

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (the “Agreement”) is made by and between *The Breeze*, the James Madison University newspaper; Katie Thisdell, *The Breeze*’s editor (“Thisdell”); Robert Boag, *The Breeze*’s Photo Editor (“Boag”); and David Casterline, a photographer for *The Breeze* (“Casterline”) (collectively, the “Newspaper Parties”), on the one hand, and the Office of the Commonwealth’s Attorney for Rockingham County, Virginia (the “Commonwealth’s Attorney’s Office”), Commonwealth’s Attorney Marsha Garst (“Garst”), and the Harrisonburg, Virginia Police Department, (collectively, the “Law Enforcement Parties”), and the James Madison University Police Department (“JMU”), on the other. This Agreement shall become effective on the date on which the last party has signed below (the “Effective Date”).

WHEREAS, Springfest was held on or about April 10, 2010;

WHEREAS, certain persons in attendance at Springfest engaged in various violent and unlawful acts, and the Law Enforcement Parties responded;

WHEREAS, Boag and Casterline took photographs on behalf of *The Breeze* of Springfest and certain of the acts being investigated by the Law Enforcement Parties;

WHEREAS, on or about April 15, 2010, the Commonwealth’s Attorney’s Office informally requested *The Breeze* to provide its unpublished photographs, which request was declined on the basis of the journalist’s privilege under the First Amendment, the Virginia Constitution and common law (the “Journalist’s Privilege”);

WHEREAS, on or about April 16, 2010, Garst, on behalf of the Commonwealth’s Attorney’s Office, obtained a warrant from the Circuit Court for Rockingham County for *The Breeze*’s photographs of Springfest (the “Warrant,” a copy of which is attached hereto as Exhibit A);

WHEREAS, also on or about April 16, 2010, Garst and other agents of the Law Enforcement Parties executed the Warrant on *The Breeze*;

WHEREAS, although the JMU Police Chief and a JMU Police Lieutenant were present when the warrant was being executed, JMU was not involved in obtaining the warrant, or pursuing or searching for the photographs of Springfest maintained by *The Breeze*;

WHEREAS, during the execution of the Warrant, Thisdell and counsel for *The Breeze* asserted that the seizure violated the Journalist’s Privilege and the Privacy Protection Act, 42 U.S.C. §2000aa *et seq.*;

WHEREAS, Garst and other agents of the Law Enforcement Parties seized approximately 962 digital photographs on two discs (the “Seized Photos”);

WHEREAS, on or about April 18, 2010, Garst, through her counsel, represented that the Law Enforcement Parties had not copied or reviewed the Seized Photos and returned the Seized Photos to *The Breeze*’s faculty advisor, Professor Roger Soenksen (“Soenksen”), who agreed to maintain the Seized Photos in his custody until receiving further instructions from both Garst and Thisdell, or from a court of competent jurisdiction;

WHEREAS, the Law Enforcement Parties indicated an ongoing intent to seek *The Breeze*'s Springfest photographs, including by subpoena if necessary, and the Newspaper Parties asserted that such photographs were protected by the Journalists' Privilege (the "Photograph Dispute");

WHEREAS, the Newspaper Parties indicated an interest in resolving the matter informally if possible but otherwise indicated an intention to pursue legal claims under the Privacy Protection Act and otherwise, including without limitation claims for attorneys fees and costs (the "Privacy Act Dispute");

WHEREAS, on or about May 3, 2010, Garst on behalf of the Law Enforcement Parties and Thisdell on behalf of the Newspaper Parties, through their respective counsel, entered into an agreement concerning the procedure for resolving Photograph Dispute and the Privacy Act Dispute, including to exchange certain information on a confidential basis in connection therewith (the "Procedure Agreement," a copy of which is attached hereto as Exhibit B);

WHEREAS, also on or about May 3, 2010, Garst, through her counsel, narrowed her office's request for photographs, identifying eight specific events during Springfest for which her office was seeking *The Breeze*'s photographs (the "May 3 Request for Photographs"), in order that the Parties could resolve the Photograph Dispute without the need for a subpoena and litigation of a motion to quash or a motion to compel;

WHEREAS, the Newspaper Parties and the Law Enforcement Parties have agreed to resolve their disputes, including without limitation the Photograph Dispute and the Privacy Act Dispute, as follows;

