

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE AT BANGOR

SHANA SANDLER,

Plaintiff

v.

MIA CALCAGNI,  
RALPH CALCAGNI,  
MAUREEN CALCAGNI,  
PETER MARS,  
and  
BOOKSURGE, LLC,

Defendants.

Case No. 1:07-CV-00029-GZS

**DECLARATION OF STEVE WEINBERG IN SUPPORT OF  
BOOKSURGE, LLC'S MEMORANDUM OPPOSING  
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

THE UNDERSIGNED, under penalty of perjury, declares as follows:

1. I hereby submit this Declaration in Support of BookSurge, LLC's ("BookSurge's") Memorandum Opposing Plaintiff's Motion for Partial Summary Judgment.
2. I am a professor at the University of Missouri Journalism School and a full-time professional writer. My resume is attached to this declaration as **Exhibit A**.
3. BookSurge has retained me to serve as an expert in this case.
4. I am over the age of 18, have personal knowledge of the facts herein, and am competent to testify thereto.
5. I am familiar with the practices and processes of both traditional or "trade" publishers and print-on-demand ("P.O.D.") companies like BookSurge. I became

a full-time professional writer in 1970. In 1976, I signed my first book contract with a traditional or “trade” publisher. That first book appeared in 1978. Since then, I have written books under contract to five additional trade publishers. In addition, I write book reviews nearly every week of the year for magazines and newspapers around the country.

6. Because I am recognized as an often published professional writer, because of my visibility in the investigative reporting realm, and because of my status as a professor at the world’s first and often top-ranked journalism school, I receive requests for book-related assistance almost every week from other professionals and from amateurs. My students and many other aspiring authors also rely on me for advice.
7. I began investigating the services offered by P.O.D. companies several years ago. I published an article in the Kansas City Star on April 22, 1991, titled “The Bookmakers/KC authors face huge odds in publishing their own works. They’re happy to break even.” In order to write that article, I researched the P.O.D. business and have continued to research and analyze the industry in the course of my professional endeavors and in the preparation of my expert report in this case.
8. As a result of the above, I am familiar with the distinctions between traditional or “trade” publishers and P.O.D. companies.
9. Trade publishers differ from print-on-demand (“P.O.D.”) companies like BookSurge in several ways. Some examples are provided below.
10. Based on a review of the February 2008 deposition of BookSurge’s General Manager, David Symonds, and his declaration in support of BookSurge’s Motion

for Summary Judgment, I understand that BookSurge does not read and review the content of any material that it prints. In fact, Mr. Symonds testified that any review by BookSurge is limited to a technical review to ensure that the PDFs and computer files it receives from its customers are compatible with its P.O.D. technology. Unlike BookSurge, trade publishers review the content of the manuscripts that are presented to them in order to determine whether they want to publish the manuscripts as books.

11. Unlike BookSurge, once a trade publisher accepts a manuscript for publication, the trade publisher is expected to assign an editor to review, edit, and improve the manuscript in cooperation with the author before the manuscript is printed and published as a book.
12. Based on a review of the February 2008 deposition of BookSurge's General Manager, David Symonds, and his declaration in support of BookSurge's Motion for Summary Judgment, and a review of the November 2007 deposition of Ralph Calcagni, I understand that BookSurge does not pay its customers for the right to print their books. Instead, BookSurge customers pay BookSurge for the right to have their books printed. Trade publishers pay authors for the right to print their manuscripts. Sometimes these payments come in the form of advances, which permit the author to receive payment while the book is in the drafting process.
13. Based on a review of the February 2008 deposition of BookSurge's General Manager, David Symonds, and his declaration in support of BookSurge's Motion for Summary Judgment, I understand that BookSurge does not market its customers' books in the way a trade publisher would. Because trade publishers

pay authors to publish their manuscripts, trade publishers engage in active marketing campaigns to promote their books and take responsibility for the cost of promotion. For example, at their own expense, trade publishers will promote their books by sending promotional materials to distributors and retailers. Trade publishers also will schedule meetings with distributors and retailers. Trade publishers will fund advertising to promote books to retail customers. Trade publishers may sponsor author signing and speaking engagements at major retailers. Trade publishers may also fund promotion of their books by circulating copies to magazines and newspapers around the country to encourage reporters to write and publish reviews of their books. For example, on Friday, March 28, 2008, the Wall Street Journal published a review of my most recent book as a result of the marketing campaign funded and launched by my trade publisher W.W. Norton (attached as **Exhibit B**).

