

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division**

**Estate of ROBERT E. WONE, by  
KATHERINE E. WONE,**

**Plaintiff,**

**v.**

**JOSEPH R. PRICE,  
VICTOR ZABORSKY,  
and  
DYLAN WARD,**

**Defendants.**

**CA No. 2008-ca-0008315 B**

**The Honorable Brook Hedge**

**Next Event: February 14, 2011  
Witness Lists Due**

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**DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF THEIR MOTION TO ENJOIN LEGAL COUNSEL  
FROM MAKING EXTRAJUDICIAL STATEMENTS REGARDING LITIGATION**

Defendants Joseph Price, Victor Zaborsky, and Dylan Ward, by their respective undersigned counsel, respectfully submit this Memorandum of Points and Authorities in Support of their Motion to enjoin the parties' legal counsel from making extrajudicial statements regarding this litigation, and in support, state:

**INTRODUCTION**

Defendants request a court order limiting public comments by the parties' counsel about this case. The underlying occurrence has been the subject of extensive media coverage for the last four years. Most of the media coverage has clearly implicated the Defendants of some wrongdoing, premised upon multiple inaccurate and untruthful assertions of the Metropolitan Police Department ("MPD") and the United States Attorney's Office for the District of Columbia ("USAO"). Through the media's continuing repetitive publication of the inaccurate and inflammatory allegations of the MPD and USAO, the residents of the District of Columbia, i.e., the potential jury pool, have been inundated with an onslaught of negative misinformation

directed toward Defendants, which is poisoning the jury pool and threatening to make it impossible for the Defendants to find an impartial jury, if it is not already too late. Plaintiff Estate of Robert E. Wone's (the "Estate") counsel have made statements to the media since the day they filed the original complaint nearly two years ago. As recently as two weeks ago, following a September 16, 2010 hearing requested by Plaintiff, counsel for Plaintiff, Patrick M. Regan, addressed a collection of reporters outside the court house, where he made numerous statements about this case, including the following as reported by the *Washington Post* on September 17, 2010:

***Patrick M. Regan, the Wone family attorney, said*** the three men have informed the attorneys on both sides that they do not plan to offer any written testimony during the early stages of the lawsuit and likely will not testify during trial. That often is called "pleading the fifth," a reference to the fifth amendment of the constitution. ***"Defendants don't assert their fifth amendment rights if they are not guilty of something,"*** Regan said outside the courtroom following the hearing.

*Washington Post*, "Wone roommates won't testify in trial," B04 (Sept. 17, 2010) (emphasis added), attached at **Exhibit 1**. This inflammatory and fallacious public utterance by Plaintiff's counsel is a glaring example of a statement that is highly likely to "poison the well," so to speak, against Defendants to the D.C. public at large. There was no legitimate purpose for making such a statement. Although Plaintiff's counsel have not made prior statements as prejudicial as Mr. Regan's September 16, 2010 remark, there have been prior statements that also had the effect, intended or not, of poisoning the prospective jury pool, including:

- In a statement, Benjamin J. Razi, the attorney for the Wone family, called the [present civil] suit "another step in the effort to seek justice" in the slaying of their family member. "This effort will not end until all persons responsible for his murder and the cover-up of his murder are held to account," he said. *Washington Post*, "Family of Slain Lawyer Sues Three former Housemates," (Nov. 26, 2008), attached at **Exhibit 2**.

- “The effort of Messrs. Price, Zaborsky, and Ward to further delay the investigation and resolution of Mrs. Wone’s claims is unfortunate, but not surprising,” Razi said in a statement. *Legal Times*, “Two Pronged Attack,” 4 (Feb. 2, 2009), attached at **Exhibit 3**.
- Lawyers from Covington & Burling and Regan Zambri & Long, the two Washington firms representing the Wone estate pro bono, wasted no time in expressing their eagerness to kick-start the civil litigation. “We’ve been sitting on the sideline for two years,” said *Patrick Regan*, a name partner at Regan Zambri. “We are happy at long last that we can move this forward.” . . . Unlike the defendants, Regan said Katherine Wone has no intention of waiving her right to a jury trial.” *The Legal Intelligencer*, “Civil Fight Looms for Defendants in Wone Case,” (July 9, 2010), attached at **Exhibit 4**.

As almost any resident of the D.C. metropolitan area is invariably aware, the criminal trial of the Defendants received extraordinary media coverage<sup>1</sup>, fueled by incendiary police allegations. What the public does not know, because it has not been reported, is that many of the police allegations were abandoned wholesale, one after the other,<sup>2</sup> as it came to light that there was—and had never been—any evidentiary basis for the false, inaccurate and misleading claims promulgated by the MPD and USAO.