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and other undertakings set forth herein, it is mutually agreed as follows:

1. On or before May 31, 2010, the Newspaper Parties will respond to the May 3 Request for Photographs, pursuant to the Procedure Agreement, the terms of which are incorporated herein by reference and binding on all parties to this Agreement. If the Commonwealth's Attorney's Office is closed, Garst and Thisdell or Thisdell's representative shall work in good faith to coordinate a mutually agreeable procedure for delivery of the Newspaper Parties' response to the Request for Photographs. In connection therewith, the Law Enforcement Parties represent that the photographs requested in the May 3 Request for Photographs are essential to their investigation of the Springfest events and that they have no other sources of the information sought, including without limitation after the Law Enforcement Parties interviewed witnesses and arrestees and after a law enforcement task force completed its review of other photographs and video footage taken by law enforcement or available on the Internet or otherwise.

2. On the morning of June 1, 2010, and after the Newspaper Parties respond to the May 3 Request for Photographs, Garst will, without alteration or amendment other than to insert her signature and the number of photographs provided by the Newspaper Parties in the penultimate paragraph, publicly issue the statement attached hereto as Exhibit C on the letterhead of the Commonwealth's Attorney's Office (the "Public Statement") on behalf of herself and the Law Enforcement Parties. A signed copy of the final Public Statement shall be provided to the Newspaper Parties immediately prior to its public issuance. In connection therewith, the Law Enforcement Parties represent and warrant that during the period from when the Seized Photos

were taken on or about April 16, 2010 until the Seized Photos were provided to Soenksen on or about April 18, 2010, the Law Enforcement Parties and/or their employees and/or agents did not view any of the Seized Photos and did not make any copies of the discs containing the Seized Photos or any of the individual Seized Photos.

3. On or before June 1, 2010, Garst and Thisdell will each sign a letter in the form attached hereto as Exhibit D directing Soenksen to return the Seized Photos to *The Breeze*, and shall transmit it to Soenksen.

4. Within fourteen (14) days of Effective Date, the Law Enforcement Parties shall deliver a check made payable to "Levine Sullivan Koch & Schulz, L.L.P." in the amount of ten thousand dollars (\$10,000.00) (the "Attorneys Fees Reimbursement"). The Attorneys Fees Reimbursement reflects a portion of the attorneys fees and costs incurred by counsel for *The Breeze* in resolving the Photograph Dispute and the Privacy Act Dispute, including negotiating the return of the Seized Photos, negotiating the terms of the Procedure Agreement, responding to the May 3 Request for Photographs, agreeing on the language of the Public Statement, and drafting this Agreement. The Attorneys Fees Reimbursement is intended to fully and finally resolve any claim for a monetary payment to the Newspaper Parties, including for compensatory damages, punitive damages, attorney's fees and costs.

5. Contingent upon Garst's compliance with Paragraphs 2 and 3 of this Agreement and the Law Enforcement Parties' compliance with Paragraph 4 of this Agreement, the Newspaper Parties, on behalf of themselves and their parents, subsidiaries, affiliates, successors, partners, employees, agents or other associated entities, employers, heirs, trustees, successors, executors, administrators, attorneys, assigns, representatives and insurers (collectively, the "Newspaper-Affiliated Parties") hereby irrevocably, unconditionally, completely, fully, and forever release, acquit and forever discharge the Law Enforcement Parties and each of their parents, subsidiaries, affiliates, successors, partners, employees, agents or other associated entities, employers, heirs, trustees, successors, executors, administrators, attorneys, assigns, representatives and insurers (the "Law Enforcement-Affiliated Parties") from any and all claims, suits, process, demands, causes of action, debts, liabilities, rights, damages, costs, expenses or losses of every kind or nature whatsoever and by whomever asserted, in any forum or jurisdiction, within the United States or in any other nation or territory, whether at this time known or suspected, unknown or unsuspected, fixed or contingent, which the Newspaper-Affiliated Parties ever had, now have or hereafter can, shall or may ever have against any or all of the Law Enforcement-Affiliated Parties, in law or in equity, by reason of any omission, transaction, act, event or occurrence from the beginning of time through the Effective Date of this Agreement, including but not limited to any claim related to the Photograph Dispute and/or the Privacy Act Dispute, or the handling of, any such claims in connection with either such Dispute.

