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for purposes of identification.*

By email

June 2, 2020

Commissioner Paul Schnell
Minnesota Department of Corrections
1450 Energy Park Drive
St. Paul, Minnesota 55108

Mr. Karl Procaccini
General Counsel and Deputy Chief of Staff
Office of Governor Tim Walz and Lt. Governor Peggy Flanagan
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: Law enforcement targeting journalists during protests

Dear Commissioner Schnell and Mr. Procaccini:

As members of the news media and organizations that protect the rights of journalists to gather and report news, the undersigned write to ask that you take immediate, concrete steps to end the series of police arrests and attacks on credentialed and clearly identifiable journalists in your city in recent days. Police have arrested, detained, and threatened journalists, and have physically assaulted them with rubber bullets, pepper spray, tear gas, batons, and fists. In every case that we are aware of, there are strong indications that officers knew the journalist was a member of the press.

Law enforcement officers do not have legal immunity when they violate clearly established rights under the First Amendment. The right of the press to document police activity is foundational to our democracy and has long been recognized and protected by the courts. Beyond, however, the Constitution and the law, any targeting of reporters for doing their jobs—keeping the public informed during an extraordinary period of civil unrest—is beyond the pale in a free society.

While we understand the challenges that officers face in policing during times of civil protest—challenges that journalists face as well in covering these incidents—the bedrock American ideal of a free press demands that we protect First Amendments rights even more zealously in moments of crisis.

As Governor Walz rightly said, “We have got to ensure that there is a safe spot for journalism to tell this story.” And we acknowledge improvement in interactions between officers and journalists over the last

several days. But when an officer knows a journalist is a journalist, just one arrest or assault is a profound and clear violation of the First Amendment.

In Minneapolis alone, among other incidents:

- Omar Jimenez, a CNN correspondent, and two other CNN journalists were arrested on camera after calmly and repeatedly identifying themselves as journalists and offering to comply with any police request to move;
- Numerous local journalists were also arrested, pepper sprayed, and shot with rubber bullets after identifying themselves as journalists, including KTSP reporter Ryan Raiche (tear gassed and pepper sprayed), Minnesota Star Tribune reporters Chris Serres (tear gassed, shot with rubber bullets, and forced to the ground at gunpoint), and Tribune colleague Ryan Faircloth (car shot by rubber bullets, shattering the window and causing lacerations);
- Linda Tirado, a freelance photojournalist, lost an eye to a rubber bullet as she was clearly in the act of photographing police (“I was aiming my next shot, put my camera down for a second, and then my face exploded,” Tirado told the New York Times);
- Julio-Cesar Chavez, a Reuters journalist, and Rodney Seward, a Reuters security adviser (wearing a “press”-labeled flak jacket) were targeted and shot with rubber bullets;
- Michael George and a CBS news crew, standing 500 feet away from any protesters, were fired on with rubber bullets, after clearly identifying themselves as journalists and displaying credentials;
- Molly Hennessy-Fiske, a Los Angeles Times reporter, and Carolyn Cole, a Los Angeles Times photographer (also with a “press” flak jacket), had to escape over a wall after being gassed and shot with rubber bullets at point blank range.

The Reporters Committee for Freedom of the Press has documented at least ten other incidents in Minneapolis where police detained or assaulted journalists who appear to have been clearly identified as members of the news media and were not physically located among protesters. The U.S. Press Freedom Tracker has confirmed more than a dozen such incidents around the country, and the Reporters Committee and the Tracker are investigating many dozens more.

Officers on the ground must understand that gathering news and recording police activities are not crimes, and that journalists who are complying with reasonable law enforcement directions when covering civil unrest are protected by the First Amendment. In the incidents captured on camera in Minneapolis, the journalists were clearly identified as such and indisputably in compliance with the law.

Additionally, officers should recognize that training for journalists and documentarians who cover protests or civil unrest provides guidance on how to interact with law enforcement. They know to comply with an order to move, they will not resist arrest, and they will identify themselves as a member of the news media. At the same time, officers properly trained in crowd control should know that an identifiable journalist may not be arrested or personally targeted by coercive tactics like tear gas or rubber bullets.

We also strongly urge you to affirmatively instruct all officers that the news media is exempt from any curfew order, as they are in many major cities that have imposed them, including Minneapolis. A general curfew order that does not provide an exemption for members of the press and would preclude, for example, all news media coverage of police enforcement of the order, would violate the First Amendment. Furthermore, the arrest or detention of a reporter during a curfew would likewise violate the First Amendment.

A. The right to report on police activities is clearly established and officers have no immunity when they directly target reporters covering protests.

