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Some Practical Advice about Covering High Profile News Stories

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Overview

In preparation for the expected rallies and demonstrations during the 2020 Democratic National Convention (DNC), July 13-16 in Milwaukee, Wisconsin and the Republican National Convention (RNC), Aug. 24-27 in Charlotte, North Carolina, the NPPA along with the Reporters Committee for Freedom of the Press (RCFP) will be conducting training with the police agencies in both cities regarding 1st, 4th and 14th Amendment rights of citizens and journalists to photograph and record police performing their official duties in a public place. This will be similar to the training those groups provided at the 2012 DNC and RNC in Charlotte, NC and Tampa, FL (respectively) as well as the 2016 DNC in Philadelphia, PA and 2016 RNC in Cleveland, OH. It was NPPA and RCFP's hope to avoid the interference with and the arrest of journalists that occurred in 2008 in Denver and St. Paul.

NPPA was also in Ferguson, MO in August 2014 during protests there working to ensure the rights of visual journalists. If the news stories over the years are any indication, then journalists covering the 2020 elections can expect that everyone – mainstream media, bloggers, citizen journalists, protesters, and bystanders—will have a camera of one kind or another.

With the almost ubiquitous proliferation of cellphone cameras, capable of recording high-quality images along with audio and video, everybody is documenting everything and everyone.

Legal Issues

“A citizen’s right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment,” [Glik v. Cunniffe](#), 655 F.3d 78, 85 (1st Cir. 2011)). This is true because “gathering information about government officials in a form that can be readily disseminated to others serves a cardinal First Amendment interest in protecting and promoting the ‘free discussion of governmental affairs.’” *Id.* at 82.

Numerous other courts have reached the same conclusion. The Eleventh and Ninth Circuits both have long recognized that “the First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.” [Smith v. City of Cumming](#), 212 F.3d 1332, 1333 (11th Cir. 2000); [Fordyce v. City of Seattle](#), 55 F.3d 436, 439 (9th Cir. 1995) (recognizing “First Amendment right to film matters of public interest”). The Seventh Circuit echoed the principle that “making an . . . audiovisual recording is necessarily included within the First Amendment’s guarantee of speech and press rights as a corollary of the right to disseminate the recording.” [ACLU v. Alvarez](#), 679 F.3d 583, 595 (7th Cir. 2012). [Turner v. Lieutenant Driver](#), 848 F.3d 678, 689 (5th Cir. 2017) (“Filming the police contributes to the public’s ability to hold the[m] accountable, ensure that [] officers are not abusing their power, and make informed decisions about police policy.”). “Every Circuit Court of Appeals to address this issue (First, Fifth, Seventh, Ninth, and Eleventh) has held there is a First Amendment right to record police activity in public” and “we join this growing consensus.” [Fields v. City of Philadelphia](#), 862 F.3d 353, 355-56 (3d Cir. 2017). These decisions all are based on basic principles of First Amendment law that have been well-established for decades.

NPPA asserts that the right to observe and record police officers performing their duties in a public place is a recognized form of free speech through which the press and the public may gather and disseminate information on matters of public concern. First Amendment protections regarding such activity, while not absolute, may only be limited by reasonable time, place, and manner restrictions, which must be content neutral, be narrowly tailored to serve a significant governmental interest and leave open alternative avenues of communication.

But the “reasonableness” of a reasonable time, place, and manner restriction is often in the eyes of the beholder. Police issuing an order to disperse may expect everyone including those with cameras to leave the area while journalists may believe that moving back or out of the way constitutes compliance.

Local Ordinances

The cities of Tampa, Charlotte, Cleveland and Philadelphia established security zones and enacted restrictive laws. Those ordinances also banned a long list of items deemed to be potential weapons, so journalists who might come prepared with gas masks may find they are violating restrictions by carrying one. Also prohibited from places designated as “public viewing areas” were: “sticks, poles, ladders, monopods, bipods, and tripods.” Cities also often establish “free speech zones,” where permitted marches may take place and speakers may address the public. It is also important to note that many of the streets in some cities that appear to be public are actually privately owned by banks and large companies in that city, which may further complicate the right to record. Ferguson, MO also enacted its own restrictive ordinances.

