

1156 15th St. NW, Suite 1250
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

SCOTT APPLEWHITE
The Associated Press

WOLF BLITZER
CNN

DAVID BOARDMAN
Temple University

CHIP BOK
Creators Syndicate

JAN CRAWFORD
CBS News

MICHAEL DUFFY
Time

RICHARD S. DUNHAM
Tsinghua University, Beijing

ASHLEA EBELING
Forbes Magazine

SUSAN GOLDBERG
National Geographic

FRED GRAHAM
Founding Member

JOHN C. HENRY
Freelance

NAT HENTOFF
United Media Newspaper Syndicate

JEFF LEEN
The Washington Post

DAHLIA LITHWICK
Slate

TONY MAURO
National Law Journal

JANE MAYER
The New Yorker

DAVID McCUMBER
Hearst Newspapers

JOHN MCKINNON
The Wall Street Journal

DOYLE MCMANUS
Los Angeles Times

ANDREA MITCHELL
NBC News

MAGGIE MULVIHILL
Boston University

SCOTT MONTGOMERY
NPR

BILL NICHOLS
Politico

JEFFREY ROSEN
The National Constitution Center

CAROL ROSENBERG
The Miami Herald

THOMAS C. RUBIN
Seattle, Wash.

ERIC SCHMITT
The New York Times

ALICIA SHEPARD
Freelance

MARGARET LOW SMITH
The Atlantic

JENNIFER SONDAG
Bloomberg News

PAUL STEIGER
Pro Publica

PIERRE THOMAS
ABC News

SAUNDRA TORRY
USA Today

JUDY WOODRUFF
PBS/The NewsHour

*Affiliations appear only
for purposes of identification.*

August 18, 2015

Steve Stenger, County Executive
Peter Krane, County Counselor
Steven Robson, Assistant County Counselor
41 South Central Avenue
Clayton, MO 63105

Dear Sirs:

The undersigned coalition of news organizations writes to object to your office's recent decisions to pursue criminal charges against a number of journalists arrested or detained last summer during the protests in Ferguson.

The fact that these journalists were kept from doing their jobs was troublesome enough. But the fact that your office – after having had time to reflect on police actions for a full year – has chosen to pursue criminal prosecution now is astonishing.

Last summer, after hearing that journalists were being arrested in Ferguson, then-U.S. Attorney General Eric Holder, Jr. said in a statement, "Journalists must not be harassed or prevented from covering a story that needs to be told." That statement should not have to be made. It is difficult to understand what interest the county is defending by charging these journalists, when they were clearly engaged in newsgathering.

We understand that the decision to prosecute affects all individuals arrested, not just journalists, but pursuing charges against The Washington Post's Wesley Lowery and The Huffington Post's Ryan Reilly is particularly egregious, as they were not even involved in a contentious or dangerous atmosphere. They were instead sitting in a McDonald's, recharging their phones. The journalists were ordered to leave a public restaurant, and while they were leaving, they asked questions and videotaped the officers. This is perfectly lawful and appropriate behavior, does not justify the officers' decision to arrest them for "disobeying" an order, and certainly cannot justify a trespassing charge in a restaurant open to the public.

After Lowery and Reilly were released, as The Washington Post recently said in an editorial, "It seemed reasonable to assume that police had figured out how foolish they would be to come down on two legitimate journalists peacefully covering a major news story." But these charges show that Ferguson officials had no qualms about their efforts to contain a controversial story by interfering with those who would report on it.

The other journalists who were arrested during the summer were likewise only covering an important story. We have not seen credible allegations, much less documented proof, that they were interfering with police, disturbing the peace, failing to obey lawful orders, or in any way contributing to the chaos on the streets at that time. Even in the few instances where a journalist was on the wrong side of a police line or did not move off of a sidewalk quickly enough, it is imperative that officials realize that the role journalists are performing should allow for some leeway from police, and certainly from prosecutors who have to consider whether a violation should lead to a criminal charge. Journalists are there to document the story, not bolster the arguments of one side or the other, and the credibility of the city and its police depend on being open with what is going on. Interfering with the reporting of important public controversies is a telltale sign of a government that is trying to cover up its own actions. Charging journalists with crimes for covering a story sends a clear signal that police do not want their actions documented, and thus makes the situation worse.

We understand that in the heat of the moment, it may be difficult to distinguish between rioters who truly present a threat, activists engaged in civil disobedience, and journalists who are covering an event on behalf of the public. Still, police in the field must be careful not to interfere with those who they know are only exercising their First Amendment rights. But prosecutors who later determine whether charges will be brought do not have the same handicap of making immediate decisions while chaos erupts around them. With a full year to review the situation and decide what actions constitute a crime, prosecutors have no excuse for making poor judgment calls that do not respect First Amendment rights.

Many of the charges concerning a failure to obey officers seem to stem from incidents where journalists were making video recordings. But the right to record police officers in public is well established, and with good reason. As the United States Department of Justice wrote in 2012, “The right to record police officers while performing duties in a public place, as well as the right to be protected from the warrantless seizure and destruction of those recordings, are not only required by the Constitution. They are consistent with our fundamental notions of liberty, promote the accountability of our governmental officers, and instill public confidence in the police officers who serve us daily.” See Statement of Interest of the United States in *Sharp v. Baltimore City Police Dep’t*, Civil No. 1:11-cv-02888-BEL (D.Md., Jan. 10, 2012), http://www.justice.gov/crt/about/spl/documents/Sharp_SOI_1-10-12.pdf.

This principle – that not just journalists, but members of the public generally are free to observe and gather news about police actions – has been repeatedly upheld in federal courts. The First Circuit ruled in *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011), that the public’s right to record police in the performance of their public duties is a “basic, vital, and well-established liberty safeguarded by the First Amendment.” The Seventh Circuit in *ACLU of Illinois v. Alvarez*, 679 F.3d 583 (7th Cir. 2012), likewise recognized the longstanding right of the public to record police activities.

The best way for Ferguson to show that it will respect the First Amendment rights of journalists covering the continuing controversy there is to rescind these charges immediately.

Sincerely,

The Reporters Committee for Freedom of the Press
American Society of News Editors
AOL Inc. - The Huffington Post
The Associated Press
Association of Alternative Newsmedia
Bloomberg News
Cable News Network, Inc.
California Newspaper Publishers Association
The Center for Investigative Reporting
Committee to Protect Journalists
Courthouse News Service
Criminal Justice Journalists
The Daily Beast Company LLC
Daily News, LP
The E.W. Scripps Company
First Amendment Coalition
First Look Media, Inc.
Forbes Media LLC
Freedom of the Press Foundation
Hearst Corporation
Inter American Press Association
Investigative Reporting Workshop at American University
The Kansas City Star
The McClatchy Company
The Media Consortium
MPA – The Association of Magazine Media
The National Press Club
National Press Photographers Association
National Public Radio, Inc.
New England Newspaper and Press Association, Inc.
Newspaper Association of America
North Jersey Media Group Inc.
Online News Association
Radio Television Digital News Association
Reporters Without Borders
Society of Professional Journalists
Student Press Law Center
Tully Center for Free Speech
The Washington Post