

Circuit Court No. 99-89892 - AR
HON. LAWRENCE M. GLAZER

54-B District Court No. 99-0873-SM
HON. DAVID L. JORDON

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM**

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs.

ANTHONY DAVID PASTOR,
Defendant.

**BRIEF OF *AMICUS CURIAE* NATIONAL PRESS
PHOTOGRAPHERS ASSOCIATION IN SUPPORT OF
PETITIONER/APPELLANT'S MOTION FOR IMMEDIATE
STAY AND IN OBJECTION TO PEOPLE'S
APPLICATION FOR INVESTIGATIVE SUBPOENA**

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Amicus curiae National Press Photographers Association submits this brief in support of Petitioner/Appellant's Application for Leave to Appeal and Motion for Immediate Stay. *Amicus* respectfully shows the Court the following:

INTRODUCTION

Following riots in East Lansing, the police and prosecutors have issued broad-ranging subpoenas to media organization for unpublished and unbroadcast video and photographs gathered during news coverage. These subpoenas are an unconstitutional barrier to the protected newsgathering activities of the media. Michigan long ago joined virtually every state and federal jurisdiction in the United States in recognizing a journalist's qualified right to refuse to disclose newsgathering materials in response to police requests.

This qualified privilege for the media is rooted in the First Amendment, and it is central to the media's mission to inform public debate. In obtaining facts for news stories, journalists sometimes must rely on confidential informants. If the Court allowed the police to annex the press as an arm of law enforcement, confidential informants would refuse to talk to the press, and sources would deny news photographers access to sensitive or incriminating evidence. The journalist's assurance of confidence is the only basis for the media's ability to report stories from "background" sources. Without this confidence, sources would "dry up," and the media's ability to offer robust coverage of public affairs would be badly impaired.

This case presents the Court with a question that cuts to the very heart of this confidentiality, whether the police may gather evidence in an criminal investigation – outside the grand jury context – by issuing subpoenas to media organizations for unpublished and unbroadcast newsgathering materials. The subpoenas at issue are little more than a "fishing expedition" in newsrooms, and they jeopardize the independence, efficacy, and even the safety

of journalists throughout the State of Michigan. *Amicus* National Press Photographers Association (“NPPA”) wishes to be absolutely clear: it deplores the kind of violence that has characterized riots in East Lansing, and it appreciates the important role of the police in bringing criminals to justice. However, the NPPA is unwilling to sacrifice the independence that is central to its mission of gathering news and informing the public.

To protect this vital confidence, the Court should hold, as it has done in the past, that journalists’ qualified privilege under the First Amendment permits them to protect the confidentiality of their newsgathering materials. Accordingly, the Court should reverse the 54-B District Court’s April 9, 1999 Order, quash all pending subpoenas issued to the media for unpublished or unbroadcast newsgathering materials, and grant Petitioner/Appellant’s motion for a protective order.

INTEREST OF AMICUS

This case presents important and recurring issues of constitutional dimension. *Amicus* National Press Photographers Association represents 10,000 professional photographers, photography students, and photo editors across the country, including many members in Michigan. NPPA is dedicated to preserving the freedom of the press and supporting robust coverage of public affairs. It files this brief to emphasize to the Court the vital role that the First Amendment newsgathering privilege plays in the daily lives of working photojournalists in Michigan and across the United States.

ARGUMENT

I. Protecting the Confidentiality of Newsgathering Materials Is Essential To a Free Press and to the Flow of Vital Information to the Public.

A free press, guaranteed by the First Amendment to the United States Constitution, is essential to an informed citizenry and lies at the heart of our democracy.¹ In a republic where the people are sovereign, an autonomous, unfettered press disseminates information that is necessary for the public to make informed political, social and economic decisions. *King v. Photo Marketing Ass'n, Int'l*, 327 N.W.2d 515, 517 (Mich. App. 1982). See also *Associated Press v. United States*, 326 U.S. 1, 20 (1945); *Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981). Any inroad made upon the constitutional protection of a free press erodes our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

In acquiring the facts that make up news stories, journalists sometimes must guarantee their sources’ confidentiality.² Because of these guarantees, confidential sources play an

¹ See *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) (“The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government”); *Palko v. Connecticut*, 302 U.S. 319, 325-26 (1937); *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936) (“The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; . . . To allow [the press] to be fettered is to fetter ourselves”); *Near v. Minnesota ex rel Olson*, 283 U.S. 697, 717-21 (1931).