14. I have reviewed BookSurge's "Author Publishing Agreement," which was attached to the Affidavit of Bernard J. Kubetz in Support of Plaintiff's Motion for Partial Summary Judgment ("Kubetz Aff.") as Exhibit 3. I discovered that BookSurge only receives a non-exclusive license to publish the manuscripts uploaded to its website by its customers. Kubetz Aff., Ex. 3 at BS000002. This licensing arrangement differs dramatically from the licensing arrangements that I have encountered with trade publishers. Every contract I have signed with a trade publisher has required me to give an exclusive license to the trade publisher.
15. It would be unusual for, and I have never come across, a traditional publisher that would accept a non-exclusive license to an author's book when it pays the author

advances, funds active marketing campaigns, and funds the distribution of hard copies of the book to distributors and retailers.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this 2<sup>nd</sup> of April, 2008, at Columbia, Missouri.

  
STEVE WEINBERG

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**EXHIBIT A**

**EXHIBIT A**

## Resume of Steve Weinberg

January 2008

Home office  
807 West Blvd. South  
Columbia, MO 65203  
Tel. 573 875-2882

University office  
School of Journalism  
Lee Hills Hall  
University of Missouri  
Columbia, MO 65211  
Tel. 573 882-5468  
Email [weinbergs@missouri.edu](mailto:weinbergs@missouri.edu)

### Summary of current professional activities:

Tenured full professor, University of Missouri Journalism School  
Author of trade books and textbooks  
Magazine feature writer  
Freelance book reviewer for newspapers and magazines  
Speaker in newsrooms and at professional conferences  
Expert witness in journalism-related litigation  
Journalism awards judge  
Active in professional organizations

### College Degrees:

B.J., University of Missouri Journalism School, 1970  
M.A., University of Missouri Journalism School, 1975

### Employment History:

Book author, 1978-today  
Freelance periodical writer of reviews, features and essays, 1968-today  
Journalism faculty, University of Missouri, part-time or full-time, 1978-today  
Project director, national study of prosecutors, Center for Public Integrity, Washington, D.C., 2000-2004  
Alicia Patterson journalism fellow, 1997-1998  
Executive director, Investigative Reporters & Editors, Columbia, Mo., 1983-1990  
Investigative reporter, Des Moines Register, 1975-1978  
Washington, D.C., correspondent for Stauffer Newspapers, Topeka, Kan., and Institutional Investor magazine, New York City, 1973-1975  
Newspaper reporter, Metro-East Journal, East St. Louis, Ill., 1970-1972

Teaching at the University of Missouri:

From 1978-1983, I directed the Washington, D.C., semester for master's degree candidates at the University of Missouri, working intensively with 125 graduate students total. Since moving to the main campus in 1983, I have taught investigative reporting, magazine feature writing, critical reviewing, business reporting, editorial writing, criminal justice reporting, and collaborative courses with law professors that enrolled both law students and journalism students.

Book Author:

Biography of Ida Tarbell and John D. Rockefeller, published by W.W. Norton, New York City, 2008

Centennial history of MU Journalism School, commissioned by the Dean of the school, under contract to University of Missouri Press, 2008

Harmful Error: Investigating America's Prosecutors, published by the Center for Public Integrity, Washington, D.C., 2004

The Reporter's Handbook: An Investigator's Guide to Documents and Techniques, published by St. Martin's Press, New York City, 1996 (also co-author of revised edition, 2002)

Telling the Untold Story: How Investigative Reporters Are Changing the Craft of Biography, published by University of Missouri Press, 1992

Armand Hammer: The Untold Story, published by Little, Brown, Boston and New York City, 1989

For Their Eyes Only: How Presidential Appointees Treat Public Documents as Personal Property, published by the Center for Public Integrity, Washington, D.C., 1992

