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IN THE
INTER-AMERICAN COURT OF HUMAN RIGHTS

REQUEST FOR AN ADVISORY OPINION
PRESENTED BY THE
GOVERNMENT OF COSTA RICA

Brief of

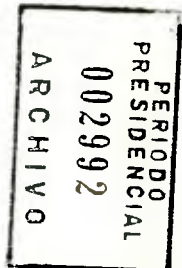
World Press Freedom Committee,
International Press Institute,
The Newspaper Guild,
and
International Association of Broadcasting

As

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INTEREST OF AMICI CURIAE

The World Press Freedom Committee, founded in 1976, represents 32 journalistic organizations on five continents. It stands for a free flow of news and against those who advocate state-controlled media, those who seek to deny truth in news, and those who abuse newsmen. From its inception, it has opposed all forms of journalistic licensing as an improper restriction on the free flow of international news.

The International Press Institute, an organization of leading editors and broadcasters in 65 nations, is dedicated to furthering and safeguarding freedom of the press by ensuring free access to news regardless of national boundaries, to increasing understanding between peoples, and to ensuring the safety of journalists and their ability to report freely.

The Newspaper Guild is a labor union affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the Canadian Labour Congress (CLC), and the International Federation of Journalists (IFJ). It represents approximately 40,000 news and commercial department employees of newspapers, news services, magazines, and related media in the United States, Canada, and Puerto Rico. The Guild represents its members in all of their collective bargaining interests, administers a pension plan, and provides its membership with educational, technical, and professional services. By the very nature of its membership base, the Newspaper Guild is always attentive to any erosions of press freedom, actual or potential, no matter where they may occur. It considers any effort to license journalists a violation of their rights, and it is committed to opposing and resisting such efforts.

The International Association of Broadcasting is a non-governmental organization of radio and television entities, with consultative status at the United Nations and with active full institutional, individual, and supporting members in the following countries: Argentina, Belgium, Brazil, Bolivia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, France, Germany, Guatemala, Haiti, Honduras, Italy, Mexico, Netherland Antilles, Panama, Paraguay, Peru, Spain, United States, Uruguay, and Venezuela. Its principal activity is the defense of freedom of expression.

STATEMENT OF FACTS

The case before the Court is a request for an advisory opinion by the Government of Costa Rica on the consistency of a system of compulsory licensing of journalists

with the American Convention on Human Rights. The request arises from the criminal prosecution in Costa Rica of Stephen Schmidt. The facts concerning his case are necessary to an understanding of the request for an advisory opinion.

Mr. Schmidt resided in Costa Rica for over ten years. He worked for the weekly English-language publication, the Tico Times, as a technical advisor, translator, and copy-editor. He also wrote on various national and international topics. He received the degree of Licenciado en Periodismo from the Universidad Autonoma de Centroamerica. As a graduate of this university, however, he was unable to join the Colegio de Periodistas of Costa Rica.

In April 1980, the Colegio de Periodistas brought his journalistic activities to the attention of the Costa Rican Prosecuting Office and alleged that Mr. Schmidt had perpetrated the crime of illegal exercise of a profession under Article 313 of the Criminal Code of Costa Rica. Under Article 313 and Law No. 4420 of Costa Rica, which establishes the Colegio, the exercise of journalism is limited to persons who are members of the Colegio and have received a license to pursue the profession.

In January 1983, the Second Criminal Court of Costa Rica found Mr. Schmidt innocent on the grounds that his activities were in accordance with Article 13 of the American Convention on Human Rights and that Costa Rican law could not restrict the exercise of freedom of thought and expression under the Convention. The Prosecuting Office presented a petition of annulment to the Supreme Court of Justice. The Third Chamber of the Supreme Court annulled the verdict of innocence and declared Mr. Schmidt guilty of the crime of illegal exercise

of the profession of journalism. He was sentenced to three months of imprisonment, which was postponed for a trial period of three years. Mr. Schmidt was further warned that he must not repeat the offense.

Mr. Schmidt presented a petition to the Inter-American Commission on Human Rights that sought a declaration that his right to freedom of thought and expression as set forth in the American Convention on Human Rights had been ignored in the criminal proceedings in Costa Rica and must be restored to him. The Commission declared that the law establishing the Colegio de Periodistas de Costa Rica, the standards that regulate it and the decision handed down by the Third Chamber of the Supreme Court of Justice of Costa Rica do not constitute a violation of the American Convention on Human Rights. The Government of Costa Rica then presented its request for an advisory opinion to this Court.