Federal Trespass

Another concern sometimes might be the enforcement of [H.R. 347](#) also known as “The Federal Restricted Buildings and Grounds Improvement Act of 2011,” making it a federal offense to cause a disturbance at certain events. More specifically, anyone who trespasses on specified property or at times and locations “so restricted in conjunction with an event designated as a special event of national significance” may be prosecuted and subject to a fine or imprisonment or both. Both conventions in 2012 were designated a “[National Special Security Event](#)” by the Department of Homeland Security.

Under this “trespass bill” anyone “knowingly” entering a restricted area under Secret Service control who “engages in disorderly or disruptive conduct” or “who, with the intent to impede or disrupt the orderly conduct of government business or official functions, obstructs or impedes ingress or egress to or from any restricted building or grounds; or knowingly engages in any act of physical violence against any person or property in any restricted building or grounds; or attempts or conspires to do so, shall be punished” accordingly. The law also creates a floating bubble of protection around the president and other dignitaries, so although those covering the protests may be outside of the designated zones, they may still fall under the ambit of the law.

Other Resources

NPPA works with a number of other organizations including the Reporters Committee for Freedom of the Press (RCFP), the American Civil Liberties Union (ACLU), the National Lawyers Guild (NLG), the Society of Professional Journalists (SPJ) and the Committee to Protect Journalists (CPJ). The RCFP has a [mobile app](#) for reporters that, according to its website, “gives reporters in the field immediate access to legal resources, particularly in situations where newsgathering or access may be stymied.” They also have a [handbook](#) entitled “Police, Protesters and the Press” available for free download. Additionally, the Reporters Committee will again be partnering with prominent law firms in Milwaukee and Charlotte as they did in 2011 and 2016 to assist “journalists who may be impeded or arrested” in those cities while covering the news. These firms often provide free 24-hour legal assistance through a [hotline](#) available for journalists covering events in those cities. The RCFP main hotline number is 800-336-4243. Write important numbers down on your arm or another easily viewed part of your body so you have them if you need them because if arrested your wallet and personal possessions will be inventoried and a phone number on a piece of paper or in your cellphone may not be available.

The NPPA and RCFP will once again be working with private law firms during the 2020 conventions to help provide these services. NPPA also helped file legal papers in Ferguson, MO resulting in court orders that vacated a number of the local ordinances that were found to be unconstitutional.

Important Items

Important items to always have with you: government-issued photo I.D. (i.e. valid driver’s license), press credential(s) or press identification card(s) (if you have any), credit card(s) and some cash (in case you need to post bond). For its members NPPA also has available for purchase a “[Member ID](#)” which some have found a useful form of identification.

Potential for Arrest

When covering demonstrations, protests, marches and rallies you should be aware that there is a risk of arrest. Just because you may be a journalist, have a camera or believe that you have a lawful reason for being present to

observe, document and report on these events does not provide immunity from being arrested along with those participating in these events. For example do not expect that you will be able to cross or walk through police lines. If you need to do so it is always advisable to seek permission before acting.

Complying with Police Orders

If a police officer orders you to move it is advisable to comply with the request. How far you move is something that you will have to decide for yourself. If you believe that the order is not a reasonable one, ask to speak to a supervisor or the public information officer if that is possible. It is important to be very aware that most police officer do not like to be questioned or challenged once they have told you to do (or not do) something and a mere hesitation, question or request may result in your detention or arrest. Only you can make that judgment call as to what to do. Every situation is different as is every police officer's reaction to your behavior. For the most part officers have been trained to respond in an appropriate manner, but given that we all have different personalities and the fact that they may be standing out in the summer heat for many hours, sometimes in helmets and riot gear you should not necessarily count on them to be as reasonable as you might like.

Being Questioned or Detained

If you are questioned or detained remember to remain calm and act professionally. Do not get into an argument about your rights. If you are able to have a reasonable discussion that is one thing but if it becomes apparent that the officer is not interested in your point of view it is usually best to move on. Discretion is the better part of valor. If you are told that you are not free to leave or under arrest it is strongly advised that you immediately do what you are told. Officers deem anything less than full compliance as resisting arrest and will then escalate the force they believe is necessary to effectuate that arrest. That means you may be forcibly thrown to the ground, set upon by more than one officer and have your equipment broken in the process. This may occur no matter how compliant you are, but it best to cooperate to the fullest extent possible. It is also important that you identify yourself as a journalist as often as possible so there is no question who you are or what your purpose was in being there. At the first appropriate moment request that a commanding officer or the PIO be notified that a journalist is being detained or has been arrested.

