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October 23, 2007

VIA FACSIMILE & U.S. MAIL

The Honorable James L. Shumate
Fifth Judicial District Court
Washington County
220 North 200 East
St. George, Utah 84770
Fax: 435-986-5723

Re: KUTV Reporter Katie Baker/Contempt of Court Ruling

Dear Judge Shumate:

On behalf of the Radio-Television News Directors Association ("RTNDA"), I write to express our deep concern with the Court's recent ruling finding KUTV reporter Katie Baker in contempt of court and ordering her to report a public service story and provide the Court a copy of such story.

RTNDA is the world's largest professional organization exclusively serving the electronic news profession, consisting of more than 3,000 news directors, news associates, educators and students. RTNDA represents electronic journalists in radio, television and all digital media, as well as journalism educators and students. RTNDA's members are news directors, producers, reporters, anchors, general managers, professors, students, industry suppliers, operations managers and digital content managers. The association is dedicated to setting standards for newsgathering and reporting, and the Court's ruling raises troubling First Amendment issues.

First, RTNDA is concerned that a television news reporter may be held in contempt of court for failing to comply with a provision in a court order about which the reporter had no actual knowledge. It is our understanding that it is undisputed that Ms. Baker had no knowledge of the court provision in question when she conducted the interview with the potential juror in the Warren Jeffs case.

Further, it is our understanding that there is no evidence that Ms. Baker was acting contemptuously of the Court, that is, willfully or intentionally in disobedience of the Court's order. Rather, she conducted an interview with a potential juror without knowing such news reporting was expressly prohibited by the Court's order. While Ms. Baker and her news station shoulder some responsibility for failing to

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FIFTH JUDICIAL DISTRICT COURT
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thoroughly read and understand the Court's order (and failing to catch the error before the story aired), RTNDA understands that Ms. Baker immediately apologized and accepted responsibility for her mistake. Further, we understand that she continued to report on the trial, and that her subsequent reporting raised no issues of compliance with the Court's order.

It seems inappropriate, therefore, and possibly unlawful, to find Ms. Baker in contempt of court on these facts. Unless vacated by this Court, such a precedent would expose all news reporters to contempt of court sanctions for unknowingly failing to comply with the provisions of court decorum orders, which are often lengthy and, as in this case, are sometimes amended multiple times.

Second, because Ms. Baker was not acting in willful contempt of the Court's order, it is inappropriate to sanction or punish her. It is particularly inappropriate, in RTNDA's view, to seek to punish or reprimand Ms. Baker by ordering her to produce a public service news story on a matter that "needs some attention." If there is one principle firmly fixed in First Amendment jurisprudence, it is that the government may not compel what news reporters should and should not publish. *See, e.g. United States v. United Foods, Inc.*, 533 U.S. 405, 410 (2001) ("Just as the First Amendment may prevent the government from prohibiting speech, the Amendment may prevent the government from compelling individuals to express certain views."); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974) (striking down as unconstitutional statute requiring newspaper to afford free space to political candidates to reply to attacks).

That the Court apparently did not order the story to actually be broadcast—just provided to the Court on a DVD—does not obviate the constitutional violation. Ms. Baker would still be compelled, under penalty of contempt, to employ her skills, training and time to produce the court-ordered story. In addition, the news resources of KUTV, including the time of a photographer and producer, also would be conscripted in service of the Court's order. The First Amendment exists precisely to protect against government interference in the editorial processes of news organizations. RTNDA respectfully submits that the Court's "remedial" order violates the First Amendment and should be vacated.

For the foregoing reasons, RTNDA respectfully urges the Court to reconsider and vacate its ruling in this matter.

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Thank you for your consideration of our view on this important issue.

Respectfully,

A handwritten signature in black ink, appearing to read "Kathleen A. Kirby". The signature is written in a cursive style and is positioned above the printed name.

Kathleen A. Kirby
Counsel to the Radio-Television News Directors Association