Trade Secrets of Washington Journalists: How to Get the Facts About What's Going on in Washington, commissioned by the National Press Foundation, published by Acropolis Books, Washington, D.C., 1981

Terrace Hill: The Story of a House and the People Who Touched It, co-author with Scherrie Goettsch, published by Wallace-Homestead Book Co., Des Moines, 1978

Book Contributor:

Contemporary Literary Criticism, Sarah Tomasek, editor, Thompson/Gale, 2007

Contemporary Literary Criticism, Jeff Hunter, editor, Thomson/Gale, 2005

The American Society of Journalists and Authors Guide to Freelance Writing, Timothy Harper, editor, St. Martin's Press, 2003

Writer's Handbook, The Writer, 2002

Mass Media Readings, Dushkin/McGraw-Hill, 2000

Media Ethics: Issues and Cases, Philip Patterson and Lee Wilkins, editors, William C. Brown and Company, 1994

The Writer's Handbook, The Writer Inc., 1994

Qualitative Research in Information Management, Jack D. Glazier and Ronald J. Powell, Editors, Libraries Unlimited, 1992



Tools of the Writer's Trade, Harper & Row, 1990  
Public Administration, Politics and the People, Dean Yarwood, editor, Longman, 1986  
Communications Policy and the Political Process, John Havick, editor, Greenwood Press, 1983  
A Writer's Guide to Washington, Washington Independent Writers, 1983

Selected Recent Magazine Freelance Features:

Review-essay of books by U.S. presidential candidates, Boston Globe, January 6, 2008  
Profile of New York City book editor George Hodgman, Mizzou, the University of Missouri alumni magazine, 2007, issue 4  
Essay about the importance of public affairs books in society, despite their sorry plight in the realm of journalistic coverage, Nieman Reports, a quarterly magazine published at Harvard University, 2007, issue one  
Program guide to documentaries about investigative journalism, WNET, New York public television, April 2007  
Essay about judging the best books of the year, American Way, the inflight magazine of American Airlines, April 1, 2007  
Profile of criminal justice reformer James McCloskey, American Way, the inflight magazine of American Airlines, April 15, 2006  
Profile of novelist Percival Everett, Bookmarks Magazine, March/April 2006  
Teaching about actual innocence cases, Chronicle of Higher Education, Feb. 10, 2006  
Profile of author Stacy Horn, American Way, Oct. 15, 2005  
Profile of author Roland Merullo, Pages magazine, October 2005  
Dealing with pleas from prisoners, Columbia Journalism Review, May-June 2005  
The past, present and future of The Sporting News, St. Louis Magazine, May 2005  
Reading up on prosecutors, The American Lawyer magazine, July 2004  
Covering adoption and foster care, The Children's Beat magazine, Summer 2004  
The realm of authorship, Mizzou (University of Missouri alumni magazine), Summer 2004  
Profile of Professor Kerby Miller, Illumination (University of Missouri research Magazine), Spring 2004  
Covering prosecutors, The Quill magazine, February 2004  
Writing about the law enforcement establishment, The Children's Beat magazine, Winter 2004  
The face of prosecutorial misconduct, Legal Affairs magazine, November-December 2003  
Profile of federal government regulator John D. Graham, On Earth magazine, Spring 2003  
Chronicling the dispute over the estate of artist Clyfford Still, Art News magazine, March 2003

Book Reviews:

My reviews have appeared in dozens of newspapers and magazines, including the New

York Times, Washington Post, San Francisco Chronicle, Atlanta Journal-Constitution, Baltimore Sun, Philadelphia Inquirer, Charlotte Observer, Cleveland Plain Dealer, Dallas Morning News, Fort Worth Star-Telegram, Orlando Sentinel, St. Petersburg Times, Denver Post, Seattle Times, Portland Oregonian, Boston Globe, Chicago Tribune, St. Louis Post-Dispatch, Kansas City Star, Raleigh News and Observer, Des Moines Register, Milwaukee Journal Sentinel, Christian Science Monitor, Columbia Journalism Review, Publishers Weekly, Kirkus Reviews, Mother Jones, High Country News, New York Sun, American Way, the Journal of Investigative Reporters and Editors, Global Journalist, Pages magazine, Bookmarks magazine and salon.com. I average about a review per week all year long, year-in and year-out.

