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April 17, 2021

Via E-mail

Governor Tim Walz

Commissioner John Harrington
Minnesota Department of Public Safety

Colonel Matt Langer, State Patrol Chief

Commissioner Paul Schnell, Minnesota
Department of Corrections

Re: Treatment of journalists by law enforcement officers

Dear Sirs:

Thank you for meeting with me and various representatives of the media by video conference earlier this afternoon to discuss the treatment of journalists by law enforcement during the ongoing demonstrations in our State. We appreciate your time and the seriousness with which you are addressing this matter.

Although today's call included a small number of representatives, I write on behalf of nearly 30 local and national news, freedom of the press, and government transparency organizations that are following the issues we discussed closely. These organizations are deeply troubled by what has occurred over the last several days. In the interest of continuing the dialogue and ensuring that what has transpired thus far does not occur again, I write to impress upon you the gravity of the misconduct and to memorialize our conversation and the media's expectations going forward.

The First Amendment is clear: journalists have a robust right of access to gather and report the news without fear of intrusion or interference by law enforcement. *See Branzburg v. Hayes*, 408 U.S. 665, 681 (1972); *see also Tirado v. City of Minneapolis*, 2021 U.S. Dist. LEXIS 32380, at *25-26 (D. Minn. Feb. 22, 2021) (noting that the number of journalists covering the George Floyd protests who "experienced similar, seemingly unjustified incidents involving less-lethal munitions and other measures is even more troubling, as the allegations plausibly suggest an unconstitutional custom carried out by MPD officers of

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targeting journalists for unlawful reprisals.”). Further, as we discussed, on April 16, District Court Judge Wilhelmina M. Wright issued a temporary restraining order (TRO) enjoining all “agents, servants, employees, and representatives” of the Minnesota Department of Safety and the Minnesota State Patrol from committing violent and threatening acts against journalists, including:

- (1) “arresting, threatening to arrest, or using physical force—including through use of flash bang grenades, non-lethal projectile, riot batons, or any other means. . .
- (2) Requiring Journalists to disperse, or arresting Journalists for not dispersing;
- (3) “using chemical agents” including pepper spray and tear gas; and
- (4) “Seizing any photographic equipment, audio- or videorecording equipment, or press passes.”

Yet as discussed on our call, reports from journalists on the ground indicate that over the last several days—and even last night after the TRO was in effect—law enforcement officers have engaged in widespread intimidation, violence, and other misconduct directed at journalists that have interfered with their ability to report on matters of intense public interest and concern. For example:

(1) New York Times Photojournalists Harassed on April 12

Two separate photojournalists on assignment for The New York Times were harassed by officers. In one instance, a Minneapolis State Patrol Captain recognized the photojournalist, rushed out of a police line, and grabbed him. The officer then pulled the journalist behind the police line where another officer held his hands behind his back and took his phone. When the journalist asked “why,” the officer said: “Because that’s our strategy right now.”

That same night, a separate journalist was at the Brooklyn Center Police Department when an officer used a chemical irritant against a protestor next to the journalist. The officer then lunged forward and aimed the irritant directly at the journalist from a distance of approximately 4-5 feet. Fortunately the journalist was wearing a gas mask, but the irritant still burned a red ring around his face and damaged his camera.

(2) CNN Journalist Arrested on April 13

Carolyn Sung, an Asian-American CNN producer, was thrown to the ground and arrested by state troopers Tuesday night while trying to comply with a dispersal order. As Sung tried to

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leave the area as directed, troopers grabbed Sung by her backpack and threw her to the ground, zip-tying her hands behind her back. Sung did not resist and repeatedly identified herself as a journalist working for CNN and showed her credentials. A male security agent hired by CNN to work with Sung was briefly detained, but quickly released upon showing his credentials. Despite repeatedly hearing Sung identify herself as a member of the press and tell the troopers that the zip ties were too tight on her wrists, one trooper yelled at Sung, "Do you speak English?" Sung, whose primary language is English, was placed in a prisoner-transport bus and sent to the Hennepin County Jail, where she was patted down and searched by a female officer who put her hands down Sung's pants and in her bra, fingerprinted, electronically body-scanned, and ordered to strip and put on an orange uniform before attorneys working on her behalf were able to locate her and secure her release, a process that took more than two hours.

(3) Summons Issued Against Journalist on April 13

That same night, a photojournalist in Brooklyn Center was tackled, put in restraints, and loaded into the back of a Minnesota State Police patrol vehicle. The photojournalist could hear on the car's radio an order that any journalists in custody were to be released, but the officer continued to detain him and issued a summons for an alleged "failure to obey a lawful order" pursuant to Minn. Stat. § 169.02.2, which makes it a misdemeanor to refuse to comply with a peace officer assigned to control traffic.