6. The Law Enforcement-Affiliated Parties hereby irrevocably, unconditionally, completely, fully, and forever release, acquit and forever discharge the Newspaper-Affiliated Parties from any and all claims, suits, process, demands, causes of action, debts, rights, damages, costs, expenses or losses of every kind or nature whatsoever and by whomever asserted, in any forum or jurisdiction, within the United States or in any other nation or territory, whether at this time known or suspected, unknown or unsuspected, fixed or contingent, which the Law Enforcement-Affiliated Parties ever had, now have or hereafter can, shall or may ever have against any or all of the Newspaper-Affiliated Parties, in law or in equity, by reason of any

omission, transaction, act, event or occurrence from the beginning of time through the effective date of this Agreement, including but not limited to any claim related to the Photograph Dispute and/or the Privacy Act Dispute, or the handling of, any such claims in connection with either such Dispute. The release contained in this Paragraph 6 is intended to include without limitation the agreement set forth in the penultimate sentence of page two of the Procedure Agreement (namely, that if The Breeze provides photographs sufficient to identify the individuals specified by Garst in each of the specific instances sought by Garst in the May 3 Request for Photographs, or if Thisdell, as Editor of The Breeze, otherwise states in writing and under oath that The Breeze has conducted a reasonably diligent search of its photographs and that The Breeze believes in good faith that it has no photographs related to a specific incident or incidents in its possession, the Law Enforcement-Affiliated Parties agree that the provision of such photographs and/or written statement that there are none will finally and conclusively resolve the Law Enforcement-Affiliated Parties' request for information from the Newspaper-Affiliated Parties; that they will not seek from the Newspaper-Affiliated Parties further information related to Springfest or criminal conduct in connection therewith, whether by warrant, by subpoena or otherwise; and that the Law Enforcement-Affiliated Parties will not seek any other type of relief against the Newspaper-Affiliated Parties in connection therewith). The release contained in this Paragraph 6 is not intended to limit (a) Garst's rights under the final sentence of page two of the Procedure Agreement (namely, that if The Breeze asserts the Journalist's Privilege or otherwise affirmatively refuses to produce photographs actually in its possession sufficient to identify the individuals specified by Garst in connection with a specific incident in the May 3 Request for Photographs, Garst shall not be precluded from issuing a subpoena seeking such photographs related to that incident (and only that incident) but not produced by The Breeze) or (b) the Law Enforcement Parties' ability to investigate and/or prosecute criminal conduct entirely unrelated to the Newspaper-Affiliated Parties' acts and/or omissions in connection with gathering and/or reporting news or events, including without limitation any and all activity arising out of and/or related to reporting, interviewing, photographing, investigating, gathering, writing, editing and/or disseminating news, information or images of events, whether or not such activity ultimately resulted in a published report.

7. Contingent upon Garst's compliance with Paragraphs 2 and 3 of this Agreement and the Law Enforcement Parties' compliance with Paragraph 4 of this Agreement, the Newspaper Parties, on behalf of themselves and, the Newspaper-Affiliated Parties, hereby irrevocably, unconditionally, completely, fully, and forever release, acquit and forever discharge JMU and each of their parents, subsidiaries, affiliates, successors, partners, employees, agents or other associated entities, employers, heirs, trustees, successors, executors, administrators, attorneys, assigns, representatives and insurers (the "JMU Parties") from any and all claims, suits, process, demands, causes of action, debts, liabilities, rights, damages, costs, expenses or losses of every kind or nature whatsoever and by whomever asserted, in any forum or jurisdiction, within the United States or in any other nation or territory, whether at this time known or suspected, unknown or unsuspected, fixed or contingent, which the Newspaper Parties ever had, now have or hereafter can, shall or may ever have against JMU, in law or in equity, by reason of any omission, transaction, act, event or occurrence from the beginning of time through the Effective Date of this Agreement, including but not limited to any claim related to the Photograph Dispute and/or the Privacy Act Dispute, or the handling of, any such claims in connection with either such Dispute.

