

# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020  
Washington, D.C. 20005  
(202) 795-9300  
www.rcfp.org

Bruce D. Brown  
Executive Director  
bbrown@rcfp.org  
(202) 795-9301

## STEERING COMMITTEE

STEPHEN J. ADLER  
*Reuters*

J. SCOTT APPLEWHITE  
*The Associated Press*

WOLF BLITZER  
*CNN*

DAVID BOARDMAN  
*Temple University*

THEODORE J. BOUTROUS, JR.  
*Gibson, Dunn & Crutcher LLP*

MASSIMO CALABRESI  
*Time Magazine*

MANNY GARCIA  
*Pro Publica*

EMILIO GARCIA-RUIZ  
*The Washington Post*

JOSH GERSTEIN  
*POLITICO*

ALEX GIBNEY  
*Jigsaw Productions*

SUSAN GOLDBERG  
*National Geographic*

JAMES GRIMALDI  
*The Wall Street Journal*

LAURA HANDMAN  
*Davis Wright Tremaine*

DIEGO IBARGÜEN  
*Hearst*

KAREN KAISER  
*The Associated Press*

DAVID LAUTER  
*Los Angeles Times*

MARGARET LOW  
*WBUR*

JANE MAYER  
*The New Yorker*

COLLEEN MCCAIN NELSON  
*The McClatchy Company*

MAGGIE MULVIHILL  
*Boston University*

JAMES NEFF  
*The Philadelphia Inquirer*

NORMAN PEARLSTINE  
*The Los Angeles Times*

THOMAS C. RUBIN  
*Stanford Law School*

CHARLIE SAVAGE  
*The New York Times*

JENNIFER SONDAG  
*Bloomberg News*

NABIHA SYED  
*The Markup*

ADAM SYMSON  
*The E.W. Scripps Company*

PIERRE THOMAS  
*ABC News*

SAUNDRA TORRY  
*Freelance*

VICKIE WALTON-JAMES  
*NPR*

JUDY WOODRUFF  
*PBS/The NewsHour*

## HONORARY LEADERSHIP COUNCIL

CHIP BOK  
*Creators Syndicate*

TONY MAURO  
*American Lawyer Media, ret.*

DAHLIA LITHWICK  
*Slate*

ANDREA MITCHELL  
*NBC News*

CAROL ROSENBERG  
*The New York Times*

PAUL STEIGER  
*ProPublica*

*Affiliations appear only  
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](mailto: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  
Bloomberg News  
Boston Globe Media Partners, LLC  
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.  
Criminal Justice Journalists  
The Daily Beast Company LLC  
The Dallas Morning News, Inc.  
Dow Jones & Company, Inc.  
The E.W. Scripps Company  
First Amendment Coalition  
First Look Media Works, Inc.  
FOX News Media  
Fox Television Stations, LLC  
Freedom of the Press Foundation  
Gannett Co., Inc.  
Georgia Press Association  
The Guardian U.S.  
Hearst Corporation  
Hoosier State Press Association  
Foundation

HuffPost  
Illinois Press Association  
Inter American Press Association  
International Documentary Assn.  
International Federation of Journalists  
International Women's Media  
Foundation  
Investigative Reporting Workshop at  
American University  
Investigative Studios  
James W. Foley Legacy Foundation  
Kansas Press Association  
KARE11  
Los Angeles Times Communications  
LLC  
Maryland-Delaware-D.C. Press  
Association  
Massachusetts Newspapers Publishers  
Association  
The McClatchy Company  
The Media Institute  
Media Law Resource Center  
Media Legal Defence Initiative  
Metro Corp. d/b/a Philadelphia and  
Boston Magazines  
Michigan Press Association  
Minnesota Broadcasters  
Association (MBA)  
Mother Jones  
MPA - The Association of Magazine  
Media  
National Association of Black  
Journalists  
National Association of Broadcasters  
National Association of Hispanic  
Journalists  
National Freedom of Information  
Coalition

National Geographic Partners  
National Journal Group LLC  
National Newspaper Association  
National Press Club Journalism Institute  
The National Press Club  
National Press Photographers  
Association  
National Public Radio, Inc.  
National Writers Union  
Native American Journalists Association  
NBCUniversal Media, LLC  
Nebraska Press Association  
Nevada Press Association  
New England First Amendment  
Coalition  
New England Newspaper and Press  
Association, Inc.  
New York News Publishers Association  
The New York Times Company  
The New Yorker  
The News Leaders Association  
News Media Alliance  
Newsday LLC  
The NewsGuild – CWA  
NLGJA: The Association of LGBTQ  
Journalists  
North Dakota Newspaper Association  
Online News Association  
Oregon Newspaper Publishers  
Association  
PEN America

POLITICO LLC  
ProPublica  
Quartz Media, Inc.  
Radio Television Digital News  
Association  
Reporters Without Borders USA  
Reuters News & Media Inc.  
The Seattle Times Company  
Sinclair Broadcast Group, Inc.  
Society of Environmental Journalists  
Society of Professional Journalists  
Society of Professional Journalists New  
England  
South Carolina Press Association  
South Dakota Newspaper Association  
Student Press Law Center  
TEGNA Inc.  
Texas Press Association  
TIME USA, LLC  
Tribune Publishing Company  
Tully Center for Free Speech  
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  
Mayor, City of Minneapolis

Chief Medaria Arradondo  
Chief of Police, City of Minneapolis

The Honorable Melvin Carter  
Mayor, City of St. Paul

Chief Todd Axtell  
Chief of Police, City of St. Paul