QUESTIONS PRESENTED

1. Is there any incompatibility, conflict, or disagreement between domestic law compelling membership of journalists and reporters in a professional association and Articles 13 and 29 of the American Convention on Human Rights?
2. Is compulsory membership of journalists and reporters in a professional association permitted or included among the restrictions or limitations authorized by Articles 13 and 29 of the American Convention on Human Rights?

SUMMARY OF ARGUMENT

Article 13 of the American Convention of Human Rights is an additional and recent step in a lengthy historical process which has led to the recognition of freedom of expression as a fundamental and universal human right. Prior restraints are among the most pernicious violations of this right. A compulsory licensing system for journalists is a prior restraint since it precludes persons from the exercise of their right to freedom of expression. Associations of journalists may perform many legitimate functions, but since journalism inherently involves expression, they may not control access to the practice of journalism as associations of professionals like doctors and lawyers do. Finally, a compulsory licensing system does not fall within any exception to the right of freedom of expression set forth in the Convention.

ARGUMENT

I. A SYSTEM OF COMPULSORY LICENSING OF JOURNALISTS VIOLATES THE AMERICAN CONVENTION ON HUMAN RIGHTS

A. Freedom of Expression is a Fundamental Right Which Supercedes the Laws of any State.

The principle at issue in this case — freedom of expression, as formulated in the American Convention on Human Rights — is a fundamental human right. It is not a privilege that can be bestowed by any government or, still less, by any government-sanctioned professional society. The Preamble to the Convention specifically recognizes that “the essential rights of man are not derived from one’s being a national of a certain state, but are based upon attributes of the human personality and that they therefore justify international protection in the form of a Conven-

tion reinforcing or complementing the protection provided by the domestic law of the American States.”¹

It is significant that Costa Rica was the first signatory to the Convention. As noted in the decision of the lower Court in Costa Rica, Article 7 of the Costa Rican Magna Carta states that “public treaties, international agreements and concords duly approved by the Legislative Assembly shall from the time of their acceptance have authority higher than that of the laws.”

Article 13 of the Convention guarantees the right to freedom of thought and expression:

“Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”²

Article 13 further provides that the exercise of the right “shall not be subject to prior censorship, but shall be subject to subsequent imposition of liability . . . to the extent necessary to ensure . . . respect for the rights or reputations of others, or the protection of national security, public order, or public health or morals.”³ Finally, Article 13, as pertinent to this case, states that “the right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint”⁴ Article 29 of the Convention establishes certain interpretative guidelines and precludes parties from excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts may have.⁵

Article 13 of the Convention is based upon a history of

over 300 years of the emergence, evolution, and confirmation of the principle of freedom of expression. Freedom of the press first emerged as a right recognized by the common law of England in response to a system of censorship under which all printing presses and printers were licensed and nothing could be published except with the prior approval of state or church authorities. At that time, printers were the equivalent of modern editors and journalists.⁶ John Milton’s classic defense of freedom of speech in his *Areopagitica*, however, came to be recognized by the common law. The eminent legal scholar, Blackstone, summarized the law by stating that “every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press”⁷ The principle of freedom of expression was thereafter recognized in the U.S. Constitution, which states in the First Amendment that “Congress shall make no law . . . abridging the freedom of speech, or of the press”⁸

Since then, the principle of freedom of expression has gained international acceptance. The Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on December 10, 1948, states in Article 19 that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”⁹ In the same year, the Ninth International Conference of American States, meeting in Bogota, Colombia, adopted the American Declaration of the Rights and Duties of Man. This agreement provided in Article IV that “every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.”¹⁰ Thus, Article 13

of the American Convention on Human Rights is the expression of a well-established, universal human right.

B. Licensing of Journalists Through a Professional Association is in Conflict With Article 13 of the Convention as a Prior Restraint on Freedom of Expression.

A system of compulsory licensing of journalists like the Colegio de Periodistas of Costa Rica violates the principle of freedom of expression as stated in Article 13 of the American Convention on Human Rights. The membership of the Colegio in Costa Rica is restricted principally to those holding a Bachelor's degree in journalism from the University of Costa Rica or other educational institutions recognized by the association. Law No. 4420 further states that the functions of a journalist may be performed only by members registered in the Colegio. Thus, a person must be licensed before he may become a journalist, and the class of persons who are eligible for licensing is limited.