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<sup>1</sup> The media coverage has extended past the traditional mainstream media to the internet world of blogs leading to more widespread coverage. Unfortunately, all of the coverage has largely consisted of nothing more than parroting the latest and ever evolving rank speculation of various MPD officials, often speaking anonymously. American courts have long recognized the effect that a media circus similar to the one at issue can have on the public at large: “[m]urder and mystery, society, sex and suspense were combined in this case in such a manner as to intrigue and captivate the public fancy to a degree perhaps unparalleled in recent annals. Throughout the preindictment investigation, the subsequent legal skirmishes and the nine-week trial, circulation-conscious editors catered to the insatiable interest of the American public in the bizarre. In this atmosphere of a ‘Roman holiday’ for the news media, [Defendants] stood trial.” *Sheppard v. Maxwell*, 384 U.S. 333, 356 (1966) (citation omitted).

<sup>2</sup> During the course of the criminal trial the government was forced to abandon—due to an absence of evidence—the entirety of its most outrageous allegations, including that the crime scene had been cleaned, that Mr. Wone “could have been” sexually assaulted, that he had been “paralyzed” with some unknown, “undetectable” drug, and that Mr. Wone had been “tortured.” These government concessions have been ignored by the press.

In light of Mr. Regan’s latest and patently incorrect claim that only guilty people assert their Constitutional rights under the Fifth Amendment, Defendants are legitimately concerned that further incendiary public comments, even if more benign than the latest comment of Plaintiff’s counsel, will lead to a point where the Defendants will be deprived of their right to a fair trial in the District of Columbia, particularly when such comments are made in combination with press coverage that continues to relentlessly repeat the inflammatory inaccuracies – abandoned or otherwise – asserted by the MPD.<sup>3</sup> Accordingly, Defendants ask this Court to issue an Order similar to those issued in other high profile cases in this and neighboring jurisdictions, enjoining the parties’ counsel from making any extrajudicial statements regarding this lawsuit. *See, e.g., United States of America v. I. Lewis Libby*, Criminal No. 06-560, slip op. at 1-2 (D.D.C. Dec. 21, 2006), attached at **Exhibit 6**; *Estate of Abtan v. Blackwater, USA*, Civil Action No. 07-1831, slip op. at 1-2 (D.D.C. Dec. 19, 2007), attached at **Exhibit 7**.

### **ARGUMENT**

Defendants in civil cases have a “constitutional right to an impartial jury.” *Am. Sci. & Eng’g, Inc. v. Autoclear, LLC*, 606 F. Supp. 2d 617, 625 (E.D. Va. 2008) (citing *Thiel v. S. Pac. Co.*, 328 U.S. 217, 220 (1946)). That constitutional right is imperiled when pretrial publicity “taint[s] the jury venire, resulting in a jury that is biased toward one party or another.” *United States v. Brown*, 218 F.3d 415, 423 (5<sup>th</sup> Cir. 2000); *see also Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1075 (1991) (“Few, if any, interests under the Constitution are more fundamental than the

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<sup>3</sup> For example, the press continues to report that the government contends Mr. Wone was sexually assaulted. *See, e.g., Washington Post*, “Wone’s widow wants phone records,” (Aug. 9, 2010) (“Authorities say Wone was drugged, sexually assaulted and stabbed after arranging to spend the night at the three defendants’ home.”), attached at **Exhibit 5**. In fact, the government abandoned the claim of “possible” sexual assault prior to the criminal trial, after the government’s own expert forensic pathologist stated that there was no forensic evidence supporting such an assertion. Again, the fact that the MPD made an incendiary conclusion without basis in fact was never reported by the Washington media. Plaintiff’s recent amendments to its Complaint acknowledge the complete lack of any evidence of sexual assault, as Plaintiff has now removed all references to a sexual assault from the Complaint.

right to a fair trial by ‘impartial’ jurors, and an outcome affected by extrajudicial statements would violate that fundamental right.”). Thus, to safeguard the right to a fair trial, courts have “an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity.” *Brown*, 218 F.3d at 423 (quoting *Gannett Co. v. DePasquale*, 443 U.S. 368, 369 (1979)); accord *Chandler v. Florida*, 449 U.S. 560, 574 (1981) (instructing trial courts to be “especially vigilant” in safeguarding the right to a fair trial, free of extraneous influence). As the United States District Court for the District of Columbia has repeatedly noted, “the Court’s overriding interest is and must be the right to a fair trial afforded to all parties that appear before it—a right which cannot be maintained if the minds of potential jurors are swayed by indiscriminate appeals by counsel to the public at large.” *Estate of Abtan*, Civil Action No. 07-1831, slip op. at 2. Courts have regularly restricted extrajudicial statements in both criminal *and* civil cases. See, e.g., *R.J. Reynolds Tobacco Co. v. Engle*, 750 So. 2d 781 (Fla. Dist. Ct. App. 2000); *Rufo v. Simpson*, No. SC031947, 24 Media L. Rep. 2213 (Cal. Sup. Ct. Aug. 16, 1996), *aff’d as modified*, *Cable News Network, Inc. v. Superior Court*, No. B104967, 1996 WL 536864 (Cal. App. Ct. Sept. 17, 1996); *Koch v. Koch Indus., Inc.*, 6 F. supp. 2d 1185 (D. Kan 1998).

