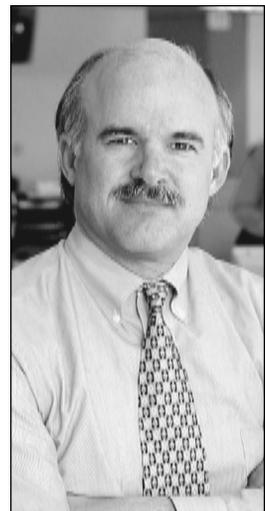
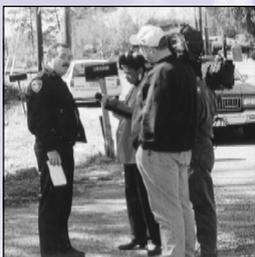


press impasses:

dealing with police

before, during and

after stories break



**THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS**

SUMMER 2001

media
relations officer
cpl. don kelly
briefs reporters

BY SCOTT L. MATSON

When television reporter John Garcia went to cover a breaking news story about a man who barricaded himself in a suburban Chicago grocery store, he and the other journalists there faced their own obstruction. Police established a boundary that gradually pushed the reporters and camera crews farther and farther from the scene.

"We were told to go to the police department, which was six blocks away. Obviously we weren't going to do that," said Garcia of ABC-7 in Chicago.

Journalists cannot overlook the importance of fostering a good working relationship with police. The emergency scene, however, is not the best time or place for journalists to resolve questions about boundaries, photos and which officer can speak for the department.

Journalists need to know what to do before, during and after these events. At the center of the debate are media policies, which police departments use to define what is acceptable conduct. While these policies may be useful guidelines, they can become too restrictive of the press. But in light of some disturbing consequences to press and police alike, agreeing to some rules may be the best alternative.

Mutual Understanding

For the past 13 years, Cpl. Don Kelly, media relations officer for the Baton Rouge, La., police department has worked face-to-face with the beat reporters directly affected by the department's media policy.

Understanding the objectives of the press and police ahead of time is instrumental for everyone involved. At the station, Kelly spends time coaching other police officers one-on-one, at times even grabbing them in the hallway to coach

them on their conduct with the media. Kelly has also visited the local newspaper to develop a cooperative relationship with the reporters. At times Kelly's friendliness with the local media has caused detectives to be reluctant to share information with him.

"There's no way to confront it except over time," he said of their skepticism.

A sit-down with editors usually follows a specific incident — like a photographer last year who disagreed with police about the boundaries at a crime scene, Kelly said. The situation grew so contentious Kelly researched the law on interference at a crime scene with the idea of lobbying for legislation. In the end, a meeting with newspaper editors resolved the dispute and prevented the arrest of a member of the news media. Kelly, a former president of the National Information Officers Association, admitted arrests are not the best solution.

"You don't want it to come to that. There are enough problems going on (at a crime scene) to have to arrest a reporter," he said. "There are occasions when there's no other way to resolve it. Sometimes it's the court of last resort."

In his experience, Kelly said, there has been little need to enter an agreement to control conduct or even put guidelines in writing.

Susan Seager, on the other hand, realizes a smooth relationship between police and the media is unlikely. The Los Angeles attorney supports putting a media policy in print.

As an example, Seager cited the Los



Angeles Police Department media access policy, which allows journalists to photograph crime scenes, prohibits the isolation of the media outside of the crime scene perimeter, allows journalists to make their own decisions about safety and advises officers to call media relations personnel in the event of a dispute over access.

"I do support written policies if they contain clear, strong rules providing media access to

crime and disaster scenes and police records," said Seager, a former reporter who is now a second-year associate at Davis Wright Tremaine.

What, if anything, can the news media expect to accomplish by meeting with police officials?

For Kelly, he finds discussions with the local media most successful when he leaves knowing that the news representative had an open mind and did not automatically close ranks to defend the media side. He quickly acknowledged police tend to have the same immediate reaction.

"It's also nice to get a follow-up call informing us the situation has been addressed," he said. Resolving disputes when they arise, Kelly said, give the two sides an opportunity to understand each other's motivations.

Sometimes the benefits of a meeting are short-lived. Even with a standard in place, the policy itself can be nebulous and its enforcement inconsistent. As Garcia experienced, different officers will enforce the rules at an emergency scene differently. Garcia knew the police had media guidelines, but certainly did not call them

los angeles police officers
confront reporters during
the democratic convention



strict. The Chicago reporter said enforcement “depends on who is on scene and how media friendly they are.”

