

First Amendment fallout in Ferguson

Recent unrest in Ferguson, Mo. has challenged reporters, photographers to carefully examine their relationship with law enforcement

The last few weeks have been full of difficult evenings for reporters in and around Ferguson, Mo. A number of our local media, including reporters and photographers at the *Post-Dispatch*, and most especially the staff of the *St. Louis American*, have done an amazing job covering the protests in that area. Coverage in the print products has been in-depth and the Twitter feeds by well-trained reporters and photographers have given us the “up to the minute” coverage of a fast-developing situation.

But, it was extremely discouraging to hear of the incident a few days ago involving the *Washington Post* and *Huffington Post* reporters who were arrested and carted off by local police in their van. Fortunately, they were released less than an hour later after another paper’s reporter reached the local police chief and alerted him to their arrests, but it was a vivid demonstration of the situations that can develop when law enforcement feels threatened and they decide the media is the enemy, rather than others whose actions the reporters are covering.

Of course, it’s a given that reporters have an extremely strong First Amendment right to cover news and to be “on the scene” reporting about activities that are occurring during a situation such as developed in Ferguson. No judge would deny that reporters have a right to be where these reporters were and to take photographs and interview witnesses as these two gentlemen were doing. Heck – they weren’t even “at the scene” as they were at a nearby McDonald’s charging their batteries!

The problem reporters have is that we don’t carry those judges in our back pocket at all times. When a law enforcement officer, who usually is wearing a gun, approaches you at the scene of a story you are covering and demands you quit filming or shooting photos, or that you leave an area where you are doing your job and move to a different location far from where the activity is that you are covering, or – worst case scenario



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– they pull out their guns and handcuffs and cart you off, there is little you as a reporter can do under those circumstances except move back, or call someone to notify them where you are and the circumstances under which you were arrested.

Of course, you have a right to cover these stories. Of course, your First Amendment rights are still in place. But pulling a reporter’s identification card isn’t going to do much at the instant those situations are developing to trump the actions of law enforcement.

Of course, you can call your lawyer. I guarantee you that your lawyer, at a cost of some precious dollars and the time it takes to get paperwork filed and a hearing before a judge, will be able to remind law enforcement of your First Amendment rights and to set out some parameters for both you and the law enforcement authorities in terms of each party having the ability to do its job.

But that doesn’t solve the immediate problem. And, there’s the expense and the time you’ve expended to get to that point. By the time the court rules, the story is yesterday’s news.

What does work in these situations is a personal connection with someone who has authority to control the law enforcement officers who have you in their sights. That is why your best advice is to deal with these potential problems NOW, and not when they crop up in the heat of a controversy.

When was the last time you sat down and talked with your local sheriff, your local police department, or the highway patrol captain governing your part of the state and had a conversation with them about how you do your job and your concerns about

handling any conflicts that arise? Do local law enforcement folks know you and your staff by face? Are they comfortable with you and know you and your staff are professional and will not get in their way when they are doing their job? Are they comfortable letting you do the job you need to do? Do they have questions about how you do your job that need to be addressed at a time you are not in the middle of a controversy?

Take them to coffee or to lunch this week! Get this relationship established. Make your reporters do the same thing.

If you know there’s a personal relationship problem with the local head of one of these offices, figure out who their supervisor is and make a contact with that person. Maybe it’s your local prosecutor or the local judge.

Yes, it takes time from your busy schedule and might even cost you a few dollars. But the payoff will be huge when you are the news staff getting access to the scene and the national news media are the ones who are being stopped by law enforcement because they are strangers and

are not recognized by the officers who are struggling to maintain control in a situation where they must make snap judgments.

I cannot guarantee that this will work every time, but I do guarantee you it’s a lot cheaper than legal fees and a lot quicker than going to court to get the access you seek!

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