By contrast, there is no constitutional right to sway potential jurors through press releases, media interviews, and other extrajudicial statements. “Legal trials,” the Supreme Court has observed, “are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper.” *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966) (quoting *Bridges v. California*, 314 U.S. 252, 271 (1941)). Instead, “[t]he theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.” *Patterson v. Colorado*,

205 U.S. 454, 462 (1907); *see also Cox v. Louisiana*, 379 U.S. 536, 583 (1965) (Black, J., concurring and dissenting) (observing that the “very purpose of a court system . . . [is] to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures”).

Consistent with these principles, this Court is expressly empowered to limit and control extrajudicial statements, as provided by Superior Court Civil Rule 203(d):

In any case which is or is likely to become widely publicized, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the parties to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

In exercise of this authority, this Court and others regularly enjoin parties and their counsel from making extrajudicial statements regarding pending cases, particularly when, as here, the controversy already has attracted significant media attention. *See Sheppard*, 384 U.S. at 359 (holding that the trial court erred by failing to restrain counsel and potential witnesses from releasing “leads, information, and gossip” to the media); *Am. Sci. & Eng’g*, 606 F. Supp. 2d at 625-26 (“Courts may disallow prejudicial extrajudicial statements by litigants that risk tainting or biasing the jury pool.”); *Brown*, 218 F.3d at 418-19, 423 (affirming order that precluded parties, counsel, and potential witnesses from making any public statements that “could interfere with a fair trial” or that might prejudice the parties “or the administration of justice”) (internal quotation marks omitted).

Moreover, courts have been particularly quick to impose limits on extrajudicial statements when the substance of those statements has potential to materially prejudice the proceedings. Indeed, the District of Columbia Rules of Professional Conduct provide that:

A lawyer engaged in a case being tried to a judge or jury shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of mass public communication and will create a serious and imminent threat of material prejudice to the proceeding.

D.C. Rules of Prof'l Conduct R. 3.6.

Citing Rule 3.6, United States District Judge Reggie B. Walton, while presiding in the civil litigation involving wrongful death claims against Blackwater, USA, ruled that:

the Court will not hesitate to enforce its local rules should it conclude that any attorney in this case has attempted to unduly prejudice the proceedings before it through untoward engagements with the national or local news media. The Court further expects that all counsel of record will conduct themselves in a manner becoming to an officer of this Court at all times, and that counsel will therefore focus their energies on proving their case in this Court—a court of law—rather than in the court of public opinion.

*Estate of Abtan*, Civil Action No. 07-1831, slip op. at 2.

Mr. Regan's recent legally incorrect<sup>4</sup> statement to a collection of journalists that "[d]efendants don't assert their fifth amendment rights if they are not guilty of something" has a high likelihood of materially prejudicing these proceedings by poisoning and inflaming the jury pool. Assertion of their fundamental Constitutional 5<sup>th</sup> Amendment Right should not be used by the Plaintiff's counsel to influence jury selection through the press more than a year before trial is scheduled to begin.

Accordingly, Defendants request that the Court enter an Order restraining extrajudicial statements relating to these cases by the parties' counsel to ensure that all parties receive a fair trial and a decision from an impartial jury. Although the events at issue occurred several years ago, media interest in this case, as reflected by press attendance at the status conference in this

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<sup>4</sup> In fact, one would expect that Mr. Regan's co-counsel, attorneys at the law firm of Covington & Burling would take issue with Mr. Regan's comments. Covington & Burling maintains a large white collar criminal defense practice, consisting of 29 partners who, per the firm's website are "widely recognized not only for litigating and winning high-profile criminal cases, but also for devising creative legal strategies to resolve cases long before they draw public scrutiny." See, [http://www.cov.com/practice/white\\_collar\\_and\\_investigations/](http://www.cov.com/practice/white_collar_and_investigations/).

case, remains intense and inaccurate. Given that Plaintiff has demanded a trial by jury, this Court should ensure that the proceedings do not devolve into a “trial by newspapers.” *Pennekamp v. Fla.*, 328 U.S. 331, 361 (1946) (Frankfurter, J. concurring). An Order precluding extrajudicial statements by the parties’ counsel will help to achieve that purpose, and Defendants request that such an Order be entered.

### **CONCLUSION**

For these reasons, Defendants respectfully request the entry of an Order precluding the parties’ counsel from making extrajudicial statements regarding the matters at issue in this litigation, and for such further and additional relief as is deemed appropriate.