Such a system constitutes a clear prior restraint on freedom of expression. This is confirmed when the actual functioning of the Colegio system is examined. In this case, Mr. Schmidt was deemed to have violated the law merely by exercising his right to freedom of expression. He was criminally convicted, and is now unable to pursue further his career as a journalist in Costa Rica. The licensing system precludes him from the exercise of his right. More chillingly, the existence of the closed licensing system deters others, whose numbers cannot be known, from ever attempting to function as journalists and thus exercise their right to freedom of expression. These are the essential attributes of a prior restraint.

The evolution of the principle of freedom of expression embodied in Article 13 demonstrates that prior restraint of

expression is the most serious type of violation of the principle. As explained above, the concept of freedom of expression emerged precisely in reaction to a system of licensing analogous to the Colegio system. Thus, the common law as summarized by Blackstone held that the "liberty of the press is indeed essential to the nature of a free state; but this consists in laying no *previous* restraint upon publications, and not in freedom from censure for criminal matter when published."¹¹ In the United States, which has had extensive experience with a system of freedom of expression, it is understood that freedom of expression is, first and foremost, freedom from prior restraint or censorship of expression.¹² In fact, the principle is so well established that no effort has ever been made in the United States to establish a licensing system like the Colegio. Other efforts to restrict freedom of expression through a system of permits or licenses have generally met with strong condemnation in the courts of the United States.¹³

A compulsory licensing system for journalists, therefore, violates the right to freedom of thought and expression. It precludes those who have not or cannot obtain a license "the freedom to seek, receive, and impart information and ideas." It constitutes prior censorship. It restricts directly or indirectly through governmental or quasi-governmental controls the right of expression. It violates the American Convention on Human Rights.

C. The Performance of Legitimate Functions By a Colegio Does Not Vindicate Its Restriction of Freedom of Expression.

In its disposition of Mr. Schmidt's petition, the Inter-American Commission on Human Rights found that professional associations perform many legitimate and worth-

while functions. For example, professional associations promulgate ethical standards and standards of performance. They also seek to advance the profession and the well-being of their members. These functions are consistent with and contribute to the well-being of society. The Commission relied upon these legitimate functions and looked to the licensing function performed by such professional associations as those governing the medical and legal professions to reach its conclusion that the Colegio system in Costa Rica does not violate Article 13 of the American Convention on Human Rights.

The Commission proceeded from a false premise. The legitimate functions of a professional association are not at issue in this case. Indeed, *amici* themselves perform similar functions for journalists in their respective countries. Moreover, there are numerous associations of journalists, such as the Society of Professional Journalists (Sigma Delta Chi) in the United States, the Syndicat general des journalistes in France, the Svenska Journalistforbundet in Sweden and the Association de Periodistas and Sindicato de Prensa in Argentina which perform many of the activities which the Commission lauded. The critical distinction between those associations and the system at issue in this case is that *such associations do not license*, and thereby restrict, the practice of journalism.

The analogy to professions such as medicine and law is likewise false. Journalism stands on a different ground from these professions because it involves, in its very essence, the exercise of a fundamental human right — freedom of expression. In contrast, the principal activity of doctors or lawyers concerns the public health or safety, although their activities may from time to time implicate human rights. Regulation of those affecting the public health and safety is a legitimate exercise of government.

Admittedly, the press does have significant social responsibilities. It informs the public and thus permits citizens to discharge their responsibilities as members of society. But, this does not imply that journalism may be regulated in the same manner as the professions of medicine and law in order to achieve this larger social goal. On the contrary, the free interplay of ideas and thought, whether they be good or bad, has been determined to be the surest mechanism for informing the public. As Justice Douglas of the United States Supreme Court stated, “effective self-government cannot succeed unless the people are immersed in a steady, robust, unimpeded, and uncensored flow of opinion and reporting which are continuously subjected to critique, rebuttal, and free examination.”¹⁴ Further, James Madison stated that:

“Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press. It has accordingly been decided by the practice in the States, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits. And can the wisdom of this policy be doubted by any who reflect that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression.”¹⁵

Accordingly, an association of journalists must be constructed on a basis different from that of other professional associations. It must recognize that the practice of journalism itself involves the exercise of a fundamental human right. This means that, while the association may advocate or seek to persuade its members to follow high standards, it may not interfere with or discipline their

journalistic activities. It further means that admission to the practice of journalism must be as open as possible. This is the fundamental defect of the Colegio system of compulsory licensing involved in this case.

II. A COLEGIO LICENSING SYSTEM DOES NOT FALL WITHIN ANY OF THE RESTRICTIONS OR LIMITATIONS IN ARTICLES 13 or 29 OF THE CONVENTION.

