

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 2017-CR-4286
)	
JASON VAN DYKE,)	Judge Vincent M. Gaughan
)	
Defendant.)	
)	
)	

**MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
AND 18 MEDIA ORGANIZATIONS FOR LEAVE TO FILE AN *AMICUS* BRIEF**

The Reporters Committee for Freedom of the Press, American Society of Journalists and Authors, American Society of News Editors, The Associated Press, Associated Press Media Editors, Association of Alternative Newsmedia, BuzzFeed, Chicago Tribune Company LLC, Dow Jones & Company, Inc., First Look Media Works, Inc., Gannett Co., Inc., Illinois Broadcasters Association, Illinois Press Association, News Media Alliance, Online News Association, Radio Television Digital News Association, Society of Professional Journalists, Sun-Times Media, LLC, and Univision Communications Inc. (collectively, “*amici*”) respectfully request that this Court grant leave to file the attached *amicus* brief (Exhibit A) in support of Jamie Kalven’s motion to quash the subpoena. A proposed order is attached as Exhibit B. The Reporters Committee has informed all parties to this matter of its intent to submit the attached *amicus* brief. Kalven consented to its filing. The government had no objection. Defendant Jason Van Dyke has not responded to our request.

Amici submit the attached brief to aid the Court in interpreting the Illinois Reporter's Privilege Act, 735 ILCS 5/8-901, *et seq.* (the "Act"). *Amici* are all media organizations that publish information or represent the interests of those that do. Their brief will be valuable to this Court because of their experience analyzing legal issues that touch on First Amendment rights and because of their direct interests in protecting the freedom of the press. As representatives and members of the news media, the resolution of Kalven's motion is of central importance to *amici*. The journalists on whose behalf *amici* advocate regularly rely on confidential sources in their newsgathering efforts and depend on the protections of the reporter's privilege to assure such sources that their confidentiality will be maintained. When a subpoena demands information about confidential sources, the specter of enforcing that subpoena has a chilling effect on all future sources who may have valuable information about matters of public concern, but need an assurance of confidentiality before sharing it. *See In re Arya*, 226 Ill. App. 3d 848, 852 (1992). If those sources never come forward, the public is deprived of this information. Such subpoenas also threaten the neutrality and independence of the news media, casting them as agents of discovery in legal proceedings that do not involve them. *See id.* at 861.

Amici understand that *amicus* briefs are unusual in Circuit Court, but they are not unprecedented. *See Roanoke Agency, Inc. v. Edgar*, 101 Ill. 2d 315, 317 (1984) (noting that "[t]he Attorney General of Illinois, as *amicus curiae*, participated in the circuit court proceedings in support of Roanoke's position"). Given the importance of the issues to *amici* and the public in general, *amici* request leave to be heard.

The individual descriptions of each of the *amici* are as follows:

The Reporters Committee for Freedom of the Press

The Reporters Committee is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding the First Amendment rights and freedom of information interests of the news media and the public. The Reporters Committee has provided assistance, guidance, and research in First Amendment and freedom of information litigation since 1970.

American Society of Journalists and Authors

Founded in 1948, the American Society of Journalists and Authors (ASJA) is the nation's professional organization of independent nonfiction writers. ASJA's membership consists of outstanding freelance writers of magazine articles, trade books, and many other forms of nonfiction writing, each of whom has met ASJA's exacting standards of professional achievement.

American Society of News Editors

With some 500 members, American Society of News Editors ("ASNE") is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

The Associated Press

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper members. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news

services and Internet content providers. The AP operates from 300 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

The Associated Press Media Editors

The Associated Press Media Editors is a nonprofit, tax-exempt organization of newsroom leaders and journalism educators that works closely with The Associated Press to promote journalism excellence. APME advances the principles and practices of responsible journalism; supports and mentors a diverse network of current and emerging newsroom leaders; and champions the First Amendment and promotes freedom of information.

Association of Alternative Newsmedia

Association of Alternative Newsmedia ("AAN") is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like The Village Voice and Washington City Paper. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

BuzzFeed

BuzzFeed is a social news and entertainment company that provides shareable breaking news, original reporting, entertainment, and video across the social web to its global audience of more than 200 million.

Chicago Tribune Company, LLC

Chicago Tribune Company, LLC, published the Chicago Tribune, one of the largest daily newspapers in the United States. Its popular news and information website, www.chicagotribune.com, attracts a national audience.