The right of the press to document police activities in public has long been protected by the First Amendment. *See Iacobucci v. Boulter*, 193 F.3d 14, 25 (1st Cir. 1999) (“Because Iacobucci’s [journalistic] activities were peaceful, not performed in derogation of any law, and done in the exercise of his First Amendment rights [police] lacked the authority to stop them.”). News reporting on police conduct serves the crucial First Amendment interest in promoting the “free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

The right to record police activity, by the press and public, has been held repeatedly to be “clearly established” by many courts around the country. Therefore, a police officer or official who violates that right, especially through the use of force, cannot claim legal immunity. *See Glik v. Cunniffe*, 655 F.3d 78, 83 (1st Cir. 2011) (citing cases); *see also American Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 595 (7th Cir. 2012) (finding eavesdropping statute barring recording of police activity in public violated First Amendment).

The Department of Justice has taken the position that this right to record law enforcement is a crucial First Amendment protection that should apply across the country. *See* Statement of Interest of the United States, *Sharp v. Baltimore City Police Dep’t*, No. 1:11-cv-02888-BEL (D. Md. filed Jan. 10, 2012) (“[The right to record is] not only required by the Constitution . . . [it is] consistent with our fundamental notions of liberty, promote[s] the accountability of our governmental officers, and instill[s] public confidence in the police officers who serve us daily.”); *see also* Statement of Interest of the United States, *Garcia v. Montgomery County*, No. 8:12-cv-03592-JFM (filed March

4, 2013) (arguing that discretionary charges like disorderly conduct or disturbing the peace should be viewed skeptically when based on recording police activity).

Journalists, photojournalists, and documentarians deprived of that right are entitled to relief under 42 U.S.C. § 1983, which permits individuals whose rights are violated under color of law to sue the government official responsible. *See Channel 10, Inc. v. Gunnarson*, 337 F. Supp. 634, 637 (D. Minn. 1972) (finding seizure of camera and film from journalist recording crime scene from public vantage point violated First Amendment for purposes of § 1983).

While law enforcement may impose reasonable restrictions on newsgathering to prevent undue interference with legitimate police work, journalists who comply with those restrictions—who stand at a fair remove from any police activity, who obey orders to disperse, and who conspicuously identify themselves as journalists—may not be subject to arrest or physical attack, the quintessential “unreasonable” restriction.

Though physical restraints on newsgathering, such as those which we have seen in Minneapolis in recent days, are thankfully rare and therefore seldom litigated, there is little question that a court would find a “clearly established” First Amendment right of journalists to be free from the baton or rubber bullet.

B. Minnesota and Minneapolis should immediately implement protocols to protect reporters and ensure the public is informed.

Accordingly, we urge you to:

- Instruct your officers and staff that the arrest or physical attack of a journalist who is compliant with reasonable police orders is a clearly established First Amendment violation;
- Take swift action to discipline any officer who is found to have arrested or assaulted a journalist engaged in newsgathering;
- Inform your officers that they themselves could be subject to legal liability for violating these rights;
- Ensure that crowd control tactics are appropriate and proportional, and are designed to prevent collateral harm to journalists covering the protests;
- Continue to exempt members of the news media from mobility restrictions, including, and especially, curfews; and
- Release all information about arrests of or physical interactions with the press to the public to allow it to evaluate the legitimacy of police conduct.

Please do not hesitate to contact Bruce Brown, Executive Director of the Reporters Committee, with any questions at bbrown@rcfp.org.

Sincerely,

The Reporters Committee
for Freedom of the Press

ABC, Inc.
Advance Publications, Inc.
Alabama Press Association
ALM Media, LLC
America's Newspapers
Asian American Journalists Association
The Associated Press
Association of Alternative Newsmedia
The Atlantic Monthly Group LLC
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BuzzFeed
Cable News Network, Inc.
California News Publishers Association
CBS Broadcasting Inc., on behalf of
CBS News and CBS Television
Stations
The Center for Investigative Reporting
(d/b/a Reveal)
Colorado Press Association
Committee to Protect Journalists
Cox Media Group, Inc.
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Twin Cities Chapter, National Writers
Union
Univision Communications Inc.
Utah Press Association
Vermont Press Association
Vice Media Group
Virginia Press Association
Vox Media
The Washington Post
Yahoo News

cc: The Honorable Tim Walz
Governor, State of Minnesota

The Honorable Keith Ellison
Attorney General, State of Minnesota

Commissioner John M. Harrington
Minnesota Department of Public Safety

Colonel Matthew C. Langer
Chief, Minnesota State Patrol

Major General Jon A. Jensen
Minnesota National Guard

The Honorable Jacob Frey
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Chief of Police, City of Minneapolis

The Honorable Melvin Carter
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Chief Todd Axtell
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