



National Press Photographers Association

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Via Email

May 16, 2019

Chief William Scott
San Francisco Police Department
1245 3rd Street
San Francisco, CA 94158

Re: Bryan Carmody Raid

Dear Chief Scott:

As general counsel for the National Press Photographers Association (NPPA), I write to denounce the actions of your department in seizing material and property from the home and office of freelance videographer Bryan Carmody last Friday. While other First Amendment organizations have already condemned that raid, we also wish to express our disagreement with your reported comments defending that search and seizure.

Contrary to your view that officers followed the “appropriate legal process” by obtaining search warrants from two judges, we believe such measures violated the protections for “sources and source material” provided under the California Shield law (Cal. Const. art. I, § 2(b) and Cal. Evid. Code §1070) for “a . . . reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication . . . or any person who has been so connected or employed.”

Despite your zeal to investigate the “leak” of a police report pertaining to the death of public defender Jeff Adachi, the Privacy Protection Act of 1980 (42 U.S.C. § 2000aa et seq.)(PPA) was enacted specifically to protect journalists and newsrooms from search by government officials. The legislation was drafted to address concerns resulting from a U.S. Supreme Court 5-3 decision in another California case, *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978), holding that a state is not prohibited from issuing a warrant to search and seize evidence from a third party who is not a criminal suspect; but that conditions for a search warrant “must be applied with particular exactitude” when First Amendment considerations are at stake.

In line with the dissenting opinions in *Zurcher*, Congress agreed with President Carter as to the dangers to the “effective functioning of our free press” raised by the decision and that the issues raised in “require new, stringent safeguards against Federal, state and local governmental

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intrusion into First Amendment activities.”¹ Under the PPA, rather than a warrant, a court ordered subpoena (with notice and the opportunity to be heard) must be obtained prior to the material being produced. The PPA is further bolstered by California Penal Code §1524(g) that “[n]o warrant shall issue for any item or items described in Section 1070 of the Evidence Code.”

Given the above apparent conflicts with the safeguards provided by state and federal law and the chilling effect these actions have on the First and Fourth Amendment guarantees under the U.S. Constitution, we respectfully request that your department return all property seized from Mr. Carmody and better adhere to your mission statement “to protect life and property” by providing “service with understanding, response with compassion, performance with integrity and law enforcement with vision.”

Thank you for your attention and consideration in this matter.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

¹ *Message from the President of the United States*, 96th Congress, 1st Session, H.R. Doc. No. 96-84 (April 2, 1979).