² To be sure, the practice of guaranteeing confidentiality to certain news sources is undertaken advisedly and carefully by journalists, but there is little doubt that the ability to keep material confidential permits the press to report some stories – particularly concerning government malfeasance – that otherwise would go unreported. See Osborn, *The Reporter’s* (continued...)

essential role in newsgathering and ultimately in the formation of social policy. *See New York Times Co. v. United States*, 403 U.S. 713, 717 (1971). Jeopardizing the media's ability to protect confidentiality • particularly where disclosure can lead to criminal charges • deters potential sources from providing information to the media or access to photographers. *See Talley v. California*, 362 U.S. 60, 65 (1960); *United States v. LaRouche Campaign*, 841 F.2d 1176, 1181, 1182 (1st Cir. 1988). As sources "dry up," the media's effectiveness becomes impaired, *see Baker v. F & F Inv.*, 470 F.2d 778, 782 (2d Cir. 1972), and the public loses its access to full and complete information. *See New York Times Co. v. United States*, 403 U.S. at 717; *King*, 120 Mich. App. At 531. When the state regularly forces journalists to surrender their newsgathering materials, guarantees of confidentiality to sources are rendered meaningless and the autonomy and effectiveness of the press is diminished.

The danger this practice poses to journalists • and, in turn, to the public they serve • has been established by empirical evidence. With increasing frequency, journalists are subpoenaed for the purpose of compelling them to reveal confidential sources and information during criminal investigations. Each year, more than 3,500 subpoenas are issued against the news media, and more than 1,800 of these subpoenas potentially involve testifying in criminal proceedings. *See The Reporters Committee for Freedom of the Press, Agents of Discovery: A*

Confidentiality Privilege: Updating the Empirical Evidence After a Decade of Subpoenas, 17 Colum. Hum. Rts. L. Rev. 57, 75 (1985) (72 percent of journalists believe their methods for reporting the news would be substantially impaired without confidential sources).

Report of the Incidence of Subpoenas Served on the News Media in 1993 at 4 (1995).³ Every year, courts quash some 80 percent of subpoenas that are challenged by the media based on the journalists' privilege or other grounds. *See id.* at 8.

In responding to subpoenas that are not quashed, journalists are placed in a hopeless dilemma. They must either disclose nonpublic information and imperil their future ability to gather and disseminate information, or face contempt charges. The systemic result of that dilemma is to force the news media to temper their reports and shy away from investigative reporting, *see Zurcher v. Stanford Daily*, 436 U.S. 547, 573 (1978), thus abridging the right of a free press as protected by the First Amendment.⁴

In addition to jeopardizing the gathering and dissemination of information, mandatory disclosure in criminal proceedings threatens the media's autonomy. As compelled partisans for the state in criminal proceedings • proceedings that otherwise would be the subject of their reporting • journalists' ability to serve as neutral purveyors of news and information about the judicial process is undermined.⁵ Without a minimal protection against compelled disclosure of

³ This practice has been accelerating substantially in recent years. Between 1911 and 1968, there were only 17 cases involving a reporter's confidentiality privilege. *See Comment, The Newsman's Privilege: Government Investigations, Criminal Prosecutions and Private Litigation*, 58 Calif. L. Rev. 1198, 1200 n.9 (1970).

⁴ *See American Communications Ass'n v. Douds*, 339 U.S. 382 (1950) (indirect "discouragements" of free speech violate the First Amendment).

⁵ Additionally, all journalists who cover or investigate crimes will remain "on call" throughout the criminal process, from preliminary hearing to trial, and subjected to intrusive "fishing expeditions." *See O'Neill v. Oakgrove Constr., Inc.*, 523 N.E.2d 277, 279 (N.Y. 1988) ("because journalists typically gather information about accidents, crimes, and other matters of special interest that often given rise to litigation, attempts to obtain evidence by subjecting the press to discovery as a nonparty would be widespread").

nonpublished information, reporters lose their capacity to report the news fully and fairly, and the citizenry loses its ability to be fully and fairly informed.

II. The First Amendment to the U.S. Constitution Affords Journalists a Qualified Privilege to Decline to Produce Newsgathering Materials.