#### Contest Judging:

I serve as a judge for at least half-a-dozen journalism awards most years, including those sponsored by Investigative Reporters and Editors, Penney-Missouri (lifestyle feature writing), City and Regional Magazine Association, Association of Area Business Publications, Society of Business Editors and Writers, Parenting Publications of America, Association of Alternative Newsweeklies, Society of American Travel Writers, American Society of Journalists and Authors, and National Book Critics Circle.

#### Recent Speaking and Consulting About Journalism:

I speak all over the nation, for pay and pro bono, throughout the year. Some of the appearances are in individual print and broadcast newsrooms, usually on the topic of how to improve investigative reporting. Some of the appearances are at professional conferences, such as Investigative Reporters and Editors, American Society of Journalists and Authors, National Book Critics Circle, Society of American Business Editors and Writers, Association of Alternative Newsweeklies, and the City and Regional Magazine Association. I appear as a guest lecturer in MU Journalism School classes and Law School classes at least several times every year, as well as occasionally at journalism and law schools on other campuses, including, recently, the University of North Carolina, Duke University and Arizona State University.

#### Campus, School and Community Service:

Since joining the faculty at the University of Missouri, I have served on advisory committees for the Peace Studies degree program, the central library, the Center for the Literary Arts, the Missouri Review literary magazine and the Campus Writing Program. I have appeared as a guest lecturer in law classes, English classes, geography classes, peace studies classes, history classes and political science classes.

Within the Journalism School, I have served on elected and appointed departmental and school-wide advisory committees, chaired three search committees plus served on a dozen others, chaired M.A. committees for about three-dozen graduate students and served on at least as many others, as well as appeared as a guest lecturer in at least one hundred classes.

In the community of Columbia, Mo., I have spoken to classes at all three high schools plus several junior high, middle and elementary schools, served on Parent Teacher Student Association boards, coached youth baseball and soccer teams, volunteered at the community radio station KOPN and presented guest lectures to all sorts of not-for-profit organizations.

#### Personal Information

Born June 4, 1948, Chicago, Ill. Graduated in 1966 from Highland Park, Ill., High School.

My wife is Scherrie Goetsch. We are the parents of Sonia, born in 1980, and Seth, born in 1984. We also served as the legal guardian for and raised Kendra Goetsch, born in 1984.

**EXHIBIT B**

**EXHIBIT B**



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March 28, 2008

## BOOKS

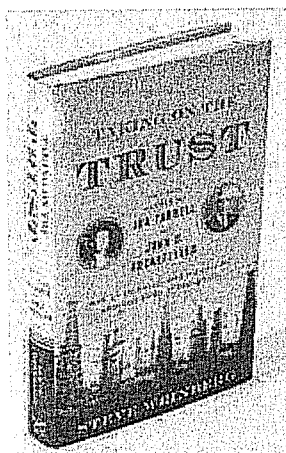
# A Reporter at the Ramparts

By **PAUL E. STEIGER**  
*March 28, 2008; Page W5*

## Taking on the Trust

By Steve Weinberg  
*(Norton, 304 pages, \$29.95)*

In 1901, John D. Rockefeller had reason for optimism.



His Standard Oil empire dominated the global petroleum business. His products had found satisfied customers in every nook and cranny of business and household life. The year before he had covered half the \$500,000 in campaign expenses incurred by William McKinley, the recently re-elected Republican president. His \$3 million in annual dividend income alone was 5,700 times the earnings of the nation's typical worker.

But he hadn't counted on two things. On Sept. 6, an anarchist fatally shot McKinley, ushering into office an altogether different sort of Republican -- Theodore Roosevelt, a man who would famously speak of "the malefactors of great wealth." And Ida Tarbell, a new kind of journalist -- a prototype of what later would be called a muckraker and later still an investigative reporter -- was preparing to launch a series of

excoriating profiles of Rockefeller's business practices that would eventually alter his own fate and his company's.

