

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

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STATE OF WISCONSIN

**FILED**

IN MATTER OF SUBPOENA TO:

JAN 17 2007

Calumet County Sheriff's Dept.  
Incident No. 05-157-995

LAURA RICCIARDI, and  
SYNTHESIS FILMS,

**CLERK OF CIRCUIT COURT**

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF  
SILHA CENTER FOR THE STUDY OF MEDIA ETHICS AND LAW

The Silha Center for the Study of Media Ethics and Law ("Silha Center") respectfully submits this motion for leave to file a brief *amicus curiae* before the court related to third-party journalist Lauara Ricciardi's and Synthesis Films' motion to quash subpoena.

The Silha Center is a research center located within the School of Journalism and Mass Communication at the University of Minnesota. Its primary mission is to conduct research on, and promote understanding of, legal and ethical issues affecting the mass media. The Silha Center also sponsors an annual lecture series; hosts forums, conferences and symposia; produces the Silha Bulletin, a quarterly newsletter, and other publications; and provides information about media law and ethics to the public.

The Silha Center believes that the accompanying *amicus* brief may assist the Court in its analysis of the case. *Amicus* is concerned that this Court may repudiate Wisconsin's tradition of recognizing a vibrant journalist's privilege by curtailing it in criminal proceedings. Permitting the state to enforce its subpoena for Ricciardi's tapes will have a detrimental impact on journalists by subjecting them to future subpoenas by the state. This will inevitably hinder the newsgathering process, because individuals will be hesitant to speak to journalists for fear that they will later be dragged into litigation. Such a consequence must be avoided in order to preserve the media's role in informing the public.

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(1)

The state contends that the journalist's privilege should not apply in this case for two reasons.

First, the state contends that any journalist's privilege should not cover journalists subpoenaed in criminal cases who are not protecting confidential sources. However, the type of proceeding and confidentiality of the material being subpoenaed are immaterial when considering the harms caused by subpoenaing journalists. Subpoenaing journalists hinders them in their work by intruding on the editorial process, creating a perception that they are working as an investigative arm of the state, and providing an incentive for them to purge their files of materials that could be used to enhance the free flow of information to the public. Furthermore, although the state cites various court rulings that have not recognized a journalist's privilege for nonconfidential material in criminal cases, other federal circuits have recognized this privilege in situations analogous to the instant case. *See e.g., United States v. Cuthbertson*, 630 F.2d 139 (3rd Cir. 1980) *United States v. Marcos*, 17 Media L. Rep. 2005 (S.D.N.Y. 1990) *State ex rel. Charleston Mail Ass'n v. Ranson*, 488 S.E.2d 5 (W. Va. 1997).

Furthermore, the state's subpoena is overbroad and unduly intrusive on Riccardi's work as a journalist. Seeking all of Riccardi's tapes will prevent her from completing a valuable documentary film both because of the time it would require of her, and because it would hinder her ability to acquire sources in the future. The Pennsylvania Supreme Court in *In re The Twenty-Fourth Statewide Investigating Grand Jury Petition of Commonwealth of Pennsylvania*, 907 A.2d 505 (Pa. 2006) recently considered an analogous situation involving a newspaper company, and recognized the chilling effect on journalists of broad subpoenas issued by state government.

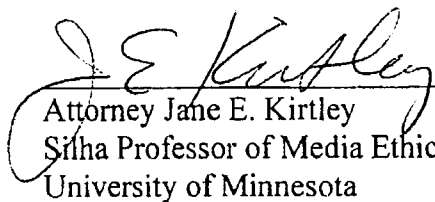
Second, the state claims that Ricciardi does not meet the definition of a journalist and is instead an "investigative arm" of Steven Avery's defense team, and would not be covered by any privilege the court may recognize. However, two courts have ruled that documentary film makers can be considered to be journalists for purpose of a journalist's privilege, the Tenth Circuit in *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433 (10th Cir. 1977), and a New Jersey court in *Marshall v. Hendricks*, No. 97-CV-5618 (D.N.J. Sept. 4, 2003). In addition, since the inception of her involvement with this case, Ricciardi has intended to complete a documentary film, distinguishing her from the individual in *von Bulow by Auersberg v. von Bulow*, 811 F.2d 136 (2d 1987), to whom the court did not grant the protection of the journalist's privilege.

*Amicus* takes no position regarding the guilt or innocence of the defendants in this matter. It instead asks this Court not to limit Wisconsin's robust journalist's privilege simply because the state speculates that some of Ricciardi's materials may possibly be useful to it. The Court should instead grant Ricciardi's motion to quash and protect the interest of the people of Wisconsin in receiving information that will help them make informed decisions about their government and to participate fully in the democratic process.

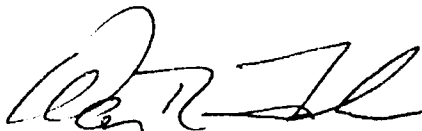
#### CONCLUSION

For the foregoing reasons, *amicus* respectfully requests that the Court grant leave to file the proposed brief *amicus curiae*.

Dated: January 11, 2006.

  
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Attorney Jane E. Kirtley  
Silha Professor of Media Ethics and Law  
University of Minnesota

Dated: January 11, 2006.

  
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