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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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STEVEN J. HATFILL,

Plaintiff,

- against -

DONALD FOSTER, et al.

Defendants.  
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x

**DECLARATION OF ANDREW  
D. O'TOOLE EXPLAINING  
DELAYED ECF FILING**

No. 04 Civ. 9477 (CM) (GAY)

x

ANDREW D. O'TOOLE, pursuant to 28 U.S.C. § 1746, declares the following under penalty of perjury:

1. I am an Assistant United States Attorney in the office of Michael J. Garcia, United States Attorney for the Southern District of New York, one of the attorneys appearing on behalf of non-party the United States Department of Justice (the "Government") in the above-captioned action. I make this declaration to explain the Government's delayed filing of its memorandum of law in opposition to the motion to compel filed by Condé Nast Publications.

2. Pursuant to the schedule set by the Court, the Government was required to respond to the motion to compel by January 18, 2006. See Response to the Government’s Letter Dated December 15, 2005, dated December 16, 2005.
3. According to the web site for the United States District Court for the Southern District of New York, “the ECF System will be upgraded and unavailable for electronic filing January 12th – January 19th.”
4. The Government was therefore unable to electronically file its memorandum of law in response to the motion to compel on January 18, 2006 — the day on which it was due. However, the Government caused a copy of its memorandum of law to be sent via email and Federal Express to all counsel of record on that date.
5. The Court’s web site provides the following instructions in the event of an ECF interruption:

If you are ever prevented from filing on a deadline day because of an ECF-related technical difficulty you may seek relief from the Court. In such instances:

  - Please do not bring paper filing in ECF cases to the Court.
  - Electronically file the document as soon as the system is restored.
  - Electronically file a statement explaining the “delayed” filing. Include that statement as a pdf attachment to the filed document.
6. The Government is therefore electronically filing its response on the first day on which ECF service has been restored.

Dated: January 20, 2006  
New York, New York

MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York

By: /s/ Andrew D. O'Toole  
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