The stories of Rockefeller and Tarbell have been told before, but Steve Weinberg's "Taking on the Trust" is the first book aimed entirely at narrating their epic clash and their surprisingly intertwined personal histories. The book's timing could not be more apt.

Early in the 20th century, Americans rebelled against a laissez-faire, untrammled business environment that gave rise to the fortunes of robber barons and to feelings of frustration and powerlessness among ordinary workers and business people. Today, after a generation of deregulation and free-market policies -- not to mention lurid tales of financial buccaneering -- there are similar signs of a shift in sentiment toward the tighter government oversight of business.

The book's timing is apt in another way as well. In an era of economic upheaval in American journalism, it is fascinating to read about a once penniless Irish immigrant, Samuel McClure, who was able to found a magazine that created practically overnight a platform for incisive reporting --

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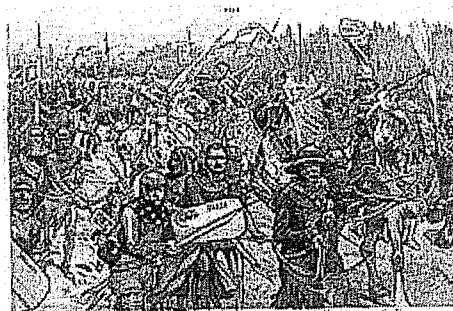


### <sup>1</sup> TAKING ON THE TRUST

Read an excerpt<sup>2</sup> from Steve Weinberg's new book.

not only by Tarbell but also by Lincoln Steffens, Ray Stannard Baker, Josiah Willard and others.

Mr. Weinberg, a journalism professor at the University of Missouri and himself a distinguished investigative reporter, keeps his two main characters headed relentlessly toward their ultimate confrontation, and he is more willing to criticize Tarbell than one might expect. Indeed, his deeply researched account is scrupulously evenhanded, fair to both the man who was by far the nation's richest tycoon and the woman who was its most famous reporter.



Library of Congress

A 1906 Puck drawing of 'crusaders marching' with Tarbell on horseback in the center background.

Both Rockefeller and Tarbell had to struggle through challenging childhoods and early careers; both were frequently uprooted in their youth, scrambling from place to place as their families sought opportunity in a rapidly expanding but panic-plagued economy. Rockefeller launched his public life as a bookkeeper in Cleveland; Tarbell began hers as a would-be expatriate author in Paris. Both were crucially influenced by up-close exposure to the reckless oil boom touched off in the muddy drilling fields near Titusville, Pa., in the 1850s.

Rockefeller was born in rural New York to an itinerant medicine salesman, a philandering confidence man who managed to marry the daughter of a prosperous farmer. A housekeeper's rape charge against Rockefeller père forced the family to skedaddle to Cleveland, where he continued his wandering ways. But his wife kept the kids together (with money help from their father, most of the time). At the age of 16, John D. quit school and landed an apprentice job at a produce-trading firm.



Library of Congress

Ida Tarbell wrote about John D. Rockefeller for McClure's Magazine in 1905.

A prodigious worker and devout Baptist (no drinking, no dancing), John D. soon moved from vegetables to petroleum and from buying and selling to building a business with complete vertical integration -- controlling his new commodity from wellhead to pipeline to refinery to customer. He had a keen eye for figures and an unusual ability to connect with people from different walks of life. He also had a healthy respect for competition and sought to eliminate it whenever possible.

The business landscape across which Rockefeller strode was almost without rules. The corporation was replacing the individual proprietor as the fundamental structure of commerce, and the trust -- a forerunner the now familiar holding company -- was a way of controlling corporate empires across states. Unburdened by modern disclosure mandates, the trust also permitted emerging industrial octopi to mask their size and collaboration.

Practices long since outlawed today -- accepting kickbacks and offering bribes to the employees of other companies for sensitive information -- allowed Rockefeller and his lieutenants to muscle their way into every corner of the industry. Competitors were either driven into bankruptcy by cut-rate pricing or, if Rockefeller admired their acumen, invited aboard.