Inconsistency makes reporting more difficult. As a result, journalists find themselves in a frustrating situation where they customarily receive certain information then suddenly learn it is unavailable from someone else in the same department.

At the *Boston Globe*, reporters documented each time the city police department failed to provide basic information, such as name, age and residence. One moment of secrecy will not throw a newspaper the size of the *Globe* off course. When repeated regularly by the Boston Police Department, however, editors at the newspaper held a meeting with the department spokeswoman at the beginning of the year to address the problem.

“For a while we weren’t getting IDs of victims of non-fatal crimes,” said Francie Latour, who has covered city police for two years. Over time, she said, reporters often become less trusting of the information they receive from the police.

Latour said withholding the names of victims signaled a departure from the department’s previous behavior. As a consequence, she said, reporters’ distrust of officials grows and they rely instead on unofficial or unnamed sources. Anonymous sources raise red flags on the copy desk.

“The good thing is [the] Boston Police Department has come a long way in terms of professionalizing how it releases information,” she said. Previously the department had a knee-jerk resistance to the media and offered as little as possible, she said.

Not much later, the *Globe* found itself again repeatedly asking for the identity of people involved in a breaking news story. On a snowy February day in the Boston neighborhood of Roxbury, a stolen car careened off the road and into a home trapping a 4-year-old girl. Police would not release the name of the hospitalized girl. Finally, said Patty Nealon, a *Globe* editor, “after many phone calls” the police identified the victim, Aisha Stewart.

Journalists find ways to compensate for the lack of candor by police. One way is to arrive at the scene before the police. Journalists can interview bystanders before emergency personnel corral the assembled news media.

Kelly, the police public information officer, expects control of media at crime scenes to worsen in the future because so many news crews beat police to the scene. Television reporter Garcia experienced such a turf battle while covering a story in the Chicago suburb of Lindenhurst, Ill. In the early summer, a man barricaded himself in a grocery store and, as usual, Garcia said the news media assembled at the scene and the police established a perimeter area. During the standoff, reporters and camera crews were repeatedly told to move farther and farther from the scene.

The Chicago Police Department media guidelines specify when a journalist will be permitted access to a scene. Sometimes entering the scene is no longer worthwhile.

“Frequently they whisk potential witnesses away or discourage them from talk-

boston globe journalists
couldn't get the name of a girl injured
when a stolen car slammed into her home



ing with media," Garcia said.

Garcia learned about three years earlier that challenging the police at the scene does not make reporting easier. While covering a hostage situation at a Chicago housing project, Garcia said police told the media to leave.

"I walked around to the back of the building and saw children playing in a playground," Garcia said. "There was no reason for me not to be there," as long as the area was safe enough for children, he said.

Police eventually recognized Garcia and asked him to leave. The reporter offered only modest resistance by simply asking why he had to leave. Then, he said, two officers threatened to arrest him.

"I backed down," Garcia said. He wanted to get the story more than he wanted to get arrested. "In my opinion we back down too easily and don't challenge these things." At the same time, however, Garcia, a television reporter for 13 years, offered a rationale for not pressing a case against police that may have broad appeal within the news media. "We're concerned with the relationship."

Understanding the legal limits of access to places can assist the journalist concerned with striking a balance between aggressively pursuing a story and not burning a valuable source. The boundaries are defined by the various factual scenarios of the lawsuits. Some guideposts have emerged.

Car accidents present a typical breaking news event. Some scanner-hawk photographers will even arrive at a wreck before the emergency personnel. In a New

Hampshire incident, David Connell, a free-lance journalist (who doubled as reporter and photographer) drove past the scene of a two-car accident. The journalist photographed the crash, in which one person died, from a distance of 25 feet, according to a court decision about the incident. After two officers asked Connell to move or refrain from taking any photos, he finally agreed when the chief threatened him with arrest. According to Connell's deposition, the chief ordered him out of a private home overlooking the crash site and said an arrest could be made without securing a warrant. Connell sued the city in federal district court for violating his civil rights. The court ruled in Connell's favor before a trial. The court placed a one dollar value on the abuse to his First Amendment rights. (*Connell v. Hudson, N.H.*)