/s/ Craig D. Roswell  
CRAIG D. ROSWELL (DC Bar # 433406)

/s/ Brett A. Buckwalter  
BRETT A. BUCKWALTER (DC Bar # 478382)  
**Niles Barton & Wilmer LLP**  
111 South Calvert Street, Suite 1400  
Baltimore, Maryland 21202-6185  
Telephone: (410) 783-6300  
[cdroswell@nilesbarton.com](mailto:cdroswell@nilesbarton.com)  
[babuckwalter@nilesbarton.com](mailto:babuckwalter@nilesbarton.com)  
*Counsel for Defendant Joseph R. Price*

/s/ David Schertler  
DAVID SCHERTLER (DC Bar # 367203)

/s/ Robert Spagnoletti  
ROBERT SPAGNOLETTI (DC Bar # 446462)  
**SCHERTLER & ONORATO LLP**  
601 Pennsylvania Ave., N.W.  
North Building, 9<sup>th</sup> Floor  
Washington, D.C. 20004  
Telephone: (202) 628-4199  
[dschertler@schertlerlaw.com](mailto:dschertler@schertlerlaw.com)  
[rspagnoletti@schertlerlaw.com](mailto:rspagnoletti@schertlerlaw.com)  
*Counsel for Defendant Dylan M. Ward*



/s/ Larissa N. Byers  
LARISSA N. BYERS (DC Bar # 472431)

/s/ Frank F. Daily  
FRANK F. DAILY<sup>5</sup>

/s/ Sean Edwards  
SEAN EDWARDS<sup>6</sup>  
**The Law Offices of Frank F. Daily, P.A.**  
11350 McCormick Road  
Executive Plaza III, Suite 704  
Hunt Valley, MD 21031  
Telephone: (410) 584-9443  
[lbyers@frankdailylaw.com](mailto:lbyers@frankdailylaw.com)  
[fdaily@frankdailylaw.com](mailto:fdaily@frankdailylaw.com)  
[sedwards@frankdailylaw.com](mailto:sedwards@frankdailylaw.com)  
*Counsel for Defendant Victor Zaborsky*

4842-5275-9559, v. 1

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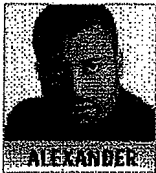
<sup>5</sup> Admitted pro hac vice pursuant to Court's 2/26/10 Order.

<sup>6</sup> Admitted pro hac vice pursuant to Court's 8/2/10 Order.

## **EXHIBIT 1**

Sept. 17, 2010 — Washington Post

## Wone roommates won't testify in trial



The three roommates named as defendants in the wrongful death lawsuit filed by the family of Robert E. Wone already have invoked their legal rights not to testify and avoid self-incrimination, lawyers told a D.C. Superior Court judge Thursday.

Patrick M. Regan, the Wone family attorney, said the three men have informed the attorneys on both sides that they do not plan to offer any written testimony during the early stages of the lawsuit and likely will not testify during trial. That often is called "pleading the fifth," a reference to the fifth amendment of the constitution.

"Defendants don't assert their fifth amendment rights if they are not guilty of something," Regan said outside the courtroom following the hearing.

At the hearing, the trial was again rescheduled, to Oct. 17, 2011, from Sept. 12, 2011.

Wone, a lawyer who worked as general counsel for Radio Free Asia, was found stabbed to death in the men's home at 1509 Swann St. NW on Aug. 2, 2006. The roommates, Dylan M. Ward, Joseph R. Price and Victor J. Zaborsky, said an unknown intruder came into the townhouse and killed Wane. No one has been charged in the slaying.

In June, after a five-week trial, Price, Zaborsky and Ward were acquitted on charges of covering up for the killer and tampering with evidence. Wone's wife Katherine and his family filed the lawsuit when the men were arrested and charged with conspiracy in 2008.

Thursday's hearing was one of the first in the civil trial. None of the defendants was present.

The three men have gotten new attorneys for the civil case, and only one of the half-dozen or so attorneys who represented them at the criminal trial was at the hearing. Robert J. Spagnoletti, who represented Ward, informed Judge Brook Hedge that another attorney would assume the lead role.

While the criminal trial lasted five weeks, it was unclear how long the civil trial could last. Regan said he should be able to present his case in about six days, but Spagnoletti said the defense could take as long as three weeks. One challenge, Hedge said, would be picking a jury because of the intense publicity of the case and previous trial.

During the hearing, attorneys said they plan to file a motion to compel the men to testify. Hedge acknowledged that the "fifth amendment is going to be the biggest issue."

Although Hedge spoke as if she plans to oversee the trial, the judge informed court officials that she plans to retire in December. It was unclear if Hedge plans to leave the bench when she retires or apply for senior status, which would mean she could still preside over the case.

