



National Press Photographers Association, Inc.

The Society of Visual Journalists

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VIA EMAIL

October 1, 2012

Commissioner Raymond W. Kelly
New York Police Department
1 Police Plaza
New York, NY 10007

Re: Recent Events Involving Police Press-Relations

Dear Commissioner Kelly,

As a follow-up to our meeting on November 23, 2011, after which you issued your FINEST message “to remind members of the service of their obligations to cooperate with media representatives acting in a news-gathering capacity at the scene of police incidents,” I am writing on behalf of the organizations listed below in order to address recent events involving members of the press and your department.

On August 4, 2012, New York Times photographer Robert Stolarik was interfered with and arrested in the Bronx while taking pictures of an arrest which was part of the “stop and frisk” program. Correspondence was exchanged between George Freeman, DCPI Paul Browne, ADCLM Deborah Zoland, ADCLM Thomas Doepfner and I regarding this matter. After much effort by all parties his equipment was returned a week later and his credentials were returned on 8/23/12. Despite our repeated assertions that Mr. Stolarik’s arrest was completely unwarranted, the charges of obstruction of governmental administration and resisting arrest remain; and we have yet to receive the report from the IAB investigation in which Mr. Stolarik fully cooperated. We are also deeply concerned because his arrest appears to be in direct contravention of a 6/2/77 Stipulation and Order in the U.S. District Court for the Southern District of New York in the matter of *Black v. Codd*, which was incorporated verbatim into the NYPD Patrol Guide in 2000 at PG 208-03 under the heading “Observers at the Scene of Police Incidents.”

On Monday, September 17, 2012, in violation of both the FINEST message and Patrol Guide directives, members of the service, including command and supervisory personnel, interfered with, assaulted, detained and in some cases arrested members of the media who were on a public street covering the anniversary of the Occupy Wall Street protests.

According to reports from the scene along with viewed videos, a police lieutenant repeatedly told journalists, including many with NYPD-issued credentials, they could not be on a section of Broadway just north of Wall Street. He was heard saying “This is a protest” and once again that photographers were not permitted to be there. He also can be heard telling a group of reporters and photographers, including several with NYPD-issued credentials, that they could not continue to use cameras in a public area.

Officers then used batons to shove groups of credentialed journalists north on Broadway and also threatened another group of credentialed journalists with arrest if they did not leave the sidewalk on the west side of Broadway. This occurred at the same time police allowed members of the public access to that area.

In another incident on the same day, a reporter with NYPD-issued press credentials was told by an officer that he could not pass a barricade and walk down a sidewalk because “the stock exchange is not accepting media today.” There is also video showing a private stock exchange guard manning a police barricade at which he checked IDs. It was apparent that police had abrogated their authority and allowed this person to determine who was eligible to walk along a public sidewalk at the same time denying access to members of the press. While we commend some command staff for intervening on behalf of credentialed media, there were far too many instances to be ignored where proper procedures were not followed.

It is our strongly asserted position that while the press may not have a greater right of access than the public, they have no less right either.

What is also of grave concern is the fact that although DCPI issued press credentials may be required for admission to certain press events; it is a blatant violation of the First Amendment for officers to prevent non-credentialed members of the media from gathering and disseminating news on a street where the public has not been denied access. We strongly object to any journalists being harassed, intimidated and arrested when clearly displaying press identification solely because they were not considered to be “properly credentialed” by the police.

As the Supreme Court noted in *Branzburg v. Hayes*, 408 U.S. 665 (1972) “Liberty of the press is the right of the lonely pamphleteer who uses carbon paper or a mimeograph just as much as of the large metropolitan publisher who utilizes the latest photocomposition methods.” In *Von Bulow v. Von Bulow*, 811 F.2d 136 (2d Cir. 1987), the U.S. Court of Appeals for the Second Circuit, similarly stated that “an individual successfully may assert the [New York] journalist’s privilege if he is involved in activities traditionally associated with the gathering and dissemination of news, even though he may not ordinarily be a member of the institutionalized press.” In that same vein, the U.S. Court of Appeals for the First Circuit noted that such constitutional protections “cannot turn on professional credentials or status.” *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011).

Given these ongoing issues and incidents we believe that more is needed in order to improve police-press relations and to clarify the ability of credentialed and non-credentialed journalists to photograph and record on public streets without fear of intimidation and arrest. Therefore, we urge you meet with us once again so that we may help devise a better system of education and training for department members starting from the top down.

Thank you for your anticipated cooperation.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

cc: Paul J. Browne, DCPI (via email)

On behalf of:

George Freeman, The New York Times
Matthew Leish, The New York Daily News
Karen Kaiser, The Associated Press
Shmuel Bulka, Thomson Reuters
Craig Lindner & Jason Conti, Dow Jones
Larry Seary, New York Press Club
Diane Kennedy, New York Newspaper Publishers Association
David Pokress, New York Press Photographers Association
Eugene Mopsik, American Society of Media Photographers
Bruce Brown, Reporters Committee for Freedom of the Press
Kathleen Kirby, Radio Television Digital News Association
Sonny Albarado, Society of Professional Journalists
Carlos Lauría, Committee to Protect Journalists