In a similar example from Pennsylvania, a photographer attempted to shoot



globe
reporter
francie
latour

pictures at the scene of a collision between a police cruiser and another motorist. This time, after verbally instructing the photographer to halt, an officer pushed the photographer to the ground, then arrested him. At the time of the altercation, traffic at the accident scene had stopped. (*Pennsylvania v. Chini*)

The courts in the two cases above ruled in favor of the media. Factually the two are similar because photographers, the courts found, did not interfere with the work of the police. Each photographer

the pros and cons of police-press policies

kptv news director
john sears

City officials are quick to recommend a press policy as an answer to the emergency scene dilemma. Journalists, a naturally skeptical lot, should approach these plans hesitantly. In short, police-press policies rarely acknowledge First Amendment rights to the fullest.

Agreements frequently rely on the honor system for their enforcement and during the heat of the moment are not followed as promised. Experience has shown that journalists forfeit many rights in the name of cooperation.

Three years ago in Portland, Ore., television news stations sent camera crews in helicopters to cover a police standoff. Before the helicopters arrived, a police officer was shot and killed. Following the officer's death, the police made a scapegoat of the news media. In an attempt to mend the relationship between the press and police, the mayor, city attorney, general managers and news directors and a cadre of police representatives assembled to discuss how the news media could continue to cover breaking news by helicopter without interfering with police on the ground.

"The city attorney offered a document and it was really offensive," said John Sears, news director for KPTV-12, who attended the session. "We threw it out."

After two months, Portland police and news media reached a voluntary agreement without involving city officials. The two-page compromise itemized nine guidelines and Sears said the policy expressed the mutual "expectations" of the two groups. The media agreed to modify their live coverage of situations involving hostages or armed, barricaded assailants by not revealing

tactical operations and refraining from showing live pictures of specialty police forces. In exchange, the police agreed to more timely news briefings and to provide a public information officer at a central location throughout the emergency.

"Through this agreement we thwarted what may very well have been a protracted legal battle over live access," said Sears, news director at KPTV for a decade.

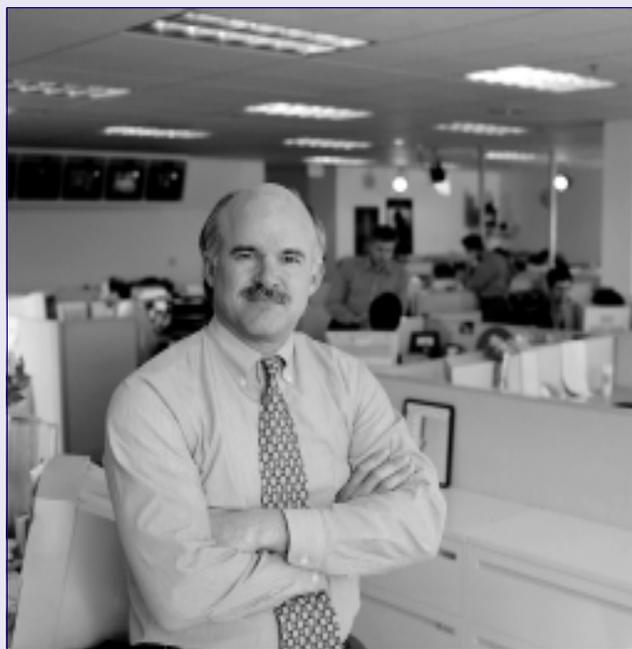
"The news directors felt that what the city and police wanted to implement was absolutely unconstitutional," he said.

Although the television news media in Portland reached a pact Sears said all sides agreed upon, there are some broad and often overlooked ramifications of press policies.

For one thing, a relatively small number of journalists dictate the policy that affects all journalists working in a city or region. An alternative is to involve all newspapers and broadcasters, the state press association or even national media organizations.

In addition, agreements often include general and vague statements such as:

The police department recognizes that journalists have a right to gather the news, and officers should whenever possible allow them to cover events, as long as their efforts do not interfere with officers' attempts to keep the peace. Journalists must also recognize that the police must maintain the peace, and that they must follow legitimate orders



from police during public events.

But such language can be used against the media if, for example, police officials decide an officer's order to stop taking pictures was "legitimate." In addition, the general language gives the media no remedy if police do not allow journalists to do their jobs.