Your Files

While covering these events police may ask to see your images, recordings or files. Be aware that you do not have to consent to such a request. They may try to intimidate, coerce or threaten you into doing so but "consent" must be voluntary. You should know that absent consent or "exigent circumstances" an officer may not seize your camera. Exigent circumstances only exist where an officer has probable cause to believe a crime has been committed AND that you have captured evidence of that crime on your camera AND that there is also a strong likelihood that such evidence may be lost if the camera is not seized. This last element should be difficult if not impossible to satisfy given that the main purpose of a journalist is to gather and disseminate information and images. Even when police do seize a camera they cannot view its contents without a proper warrant. There have been other instances where police have ordered journalists to delete files or have exercised self-help by deleting those files themselves. According to the [Department of Justice](#) "under the First Amendment, there are no circumstances under which the contents of a camera or recording device should be deleted or destroyed" (emphasis added).

For many of the reasons listed above it is very important that journalists work in pairs or groups so that someone may be able to notify those of us working to protect your rights that you have been arrested or are in police custody. Another suggestion is that, to the extent possible, start recording events before a situation becomes a

problem and continue to record for as long as possible. Such recordings may be the best evidence to refute whatever you may be charged with.

Also be aware that many police agencies will be working at these events. The Secret Service, FBI and Department of Homeland Security (DHS) will all have a presence as will the state police along with local city and county agencies. Each has an area of jurisdiction and each may be tasked with enforcing certain laws and ordinances. Just because you receive permission from one officer does not mean that another officer only a few feet away may deny that request. Don't expect things to make perfect sense. Try to be flexible, creative and patient while covering these situations.

Arrest & Release

If you are arrested it is crucial to remember that anything you say may be used against you and possibly lead to additional charges. Saying you are a journalist is one thing. Talking about what happened is another. The charges against journalists arrested in these situations are usually misdemeanors, violations or infractions. Such charges may include but are not limited to: disorderly conduct, failure to disperse, trespassing, unlawful assembly, disturbing the peace, failure to follow a police order and obstruction. If you are arrested expect to be handcuffed behind your back (with traditional metal handcuffs or plastic zip-tie cuffs). You will also have to be processed, which includes having your fingerprints and photograph taken and your personal information such name, address, age, date of birth and social security number run through a national computer check for any previous criminal record or outstanding wants (other law enforcement agency looking for you) or warrants.

Once that process is complete (which may take hours depending on the number of those arrested and the number of officers assigned to booking) and depending on the charges bail will be set. Bail acts as a monetary guarantee that you will return for further court proceedings. Sometimes you may be released in your own recognizance (no money required) but that is unlikely if you are from out-of-town. In most you may be able to post a bond (another form of bail) or have someone do that for you.

The type of bond most often used for the types of charges listed above is known as a Signature or I-Bond. Such a bond requires that you post a minimal amount of money (i.e. \$75.00 – \$200.00) by cash or credit card. It is very important that you receive and securely keep your bond receipt because it usually contains all the information for your next court appearance including the date and location. You will also need that receipt in order get your money back once your case has been adjudicated. If you fail to appear in court the money posted will be forfeited to the court, an arrest warrant will be issued and once found you may be arrested again.

Practical Advice

In terms of practical advice, aside from looking for great images make sure you maintain “[situational awareness](#)” or in simpler terms – know what is going on around you and how it might affect your safety. Not only is it important to be aware of what the police are doing but also others around you such as demonstrators. Journalists have been attacked by those who did not want to be photographed or just did not like the main stream media. You should always try to keep an eye on those who might wish to cause you harm. See the Anarchist News [posting](#).