Born in northwestern Pennsylvania 18 years after Rockefeller, in 1857, Tarbell was a rarity among daughters of the working class -- she was encouraged to pursue an education. Her father

worked at many trades, including welding, teaching and farming. But the oil boom brought him prosperity as a barrel maker. Before long, he found himself up against the power of Rockefeller's Standard Oil empire, which curtailed the growth of the barrel business by introducing more efficient tanks and tank cars. Ida's once ebullient father became dour and depressive as the trust squeezed him and his neighbors.

Despite family setbacks, Ida managed to become one of the first women to attend Allegheny College, 30 miles from her home. She studied chemistry, calculus, history and economics, among other subjects. "Her book learning, supplementing her real-world experience to come," Mr. Weinberg asserts, "placed her at an advantage over the less formally educated Rockefeller."

After graduation in 1880, she was hired as a teacher at a high school in Poland, Ohio (a school once attended by McKinley). But she didn't like the work and quit after two years, later landing an editorial job at *The Chautauquan*, the organ of the popular educational movement based in upstate New York.



Pennsylvania Historical and Museum Commission, Drake Well Museum, Titusville

McClure's Magazine was one of Ms. Tarbell's biggest customers.

From there she took a great leap, scraping together enough money to go to Paris and write a biography of Madame Roland, a prominent republican sympathizer during the French Revolution. Landing in France with \$150 to her name, Tarbell befriended a handful of American expatriates, learned the language and pursued her research -- which kept getting interrupted by freelance writing assignments. Her biggest customer became McClure, who lured her to New York in 1894 to join his magazine.

Tarbell soon became a superstar. Her natural intellectual rigor, combined with the experience of researching Roland's life (the biography appeared in 1896), made her an unusually effective reporter. Unsatisfied with a single source, she tested documents and the recollections of interviewees against one another until she was satisfied that she had an accurate account. Her work at McClure's first focused on historical figures, but her information was so fresh and her writing so compelling that, when her biographical chronicles were serialized in the magazine, they helped to double its circulation.

Then McClure invited her to turn her attention to Rockefeller. For a while there was some question whether, given Tarbell's family's history, she was the right person to investigate the oil trust. But McClure had confidence in her fairness, and she dug in. The more she reported, the more convinced she became that Rockefeller's ruthlessness was pervasive and beyond moral if not legal bounds.

She ultimately found what Mr. Weinberg calls a "smoking gun" -- a secret document offering clear evidence of Rockefeller's pattern of business espionage. It had been given to a young Standard Oil clerk to burn, but he had noticed the name of an independent refiner who happened to be his Sunday school teacher and had turned the document over to the teacher, who passed it along to Tarbell.

Tarbell's serialized articles -- detailing predatory pricing against competitors and the secret rigging of railroad rates -- caused a sensation. Public outrage mounted against Rockefeller and the trust. Finally, in 1911, the Supreme Court -- in an opinion tracking the findings of Tarbell's reports -- ruled that Standard Oil had violated the Sherman Antitrust Act and had to be broken up.

The verdict was a triumph for Tarbell and a major defeat for Rockefeller. Investors decided that Standard Oil was more valuable in parts, and Rockefeller ended up worth even more than before. Still, the court's decision -- forcing Rockefeller to do something that he dearly did not want to do, as a price for illegal conduct -- was a demonstration that the power of wealth was not absolute and that the power of the press to expose corruption was not to be ignored. Thus did Ida Tarbell become the mother of modern investigative reporting.

***Mr. Steiger is the editor in chief of ProPublica, a nonprofit, nonpartisan organization for investigative reporting. Write to Paul E. Steiger at [Paul-E.Steiger@wsj.com](mailto:Paul-E.Steiger@wsj.com)***<sup>3</sup>

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(3) <mailto:Paul-E.Steiger@wsj.com>

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UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE AT BANGOR

SHANA SANDLER,

Plaintiff

v.

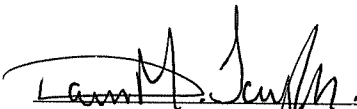
Case No. 1:07-CV-00029-GZS

MIA CALCAGNI,  
RALPH CALCAGNI,  
MAUREEN CALCAGNI,  
PETER MARS,  
and  
BOOKSURGE, LLC,

Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that on April 2, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

  
Dawn M. Taylor, Legal Assistant