Michigan has joined an overwhelming majority of jurisdictions that have afforded journalists a qualified privilege to refuse to reveal newsgathering materials, based in part on the Supreme Court's fractured majority opinion in *Branzburg v. Hayes*, 408 U.S. 665 (1972) and the cases that interpret that opinion.

A. Branzburg v. Hayes and its Progeny

The seminal case in establishing a qualified privilege for reporters under the First Amendment is *Branzburg v. Hayes*, 408 U.S. 665 (1972). In *Branzburg*, the United States Supreme Court decided four cases involving journalists' obligations to appear before a grand jury and to testify about alleged crimes that they witnessed.⁶ In deciding the first case, *Branzburg v. Pound*, the Court addressed the issue of the press's privilege to decline to disclose its confidential sources. Although the case produced no clear majority, the plurality emphasized that "without some protection for seeking out the news, freedom of the press could be eviscerated," and thus asserted that newsgathering qualifies for constitutional protection. *Branzburg*, 408 U.S. at 681. A majority of justices also made clear that reporters enjoy a qualified privilege, based in the First Amendment, to resist compelled disclosure of their

⁶ *Branzburg v. Pound*, 461 S.W.2d 345 (Ky. 1970); *Branzburg v. Meigs*, an unreported decision; *In re Caldwell*, 311 F. Supp. 358 (N.D. Cal.), *rev'd*, 434 F.2d 1081 (9th Cir. 1970); and *In re Pappas*, 266 N.E.2d 297 (1971).

newsgathering activities. *See id.* at 709-10 (Powell, J., concurring); *id.* at 725-52 (Stewart, J., dissenting, joined by Brennan, Marshall, J.J.); *id.* at 711-25 (Douglas, J., dissenting). Four Justices found that, under the facts in *Branzburg*, a grand jury subpoena was justified. Justice Powell agreed that a grand jury subpoena was justified, but wrote separately “to emphasize . . . the limited nature of the Court’s holding.” *Id.* at 709.

The Court does not hold that newsmen, subpoenaed to testify before a grand jury, are without constitutional rights with respect to the gathering of news or in safeguarding their sources. Certainly, we do not hold . . . that state and federal authorities are free to “annex” the news media as “an investigative arm of government.” . . . The asserted claim to privilege should be judged on its facts by the striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct. The balance of these vital constitutional and societal interests on a case-by-case basis accords with the tried and traditional way of adjudicating such questions. In short, the courts will be available to newsmen under circumstances where legitimate First Amendment interests require protection.

Id. at 709-10. Justice Powell thus explicitly advocated a case-by-case balancing test to gauge journalists’ claims of privilege.

Following *Branzburg*, eleven federal circuits⁷ have adopted this balancing test and held that the First Amendment establishes a qualified privilege from discovery of journalists’

⁷ *See e.g., Bruno & Stillman, Inc. v. Globe Newspaper Co.*, 633 F.2d 583, 595-96 (1st Cir. 1980); *United States v. LaRouche Campaign*, 841 F.2d 1176, 1181-82 (1st Cir. 1988); *United States v. Burke*, 700 F.2d 70 (2d Cir.), *cert. denied*, 464 U.S. 816 (1983) (quashing criminal defendant’s subpoena for reporter’s unpublished tapes, transcripts, notes, and other material because defendant could not show requisite need for the unpublished material); *United States v. Cutler*, 6 F.3d 67, 71 (2d Cir. 1993); *United States v. Cuthbertson*, 630 F.2d 139 (3d Cir. 1980), *cert. denied sub nom. Cuthbertson v. CBS, Inc.*, 449 U.S. 1126 (1981) (qualified privilege protects non-broadcasted television outtakes); *LaRouche v. NBC*, 780 F.2d 1134, 1139 (4th Cir.), *cert. denied*, 479 U.S. 818 (1986); *Church of Scientology Int’l v. Daniels*, 992 F.2d 1329, 1335 (4th Cir.), *cert. denied*, 114 S. Ct. 195 (1993); *United States v. Calvert*, 523 F.2d 895, 902 n.4 (8th Cir. 1975), *cert. denied*, 424 U.S. 911 (1976) (quashing criminal defendant’s subpoena because of inadequate showing of need); *Shoen v. Shoen*, 5 (continued...)

