to his conversations with Ms. Bond. (Kalven Supp. Aff. ¶¶ 4, 6.)

(d) We respectfully submit that these factors are dispositive of Mr. Kalven's right to protect his notes, regardless of whether he believed that he might later be called on to disclose to defendants what he had disclosed to Mr. Futterman, and regardless of his willingness to allow defendants to depose him concerning his communications with Ms. Bond.

6. Accordingly, there is no basis to accord the notes of Mr. Kalven's conversation with plaintiff any less protection than the notes of his other interviews, which this Court properly held should not be disclosed. In each instance, the disclosure would impose a substantial burden on his role as a journalist and compromise his work product, as the courts in both *Patterson* and *Hobley* recognized.

Respectfully submitted,

JAMIE KALVEN

By: s/ David P. Sanders
One of his attorneys

Thomas P. Sullivan (#2773112)
David P. Sanders (#2452359)
JENNER & BLOCK LLP
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350
(312) 527-0484

EXHIBIT 1

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	)	Magistrate Judge Arlander Keys
Defendants.	)	

SUPPLEMENTAL DECLARATION
OF JAMIE KALVEN

Jamie Kalven, for his declaration, states:

1. I submit this Supplemental Declaration in connection with my motion for partial reconsideration and modification of this Court's Order of June 27, 2006.

2. The sole purpose for my interviewing Diane Bond was journalistic. I interviewed her because I was engaged at the time in gathering news for publication about events occurring at Stateway Gardens.

3. The documents reflecting my conversations with Diane Bond are not verbatim accounts of my interviews. Rather, consistent with my general practice, I took notes by pencil of my conversations with her in a stenographer's notebook. I then transcribed these notes using a computer. In the course of doing so, I also entered into my computer, interspersed with the notes I entered, questions in my mind, lines for further inquiry, information that might be significant for my reporting, and ideas for the form of future publications. These documents were an indispensable part of my journalistic process. Once this process was completed, I disposed of the notes written in pencil, in accordance with my general practice.

4. I asked Mr. Futterman, based on my understanding of what had happened to Ms. Bond, if he thought Ms. Bond had a valid case. However, I never disclosed to Mr. Futterman my notes or any other documents reflecting my conversations with Ms. Bond.

5. I have never assumed that the notes reflecting my communication with Ms. Bond would be disclosed to the defense in this case or to anyone else.

6. I have never turned over or disclosed to anyone else the notes of my conversations with Ms. Bond, other than to my attorneys in connection with my opposition to the defendants' petition for a rule to show cause and motion to compel.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 7, 2006.

Jamie Kalven

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