(4) New York Times Journalist and Others Assaulted on April 13

On April 13, while in a car with others, police officers surrounded the car, banging on the windows and doors with wooden sticks and yelling to get out. The driver of the car was dragged out and arrested; another photographer in the car was taken out and talked to. The New York Times journalist was repeatedly hit by officers while in the car, and the officers also tried to break his camera.

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(5) Additional use of Chemical Agents Against Journalists

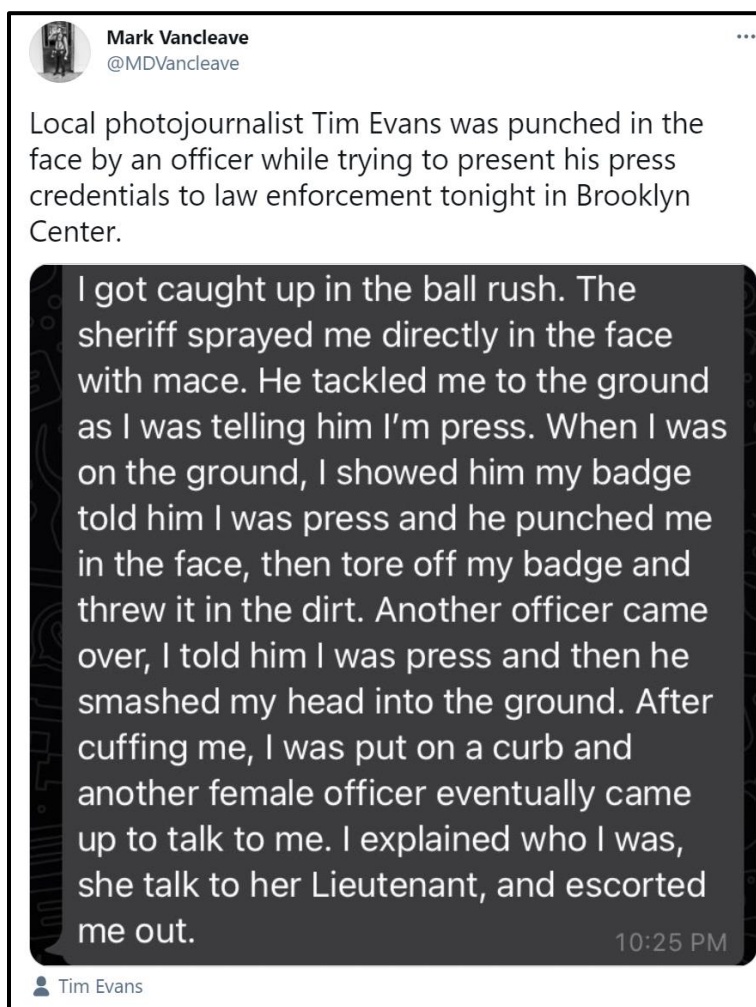
As Colonel Langer noted on the call, there have been reports of chemical agents being used against journalists, including one image showing an unidentified law enforcement officer spraying chemical agents at two journalists—who are clearly identifiable as such by their clothing and equipment—at incredibly close range:



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(6) Additional use of Physical Force Against a Journalist

Another local photojournalist reported being beaten by two law enforcement officers, even after he identified himself as a journalist.



(7) Order to Disperse and Cataloging of Journalists on April 16

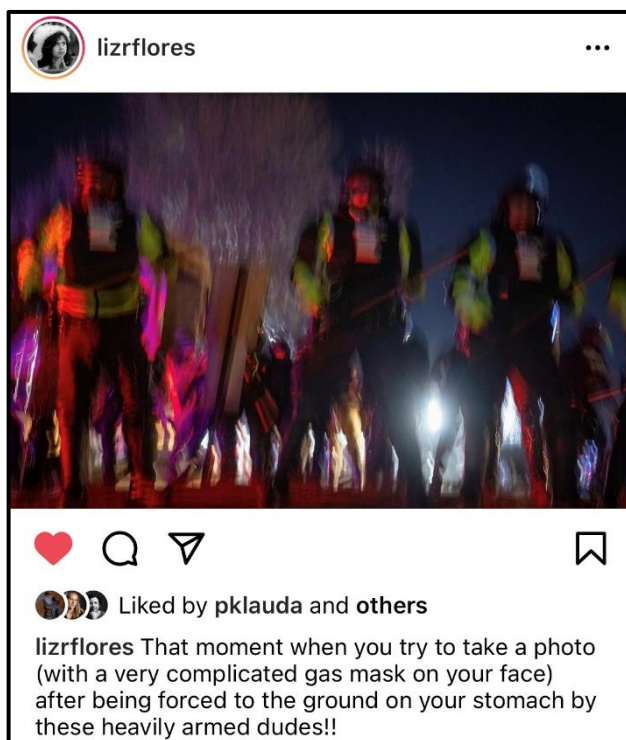
Several reports from journalists on the ground in Brooklyn Center last night indicate that the activities of April 16 were particularly disturbing. According to one report, at approximately

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9:30 p.m. officers outside the station began firing grenades with chemical gas and other projectiles and using pepper spray against protestors. Dozens of journalists were in the crowd.