newsgathering materials in civil and criminal cases.⁸ Similarly, throughout the country, the overwhelming majority of state courts – including Michigan courts – have recognized the reporter’s qualified privilege, relying on the First Amendment, their respective state constitutions, and the common law.⁹ These courts have ruled that when a reporter invokes his

F.3d 1289, 1292 (9th Cir. 1993); *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 436-37 (10th Cir. 1977); *United States v. Caporale*, 806 F.2d 1487, 1504 (11th Cir. 1986), *cert. denied*, 483 U.S. 1021 (1987); *Clyburn v. News World Communications, Inc.*, 903 F.2d 29 (D.C. Cir. 1990). Although the Seventh Circuit has not had occasion to recognize the privilege, federal district courts in that circuit have done so. *See United States v. Lopez*, 14 Med. L. Rep. 2203 (N.D. Ill. 1987); *Gulliver’s Periodicals v. Chas. Levy Circulating Co.*, 455 F. Supp. 1197 (N.D. Ill. 1978). *But see In re Grand Jury Proceedings*, 810 F.2d 580, 584-85 (6th Cir. 1987) (concluding reporter was not being harassed and subpoena was issued in good faith).

⁸ In addition to the federal courts of appeal, Supreme Court Justices in chambers also have explicitly recognized the privilege. *See In re Roche*, 448 U.S. 1312, 1315 (Brennan, Circuit Justice 1980); *New York Times Co. v. Jascavevich*, 439 U.S. 1304, 1305 (Marshall, Circuit Justice 1978).

⁹ *See, e.g., Norandal, U.S.A., Inc. v. Local Union No. 7468*, 13 Media L. Rep. (BNA) 2167, 2168 (Ala. Cir. Ct. 1986); *Coney v. State*, 699 P.2d 899, 902 (Alaska App. 1985); *Matera v. Superior Court*, 170 Ariz. 446, 448-49 (1992); *Saxton v. Arkansas Gazette Co.*, 264 Ark. 133 (1978); *New York Times Co. v. Superior Court*, 51 Cal. 3d 453, 460 n.8 (1990); *Henderson v. People*, 879 P.2d 383, 392-94 (Colo. 1994); *Strade v. Connecticut Newspapers, Inc.*, 193 Conn. 313, 1007 n.4 (1984); *Delaware v. Hall*, 16 Media L. Rep. (BNA) 1414, 1414-15 (Del. Mun. Ct. 1989); *Tribune Co. v. Huffstetler*, 489 So.2d 722, 723 (Fla. 1986); *Nobles v. State*, 201 Ga. App. 483, 486 (1991); *Matter of Contempt of Wright*, 700 P.2d 40, 44-45 (Idaho 1985); *People v. Palacio*, 240 Ill. App. 3d 1078 (1993); *In re Stearns*, 12 Media L. Rep. (BNA) 1837, 1841 (Ind. Ct. App. 1986); *Bell v. City of Des Moines*, 412 N.W.2d 585, 587-88 (Iowa 1987); *State v. Sandstrom*, 581 P.2d 812, 814-15 (Kan. 1978), *cert. denied*, 440 U.S. 929 (1979); *In re Ridenhour*, 520 So. 2d 372, 376 (La. 1988); *In re Letellier*, 578 A.2d 722, 726 (Me. 1990); *Chesapeake Publishing Corp. v. Williams*, 661 A.2d 1169 (Md. 1995); *Sinnott v. Boston Retirement Bd.*, 524 N.E.2d 100, 104 (Mass.), *cert. denied*, 488 U.S. 980 (1988); *King v. Photo Marketing Assn. Int’l.*, 327 N.W.2d 515, 517 (Mich. App. 1982); *CBS Inc. v. Campbell*, 645 S.W.2d 30, 32-33 (Mo. App. 1982); *Sible v. Lee Enterprises, Inc.*, 224 Mont. 163, 168 (1986); *Las Vegas Sun, Inc. v. District Court*, 761 P.2d 849, 853-54 (Nev. 1988); *State v. Siel*, 444 A.2d 499, 502-03 (N.H. 1982); *Dairy Stores, Inc. v. Sentinel Publishing Co.*, 104 N.J. 125 (1986); *O’Neill v. Oakgrove Constr., Inc.*, 523 N.E.2d 277, 277-78 (N.Y. 1988); *Clark v. Brown*, 99 N.C. App. 255 (1990); *Taylor v. Miskovsky*, 640 P.2d 959, 961-62 (Okla. 1981); *Hass v. Port of Portland*, 829 P.2d 1008, 1011-12 (Or. App. 1992); (continued...)