8. The JMU Parties hereby irrevocably, unconditionally, completely, fully, and forever release, acquit and forever discharge the Newspaper-Affiliated Parties from any and all

claims, suits, process, demands, causes of action, debts, rights, damages, costs, expenses or losses of every kind or nature whatsoever and by whomever asserted, in any forum or jurisdiction, within the United States or in any other nation or territory, whether at this time known or suspected, unknown or unsuspected, fixed or contingent, which the JMU Parties ever had, now have or hereafter can, shall or may ever have against any or all of the Newspaper-Affiliated Parties, in law or in equity, by reason of any omission, transaction, act, event or occurrence from the beginning of time through the effective date of this Agreement, including but not limited to any claim related to the Photograph Dispute and/or the Privacy Act Dispute, or the handling of, any such claims in connection with either such Dispute. Without limiting the foregoing, the JMU Parties agree that they will not take any steps to obtain from any of the Newspaper-Affiliated Parties any photographs that are the subject of the Photograph Dispute, whether for use by the JMU Parties, the Law Enforcement Parties, or any other person or entity.

9. The Law Enforcement Parties represent and warrant that the Rockingham County, Virginia Sheriff's Office (the "Sheriff's Office") was not present during the execution of the Warrant, and did not participate in obtaining the Warrant or pursuing or searching for the photographs of Springfest maintained by *The Breeze*. The Law Enforcement Parties have provided a letter from the Sheriff's Office in the form attached hereto as Exhibit E, on the letterhead of the Sheriff's Office, the sufficiency of which is hereby acknowledged by the Newspaper Parties, confirming the foregoing representation and that the Sheriff's Office, its officers, deputies, employees, agents, attorneys and/or representatives will not take any steps to obtain from any of the Newspaper-Affiliated Parties any photographs that are the subject of the Photograph Dispute, whether for use by the JMU Parties, the Law Enforcement Parties, or any other person or entity.

10. Each party hereby represents and warrants that it has the necessary and requisite power and authority to enter into this Agreement, and that this Agreement has been authorized by all necessary corporate, municipal, governmental or other action. Each signatory to this Agreement further represents that he or she is authorized to sign on behalf of the party on whose behalf the Agreement is signed. The parties further represent and warrant that they have been advised by legal counsel before executing this Agreement, that they understand all of its terms, and that they voluntarily execute it of their own free will.

11. Each party hereby represents and warrants that no other person or entity (other than the Parties hereto) has any interest in this matter, and that none of them has heretofore assigned, transferred, or purported to have assigned or transferred, to any other person or entity, any claim, debt, liability, demand, obligation, cost, expense, action or cause of action hereby released.

12. Once executed by both parties, this Agreement supersedes any prior written or oral communications, understandings or agreements between the parties, except for the Procedure Agreement (Exhibit B), the terms of which, as set forth in Paragraph 1, has been expressly incorporated herein by reference. This Agreement (including Exhibit B) constitutes the entire agreement between the parties with respect to the matters contained herein, and shall not be modified, altered or discharged except by a writing signed by the parties. Except as otherwise provided in Paragraph 4, each of the parties agrees that they are responsible for their own attorney's fees and expenses and no additional payments will be made.

13. This Agreement may be signed in any number of duplicate counterparts, all of which shall be deemed one and the same original instrument. Execution of a facsimile copy

shall have the same force and effect as execution of an original. Signatures and signed copies may be exchanged or given by fax or other electronic means.

14. By executing the Agreement, it is understood and agreed that this settlement is a compromise of a disputed claim, that the Agreement contains the entire agreement between the parties hereto, and that the terms of the Agreement are contractual and not a mere recital. The payment made is not to be construed as an admission of liability on the part of the party or parties hereby released and that the Law Enforcement Parties deny any and all liability therefore, and have agreed to this settlement in order to avoid potential and protracted litigation.

15. This Agreement shall be interpreted by the laws of the Commonwealth of Virginia. Any disputes arising out of or because of the Agreement will be adjudicated in Circuit Court for Rockingham County, Virginia or the United States District Court for the Western District of Virginia.