-- Keith L. Alexander

## **EXHIBIT 2**

# The Washington Post

## Family of Slain Lawyer Sues Three Former Housemates

Complaint Alleges Men Conspired To Cover Up Crime

By Keith L. Alexander

Washington Post Staff Writer

Wednesday, November 26, 2008

The widow and family of a prominent Washington lawyer who was stabbed to death in 2006 filed a \$20 million lawsuit in D.C. Superior Court yesterday, alleging that three friends of his concealed evidence and lied to police in a cover-up.

The civil suit was filed against Dylan M. Ward, 38, who was arraigned on an obstruction of justice charge yesterday, and Joseph Price, 37, and Victor J. Zaborsky, 42, who were arraigned last week on the same charge.

The complaint alleges that the three former housemates "conspired to thwart the investigation" into the slaying of Robert Wone, 32. It said they "fraudulently concealed the existence of facts" in the case, including "cleaning up and staging the crime scene, planting and destroying evidence, delaying the reporting of the murder to the authorities and lying to police."

According to prosecutors, the men waited 19 to 49 minutes before calling 911 after coming across Wone's body.

The 16-page lawsuit recites many details that were in a police affidavit filed last month.

In the wrongful death suit, Wone's widow, Katherine, said that within days of her husband's killing, the three housemates visited the Wones' home in Oakton, Va. She and other relatives pressed them for details about what happened the night Wone died, but the men replied that they did not know. They later told police, according to the affidavit, that an unknown "intruder" entered the house.

In a statement, Benjamin J. Razi, the attorney for the Wone family, called the suit "another step in the effort to seek justice" in the slaying of their family member.

"This effort will not end until all persons responsible for his murder and the cover-up of his murder are held to account," he said.

Razi is a lawyer with Covington and Burling, the same D.C. firm that employs Eric Holder Jr., President-elect Barack Obama's nominee for attorney general. Wone worked for the firm for six years before joining Radio Free Asia.

Just hours before the suit was filed, a D.C. Superior Court judge allowed Ward to be released from jail and return to live with Price and Zaborsky.

With his wrists and ankles shackled, Ward stood before Judge Frederick H. Weisberg and pleaded not guilty. Like Price and Zaborsky at their hearing last week, Ward was ordered to wear a monitoring device on his ankle.

Wone had worked late Aug. 2, 2006, and arranged to spend the night in a guestroom of the four-bedroom Dupont Circle townhouse where the three housemates lived. Wone and Price were college friends, and Wone became acquainted with Ward and Zaborsky through Price. Sometime that evening, police say, Wone was drugged, sexually assaulted and fatally stabbed. No one has been charged in Wone's slaying.

Ward was arrested four weeks ago in Miami, where he was living in a home that Price and Zaborsky purchased last year after they sold their Dupont Circle townhouse.

Ward also had to turn over his passport, agree to random drug testing and to abide by a curfew from 10 p.m. to 6 a.m. According to his attorney, David Schertler, Ward will live with Price and Zaborsky in their rented apartment here, and return to his consulting job at AB Data.

Schertler objected to the monitoring device, saying his client is not a flight risk. "We believe that these three men did nothing wrong and we will be able to prove that at trial," Schertler said. Schertler said he believed an intruder entered the townhouse through the back door and killed Wone.

Assistant U.S. Attorney Glenn Kirschner said there were additional charges against the three men before a grand jury, but he declined to identify them.

The next hearing for the three men is scheduled for Dec. 19.

Price's attorney, Bernard Grimm, called the timing of the lawsuit, coming on the heels of Ward's arraignment, "unseemly." He said he believed that prosecutors and Wone's attorney were "working in concert."

"Normally you don't have the government and plaintiffs working together in wrongful death actions," Grimm said.

U.S. Attorney Jeffrey A. Taylor declined to respond to Grimm's comments, but said his office has "provided Mr. Wone's family the same victim services that we typically provide all victims of violent crime, that is, copies of publicly filed documents and notification of all court proceedings."

Schertler, Ward's attorney, said the lawsuit was "misguided," and that none of the three men was involved in "any type of cover-up."

## **EXHIBIT 3**

2/2/09 Legal Times 4  
2009 WLNR 22377350

Legal Times  
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Volume 32; Issue 5

Section: Inadmissible

## TWO-PRONGED ATTACK

Mike Scarcella

The criminal defense lawyers representing Arent Fox partner Joseph Price, his domestic partner Victor h hZaborsky, and their close friend Dylan Ward have not been shy about declaring their clients innocent of any crimes and eager to defend themselves at trial on charges of conspiracy, obstruction of justice, and evidence tampering. But things are a little more quiet on the civil court front, where the family of homicide victim Robert Wone, who was general counsel of Radio Free Asia, is pursuing a \$20 million wrongful death complaint against the trio. The defendants, through their lawyers, refused to admit or deny anything alleged in the wrongful death complaint filed in November in D.C.