Dow Jones & Company, Inc.

Dow Jones & Company, Inc., is a global provider of news and business information, delivering content to consumers and organizations around the world across multiple formats, including print, digital, mobile, and live events. Dow Jones has produced unrivaled quality content for more than 130 years, and today has one of the world's largest newsgathering operations globally. It produces leading publications and products including the flagship *Wall Street Journal*; *Factiva*; *Barron's*; *MarketWatch*; *Financial News*; Dow Jones Risk & Compliance; Dow Jones Newswires; and Dow Jones VentureSource.

First Look Media Works, Inc.

First Look Media Works, Inc. is a new non-profit digital media venture that produces The Intercept, a digital magazine focused on national security reporting.

Gannett Co., Inc.

Gannett Co., Inc. is an international news and information company that publishes 109 daily newspapers in the United States and Guam, including USA TODAY. Each weekday, Gannett's newspapers are distributed to an audience of more than 8 million readers, and the digital and mobile products associated with the company's publications serve online content to more than 100 million unique visitors each month.

Illinois Broadcasters Association

The Illinois Broadcasters Association ("IBA") is the leading advocate for the Illinois broadcast industry and is actively engaged in shaping public policy to create positive legal and regulatory environments for its radio and television station members. For over 60 years, the IBA has been Illinois' sole trade association providing broadcast news, advertising and content to metropolitan areas and rural communities alike.

Illinois Press Association

The Illinois Press Association (“IPA”) is the largest state press organization in the United States. Founded in 1865 near the end of the Civil War, the IPA’s members include nearly all of the more than 600-plus newspapers in Illinois. Throughout its long history, the IPA has been dedicated to promoting and protecting the First Amendment interests of newspapers and citizens before the Illinois legislature and Illinois courts.

News Media Alliance

The News Media Alliance is a nonprofit organization representing the interests of online, mobile and print news publishers in the United States and Canada. Alliance members account for nearly 90% of the daily newspaper circulation in the United States, as well as a wide range of online, mobile and non-daily print publications. The Alliance focuses on the major issues that affect today’s news publishing industry, including protecting the ability of a free and independent media to provide the public with news and information on matters of public concern.

Online News Association

Online News Association (“ONA”) is the world’s largest association of online journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. ONA’s more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA hosts the annual Online News Association conference and administers the Online Journalism Awards. ONA is dedicated to advancing the interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence and freedom of expression and access.

Radio Television Digital News Association

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

Society of Professional Journalists

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists, and protects First Amendment guarantees of freedom of speech and press.

Sun-Times Media, LLC

Sun-Times Media, LLC (the “Sun-Times”) is the publisher of the Chicago Sun-Times daily newspaper as well as weekly newspapers and internet news sites. The Chicago Sun-Times, formed in 1948, is circulated throughout the City of Chicago and suburbs. The newspaper has won eight Pulitzer Prizes and has a tradition of fostering in-depth investigative reporting. Consequently, the freedom of speech and the press in Illinois is a core interest of the Sun-Times, and it seeks to participate as *amicus curiae* to defend important First Amendment free speech principles.

Univision Communications Inc.

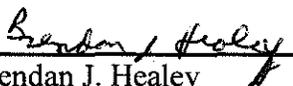
Univision Communications Inc. (“UCI”) is the leading media company serving Hispanic America. UCI is a leading content creator in the U.S. and includes the Univision Network,

UniMás and Univision Cable Networks. UCI also includes the Fusion Media Group, a division that serves young, diverse audiences, which includes cable networks and a collection of leading digital news sites including *Gizmodo*, *Deadspin*, *The Root*, *Splinter* and *Jezebel*.

For these reasons, *amici* respectfully request leave to file the attached *amicus* brief in support of reporter Jamie Kalven's motion to quash the subpoena.

Dated: December 5, 2017

Respectfully submitted,


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CERTIFICATE OF SERVICE

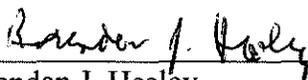
The undersigned, an attorney, certifies that he caused a true and correct copy of the foregoing **MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 18 MEDIA ORGANIZATIONS FOR LEAVE TO FILE AN AMICUS BRIEF** to be served upon:

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EXHIBIT A

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)

Plaintiff,)

v.)

JASON VAN DYKE,)

Defendant.)