qualified privilege, the court must balance the need for disclosure against the concerns of a free and unhindered press.¹⁰ After *Branzburg* established that the First Amendment protected such work product, the federal and state courts quickly, comprehensively, and decisively recognized the media's qualified privilege over newsgathering materials.

B. This Court Should Follow its Holding in *King* and Quash Police Subpoenas Based On The Qualified Newsgathering Privilege.

In *King v. Photo Marketing Association International*, this Court joined the majority of federal and state courts recognizing the newsgathering privilege announced in *Branzburg*. “Reporters of general news are usually protected against compelled disclosure of confidential sources. The so-called ‘news writer’s privilege’ is based upon the need to guarantee the unimpeded flow of information, comment, and opinion to the general public.” 327 N.W.2d at 517 (citing *Branzburg*, 408 U.S. 655) (internal citations omitted). In *King*, this Court held that, in order for a civil litigant’s subpoena to defeat the presumption of First Amendment

McMenamin v. Tartaglione, 590 A.2d 802, 811 (Pa. Cmwlth. 1991); *Hopewell v. Midcontinent Broadcasting Corp.*, 538 N.W.2d 780 (S.D. 1995); *State v. St. Peter*, 315 A.2d 254, 255-56 (Vt. 1974); *Brown v. Commonwealth*, 204 S.E.2d 429, 431 (Va.), *cert. denied*, 419 U.S. 966 (1974); *Snedigar v. Hoddersen*, 786 P.2d 781, 783-84 (Wash. 1990); *State v. Henry*, 182 W. Va. 500, 504-05 (1990); *Zelenka v. State*, 266 N.W.2d 279, 287 (Wis. 1978); *but see NBC v. Lake City Court of Common Pleas*, 556 N.E.2d 1120 (Ohio 1990).

¹⁰ These courts generally adopt a test that weighs (1) whether there is a compelling need for the reporter’s testimony that (2) is highly relevant to the inquiry at hand, and (3) the information sought is unavailable from any alternative source. *See Caporale*, 806 F.2d at 1504; *LaRouche*, 780 F.2d at 1139; *In re Selcraig*, 705 F.2d 789, 792 (5th Cir. 1983); *Burke*, 700 F.2d at 77; *Zerrilli*, 656 F.2d at 712-15; *Bruno & Stillman, Inc.*, 633 F.2d at 595; *Cuthbertson*, 630 F.2d at 147; *Silkwood*, 563 F.2d at 436; *cf. King*, 327 N.W.2d at 518 (requiring showing that (1) information requested “goes to the heart of the litigant’s case,” and (2) the litigant has exhausted all other means of obtaining the information).

protection, the litigant must show that: “(1) the requested information goes to the heart of the litigant’s case; and (2) the litigant has exhausted all other means of obtaining the information.” *King*, 327 N.W.2d at 518.¹¹ The Court should quash the subpoenas at issue in this case because they fail both prongs of the *King* test.

First, the subpoenas are not targeted to the “heart” of any criminal prosecution. They are general demands to media organizations to produce any information “concerning” the riots. One example illustrates the generality of the subpoenas in suit, requiring the Lansing State Journal to produce:

Any and all ORIGINAL video and still photographic film footage, no [sic] limited to only broadcast footage, taken by any employee and/or agent of Lansing St. Journal concerning the civil disorder/riot that occurred in the City of East Lansing and the campus of Michigan State University beginning on March 27, 1999 at approximately 10:00 p.m. and until the early morning hours of March 28, 1999, including any ASSOCIATED PRESS photographs taken.

