

Court quashes subpoena of reporter who uncovered Chicago police murder coverup

George Marlowe
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On December 13, a Cook County judge quashed an anti-press subpoena against independent journalist Jamie Kalven that would have forced him to disclose his confidential sources in court. Kalven was the first to bring to light the coverup of the police murder of 17-year-old Laquan McDonald in 2014 by Chicago police officer Jason Van Dyke, who faces charges of first-degree murder.

Were it not for Kalven, who works with the independent news organization Invisible Institute, there would have been no exposure of the police murder of McDonald and the subsequent coverup by the Chicago Police Department (CPD), the Democratic mayor Rahm Emanuel and the entire political establishment.

Kalven wrote an explosive article in *Slate* in 2015 entitled “Sixteen Shots” that shattered the official fake news and coverup—promoted by the CPD, the Emanuel administration and the media. In the article, Kalven revealed that McDonald had been shot sixteen times across his entire body, according to the autopsy report he had obtained through a Freedom of Information Act request.

He also cited an unnamed witness who contradicted the entire official police narrative, which claimed that the teenager was lunging at a police officer with a knife while under the influence drugs. The witness stated instead that McDonald was “shying away” from the police officer when he was shot multiple times. Finally, Kalven revealed that there was a police dashboard-camera video documenting the entire incident, which he learned from an unnamed source.

The subpoena—issued by Van Dyke’s lawyers in an attempt to delay his trial—threatened to undermine basic democratic rights afforded to reporters under the First Amendment of the US Constitution. Such rights include a reporter’s constitutional privilege to be

protected from being compelled to testify about confidential information or sources, critical to reporting freely on matters of public interest. At the same time, attacks on the press have steadily increased over the last few decades by multiple administrations, Democratic and Republican.

Van Dyke’s lead attorney, Daniel Herbert, himself a former police officer, issued the subpoena against Kalven claiming that his reporting influenced witnesses—thereby tainting the investigation. Kalven’s lawyers countered that the witnesses in question had already spoken to law enforcement prior to Kalven’s discussions with them. In reality, the spurious subpoena issued by Herbert is part of a counter-offensive to intimidate and threaten reporters who uncover crimes committed by police officers or other agents of the state.

In demanding the subpoena, Herbert also accused Kalven of being an activist, rather than a neutral reporter of the facts. He argued therefore that Kalven could not make use of his reporter’s privilege to maintain the confidentiality of his sources. While Kalven certainly has taken a point of view in his reporting on police brutality for many years, and has been a partisan for the voices of the poor in Chicago’s south side, he is also a conscientious and objective reporter.

Kalven’s lawyer highlighted the spuriousness of the assault on his rights. Compelling Kalven to testify about his sources, they noted, violated the Illinois Reporter’s Privilege Act—which forbids courts from forcing reporters to disclose the source of information they have obtained (confidential or not), except where no other law can prevent its disclosure, and all other sources of information have been exhausted.

An *amicus curiae* brief filed by the Reporters

Committee for the Freedom of the Press (RCFP) and eighteen other media organizations noted, “When a subpoena demands information about confidential sources, the specter of enforcing that subpoena has a chilling effect on all future sources who may have valuable information about matters of public concern, but need an assurance of confidentiality before sharing it.”

In light of the spuriousness of the charges made by Herbert, Judge Vincent Gaughan was forced to quash the subpoena. Gaughan, however, maintained he did so not because of Kalven’s protected status as a reporter, but because of the inadequacy of the subpoena itself. While the dismissal of the subpoena was a victory for Kalven’s rights as a reporter, the courts have only maintained a qualified and limited assertion of a reporter’s privilege.

After months of legal and court battles, the Emanuel administration released the video of the shooting on a late night in 2014. The video confirmed what the witnesses and autopsy reports showed. Laquan McDonald, an impoverished ward of the state, unknown to the public until his untimely death, was shot sixteen times by Van Dyke as he walked away from the officer. The first few shots took the teenager down. Van Dyke subsequently shot him multiple times as smoke emerged from his shaking, dying body.

The video of McDonald finally released in November 2015 engulfed the Emanuel administration in a full-blown political crisis. Protests ensued nightly and there were widespread calls for Emanuel to resign for his role in the cover-up. Instead, the Democratic Party and the political establishment thereafter began a process of damage control.

Emanuel, who bears chief responsibility for the murder, remains in office and no high-level political figure has been charged. In December of 2015, Emanuel called for the resignation of Superintendent Garry McCarthy, the head of the CPD at the time of McDonald’s death. Van Dyke was then indicted on six counts of first-degree murder and one count of official misconduct. Multiple officers on the scene were involved in a conspiracy to cover up what happened. The official organs of police oversight, such as the Independent Police Review Authority, sanctioned the false statements of the officers.

The mainstream press, for their part, uncritically

reported what CPD officials told them, which was that McDonald had lunged at the officer with a knife. Kalven’s reporting, however, was instrumental in bringing to light the real circumstances of the murder of McDonald and added to the growing public outrage against police brutality.

In the wake of the release of the video, Emanuel also vowed to create a task force for police accountability, in order to cover up his own tracks. Emails released by the *Chicago Tribune* later revealed the entire administration in City Hall was aware of the video and chose to suppress it. The Justice Department also opened an investigation, which released its report earlier this year. The report revealed a damning pattern of constitutional abuses by the CPD. It detailed a history of police brutality and violence in Chicago, but it only offered mere palliatives and half-measures.

Despite the reporting by Kalven and widespread outrage against police brutality in Chicago, there has been no fundamental change in the course of the CPD and its policies. Far from ushering in an era of “police reform”, as promised by Emanuel in the wake of release of the video footage of the police murder of McDonald, police violence and brutality continue unabated, in Chicago and across the country.



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