Case No.: 2017-CR-4286

Judge Vincent M. Gaughan

**BRIEF OF *AMICI CURIAE*
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
AND 18 MEDIA ORGANIZATIONS IN SUPPORT OF
REPORTER JAMIE KALVEN'S MOTION TO QUASH SUBPOENA**

INTRODUCTION

This case concerns whether journalist Jamie Kalven should be compelled to disclose information about his confidential sources from his 2015 reporting on the shooting of Laquan McDonald, an African American teenager. The defendant, Chicago police officer Jason Van Dyke, is now facing murder charges for McDonald's death and has subpoenaed Kalven's testimony. The Reporters Committee for Freedom of the Press and 18 additional media organizations¹ (collectively, "*amici*") submit this brief as *amici curiae* in support of Kalven's motion to quash the subpoena.

Kalven's article, "Sixteen Shots," revealed an autopsy report that showed McDonald was shot 16 times throughout his body; an unnamed witness' account that McDonald had been "shying away" from police when they started shooting; and confirmation from an unnamed source that a police dashboard-camera video existed documenting the incident. Jamie Kalven, *Sixteen Shots*, Slate Magazine, Feb. 10, 2015, <https://perma.cc/X5BN-KQQ6>. The autopsy report and witness account contradicted the official narrative of the shooting that McDonald had lunged at the police with a knife, and one officer had shot him in the chest. *Id.* Chicago city officials were subsequently forced to release the video, which showed McDonald being shot repeatedly, and prosecutors charged Van Dyke with first-degree murder. Julie Bosman, *Journalist Who Told Laquan McDonald's Story Faces Fight Over Sources*, N.Y. Times, Nov. 26, 2017, <https://perma.cc/2PWM-6CNS>.

¹ These media organizations are the American Society of Journalists and Authors, American Society of News Editors, The Associated Press, Associated Press Media Editors, Association of Alternative Newsmedia, BuzzFeed, Chicago Tribune Company LLC, Dow Jones & Company, Inc., First Look Media Works, Inc., Gannett Co., Inc., Illinois Broadcasters Association, Illinois Press Association, News Media Alliance, Online News Association, Radio Television Digital News Association, Society of Professional Journalists, Sun-Times Media, LLC, and Univision Communications Inc.

Compelling Kalven’s testimony would violate the Illinois Reporter’s Privilege Act, 735 ILCS 5/8-901, *et seq.* (the “Act”), which was adopted to protect precisely the types of reporter-source communications at issue in this case – those that shed light on matters of critical public importance, such as how police shootings of civilians are investigated and resolved. Divesting a reporter of these protections is appropriate only under extraordinary circumstances, where “all other available sources of information have been exhausted” and “disclosure of the information sought is essential to the protection of the public interest involved.” *Id.* at 5/8-907. Although the specific reasons that Van Dyke asserts for compelling this testimony are under seal, he must satisfy a stringent standard for overcoming the privilege, which protects the vital flow of information to the public.

ARGUMENT

I. The Illinois Reporter’s Privilege Act broadly protects confidential sources, providing a vital safeguard to the newsgathering process.

Illinois has long recognized the need to provide strong protections for free speech and an unfettered press. This principle is reflected in the Illinois reporter’s privilege, which “evolved from a common law recognition that the compelled disclosure of a reporter’s sources could compromise the news media’s first amendment right to freely gather and disseminate information.” *In re Special Grand Jury Investigation*, 104 Ill. 2d 419, 424 (1984) (internal citations omitted). In 1971, Illinois codified this principle in the Act, which conferred “a *presumptive privilege* on the newsgathering functions of reporters and the media.” Samuel Fifer & Gregory R. Naron, *Illinois*, in REPORTER’S PRIVILEGE COMPENDIUM, <https://perma.cc/M2ME-QRRX>; *In re Arya*, 226 Ill. App. 3d 848, 852 (1992). In the subsequent decades, a national consensus on this issue has emerged, as nearly every other state has adopted some form of protection for reporters’ confidential sources. See *United States v. Sterling*, 724 F.3d 482, 532

(4th Cir. 2013) (Gregory, J., dissenting) (“Today, only one state, Wyoming, has not enacted or adopted a reporter’s privilege.”).