It is very important to pay attention to your gut instinct and always look toward having a safe way out of the crowd. Once again, I would strongly recommend working in pairs or in a group so that you can watch each other's backs (it is easy to get tunnel vision when your eye is up to the viewfinder). This also will help should you be injured or arrested and are unable to notify anyone of your situation. Fortunately for Getty's Joshua Lott, he was with Scott Olson who immediately reported Josh's arrest and we (the attorney for the RCFP and me) were able

to immediately contact the Chicago Police, get the initial felony charges of mob-action reduced to the misdemeanor reckless conduct and obtain his release a short time later. Josh later returned the favor by calling me when Scott was arrested in Ferguson.

Training for law enforcement officers has included advice regarding the rights of journalists and the directive that they are not to be interfered with so long as they do not violate the law, create a safety hazard or interfere with police operations. While identifying yourself as a journalist may reduce the likelihood of arrest or help speed your release the best practice is to avoid being caught-up in a mass arrest by remaining near the edge of any large demonstration and also leaving yourself an avenue of escape if needed.

Preparation

Many of these events occur in very hot weather. Remember to stay hydrated. Have plenty of water with you (also be on the lookout for places where they will be providing free bottles of water). Stay in the shade when possible.

Wear light-colored, loose-fitting clothing. Dress neatly – if you don't want to be confused with the protesters try to find a way to not look like them. Wear sunglasses and a hat. Apply sunscreen liberally and often. Be aware of the weather and check weather reports.

You may also consider purchasing a [plastic insert](#) for the inside of a baseball hat which will keep the sun off your head and provide some protection “against lacerations, bumps and scrapes to the head area.”

There is some debate about wearing vests or hats with PRESS written in large type. On one hand it leaves no doubt about your purpose but on the other may make you a target. The one thing you should do is clearly display your press credentials or ID's if you have them. During the protests in Ferguson many journalists were wearing flak vests and helmets sometimes with “camo” designs. While they might offer protection and look cool they may also make you a target of police or demonstrators who might confuse you with the “enemy.”

Other items you may wish to have with you are eye protection and something to cover your nose and mouth with such as a surgical or painters mask. Of course sometimes wearing a mask will bring you extra police scrutiny but if the police have already deployed OC spray or other crowd control agents the benefit of the mask might well outweigh the downside. If you wear contact lenses consider going back to wearing glasses for the time you are out covering the protests. See How to prepare for [OC Spray](#).

Your Equipment

Visual journalists carry equipment ranging from a cellphone camera or a simple point-and-shoot to high-end digital cameras, Betacams, laptops and other gear worth thousands of dollars. No matter what you use, the equipment is essential to doing your job and its safety and security should be of utmost importance to prevent it from becoming damaged, lost, stolen or seized.

For those who use Apple products, make sure that you activate the tracking and auto-lock features on your iPhones and iPads. Also be sure to write down the description and serial numbers of all your equipment and devices and store that list in a safe but easily accessible place in order to file a complete police report and to expedite recovery if they are stolen.

As for camera equipment, some also suggest being well connected to your gear using “[Sun Sniper](#)” straps that have steel cables running through them.

Also make backups of all your important files and keep it on a remote computer or USB drive which you have stored in a safe and secure place. Consider using the Cloud or similar remote storage for these files as well for livestreaming of your images in case your camera is lost, stolen or seized by police. For more info on staying safe read [Poynter](#).

Conclusion

Police in several many cities have exercised considerable restraint in allowing protesters to move into non-designated areas and not interfere with non-permitted marches. Officers in other cities have penned journalists and used kitting tactics to arrest protestors and journalists. Police often do not distinguish between credentialed and non-credentialed journalists when allowing access to most public places. Depending on the circumstances they may or may not interfere with those taking pictures, recording video, or livestreaming events. Command staff from both the Tampa and Charlotte-Mecklenburg police departments were present in 2012 during the NATO Summit in Chicago to observe, and the lessons they learned were clearly reflected in no arrests of journalists in either city during the 2012 political conventions. The same was true in 2016 in Cleveland and Philadelphia. Unfortunately, the same cannot be said of what happened in Ferguson where there was not a unified police command structure and officers interfered with, detained and arrested many journalists.

If you get into trouble or have questions about certain situations please feel free to contact me by email at lawyer@nppa.org or by text or cellphone at 716.983.7800. For more information and links to reference material click [here](#):

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