

The logo for Media Alliance, featuring the word "Media" in white on a black background and "Alliance" in black on a white background.

Action & Resources
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and diverse media system



Comments to the Berkeley Police Review Commission on Press Pass Credentialing

October 7, 2015

Thank you for this opportunity to address you. I regret being unable to attend the October 8th meeting in person. As a brief introduction, Media Alliance is a Northern California-based democratic communications advocate which began as a journalists association in 1976. We have a long history of legal and policy interventions on behalf of journalist rights. You can find out more at www.media-alliance.org.

With regard to the parameters for a policy for the BPD, there are a few foundational statements to be made. The first is that regardless of existing credentialing policy, the events of December conclusively demonstrate that a problem exists and corrective action needs to be taken to prevent the mauling of journalists by police officers during heated protests.

The second is the fairly crucial observation that journalism is a verb, not a noun. The indicator for journalism is the role an individual is playing in a particular scenario. Much like the provided example of a National Lawyers Guild legal observer, who dons identifying gear and attends a protest in a particular capacity to fill a specific role. An individual serving as a legal observer at a particular event may not be and often is not a legal observer at every event they attend. They make a decision to participate in a certain way, identify themselves clearly as such, and generally observe the characteristics of the role while identifying as such. In this day and age, we need to define the act of journalism similarly.

The role of a journalist at a public protest event or in a public event with a law enforcement presence is fairly straightforward. It is to observe events, document or record them without actively playing a role in determining what occurs, and to release those observations and documentations over a channel to an audience that is not themselves present at the event. In return for providing these information services to the public, the journalist expects access to public events and not to be manhandled, detained, gassed, beat up or injured in such a way as to prevent the delivery of their information to the public in a timely way.

The simple provision of press passes defines that basic exchange, but hasn't always worked. This happens for several reasons, which we will list below and suggest possible remedies:

The press pass is not visible or not made visible quickly enough to prevent an injurious action

We would recommend the provision of a clearly identifying band or sticker to any individual registering with the department. Some may not choose to utilize it, but in a situation that becomes heated, it provides an option to prevent incidents of the kind we saw in December, as well as to clearly establish fault when identification is demonstrably visible.

“Class issues” in journalism are subjectively interpreted by individual police officers

In every case, it is a losing proposition to leave it to the individual judgments of officers who is and isn't a journalist. It is understandable that a single reporter from an obscure outlet will be far more vulnerable to an erroneous police judgment than a 4-person team from KTVU-TV complete with elaborate camera equipment or a nattily dressed reporter from the *Wall Street Journal*. However freedom of the press extends to the full range of outlets and journalistic activity, not merely the most recognizable. Students from the Daily Californian are reporters extended constitutional protections even though they may look just like all the other protesters and carry nothing more exciting than a pencil and an iPhone.

Suggesting two “levels” of press passes is essentially creating a two-tier system that guts constitutional protections offered to the media based on economics. It is also an outdated model as the percentage of full-time workers in journalism has been steadily dropping and virtually all media outlets depend heavily on volunteer journalists and/or stringers to a significant extent. So I would encourage you to dismiss any idea of “levels” of press passes and focus on a workable system to maintain adequate levels of access and insulation from detainment and injury for any individual who is filling the role of a journalist.

Training and Accountability is Crucial

Whatever identifying material is provided to registered journalists by the BPD (and I'd suggest an annual or biannual credentialing process that leaves it to the individual whether to don their identifying regalia at a given event), it is important that all BPD officers and outside forces used to assist be aware of the journalistic regalia and the set of actions that is off-limits with regards to journalistic practitioners. The suggestion of a subcommittee to develop that set of “what not to do to an identified journalist at a protest” is a good one and a clear 5 or 10 point list of prohibited actions would serve a clear purpose.

The final piece to put into place is disciplinary responses to violations of the constitutional rights of an identified journalist. Given the amount of cameras generally available at heated protests, evidence is likely to be available to support or document problems, and it is incumbent upon BPD and the PRC to have disciplinary remedies in place that address both police mistakes and deliberate flouting of the press treatment rules, both to indicate low tolerance for journalist abuse and to retrain officers who for whatever set of reasons take incorrect actions so the problems do not recur.

Media Alliance would be pleased to follow up on these general comments in any way that would be helpful to the PRC and thanks you for your time and consideration of public input.

Sincerely,

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