The Act forbids courts from compelling a person to disclose the source of any information (confidential or not) obtained by a reporter, except where no other law prevents the disclosure, “all other available sources of information have been exhausted,” and such disclosure is “essential” to protect the public interest. 735 ILCS 5/8-901, 907. The subpoenaing party has the burden of satisfying this rigorous test. *In re Arya*, 226 Ill. App. at 862. By placing this burden on the subpoenaing party, the legislature ensured that compelled disclosure would occur only as a “last resort” and under extraordinary circumstances. *Id.* at 862.

The legislature adopted this high standard to protect the “paramount public interest” in maintaining “a vigorous, aggressive and independent press capable of participating in robust, unfettered debate over controversial matters, an interest which has always been a principal concern of the First Amendment.” *People v. Silverstein*, 89 Ill. App. 3d 1039, 1043 (1980), *rev’d on other grounds*, 87 Ill. 2d 167 (1981) (quoting *Baker v. F&F Inv.*, 470 F.2d 778, 782 (2d Cir. 1972)). The Act aims to “preserve the autonomy of the press by allowing reporters to assure their sources of confidentiality, thereby permitting the public to receive complete, unfettered information.” *In re Arya*, 226 Ill. App. at 852 (citing *Zerilli v. Smith*, 656 F.2d 705, 710–11 (D.C. Cir. 1981)).

Protection of reporters’ confidential sources serves the health of our democracy by ensuring that citizens have access to information needed “to make informed political, social, and economic choices.” *Zerilli*, 656 F.2d at 711. The ability to foster and maintain confidential relationships with sources is crucial to effective reporting, since reporters often rely on confidential sources to publish news stories that inform the public of sensitive and important

issues. The role of confidential sources in the newsgathering process cannot be overstated. Through such sources, the public has learned about a myriad of government abuses and corruption through the decades—stories of profound national importance, like the involvement of the Nixon administration in the Watergate break-in and subsequent cover-up, instances of prisoner abuse in Iraqi prisons, and the federal government’s secret and illegal spying programs after the September 11th attacks. See David Von Drehle, *FBI’s No. 2 Was “Deep Throat”*: Mark Felt Ends 30-Year Mystery of *The Post’s* Watergate Source, Wash. Post, June 1, 2005, <https://perma.cc/2QQV-U2AD>; Todd Richissin, *Soldiers’ Warnings Ignored*, Balt. Sun, May 9, 2004, <https://perma.cc/4TKY-N2NN>; James Risen & Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. Times, Dec. 16, 2005, <https://perma.cc/J4UY-2HDU>.

When reporters’ confidential source relationships are threatened, sources are less willing to speak to the press, and the public loses out on newsworthy information. As former Illinois Governor Richard Ogilvie explained upon signing the Act into law, the reporter’s privilege promotes a “better, more informed public, for it allows reporters to seek the truth wherever it is to be found, without fear that their sources of information will be cut off by unnecessary disclosures.” *In re Arya*, 226 Ill. App. at 852 (internal citations omitted). The privilege “protects anonymous sources from retribution for revealing publicly valuable—though damaging or even damning—information.” *Id.* (citing *United States v. Criden*, 633 F.2d 346, 356 (3d Cir. 1980)). It “allows information to flow more freely from confidential, anonymous sources if they can tell the reporter, ‘Don’t tell anyone I told you, but...’” *Id.*

The dangers of compelled disclosure of a reporter’s confidential sources loom especially large in criminal cases. Such compelled disclosure could result in the prosecution using the news media as an investigative arm of the government, undermining the media’s autonomy and

contravening legislative intent. *See id.* at 861. The news media's reports on criminal activities are an important source of information for the public about crime and government response to crime. Sources who believe that reporters are working as an investigative arm of the government will be less likely to come forward with truthful information about government misconduct, leading to a loss of public knowledge about these critical issues. Thus, the presumption against compelled disclosure of confidential sources is heightened in criminal cases, like this, where the "important social interests" underlying the privilege are "particularly compelling," and journalists should be "encouraged to investigate and expose evidence of criminal wrongdoing." *United States v. Lopez*, No. 86 CR 513, 1987 WL 26051, at *1 (N.D. Ill. Nov. 30, 1987) (citing *United States v. Burke*, 700 F.2d 70, 77 (3d Cir. 1983)).

II. The strict requirements of the Act are not overcome by speculative arguments.

Amici do not have access to Van Dyke's opposition papers containing his legal argument as to why the reporter's privilege has been overcome in this case. Despite the public's presumptive right of access to court records under the First Amendment, common law, and Illinois statutory law, Van Dyke's opposition papers have been filed under seal. *Skolnick v. Altheimer & Gray*, 191 Ill.2d 214, 230–32 (2000). *Amici* and the public are thus left in the dark in a case of great public importance.