IN WITNESS WHEREOF, the parties, intending to be legally bound by this Settlement Agreement and Release, set their hands as follows without coercion and with knowledge of the nature and consequences thereof:

**OFFICE OF THE COMMONWEALTH'S
ATTORNEY FOR ROCKINGHAM
COUNTY, VIRGINIA**

THE BREEZE

By: /s/ Marsha Garst
Marsha Garst, Commonwealth's Attorney

By: /s/ Katie Thisdell
Katie Thisdell, Editor

Date: 5/28/10

Date: 5/30/10

/s/ Marsha Garst 5/28/10
MARSHA GARST **Date**

/s/ Katie Thisdell 5/30/10
KATIE THISDELL **Date**

**HARRISONBURG, VIRGINIA POLICE
DEPARTMENT**

/s/ Robert Boag 5/29/10
ROBERT BOAG **Date**

By: /s/ Col. D. G. Harper
Col. D. G. Harper, Chief of Police

/s/ David Casterline 5/31/10
DAVID CASTERLINE **Date**

Date: 5/28/10

**THE JAMES MADISON UNIVERSITY
POLICE DEPARTMENT**

By: /s/ Lee Shifflett
Lee Shifflett, Chief of Police

Date: 5/28/10

Exhibit A

SEARCH WARRANT

Commonwealth of Virginia

VA.CODE §§19.2-56, 19.2-57

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth to forthwith search the following place, person or thing either in day or night

The offices of "The Breeze" Newspaper, located at James Madison University, G1 Anthony-Seeger Hall, Harrisonburg, Virginia 22807. And all electronic devices including but not limited to computers, cameras, cell phones, video cameras and all electronic, magnetic or optical storage devices including but not limited to hard drives, portable hard drives, ZIP discs, floppy diskettes, compact discs, dvds, flash drives, memory cards, memory sticks, back-up tapes, printer buffers, personal digital assistants, optical discs, smart cards, USB storage devices located on the premises or possessed or owned or leased or used by "The Breeze" or by any of its employees, agents or members. Also see attached Affidavit Section 2. for the following property, objects and/or persons:

All photographs prints, slides, negatives, video recordings, video and audio recordings, videotapes, motion pictures, photocopies, visual recordings, visual representations taken, produced, created, copied, possessed, recorded, or stored in or on a tangible form, paper form or any type of electronic storage device, electronic device, or devices as mentioned in above Section of this warrant, between Saturday, April 10, 2010 and Sunday, April 11, 2010, and information, if any, regarding the identity of any person or thing represented in aforementioned items. See attached newspaper article and photographs from "The Breeze" Newspaper. Note: The electronic devices and electronic, magnetic and optical storage devices are permitted to be taken from the premises to be searched off-site. Also see attached Affidavit Section 3.

You are further commended to seize said property, persons, and/or objects if they be found and to produce before the Rockingham County Circuit Court an inventory of all property, persons, and/or objects seized.

This SEARCH WARRANT is issued in relation to an offense substantially described as follows:

Obstructing free passage of others in violation of Va. Code Section 18.2-404; Participation in a riot in violation of Va. Code Section 18.2-405; Unlawful assembly in violation of Va. Code Section 18.2-406; Remaining at a place or riot or unlawful assembly after warning to disperse in violation of Va. Code Section 18.2-407; Conspiracy with others to cause or produce a riot or Direct, Incite, or Solicit other persons who participate in a riot to acts of force or violence in violation of Va. Code Section 18.2-408; Assault and Assault and Battery on a Law-Enforcement Officer in violation of Va. Code Section 18.2-57. Indecent exposure. Public swearing and public intoxication. Also see attached Affidavit Section 1.

I, the undersigned, have found probable cause to believe that the property or person constitutes evidence of the crime identified herein or tends to show that the person(s) named or described here-in has committed or is committing a crime and further that the search should be made, based on the statements in the attached affidavit sworn to by

4/16/10 0838
DATE AND TIME

[Signature] NAME OF AFFIANT
☐ CLERK ☒ MAGISTRATE ☒ JUDGE

CON

"The]
James
G1 Ar
Harris

SEARCH INVENTORY AND RETURN

The following items, and no others, were seized under authority of this WARRANT:

1. Files ~~containing~~ ~~containing~~ containing photographs from Mac Computers
2. 09-1439 and K10594,
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____

Executed
place, per

4/16

J.C

Certified

Circuit C

The statement above is true and accurate to the best of my knowledge and belief.