A better policy should include direct, explicit remedies for alleged wrongs. There must be clear statements of how disagreements during an emergency are handled and appealed, even if informally to a police public affairs officer. There must also be real penalties for officers who violate the rules. A strong policy would require officers to know the rules, not just be part of a forgotten officer's handbook. Then when the situation dictates, a journalist can refer to a card (much like an officer who reads Miranda warnings) and say that arresting them violates a specific guideline.

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— in the form of an opinion —
that the journalist is right and
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— minneapolis media attorney john borger

kept a safe distance from the scene and the cars involved.

At the other end of the spectrum, the severity of an accident in New Jersey and the conduct of a photographer led the state supreme court to uphold a \$15 fine against the photographer, but more importantly, they put in place a bar against which all subsequent conduct has been measured.

The case arose when a newspaper staff photographer passed a gory, fatal accident on the Garden State Parkway. He had arrived before police and parked 150 feet from the crash site. By the time a state police officer arrived, a group had assembled and he asked them to disperse. The photographer ignored the instruction. Witnesses later said the officer and photographer argued for three to four minutes during which the photographer berated the officer with expletives. Displaying his press ID, the photographer stood his ground. Finally, the state trooper arrested the photographer for disorderly conduct. At trial and all the way to the state supreme court, the photographer argued he did not violate the disorderly person statute because he did not physically interfere with the officer's movement. The New Jersey Supreme Court, in a 4-3 ruling, called this interpretation of the law “overly narrow.” The court examined the totality of the circumstances when deciding whether the officer issued a reasonable order. At this emergency scene, a victim was pinned inside a car that was leaking fluids and at risk of catching fire. The accident occurred on a main state thoroughfare. And, obviously, the photographer failed to cooperate even slightly. “In this case,” the state Supreme Court said, “the officer did not misjudge the situation.” (*New Jersey v. Lasbinsky*)

At a more dire scene, such as a plane crash, a state supreme court ruling suggests a basic rule of thumb: the more dangerous the emergency scene, the more authority the police will likely have. Shortly after a Midwest flight went down outside Milwaukee, police established a border around the scene through which

only emergency personnel and equipment could pass. About a half hour later, journalists from a local television station entered the restricted zone by van. At the time they arrived, airport officials had not organized their escort system, where an official guides the media into the non-public area of Gen. Mitchell Field where the crash occurred. As a result, police charged one journalist with disorderly conduct. Airport officials led other media to nearly the same spot the arrested journalist had attempted to record the rescue. But the arrested reporter's conviction was upheld by the Wisconsin Supreme Court. In their opinion, the court recognized the impracticability of calling a mere refusal to obey police disorderly conduct. The court carefully noted, however, at this disaster scene police had a major concern with crowd control and made reasonable requests of the media to stay outside the emergency site. (*Oak Creek v. Ab King*)

Legal recourse for journalists

As the previous examples show, courts give police greater liberty when crowd control is a concern. However, it is hard to draw sharp lines when defining acceptable conduct, according to Minneapolis media attorney John Borger.

“When a journalist becomes a distraction to an officer, the reporter is getting on to thin ice,” Borger said.

On the other hand, seven journalists in Los Angeles thought they were on *terra firma* last summer while covering protesters at the Democratic National Convention. The police apparently thought differently as they shot several working journalists with rubber bullets and beat others with nightsticks. The journalists solicited the aid of the American Civil Liberties Union and attorney Peter Eliasberg, who said his clients were not asking for special treatment while covering the demonstrations.

myth

“I have a right to cover the news, and the First Amendment protects me from being arrested.”

fact

Journalists are not immune from arrest while engaged in newsgathering, and may even be convicted of interfering with police at emergency scenes. Attempts to argue a “First Amendment defense” often fall on deaf ears in courtrooms, and judges are usually willing to give great deference to police officers who are trying to control an emergency scene. A police officer's actions that specifically stop you from covering an event and deprive you of your rights might, if severe enough, rise to the level of a violation of your constitutional rights. But many, if not most, restrictions at an emergency or disaster scene will be allowed by courts. A police-press policy may give you specific rights, but will often specify that police have certain powers to control situations.

“I still think the problem is that the police on the scene may ignore the policy in the heat of the moment, but at least you have the policy to back you up if there is an arrest of a reporter.”
— Los Angeles media attorney Susan Seager

“They felt like police in no way recognized their right to be there. They were subjected to an unjustified use of force, and they posed no threat and were clearly identified as journalists,” he said.

