



June 17, 2020

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### **Statement on Detention of Legal Observers**

The New York City Bar Association (City Bar)<sup>1</sup> is gravely concerned by recent reports in the United States of concerted efforts by police forces to target legal observers<sup>2</sup> during the course of ongoing nationwide protests against police brutality and anti-Black racism in the killings of George Floyd, Breonna Taylor, Tony McDade, Ahmaud Arbery, Eric Garner, and countless others, and in support of the Black Lives Matter movement. Last week in the Bronx, nine legal observers affiliated with the National Lawyers Guild—each wearing neon green hats that plainly signaled their status as legal observers—were reportedly identified by police officers, pulled out

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<sup>1</sup> The New York City Bar Association’s Task Force for the Independence of Lawyers and Judges focuses on fostering the independence of lawyers and judges in their professional activities in the United States and abroad and increasing awareness about the importance of such independence to maintaining the rule of law in civil society. The Civil Rights Committee addresses both civil rights and civil liberties matters, including First Amendment and Due Process rights as well as other constitutional protections against overreaching by state actors. The Sex and Law Committee addresses issues pertaining to gender and the law, and its members, who train and serve as legal observers, understand the important role of legal observers in protecting the exercise of an individual’s fundamental and civil rights.

<sup>2</sup> Legal observers are specially trained individuals who do not take part in protests, and the New York Police Department’s Patrol Guide expressly forbids police officers from obstructing their lawful conduct. N.Y. Police Dep’t Patrol Guide, Proc. No. 203-29, “When A Member of the Service Encounters An Individual Observing, Photographing, and/or Recording Police Activity” (eff. date June 12, 2018), [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/public-pguide1.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf). Legal observers are typically lawyers, law students, or paralegals. As discussed later in this letter, the role of a legal observer is to distribute information to protesters regarding their rights, monitor police activity, and connect arrestees with legal services. See National Lawyers Guild Legal Observer Training Manual (2003) available at: [https://cldc.org/wp-content/uploads/2012/01/LO\\_Manual.pdf](https://cldc.org/wp-content/uploads/2012/01/LO_Manual.pdf); “Legal Observer,” Civil Liberties Defense Center (2014) available at: <https://cldc.org/legal-observer/>; “NLG Legal Observers Program,” National Lawyers Guild available at: <https://www.nlg.org/legalobservers/>; “How to be a legal observer,” Network For Police Monitoring available at: <https://netpol.wordpress.com/monitoring/legal-observers/how-to-be-a-legal-observer/> (all websites last visited June 17, 2020).

of a crowd, restrained with zip-tie cuffs and detained for twenty minutes.<sup>3</sup> Several were thrown to the ground before being arrested.<sup>4</sup> Even more disturbing are allegations that officers illegally accessed and examined these legal observers' privileged documents and took down their personal information while claiming to be ignorant of the function of legal observers during protests.<sup>5</sup>

The targeting of legal observers by police is also occurring outside New York. In recent days legal observers have allegedly been singled out through the use of kettling tactics and attacked by police using pepper spray, tear gas, and rubber bullets.<sup>6</sup> In one disturbing video, a legal observer in Cleveland, Ohio recorded a police officer as the officer shoots rubber bullets toward protesters. Once within the officer's line of sight, however, the officer quickly begins firing rubber bullets at the legal observer.<sup>7</sup>

Legal observers are third-party observers of protest movements whose sole function is to adequately safeguard individuals' rights. In New York, the NYPD's Patrol Manual clearly recognizes this constitutionally protected conduct, emphasizing that "[i]ndividuals have a right to lawfully observe and/or record police activity including, but not limited to detentions, searches, arrests or uses of force" and that officers must not "[t]hreaten, intimidate, or otherwise discourage an observer from recording the police officer's activities."<sup>8</sup> To that end, legal observers' work includes documenting arrests, use of force, intimidating display of force, denial of access to public spaces like parks and sidewalks, and any other behavior on the part of law enforcement that appears to restrict demonstrators' ability to express their political views.<sup>9</sup> When arrests do occur, legal observers provide a vital function collecting witnesses and

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<sup>3</sup> Emma Whitford, "NYC Legal Observers Detained at George Floyd Protests," Law360 (June 5, 2020) available at: <https://www.law360.com/articles/1280305>; see also Jake Offenhartz, Nick Pinto, Gwynn Hogan, "NYPD's Ambush of Peaceful Protesters was Executed 'Nearly Flawlessly,'" City Leaders Agree," Gothamist (June 5, 2020) available at: <https://gothamist.com/news/nypds-ambush-of-peaceful-bronx-protesters-was-executed-nearly-flawlessly-city-leaders-agree>.