At approximately 9:50 p.m., the Hennepin County Sheriff's Office reportedly ordered protestors to disperse to the North. Soon thereafter, police lines rushed from the South and West, pushing protestors North, at which point a separate line of officers approached from the North, kettling protestors and the dozens of journalists. Officers then ordered all individuals to lie on the ground, and told journalists they would be released after checking their credentials. Some journalists spent upwards of ten minutes lying face-down on the ground. As journalists were released, however, they ran into a separate line of officers just one block North. These officers ordered the journalists to line up for processing. Each journalist was then systematically told to lower their mask, present their press credentials and state identification (i.e., driver licenses), and be photographed.

You can view a video of the encounter at: <https://youtu.be/PIRzKemQIc8>. Here is an image captured by a Star Tribune journalist of the encounter:



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Another journalist reported that the officers who “processed” at least some of these journalists wore no visible identifying information, aside from numbers on their helmets: 2300 and 2104, respectively. Another reported that several journalists present and detained in this manner were wearing the Minnesota Media credentials that law enforcement had asked journalists to wear to allow them to be easily identified.

The New York Times reporter who was assaulted on April 13, was again assaulted during this encounter. He was ordered to the ground, then told to stand, only to be ordered to “get back down.” Another group of officers ran up on top of him and began hitting his camera. He suffered additional bruising on his legs and has lingering shoulder pain.

Whatever the intent behind this “cataloging” of journalist, it was deeply disturbing for those involved, and it has caused much fear regarding what use might be made of these photographs and accompanying identifying information in the future, including full names, dates of birth and home addresses. As a federal district court recently held in an analogous case where journalists’ identifying information was collected by law enforcement, the gathering and retention of such records constitutes a First Amendment violation and an “injury-in-fact.” *Guan v. Mayorkas*, 2021 U.S. Dist. LEXIS 61873, at *15-16 (E.D.N.Y. Mar. 30, 2021).

On today’s call, the question was posed whether this type of tension between law enforcement and the media is commonplace these days, or whether Minnesota is a unique example. Certainly, we live in politically and socially tense times and that is true across the country. But the abuses perpetrated by law enforcement officers in the Twin Cities over the past several nights—and going back to last summer—are alarming and, yes, threaten to set this State apart. They also are clear violations of the First Amendment, and for those officers subject to the TRO, they are in direct violation of the TRO.

Pursuant to the assurances provided on today’s call, we plan to instruct our journalists as follows:

- (1) No journalists will be asked, or ordered, to stand for a photograph or to provide anything more than a press credential;
- (2) Members of the press with press credentials who are not acting unlawfully will not be told to disperse;

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- (3) If members of the press are arrested as part of a mass arrest, they will be released as quickly as possible and allowed to continue reporting;
- (4) The Minnesota State Patrol embraces the language of the TRO, and journalists can expect that those officers who are subject to the TRO to act in full compliance with the TRO; and
- (5) No law enforcement officer will physically assault a member of the press, including by punching or pushing to the ground.

We appreciate your time and assistance in this matter. We want to assure you that the members of the media on the ground in Minnesota take their role in reporting on the events unfolding seriously. They understand the challenges you face in keeping the peace and they do not want to make your job harder. They are professionals who have no interest in “being a part of the story” themselves. All we ask is that law enforcement also act reasonably and in a manner consistent with the U.S. Constitution and judicial orders.

We look forward to working with you over the coming days and months to ensure that both law enforcement officers and the press are able to do their jobs effectively and that these abuses are not repeated.

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Sincerely,

s/Leita Walker

Leita Walker, writing on behalf of:

American Public Media Group (which owns Minnesota Public Radio);	Minnesota Coalition on Government Information;
The Associated Press;	National Press Photographers Association;
BuzzFeed, Inc.;	NBC News
Cable News Network, Inc.;	The New York Times Company;
CBS Broadcasting Inc. (on behalf of WCCO-TV and CBS News);	The News Leaders Association;
Committee to Protect Journalists;	Radio Television Digital News Association
Court TV Media LLC;	Reporters Committee for Freedom of the Press;
Dow Jones & Company (which publishes <i>The Wall Street Journal</i>);	Reuters;
Fox/UTV Holdings, LLC (which owns KSMP-TV);	The Silha Center for the Study of Media Ethics and Law;
Gannett Co., Inc./USA Today Network;	Society of Professional Journalists
Institute for Nonprofit News;	Star Tribune Media Company LLC;
Media Convergence Group, Inc., d/b/a Newsy;	TEGNA Inc. (which owns KARE-TV);
	Twin Cities Public Television;
	The Washington Post

Cc: Teddy Tschann