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Executive Director

November 13, 2014

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The Honorable Charles Dooley
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The Honorable James Knowles III
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110 Church Street
Ferguson, MO 63135

Chief Thomas Jackson
Ferguson Police Department
222 S. Florissant Road
Ferguson, MO 63135

Governmental Responsibility to Protect First Amendment Rights

Gentlemen:

With the pending announcement of the grand jury decision whether to indict Officer Darren Wilson for the shooting death of Michael Brown, it is imperative that the free speech rights of the public, and the rights of the press, be protected and respected by all law enforcement officials.

Free Speech is a Right That Needs Breathing Room

Free speech often involves protest, raised voices, anger, and the airing of grievances. Members of the public must be free to protest in public without interference from government officials, including police.

We understand that there is a difference between exercising one's First Amendment right to assemble and breaking the law. Law enforcement agencies must recognize, however, that the Constitution firmly protects protests even when – and especially when – they stir anger, question preconceptions, challenge government policy, and induce dissatisfaction with the *status quo*. Speech, especially speech during times of unrest and public crisis can – at times – be loud, raucous, and even occasionally frightening.

The First Amendment safeguards protesters' rights to awaken passions, to make the public aware of their positions and opinions. America's robust tradition of free speech allows us all to effect change by making our voices heard. This is crucial to ensuring that the government remains responsive to the will of the people; it is what sets our country apart and is the reason it must be carefully and consistently protected.

Each and every law enforcement agent has an affirmative duty to ensure that the rights of protesters and the press are protected.

Pretextual Arrests

What is **not** a part of the American tradition is using pretextual reasons to arrest, or threaten with arrest, those individuals engaged in peaceful public protests.

Nor is the use of force against protesters absent a real and immediate threat of physical harm to others ever permitted.

Any law enforcement officer engaged in protest monitoring must ensure that the rights of protesters are respected.

To be specific, it is unlawful – absent consent or exigent circumstances – for police to:

- confiscate recorded footage;
- prevent recording by media or private citizens of police activity;
- disperse protesters or members of the media, or order them to leave a public space;
- search an individual; or
- enter, search, or raid private homes or sanctuary spaces without a warrant.

Public Desire for Protections

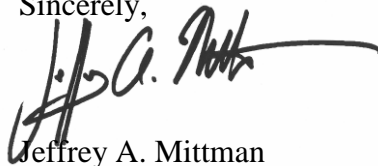
As we have all learned from the events following August 9, protests and the police reaction to them do not go unnoticed.

Should the ACLU receive information or footage evidencing violations of protester civil liberties, we will take immediate action to prevent further abuses. Such legal action could result in court orders and/or attorneys' fees.

Our hope is that protesters and the media will be allowed to exercise their First Amendment rights while law enforcement officials monitor and observe for the sole purpose of public safety.

Instructing all officers in and around active protests on allowable actions and what constitutes unlawful behavior would best serve all parties and the community.

Sincerely,

A handwritten signature in black ink, appearing to read "J.A. Mittman", with a long horizontal flourish extending to the right.

Jeffrey A. Mittman
Executive Director

American Civil Liberties Union of Missouri Foundation