Superior Court. Lawyers for the men in civil court- David Schertler, Larissa Byers, and Craig Roswell -argue it's unfair to allow the civil case to proceed simultaneously with the criminal matter. In motions filed Jan. 23 to stay the civil case, the lawyers accuse the **Wone** family counsel at Covington & Burling of using the civil case, including depositions, to gather information for the criminal prosecution. Covington partner Benjamin Razi says the claim is meritless. "The effort of Messrs. Price, Zaborsky, and Ward to further delay the investigation and resolution of Mrs. Wone's claims is unfortunate, but not surprising," Razi said in a statement. A status hearing in the civil case is set for Feb. 27.

### — INDEX REFERENCES —

COMPANY: RADIO FREE ASIA

NEWS SUBJECT: (Legal (1LE33); Military Conflicts (1M168); World Conflicts (1W007); Global Politics (10L73))

Language: EN

OTHER INDEXING: (COVINGTON; COVINGTON BURLING; RADIO FREE ASIA; SUPERIOR COURT) (Arent Fox; Benjamin Razi; Craig Roswell; Dylan Ward; Joseph Price; Larissa Byers; Price; Razi; Robert Wone; Ward; Wone)



Word Count: 281  
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## **EXHIBIT 4**

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## Civil Fight Looms for Defendants in Wone Case

Jeff Jeffrey and Mike Scarcelia

07-09-2010

After a five-week criminal trial that examined one of Washington's most vexing unsolved homicides, the three housemates charged with covering up the murder of Washington attorney Robert Wone walked out of court as free men. But their legal wrangling is far from over.

Victor Zaborsky, Dylan Ward and former Arent Fox litigation partner Joseph Price were acquitted June 29 in the District of Columbia Superior Court on charges of obstruction of justice and conspiracy and, in Price's case, tampering with evidence. All three men still face a \$20 million wrongful death suit that was filed on the heels of the criminal case in late 2008.

The civil suit, which has been on hold during the criminal prosecution, will keep the meter running on their legal bills. Several criminal defense lawyers in Washington estimated defending against the criminal charges cost them between \$2 million and \$3 million in fees.

Legally speaking, Judge Lynn Leibovitz's not-guilty verdicts are irrelevant to the civil case. Even her opinion deeming it "very probable" that Price, Zaborsky and Ward know more than they've told police about Wone's death has no formal effect on the civil proceedings. But several plaintiffs' lawyers noted Leibovitz's statement that the government simply failed to convince her beyond a reasonable doubt offers encouragement that the Wone family lawyers can meet the lower burden of proof in the civil arena. And they can use the criminal prosecution as a road map.

Lawyers from Covington & Burling and Regan Zambri & Long, the two Washington firms representing the Wone estate pro bono, wasted no time in expressing their eagerness to kick-start the civil litigation.

"We've been sitting on the sideline for two years," said Patrick Regan, a name partner at Regan Zambri. "We are happy at long last that we can move this forward."

For their part, the defendants and their criminal lawyers were careful not to greet the acquittals with public exuberance. "There were losers all the way around and on multiple levels, with obviously the worst being Robert himself," said Price's lawyer, Cozen O'Connor partner Bernard Grimm. "You don't go out on the courthouse steps and claim victory. It's not jubilation. it's relief."

## A HIGH POWERED DEFENSE

The Wone murder has baffled law enforcement from the start. On Aug. 2, 2006, Wone stayed at the Northwest Washington house shared by Price, his domestic partner Zaborsky and Ward, who form what the three men have called a "polyamorous family." Wone had worked late at his new job as general counsel for Radio Free Asia and had made plans to spend the night at their Dupont Circle house.

Within an hour or so after arriving at the house, Wone was stabbed three times in the chest. Although Price, Zaborsky and Ward have always maintained that an unknown intruder killed Wone, investigators found no evidence of a break-in, and no property was missing from the

house. Two years went by before criminal charges were filed in the case, and even then no one was charged with murder. The three men were indicted on tampering with evidence, obstruction of justice and conspiracy.

Price, Zaborsky and Ward faced up to 38 years in prison each if convicted on all counts. In the weeks after the murder, they hired criminal defense lawyers.

Price initially hired solo practitioner Kathleen Voelker, a former Arent Fox partner, but later switched to Grimm, a well-known Washington attorney who has gained a national reputation for his cable TV legal commentary. Zaborsky retained Thomas Connolly, who chairs the litigation practice at Wiltshire & Grannis, and partner Amy Richardson. Ward tapped David Schertler of Schertler & Onorato, a former homicide chief in the U.S. Attorney's Office in Washington, and Robert Spagnoletti, also a Schertler & Onorato partner and a former D.C. attorney general.

Several defense attorneys estimated that, even if the lawyers have been working for Price, Zaborsky and Ward at a reduced price, they are likely charging between \$350 and \$500 an hour. Their tab has been running through the four-year police investigation, the pretrial discovery and preparation process and the live-week trial. Moreover, the \$2 million to \$3 million estimate on fees does not include additional expenses such as forensic experts, including Henry Lee, who also testified in the O.J. Simpson trial.