The lawsuit was filed in federal court in September and alleged, among other things, police deprived the journalists of their basic civil rights. Eliasberg said the judge has moved the case quickly and by late June the discovery phase closed and the parties had held a settlement conference.

Should the journalists’ civil rights case against the city and chief of police go to trial, the news media will most assuredly have a concrete example of what constitutes excessive police conduct. Any legal success the journalists have will come through the use of a federal statute, 28 U.S. 1983, as the basis of their lawsuit. Created by Congress during the Reconstruction Era, the civil rights claim, commonly called a “1983 action,” is grounded in the 14th Amendment. Its purpose is to allow someone to bring cases against state or local officials who have violated a right guaranteed by federal law. Since the Constitution outlines the tenets of a free press, journalists can rely on section 1983 when these rights are abused. Commonly, section 1983 is also used in cases of racial or gender discrimination.

The news media may consider filing a lawsuit in situations far less violent than what their seven colleagues in Los Angeles experienced. Any discriminatory approach by police to access will give rise to a civil rights claim for journalists, Borger said. Other conduct to consider would be the exclusion of reporters from a press conference when others are present or seizing film, a camera or notebook, he said.

The importance of a lawsuit is to assure meaningful press access in the future. Though, Borger said, “I would not expect a prompt and easy resolution.”

“It’s tough for government officials and cops to understand” what drives a journalist to pursue a story, he said. “There’s not much sympathy. The defendant may get their back up and justify what they are doing.”

Journalists, therefore, should prepare accordingly.

Borger, who has represented media clients in federal “1983 cases,” said the news media could expect extensive questioning on the subject of how they were harmed by the actions taken against them. This presents a challenge to a news outlet because it has to explain intangibles like timeliness and newsworthiness. Reporters can also expect a change in behavior from sources; after all, the lawsuit is often filed against the same people a journalist interviews. For this reason, attorneys said suing is the last resort.

“I still think the problem is that the police on the scene may ignore the policy in the heat of the moment, but at least you have the policy to back you up if there is an arrest of a reporter,” said Los Angeles attorney Seager.

“If someone is arrested, use the policy to talk to police and point out they have violated their own policy and that the denial of access or arrest was improper,” she said.

The only true way for the news media to enforce a policy, she said, is through legal action. “Which would be a tactic of last resort.”

Winning a lawsuit goes a long way to assuring meaningful press access in the future.

“What litigation does is crystalize — in the form of an opinion — that the journalist is right and the cops are wrong,” Borger said.

In their request for relief, the Los Angeles journalists have asked the court to require the Los Angeles Police Department to institute policies and procedures ensuring the media a chance to report on events free from unwarranted attacks and other interference from the police. Eliasberg said the city and journalists have discussed specific terms of a settlement, but nothing is definite. He said his clients are not interested in a “six-figure settlement,” but have request that the police incorporate some of the following into their standard operating procedure.

- A command post and press liaison at spontaneous or planned events covered by a large press corps.
- Establish a press briefing location and conduct regular briefings.
- Direct the media to a neutral but observable location when an “order to disperse” is issued.
- Members of the media who are within a group when an “order to disperse” is issued will leave the crowd. If immediately unable to comply, journalists can identify themselves as such to a police officer who will ensure safe passage from the threat area.

The importance of their lawsuit, Eliasberg said, is for the press to have meaningful access at emergency scenes or protests. Officers in Los Angeles quickly declared a crowd an unlawful assembly, he said, making it nearly impossible for journalists to document the site of a protest. Eliasberg was optimistic that the four standards will create the cornerstone of building an improved relationship between the press and police. While uncertain whether a written policy is a help or a hinderance, he said having something in place will be a net positive for journalists.

Scott L. Matson is the Reporters Committee’s 2000–2001 McCormick Tribune Journalism Fellow.

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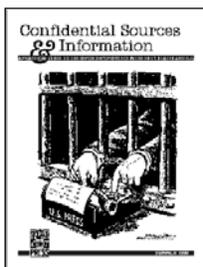
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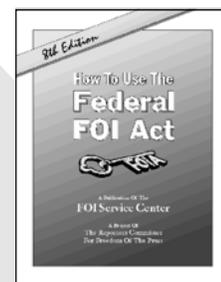
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