<sup>4</sup> Jane Wester, "Letter Demands NYPD Discipline After Legal Observers Were Detained, Illegally Searched During Bronx Protests," Law.com (June 8, 2020) available at: <https://www.law.com/newyorklawjournal/2020/06/08/letter-demands-nypd-discipline-after-legal-observers-were-detained-illegally-searched-during-bronx-protest>.

<sup>5</sup> *Id.*

<sup>6</sup> Sillas Allen, "Kettling Tactic Dallas Police Used Against Protesters is Steeped in Controversy," Dallas Observer (June 8, 2020), available at: <https://www.dallasobserver.com/news/dallas-police-protesters-kettling-margaret-hunt-hill-bridge-11916828>; Laura Gomez, "Phoenix Police Wrongly Arrested Protesters Who Could Now Be Deported," AZMirror (June 11, 2020) available at: <https://www.azmirror.com/2020/06/01/phoenix-police-wrongly-arrested-protesters-who-could-now-be-deported/>; Jessica Mensch, "Who Polices the Police?: Legal Observer Says Sacramento Police Fired Projectile at His Face During Protest," Fox40 (June 2, 2020) available at: <https://fox40.com/news/local-news/who-polices-the-police-legal-observer-says-sacramento-police-fired-projectile-at-his-face-during-protest/>.

<sup>7</sup> Cory Shaffer, "Video, photo show Cleveland police pepper spraying, shooting projectiles at legal observers during George Floyd protests," Cleveland.com (June 4, 2020) available at: <https://www.cleveland.com/crime/2020/06/video-photo-show-cleveland-police-pepper-spraying-shooting-projectiles-at-legal-observers-during-george-floyd-protests.html>.

<sup>8</sup> N.Y. Police Dep't Patrol Guide, Proc. No. 203-29, *supra* note 2.

<sup>9</sup> National Lawyers Guild Legal Observer Training Manual (2003), *supra* note 2.

connecting arrestees with legal counsel.<sup>10</sup> Legal observers' actions ensure that residents are aware of their constitutional rights, and can avail themselves of their right to legal representation where necessary, and that police officers do not act beyond their authority or abuse it.

The fact that legal observers have become targets for the police indicates that policing strategies in these communities have failed. First, these attacks suggest a failure to adequately train police serving on crowd control details to identify legal observers who are monitoring protests as non-targets. Second, the systematic targeting of legal observers contributes to a growing concern that recent police actions are entirely disproportionate to officers' narrow duties to maintain security while honoring the First Amendment rights of protesters. Third, and most egregiously, the reports of police warnings that legal observers are in the area, the subsequent targeting and detention of those observers, and the forced disclosure of privileged material indicates a startling disregard by police forces that their conduct is governed in our society by the rule of law."<sup>11</sup>

The City Bar strongly condemns all attacks on legal observers and urges state and local governments, police chiefs, and police unions both to advise their officers that attacks on legal observers are not tolerated, and also to swiftly investigate any incident involving the detention or use of force against a legal observer, and where warranted, prosecute offenders. As protests and other demonstrations continue, the City Bar specifically calls on Mayor Bill de Blasio and Police Commissioner Dermot Shea to immediately investigate the incident in the Bronx, and for all officers in the NYPD to be made aware that the consequences of any illegal targeting of legal observers by police will be swift and severe, including appropriate disciplinary charges and criminal prosecution.

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June 2020

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<sup>10</sup> See e.g. *supra* note 2, "Legal Observer," Civil Liberties Defense Center (2014); "NLG Legal Observers Program," National Lawyers Guild; "How to be a Legal Observer," Network For Police Monitoring.

<sup>11</sup> Jake Offenhartz, "Round Up the Green Hats"; NYPD Accused of Deliberately Targeting Legal Observers in Brutal Bronx Mass Arrests, Gothamist (June 8, 2020) available at: <https://gothamist.com/news/round-green-hats-nypd-accused-deliberately-targeting-legal-observers-brutal-bronx-mass-arrest>.