All that money brought the defendants their freedom, but not a full exoneration. The judge said that, even if Price, Zaborsky and Ward did not commit the murder, they likely know enough about the circumstances to help the police but are keeping that information secret. She called the theory that an intruder killed Wone "Implausible." She characterized Price in particular as "consistently arrogant, unconcerned, flippant, aggressive, self-centered and dismissive" in his interaction with the police.

Regardless, said Robert Trout of Trout Cacheris, who represented former Rep. William Jefferson, D-La., on corruption charges, "This appears to have been a textbook illustration of the significance of burden of proof and reasonable doubt. The defense astutely realized that, understood the judge would be conscientious in applying the proper legal standards and so waived a jury trial. Good move."

## THE CIVIL BATTLE

Now that the criminal case is behind them, the three men have the \$20 million civil case to look forward to. The D.C. Superior Court suit alleges wrongful death, negligence, spoliation of evidence and conspiracy. It's set for a status hearing in September.

Because Wone was an associate at Covington & Burling before joining Radio *Free Asia*, the firm agreed to represent his widow, Katherine Wone, and his estate pro bona. Partner Eric Holder Jr. represented Katherine Wone until he became U.S. attorney general. The case then moved to partner Benjamin Razi, who handles complex civil and criminal litigation. Regan was added to the team last year because he is an expert in wrongful-death suits.

Although Leibovitz's 38-page opinion is not admissible in the civil suit, it does provide a possible outline for obtaining a judgment against Price, Zaborsky and Ward under the lower civil standard of a preponderance of the evidence. Moreover, much of the evidence needed in the civil case has already been collected by virtue of the criminal case.

"The criminal case is helpful in terms of developing a trial and discovery strategy as well as which themes and messages to highlight," said William Lightfoot of Washington's Koonz McKenney Johnson DePaolis & Lightfoot, who has handled wrongful-death cases. "It's almost like a dress rehearsal for the civil case."

Lawyers defending Price, Zaborsky and Ward in the civil suit did not return calls or declined to comment. Price is represented by Craig Roswell, who chairs the litigation practice at Baltimore's Niles Barton & Wilmer. Zaborsky has retained Frank Daily, who has his own firm in Hunt Valley, Md. Court records show Schertler & Onorato is continuing to represent Ward in the civil matter.

Unlike the defendants, Regan said Katherine Wone has no intention of waiving her right to a jury trial. He said the plaintiffs are gearing up for depositions of Price, Zaborsky and Ward.

The three men, who did not testify in the criminal case, could try to plead the Fifth Amendment to avoid the depositions on the ground that they might implicate themselves in the ongoing murder investigation. Whether that would fly with the civil judge, given their acquittals on related charges, is unclear, one defense lawyer said.

What seems clear is the weight of legal fees burdening the three men. Several plaintiffs' attorneys noted that depending on how the insurance policy for the Dupont Circle house was written, it may cover at least part of the civil defense, if not the potential damages.

"We expect there will be problems collecting for Kathy," Regan said. "But that's a problem down the road."

*Jeff Jeffrey and Mike Scarcella are reporters for The National Law Journal, a Legal affiliate based in New York. •*

## **EXHIBIT 5**

# The Washington Post

## Wone's widow wants phone records

The widow of an attorney mysteriously killed in 2006 is seeking the phone and e-mail records of three romantically linked men who lived in the town house where he was fatally stabbed.

Lawyers for Katherine Wone want a judge to subpoena such records from roughly a month before and a month after Robert Wone's death.

Authorities say Wone was drugged, sexually assaulted and stabbed after arranging to spend the night at the three defendants' home.

Joseph Price, Dylan Ward and Victor Zaborsky were acquitted of misleading police in June, but they now face a wrongful death civil lawsuit.

Attorneys for Wone's widow say in court documents the records could show the defendants' "state of mind." They suggest two men were growing apart romantically and the other had planned to be out of town when Wone was killed.

-- *Associated Press*

**By Washington Post Editors** | August 9, 2010; 4:46 PM ET

## **EXHIBIT 6**



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
	)	
v.	)	Misc. No. 06-560 (RBW)
	)	
LEWIS LIBBY,	)	
	)	
Defendant.	)	
_____	)	
	)	
JOSEPH C. WILSON IV,	)	
	)	
Movant	)	
_____	)	

**ORDER**

It would appear from the Motion of Non-Party Joseph C. Wilson IV to Quash Subpoena and Supporting Memorandum of Points and Authorities ("Mot.") that the movant and his counsel have followed closely the proceedings in the criminal action of the United States v. L Lewis Libby. Mot. at 2 (citing to various filings in United States v. Libby, 05-cr-394). Thus, the Court assumes that the movant and his counsel are aware that this Court has repeatedly cautioned Mr. Libby and counsel for the parties about making extrajudicial statements and warned that the Court would not tolerate this case being tried in the media. See April 13, 2006 Order (Docket # 83). This admonition applies with equal force to any collateral matters that may impact the parties ability to obtain a fair trial, such as a movant like Ambassador Joseph Wilson, who has moved to quash the subpoena that has been served on him as a potential witness in this matter. As the Rules of this Court make clear:

[i]t is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which the lawyer or the law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

LCrR 57.7(b)(1). This Court expects that movants and their counsel in any collateral matters, including counsel for Ambassador Wilson, will demonstrate the same restraint as Mr. Libby and counsel for the parties have exercised to date. If this does not occur, this Court will not hesitate to take the necessary action to insure that the ability of the parties to obtain a fair trial is not impaired. See LCrR 57.7(c).'

**SO ORDERED** this 21st day of December, 2006.

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REGGIE B. WALTON  
United States District Judge

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As counsel should well understand, making disparaging comments in a television interview about a criminal defendant in a highly publicized case on the eve of trial could cause potential members of the jury pool to engender negative attitudes about the defendant. See Hardball with Chris Matthews, Dec. 20, 2006, available at 2006 WLNI 22257429. And even more disturbing is counsel's uninformed opinion that there is sufficient evidence to convict Mr. Libby of the charges on which he will be tried. Id. Such comments by a member of the Bar, and especially someone who was a former prosecutor, is not only shocking but borders on unethical conduct. Counsel should have known that the comments she made were improper, but if she did not, she does now. Counsel is therefore on notice that any similar comments will not be tolerated.

## **EXHIBIT 7**



litigation." Id. at cmt. I. Nevertheless, the Court's overriding interest is and must be the "right to a fair trial" afforded to all parties that appear before it—a right which cannot be maintained if the minds of potential jurors are swayed by indiscriminate appeals by counsel to the public at large. Id. To that end, the Court will not hesitate to enforce its local rules should it conclude that any attorney in this case has attempted to unduly prejudice the proceedings before it through untoward engagements with the national or local news media. The Court further expects that all counsel of record will conduct themselves in a manner becoming to an officer of this Court at all times, and that counsel will therefore focus their energies on proving their case in this Court—a court of law—rather than in the court of public opinion. It is therefore

**ORDERED** that all counsel of record apprise themselves of this Court's local rules and the Rules of Professional Conduct promulgated by the District of Columbia Court of Appeals, particularly as those rules concern the discussion of pending cases by means of mass communication.

**SO ORDERED** this 19th day of December, 2007.

REGGIE B. WALTON  
United States District Judge

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division**

**Estate of ROBERT E. WONE, by  
KATHERINE E. WONE,**

**Plaintiff,**

**v.**

**JOSEPH R. PRICE,  
VICTOR ZABORSKY,  
and  
DYLAN WARD,**

**Defendants.**

**CA No. 2008-ca-0008315 B**

**The Honorable Brook Hedge**

**Next Event: February 14, 2011  
Witness Lists Due**

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**ORDER**

The Court, having considered Defendants' Motion to Enjoin Legal Counsel from Making Extrajudicial Statements Regarding Litigation, as well as any opposition and reply filed in response thereto, hereby GRANTS Defendants' Motion. It is,

FURTHER ORDRED, that all legal counsel for all parties in this matter, regardless of whether they have entered their appearance herein, are ordered to refrain from speaking to the media—professional media or otherwise—or making any other extrajudicial public statement concerning this litigation or any matter at issue herein.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2010

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The Honorable Brook Hedge,  
Judge  
Superior Court for the District of Columbia

CC: All counsel (via CasseFileXpress):

Benjamin J. Razi ([brazi@cov.com](mailto:brazi@cov.com))  
Stephen W. Rodger ([srodger@cov.com](mailto:srodger@cov.com))  
**Counsel for Plaintiff**

Patrick M. Regan, Esquire  
([pregan@reganfirm.com](mailto:pregan@reganfirm.com))  
**Counsel for Plaintiff**

David Schertler ([dschertler@schertlerlaw.com](mailto:dschertler@schertlerlaw.com))  
Robert Spagnoletti  
([rspagnoletti@schertlerlaw.com](mailto:rspagnoletti@schertlerlaw.com))  
**Counsel for Defendant Dylan M. Ward**

Larissa N. Byers ([lbyers@frankdailylaw.com](mailto:lbyers@frankdailylaw.com))  
Frank F. Daily, admitted *pro hac vice*  
Sean Edwards, admitted *pro hac vice*  
**Counsel for Defendant Victor Zaborsky**

Brett A. Buckwalter  
[babuckwalter@nilesbarton.com](mailto:babuckwalter@nilesbarton.com)  
Craig D. Roswell  
[cdroswell@nilesbarton.com](mailto:cdroswell@nilesbarton.com)  
**Counsel for Defendant Joseph Price**