Received

DATE

EXECUTING OFFICER

Subscribed and sworn before me this day

on

DATE

☐ CLERK

☐ MAGISTRATE

☐ JUDGE

by:

FOR NOTARY PUBLIC'S USE ONLY:

State of _____ ☐ City ☐ County of _____

Acknowledged, subscribed and sworn to before me this _____ day of _____, 20

NOTARY REGISTRATION NUMBER

NOTARY PUBLIC

(My commission expires: _____)

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM

In re: "The Breeze" Newspaper, James Madison University,
61 Anthony-Seeger Hall, Harrisonburg, VA 22807

This 16th day of April, 2010, came the Commonwealth, by her attorney, Marsha L. Garst, Esquire, in an ex parte hearing pursuant to 19.2-54, Code of Virginia, 1950 as amended upon her motion to seal the affidavit of the aforementioned search warrant.

It appearing that upon the hearing of sworn testimony that good cause was shown to seal the affidavit of the aforementioned search warrant

IT IS ORDERED that the affidavit in the aforementioned search warrant be sealed for a period of one (1) year or until further order of this Court.

ENTERED THIS ____ DAY OF April, 2010.

PREPARED BY:


Marsha L. Garst, Esquire
Commonwealth's Attorney

JUDGE

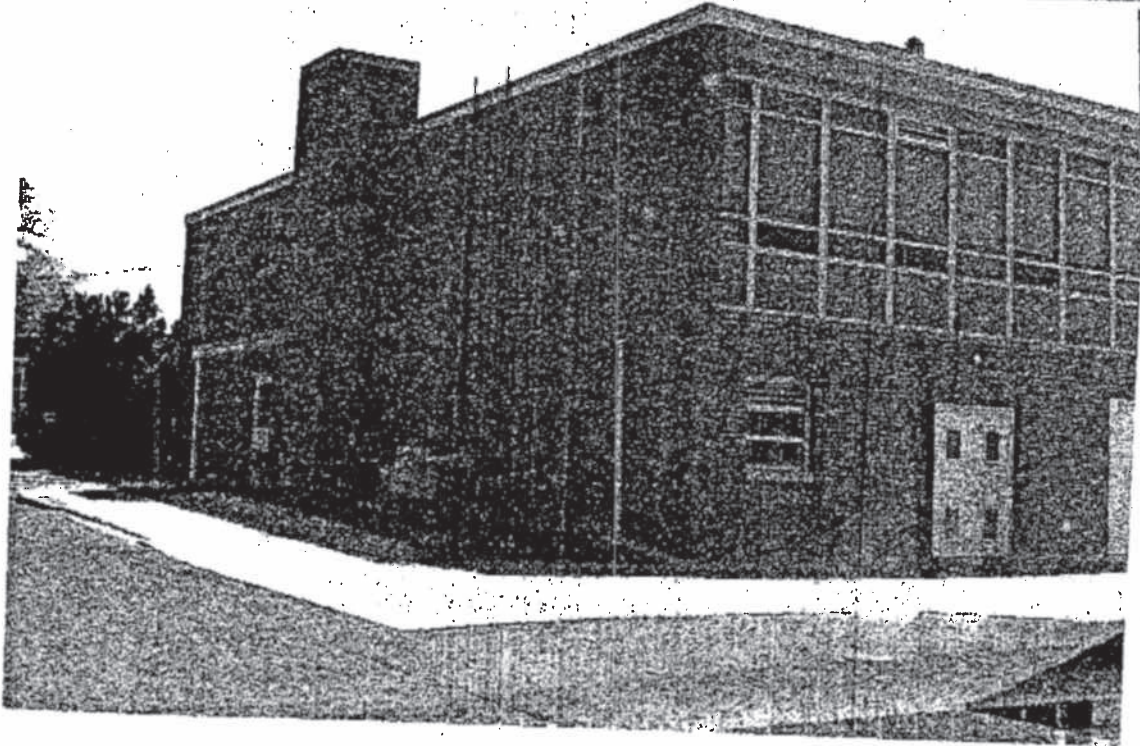
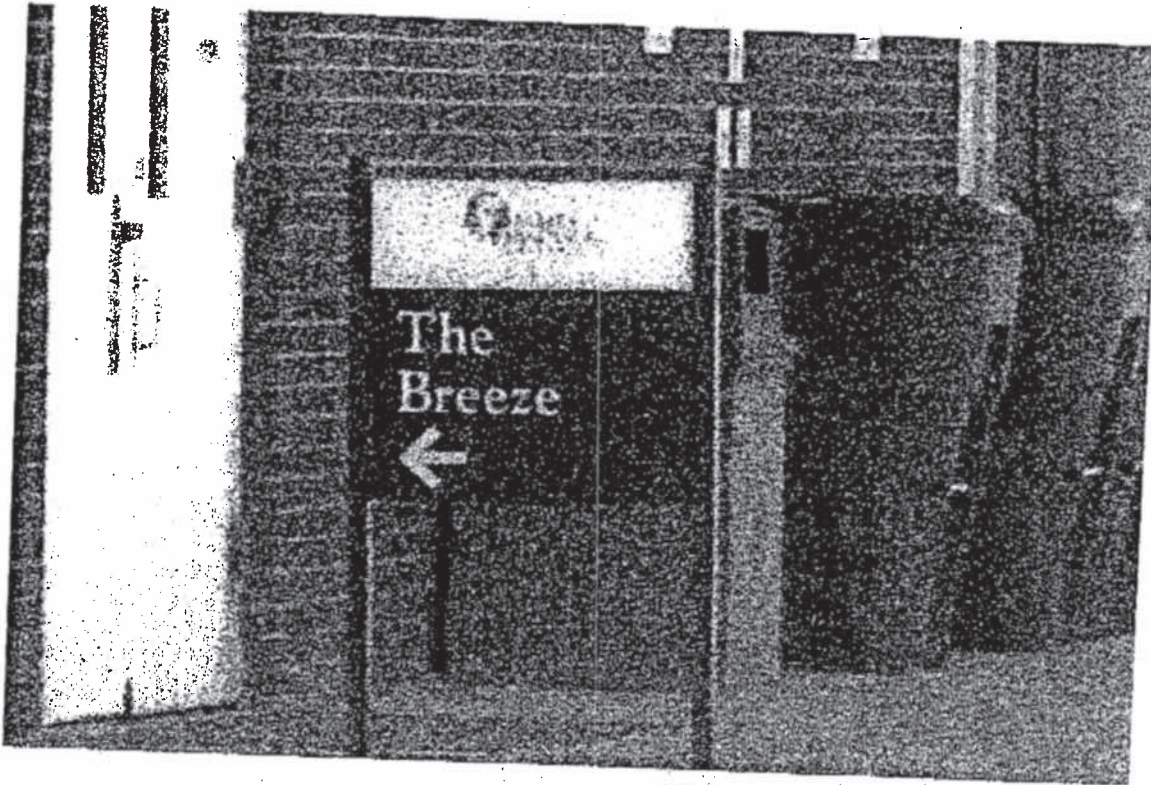