Article 13 of the American Convention on Human Rights sets forth a number of exceptions to the basic principle of freedom of thought and expression. Under Paragraph 2, the exercise of the right to freedom of expression may be subject to subsequent imposition of liability when necessary to ensure (1) respect for the rights or reputations of others, or (2) protection of national security, public order, or public health or morals.¹⁶ Paragraph 4 of Article 13 permits prior censorship of "public entertainments" for the "sole purpose of regulating access to them for the moral protection of childhood and adolescence."¹⁷ Paragraph 5 of Article 13 states that "propaganda for war and any advocacy of national, racial, or religious hatred that constitutes incitements to lawless violence" may be legally punished.¹⁸

A compulsory licensing system for journalists does not fall within any of these exceptions. As argued above, a licensing system constitutes a prior restraint on the right to freedom of expression. The exceptions set forth in Paragraphs 2 and 5 of Article 13 permit only subsequent imposition of liability. More importantly, a Colegio system of licensing extends far beyond the scope of these exceptions. It could only indirectly address the restrictions on expression which paragraphs 2, 4 and 5 legitimate since it restricts qualifications to exercise the right to engage in

journalistic expression and not the forms of expression that may be legitimately prohibited. It precludes a multitude of types of expression that are unrelated to defamatory expression or expression that threatens national security, public order or public morality. It is grossly overbroad in its effect.

Finally, Article 29 provides guides for interpretation of the rights secured by the Convention. It does not provide additional exceptions to the rights set forth in the Convention, such as the right to freedom of thought and expression guaranteed by Article 13. Indeed, Article 29 states that no provision of the Convention shall permit any state, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in the Convention or to restrict them to a greater extent than is provided therein.¹⁹ It also states that the Convention shall not be construed to limit rights that are secured by the laws of any State that is a party to the Convention, that are inherent in the human personality or derived from representative democracy, or that are, as noted above, secured by the American Declaration of the Rights and Duties of Man or other international agreements.²⁰ Thus, Article 29 expands rather than limits the right to freedom of thought and expression.

CONCLUSION

This Court has an historic opportunity to determine whether the American Human Rights Convention is defied by laws licensing journalists. We feel that a free press cannot exist under a licensing system, and any legislative proscription is a fundamental violation of the American Convention on Human Rights. The Court's decree will have an important effect in other countries where Article 19 of the

Universal Declaration of Human Rights would provide the identical protection for free speech and the press.

Two hundred-fifty years have elapsed since John Peter Zenger challenged in the American colonies the authority of the state to impose controls over the press. His victory has been a beacon for freedom-loving peoples everywhere. A similar decision by this Court in the Schmidt case can go into the annals of history as a landmark in the eternal quest for press freedom. The World Press Freedom Committee, the International Press Institute, The Newspaper Guild, and the International Association of Broadcasting respectfully urge that the Court declare that a compulsory system of licensing for journalists violates Article 13 of the American Convention on Human Rights and does not fall within any exception or limitation to the Convention.

Respectfully submitted

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FOOTNOTES

¹American Convention on Human Rights, *reprinted in* I F.V. Garcia-Amador, *The Inter-American System* 52 (1983).

²*Id.* at 59.

³*Id.*

⁴*Id.* at 60.

⁵*Id.* at 67.

⁶T. Emerson, *The System of Freedom of Expression* 504 (1970).

⁷4 *Blackstone's Commentaries on the Laws of England* 151-52, *reprinted in* T. Emerson, *The System of Freedom of Expression* 504 (1970).

⁸U.S. Const. Amend. I.

⁹Universal Declaration of Human Rights, *reprinted in* J. Joyce, *Human Rights: International Documents* 10-12 (1978).

¹⁰American Declaration of the Rights and Duties of Man, *reprinted in* I F.V. Garcia-Amador, *The Inter-American System* 4-14 (1978).

¹¹4 *Blackstone's Commentaries on the Laws of England* 151-52, *reprinted in* T. Emerson, *The System of Freedom of Expression* 504 (1970).

¹²*Near v. Minnesota*, 283 U.S. 697, 715-16 (1931).

¹³*Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 180-81 (1968).

¹⁴*Branzburg v. Hays*, 408 U.S. 665 (1972).

¹⁵J. Madison, *Report on the Virginia Resolutions* at 544.

¹⁶American Convention on Human Rights, *reprinted in* F. V. Garcia-Amador, *The Inter-American System* 59 (1983).

¹⁷*Id.* at 60.

¹⁸*Id.*

¹⁹*Id.* at 66.

²⁰*Id.* at 67.