



December 11, 2024

VIA ELECTRONIC MAIL

Sheriff Patrick Withrow
San Joaquin County Sheriff's Office
7000 Michael Canlis Blvd.
French Camp, CA 9523

Re: Press freedom concerns related to search warrant disclosure

Dear Sheriff Withrow:

The First Amendment Coalition, the Northern California Chapter of the Society of Professional Journalists and the Pacific Media Workers Guild NewsGuild-CWA Local 39521 write to express strong concern over your comment that journalists who lawfully obtained documents from the San Joaquin County Superior Court could be exposed to criminal investigation or prosecution for having “conspired to break the law.” Hannah Workman, *San Joaquin County court, sheriff at odds over confidential files access in clerk’s case*, Stockton Rec. (Dec. 7, 2024, 6:01 AM), <https://www.recordnet.com/story/news/crime/2024/12/07/san-joaquin-court-sheriff-at-odds-over-confidential-file-access/76769647007/>; see also Cassie Dickman & Aaron Leathley, *Court clerk’s arrest: As a new document is sealed, sheriff blasts county court*, Stocktonia (Dec. 4, 2024), <https://stocktonia.org/news/justice/2024/12/04/court-clerks-arrest-as-a-new-document-is-sealed-sheriff-blasts-county-court/>.

Any statement or implication by an elected official or law enforcement officer that routine journalism could be a crime exerts a powerful chilling effect on speech protected by the First Amendment. We urge you to clarify your remarks and confirm that the press is not a target or subject of any investigation in this matter.

As reported in the press, journalists with the Stockton Record asked the court for copies of documents related to a search warrant executed on November 14, 2023, as part of an investigation of Stockton Unified School District Trustee AngelAnn Flores; court staff provided the copies to the journalists a week later upon payment of the required costs. *Id.* Such documents are ordinarily public once a warrant has been executed, although sometimes they can be placed under seal for a period of time. Penal Code § 1534(a); *People v. Hobbs*, 7 Cal. 4th 948, 962 (1994); *PSC Geothermal Servs. Co. v. Superior Ct.*, 25 Cal. App. 4th 1697, 1713–14 (1994). Your office and the court said the documents should have been sealed and were disclosed inadvertently.¹ Aaron Leathley, *Search warrant in Stockton Unified board president case accidentally released: sheriff*, Stockton Rec. (Dec. 1, 2023, 8:25 AM), <https://www.recordnet.com/story/news/local/2023/12/01/search-warrant-in-stockton-unified-case-accidentally-released-sheriff/71764157007/>.

¹ It is difficult to see how the entire search warrant package could properly have been sealed. See *PSC Geothermal*, 25 Cal. App. 4th at 1713–14. For purposes of this letter, however, I will assume the documents were properly sealed.

Assuming court staff mistakenly disclosed documents that were or should have been under seal, the journalists did nothing wrong in asking for or receiving them, and the press had an absolute right to report on them. Ordinary “news-gathering techniques ‘of course, include asking persons questions, including those with confidential or restricted information,’” and “[w]hile the government may desire to keep some proceedings confidential and may impose the duty upon participants to maintain confidentiality, it may not impose criminal or civil liability upon the press for obtaining and publishing newsworthy information through routine reporting techniques.” *Ass’n for L.A. Deputy Sheriffs v. L.A. Times Commc’ns LLC*, 239 Cal. App. 4th 808, 819 (2015) (quoting *Nicholson v. McClatchy Newspapers*, 177 Cal. App. 3d 509, 519–20 (1986)).

A long line of Supreme Court precedent confirms that the First Amendment guarantees the right to publish information of public concern that is acquired through a lawful request, even if the disclosure of that information was mistaken or unlawful. See, e.g., *Bartnicki v. Vopper*, 532 U.S. 514, 534 (2001); *Fla. Star v. B.J.F.*, 491 U.S. 524, 536–37 (1989); *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 103 (1979); *Landmark Commc’ns, Inc. v. Virginia*, 435 U.S. 829, 838–40 (1978); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 494–96 (1975).

Without doubt, the investigation of an elected official is a matter of paramount public concern. Accordingly, the First Amendment protects the right to ask for and report on copies of materials related to the search warrant, and any statement or implication to the contrary undermines the fundamental rights to freedom of speech and freedom of the press.

State and federal law also protect the press from being targeted by a search warrant or subpoena in any investigation related to disclosure of the documents at issue.

Under California law, “No warrant shall issue for an item or items described in Section 1070 of the Evidence Code.” Penal Code § 1524(g). Evidence Code section 1070 parallels Article I, section 2(b) of the California Constitution in absolutely protecting publishers, editors, and reporters against subpoenas from law enforcement for their sources and unpublished information, confidential or otherwise. *Miller v. Superior Ct.*, 21 Cal. 4th 883, 896–97 (1999). Therefore, California law prohibits law enforcement from seeking warrants or issuing subpoenas for the work product of reporters.

The federal Privacy Protection Act of 1980, 42 U.S.C. § 2000aa et seq. (“PPA”), also prohibits a search warrant against the press in this case. The PPA “generally prohibits government officials from searching for and seizing documentary materials possessed by a person in connection with a purpose to disseminate information to the public.” *Morse v. Regents of the Univ. of Cal.*, 821 F. Supp. 2d 1112, 1120 (N.D. Cal. 2011) (quotation omitted).

The PPA’s narrow exceptions for exigent circumstances or journalists suspected of personally committing criminal offenses do not apply. As discussed above, no legal basis exists for any criminal investigation of any reporter or publication; to the contrary, the law is clear that the First Amendment protects the right to ask for, receive and publish newsworthy information, regardless of whether authorities might consider it confidential.

It is therefore troubling that two sheriff’s deputies visited the home of a reporter for The Record to ask about disclosure of the search warrant materials at issue and referred to an alleged

“cease-and-desist” letter that has never been disclosed or explained. Hannah Workman, *San Joaquin County Sheriff's Office refuses to answer questions regarding visit to reporter's home*, Stockton Rec. (Sept. 12, 2024, 2:03 PM), <https://www.recordnet.com/story/news/local/2024/09/12/sheriffs-deputies-visit-home-of-stockton-record-reporter-for-unclear-reasons/75076689007/>. Any attempt to prevent the press from publishing information related to the search warrant would represent an unconstitutional prior restraint, which is “the most serious and the least tolerable infringement on First Amendment rights.” *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).

Given the strong legal protections discussed above, we urge you to confirm publicly that your office will follow the clear laws protecting the press from unconstitutional prior restraints and any investigation, search warrants, or subpoenas in this matter.

Thank you for your time and attention. We welcome the chance to discuss these press freedom protections with you and answer any questions. You can contact David Loy, legal director, First Amendment Coalition, at dloy@firstamendmentcoalition.org; Joe Fitzgerald Rodriguez, president, Society of Professional Journalists, Northern California Chapter, at fitzthereporter@gmail.com; and Annie Sciacca, president, Pacific Media Workers Guild, NewsGuild-CWA Local 39521, at aesciacca@gmail.com.

Respectfully,

FIRST AMENDMENT
COALITION

PACIFIC MEDIA WORKERS
GUILD NEWSGUILD-CWA
LOCAL 39521

SOCIETY OF PROFESSIONAL
JOURNALISTS, NORTHERN
CALIFORNIA CHAPTER

cc:

Public Information Officer Heather Brent, San Joaquin County Sheriff's Office
San Joaquin County District Attorney Ron Freitas
San Joaquin County Board of Supervisors