

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

STEVEN J. HATFILL,

Plaintiff,

vs.

THE NEW YORK TIMES COMPANY,

Defendant.

No. 1:04-cv-807

**MOTION FOR AN ORDER DISMISSING THE COMPLAINT
UNDER THE “STATE SECRETS” DOCTRINE**

Defendant The New York Times Company (the “Times”) hereby respectfully moves this Court for an Order dismissing the Complaint under the “state secrets” doctrine. As grounds for its motion, the Times states as follows:

1. The state secrets doctrine, as recognized in the Fourth Circuit, precludes a case from proceeding to trial when national security precludes a party from obtaining evidence that is critical to the resolution of a core factual question or necessary to support a valid defense. Dismissal is warranted in this case because the Times has been denied access to such evidence, specifically documents and testimony concerning the work done by plaintiff on classified government projects relating to bioweapons, including anthrax.

2. A core issue in this case is whether the columns at issue falsely state that plaintiff had both an “expertise” with biological agents and access to anthrax prior to the deadly anthrax mailings in late 2001. Plaintiff denies that he had either. These are central factual issues in the case and, in the event that its pending motion for summary judgment is not granted, the Times

unquestionably has the right at trial to attempt to establish the substantial truth of the challenged statements.

3. From the outset, the Times has pursued discovery from various third parties to establish plaintiff's knowledge and experience with dry bacterial weapons agents – in particular, anthrax – as well as his access to the type of anthrax used in the mailings. Among other steps, the Times sought documents and testimony from plaintiff's employer at the time of the mailings, Science Applications International Corporation ("SAIC"), and from the United States Army Research Institute for Infectious Diseases ("USAMRIID"), where he previously worked. Evidence has been discovered demonstrating that plaintiff claimed to have a working knowledge of "dry" biological weapons agents and that he has lectured at two of the nation's top intelligence agencies, the CIA and the DIA, on biodefense issues, including the production of biological weapons agents.

4. Nonetheless, the Times has been denied potentially critical evidence on grounds of national security. Both SAIC and USAMRIID have refused to produce relevant evidence concerning "classified" projects, including those on which plaintiff worked. The Times has challenged their refusal to produce classified information through three separate motions to compel, and in each instance the Court has held that the information sought by the Times is indeed properly classified and not subject to discovery.

5. The magistrate judge ruled on two of these motions to compel just this month, after reviewing *ex parte* submissions from the government and from SAIC. The Times filed timely objections to those rulings, and one remains pending. Given the upcoming trial date, however, the Times is filing this motion now so that it will be ripe for disposition in the event

that the pending objections are overruled and the Times' pending motion for summary judgment is denied.

6. In the absence of the classified evidence that the Times has been precluded from discovering, this case may not properly proceed to trial. Under the controlling law in this Circuit, it would be manifestly unjust and improper to require the Times to defend against the claims being advanced by Steven Hatfill without affording it access to critical information concerning his own activities that could serve to defeat those claims.

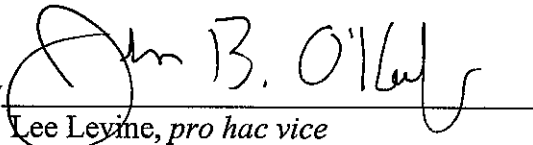
WHEREFORE, for the reasons more fully set forth in the accompanying memorandum of law, the Times respectfully requests that the Court grant its motion to dismiss the complaint under the "state secrets" doctrine.

Dated: December 29, 2006

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

By



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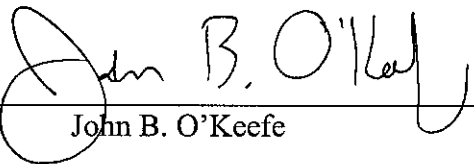
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of December, 2006, I directed that a true and correct copy of the foregoing Motion for an Order Dismissing the Complaint under the “State Secrets” Doctrine be served, by e-mail and First-Class Mail, on counsel as follows:

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