Regardless of Van Dyke's specific arguments, he must meet his burden of showing that the stringent standards of the Act have been met before the reporter's privilege may be overcome in this case. Assuming, *arguendo*, that Van Dyke seeks disclosure of any "reports and/or information [Kalven] received regarding this case, and when he received it," (Motion to Quash at 3) merely on the grounds that Van Dyke suspects Kalven "*may* have passed along [this] information to witnesses of the shooting, influencing their accounts to investigators," Bosman,

supra (emphasis added), then this Court should reject such a deficient application. Such speculation would not come close to establishing exhaustion or need; indeed, it is unclear why the testifying witnesses themselves could not testify as to what, if any, reports or information they received from Kalven. Such a slight argument would not justify the extreme, “last resort” remedy of compelling the disclosure of confidential sources. *See People v. Childers*, 94 Ill. App. 3d 104, 112 (1981) (affirming denial of application to divest reporter of source protections where “other sources not only were available to defendant but it is difficult to perceive what public interest might be involved”); *see also* Fifer & Naron, *supra* (collecting cases showing that Illinois courts have consistently upheld the powerful interests embodied in the Act and rejected frivolous attempts to compel disclosure of sources).

III. The public policy of the Act weighs decisively in favor of quashing Van Dyke’s subpoena.

In addition, the public interest in protecting confidential sources is particularly compelling in this case. Kalven’s reporting exposed misconduct by the Chicago Police Department and an official cover-up that led to a public accounting and an investigation by the U.S. Department of Justice. He won numerous awards for this article and others. Motion to Quash at 4. As the *New York Times* recently reported, “[i]f not for the reporting of Jamie Kalven, an independent journalist in Chicago, the world might never have known the name Laquan McDonald, a black teenager who was shot 16 times by a police officer as he walked down a street holding a folding knife.” Bosman, *supra*. Kalven’s article “forced the case out of obscurity in the Police Department and at City Hall and into public view.” Bosman, *supra*. The subsequent investigation into McDonald’s death “upended Chicago,” resulting in nightly demonstrations in the city, the firing of the police superintendent and the head of the Independent Police Review Authority, the state’s attorney’s loss of her re-election bid, calls for the mayor to

resign, and a U.S. Department of Justice investigation into possible civil rights abuses. *Bosman, supra.*

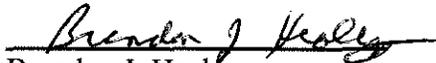
This story illustrates precisely why confidential source protections are necessary. Without them, the public may have never known how McDonald died, depriving it of the opportunity to hold the government and law enforcement accountable. Upholding Kalven's privilege to protect the identities of his confidential sources serves the vital goals of the Act and will encourage people to continue to reveal government misconduct to reporters. Without this privilege, Kalven faces potential contempt of court or other sanctions, including incarceration, for maintaining the confidentiality of his sources. Raising the specter of such harsh penalties for reporters in Illinois, simply for engaging in constitutionally protected newsgathering activity, would set a dangerous precedent. The Court should not countenance such a result.

CONCLUSION

For these reasons, the Court should grant Kalven's motion to quash the subpoena.

Dated: December 5, 2017

Respectfully submitted,


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EXHIBIT B

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Plaintiff,)
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 v.)
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 JASON VAN DYKE,)
)
 Defendant.)

Case No.: 2017-CR-4286

Judge Vincent M. Gaughan

**[PROPOSED] ORDER GRANTING MOTION OF
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
AND 18 MEDIA ORGANIZATIONS FOR LEAVE TO FILE AN *AMICUS* BRIEF**

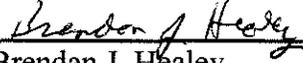
THIS MATTER comes before the Court on the motion (“Motion”) of the Reporters Committee for Freedom of the Press and 18 media organizations (collectively, “*amici*”) for leave to file an amicus brief in support of Jamie Kalven’s motion to quash the subpoena.

THE COURT, having considered the Motion, hereby ORDERS that the Motion is GRANTED, and the *amicus* brief attached to the Motion is DEEMED FILED.

DATED this ___ day of _____, 2017.

The Honorable Vincent Gaughan

Presented by:


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