With all due respect to the police, these subpoenas constitute little more than a dragnet of media organizations as a substitute for routine detective work. The subpoena does not limit the photos or video to be produced in any way; it requires *original* film and video; and it

¹¹ Although *King* was a civil case, its reasoning should govern the facts of this criminal case. In the grand jury subpoena context, Michigan courts still follow the reasoning of *Branzburg* in allowing the police to subpoena press materials. *In re Contempt of Stone*, 397 N.W.2d 244, 249 (Mich. App. 1986). However, as this court has recognized, in cases outside the grand jury context – both criminal and civil – courts “using a balancing approach, have been willing to accord a privilege to newsgatherers more liberal than that found in *Branzburg*.” *Id.* See, e.g. *King*, 327 N.W.2d at 518 (finding newsgathering privilege in civil case); *Marketos v. American Employers Ins. Co.*, 460 N.W.2d 272, 278 (recognizing qualified privilege but declining to apply it where press conceded that subpoenaed photos were not confidential). Therefore in civil and criminal cases not (continued...)

demands images of both legal and illegal activity. Far from being targeted to the “heart” of a criminal case, these subpoenas really represent an unconstitutional “fishing expedition” for evidence of crimes being committed.

Similarly, the police have not demonstrated that they have exhausted all other means of obtaining the information. There are many avenues of information gathering available to the police. First, scores of police officers personally witnessed the riots. Police can interview identified criminals, talk to students generally, or offer rewards for information related to criminal activity. If the police are interested in video or photographic evidence, they may use published materials, offer rewards for such evidence, or request that the media volunteer unpublished materials. These are merely examples to illustrate a point: under Michigan law, the confidential newsgathering materials of the press must be the last resort of police, not the first. *Cf. Tavoulares v. Piro*, 93 F.R.D. 11, 17 (D.D.C. 1981).¹²

Michigan has recognized a newsgathering privilege under the First Amendment broad enough to cover the materials sought in this case. The editorial discretion exercised by the media about which facts to report and which photos to make public are not subject to police control. Allowing the police or prosecutors to dictate which notes, video recordings,

involving a grand jury subpoena, the newsgathering privilege and balancing test recognized in *King* govern.

¹² The Department of Justice has recognized the importance of the journalists’ privilege and has promulgated regulations requiring information to be obtained from alternative sources. *See* 28 C.F.R. § 50.10 (“Because freedom of the press can be no broader than freedom of reporters to investigate and report the news, the prosecutorial power of the government should not be used in such a way that it impairs a reporter’s responsibility to cover as broadly as possible controversial issues”).

or photographs become public would eliminate the very confidentiality that Michigan courts have sought to protect since *Branzburg* and *King*.

C. Allowing Subpoenas of Unpublished Newsgathering Materials Will Chill Reporting of Matters of Public Concern and Endanger Journalists.

Finally, in considering the scope of the newsgathering privilege, the Court should weigh the possible chilling effect that the grant of subpoenas will have on confidential sources. Because confidential sources are vital to the rigorous coverage of public life, the Court should protect the privilege of the media to protect its confidential information. If these confidential sources “dry up,” the media will lose access to stories and photographs of important public interest.

Allowing the police to annex the media for criminal investigations not only jeopardizes newsgathering, but it also puts journalists in danger of physical harm. If the police were able easily to gain access to media files with subpoenas seeking general criminal evidence, journalists and photographers on assignment would be seen as agents of the police. They would face many of the same dangers as those who enforce the law, without any of the protections. Journalists do not carry firearms, handcuffs, or night sticks; they do not wear bulletproof vests; and they may not arrest suspects or call for backup. In many circumstances, all that protects the media is its independence – the promise that it may be an impartial observer and, on occasion, a confidential one. The dangers to journalists are not speculative or remote. In the March 27-28 East Lansing riots, a photographer was struck on the head with a bottle, causing a cut that required nine stitches to repair, and a television news truck was attacked. Granting general police subpoenas for investigatory purposes not

only threatens the independence and efficacy of the press, but it threatens journalists' safety as well. Accordingly, the Court should reaffirm the newsgathering privilege it recognized in *King* and protect the important First Amendment issues at stake in this case.

CONCLUSION

For the foregoing reasons, *amicus curiae* National Press Photographers Association respectfully requests that this Court reverse the 54-B District Court's April 9, 1999 Order, quash all pending subpoenas issued to the media for unpublished or unbroadcast newsgathering materials, and grant Petitioner/Appellant's motion for a protective order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above instrument has been sent by facsimile and overnight mail to all of the following counsel of record on this 20th day of April, 1999, as follows:

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