Exhibit C

On behalf of the Commonwealth's Attorney's Office for Rockingham County and the City of Harrisonburg, and the law enforcement officials involved, I wish to address the incident that took place April 16, 2010 when a search warrant was executed for photographs in the possession of the James Madison University newspaper, the Breeze. In addition, I will address the events preceding the execution of the warrant, and the steps I have taken since that warrant was executed.

On April 10, 2010, a series of violent events took place in various locations involving non-students and students of James Madison University. Several people were attacked and severely injured during the course of those events. A number of law enforcement officers were hurt as well. In addition, significant property damage occurred. Law enforcement made a number of arrests related to the actions that took place on April 10, 2010, but we believed that additional information would be necessary in order to arrest all individuals, in particular those that were involved in the extremely violent attacks on various individuals.

When it became apparent that additional information would be necessary, a representative from our office contacted a Breeze Editor and a faculty advisor on April 15, 2010 in an attempt to obtain the photographs that two Breeze photographers had taken of Springfest. They pointed us to photographs that had been published in the newspaper or on its website. In addition, my representative spoke to James Madison University Director of Judicial Affairs and James Madison University counsel, who is also an Assistant Attorney General, both of whom declined to intervene.

Due to the need to investigate and apprehend the alleged violent criminals, the next morning, on April 16, 2010, I sought a search warrant from the Court to obtain the photographs, asking that the search warrant affidavit be sealed. Accompanied by a number of plainclothes police officers, I then went to the Breeze offices in order to execute the warrant. After waiting for the Editor to arrive, I requested that she provide copies of the Breeze's photographs. The Editor declined and, after consulting with an attorney, asserted that the photographs were protected by the reporter's privilege and could not be seized pursuant to the federal Privacy Protection Act. Acting under the search warrant, I advised the Editor that if the photographs were not provided, I would have no choice but to ask law enforcement to take any steps necessary to retrieve the photographs, including removing and searching all the equipment that potentially contained the photographs.

The Editor then agreed to download the photographs. After providing copies of the photographs, the Breeze's counsel again asserted that the federal Privacy Protection Act prohibits law enforcement officials from using a warrant to seize newsgathering materials from a news organization like the photographs we were seeking. While we considered that issue, we did not review or copy the photographs we seized. Then, on the afternoon of April 18th, agreed to return the discs containing the photographs to the Breeze's faculty advisor, who agreed to maintain custody of

them, so that our effort to obtain the photographs could be resolved appropriately.

I am happy to report that through the help of attorneys on behalf of the Breeze, and cooperation of the individuals associated with the Breeze, we have been able to resolve this matter. First, my focus and the focus of law enforcement was only to obtain the photographs necessary to assist in apprehending violent criminals not to cause concern for the Breeze Editors or staff. As a prosecutor, officer of the court, and elected official of the community I recognize the concerns of the Breeze and its staff, as well as other media sources, for the protection of the Constitution and First Amendment. I express my regret for the fear and concern that I caused the Breeze and its staff. The discussions that have occurred have enhanced my understanding and re-enforced the role of a free press in our democracy.

Second, because the journalist's privilege is a qualified privilege that can be overcome where the materials sought are essential to our investigation and where we had no other source of the information, our office substantially narrowed its request to seek photographs that satisfied that test. In lieu of receiving a subpoena for that more limited category of photographs, The Breeze agreed to provide [insert number] photographs. These additional materials will hopefully allow the law enforcement community to bring violent criminals to justice.

Finally, my office intends to follow and enforce the Constitution, as well as all Federal and State statutes related to law enforcement and criminal investigations. In the future, absent an imminent need to prevent the loss of life or the threat of bodily injury, any information and documents which will be sought from any news agency or publication, including the Breeze, will be done so through the subpoena process accordingly.

[insert signature]

Marsha Garst

Commonwealth's Attorney

Exhibit D

To: Professor Roger Soenksen

As you know, on April 18, 2010, the Commonwealth's Attorney return two discs of photographs that had been taken from The Breeze by law enforcement officials pursuant to a warrant on April 16, 2010. You agreed to maintain custody of them until receiving different instructions for their disposition from both the Commonwealth's Attorney and The Breeze, or from a court of competent jurisdiction. This will confirm that both the Commonwealth's Attorney and The Breeze consent to the return of the discs of photographs to The Breeze. Thank you.

Marsha Garst
Commonwealth's Attorney for
Rockingham County, Virginia

Katie Thisdell
Editor, *The Breeze*

Date

Date

Exhibit E

Office of the Sheriff

County of Rockingham - City of Harrisonburg
25 South Liberty Street
Harrisonburg, Virginia 22801
(540) 564-3800 Fax # (540) 564-3865



Donald W. Farley
Sheriff

EXHIBIT E

May 27, 2010

To Whom It May Concern:

The Rockingham County, Virginia Sheriff's Office hereby confirms that it did not participate in the execution of a warrant on the office of the James Madison University student newspaper, *The Breeze*, on or about April 16, 2010 (the "Warrant").

This will further confirm that the Sheriff's Office, its officers, deputies, employees, agents, attorneys and/or representatives will not take any steps to obtain from *The Breeze*, its editors, reporters, photographers, or any of their parents, subsidiaries, affiliates, successors, partners, employees, agents or other associated entities, employers, heirs, trustees, successors, executors, administrators, attorneys, assigns, representatives and/or insurers any photographs related to Springfest 2010, whether for use by the Sheriff's Office or any other person or entity.

I understand that the representations in this letter are being relied upon by the parties to a dispute over the execution of the Warrant and a request for photographs of Springfest.

Respectfully,

Don Farley
Sheriff