



December 12, 2023

VIA ELECTRONIC MAIL

Pamela Y. Price, Esq.
Alameda County District Attorney
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Re: Excluding Reporter from Press Conference

Dear District Attorney Price:

The First Amendment Coalition, Northern California Chapter of the Society of Professional Journalists, and the Reporters Committee for Freedom of the Press appreciate your office's announcement of December 2 that "Berkeley Scanner Editor-in-Chief Emilie Raguso is welcome to attend future press conferences organized by the office of the Alameda County District Attorney." We write, however, to explain why "media credentials" cannot be required of anyone who wishes to attend your office's press conferences or be placed on a mailing list or other system for receiving notices of press conferences. For the reasons discussed below, it is unnecessary and inappropriate for your office to engage in any process of developing "media credentials and guidelines" for notice of or attendance at press conferences.

As a practical matter, we understand that attendance at your office's press conferences has never exceeded the capacity of the location in which they have been held and that no one attending any such conference has ever presented any security or safety risk. It is therefore not clear why your office thinks any policy for credentials to attend or receive notice of press conferences is needed.

To the extent there might be security concerns connected with persons entering your office's building or attending its events, any such concerns apply to the public generally, and they can be addressed with appropriate measures other than imposing an improper credentialing system on the press. Otherwise, your office must acknowledge that a journalist is anyone who gathers information for the purpose of disseminating it to the public, and no particular credentials are or should be required to establish that fact.

As we have discussed, "[t]he press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion." *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938). The First Amendment does not require that a reporter be "associated with the institutionalized press." *von Bulow ex rel. Auersperg v. von Bulow*, 811 F.2d 136, 145 (2d Cir. 1987). The "intended manner of dissemination may be by newspaper, magazine, book, public or

private broadcast medium, handbill or the like,” and “prior experience as a professional journalist” cannot be “the sine qua non” of “present intent to gather for the purpose of dissemination,” which can be shared “by one who is a novice in the field.” *Id.* at 144.

Therefore, the press includes not only “the institutionalized print or broadcast media” but also any person “gathering news for dissemination to the public,” regardless of circulation, audience size, longevity, business model, or corporate or employment status. *Shoen v. Shoen*, 5 F.3d 1289, 1293 (9th Cir. 1993). Under the First Amendment, “it makes no difference whether the intended manner of dissemination [was] by newspaper, magazine, book, public or private broadcast medium, [or] handbill.” *Id.* (cleaned up).

The same is true for digital media. *O’Grady v. Superior Court*, 139 Cal. App. 4th 1423, 1467–68 (2006). There is “no sustainable basis to distinguish” reporters for digital publications “from the reporters, editors, and publishers who provide news to the public through traditional print and broadcast media,” because they all “gather, select, and prepare, for purposes of publication to a mass audience, information about current events of interest and concern to that audience.” *Id.* at 1467.

Therefore, if one identifies as a person who is gathering information for the purpose of disseminating it to the public, one is a journalist under the First Amendment who is entitled to attend a press conference or other event generally open to the media. No particular credentials are or should be required to establish that fact.

The decision in *Sherrill v. Knight*, 569 F.2d 124 (D.C. Cir. 1977) did not hold otherwise. In that case, the plaintiff did not question the need for a White House press pass program or the “professional credentials” required to obtain such a pass, and the court did not address those issues. *Id.* at 120 n.19. Therefore, the decision does not stand for the proposition that the government may require credentials to attend press conferences in all circumstances.

Nor does the decision in *Los Angeles Free Press, Inc. v. City of Los Angeles*, 9 Cal. App. 3d 448 (1970) suggest that your office may properly require credentials to attend press conferences. In that case, law enforcement agencies issued “press identification cards” that were used by reporters “to cross police lines and enter areas closed to the general public and thus provide access to information at certain locations, as for example, the scene of crimes, fires or natural disasters and press conferences by policing authorities, where such access is denied to the public generally.” *Id.* at 451.

After “the chaos which accompanied a major train wreck ... when rescue operations were seriously impeded by the presence of too many authorized onlookers at the scene of the accident,” the agencies limited their officially issued press passes to reporters whose “regular course of business” was “gathering and distributing spot police-beat and fire news.” *Id.* at 452. The agencies thus issued their press passes only to reporters who showed a “need to cross police lines in the regular course of their business,” and the court found that “the purpose of granting priority to some to cross police lines is to allow the public to gain information about crimes, fires, disasters, and the like, without jeopardizing public order and safety in the process.” *Id.* at 456–57.

Notwithstanding an offhand reference to press conferences, the decision discussed press passes only in the context of crimes, fires, and natural disasters. The plaintiff did not question the need for an officially issued press pass in those circumstances but instead argued only that it was wrongly denied such a pass. Therefore, the case does not stand for the proposition that media credentials can be required to attend routine press conferences.¹ See *Brown v. Kelly Broadcasting Co.*, 48 Cal. 3d 711, 734–35 (1989) (“[T]he language of an opinion must be construed with reference to the facts presented by the case, and the positive authority of a decision is coextensive only with such facts.”).

Imposing a credentialing scheme on individuals who wish to attend your press conferences would impermissibly restrict access to these important events and could exclude members of the media who do not fit the mold of a traditional journalist. Ultimately, it is the public that suffers when governments attempt to gatekeep and control access to information.

Accordingly, we cannot endorse any policy that would require credentials to receive notice of or attend your office’s press conferences, although we remain willing to discuss any questions you might have about how best to ensure media access to press conferences or similar events.

Thank you for your attention to these matters. Please let me know if you have any questions.

Sincerely,

FIRST AMENDMENT COALITION



David Loy
Legal Director

NORTHERN CALIFORNIA CHAPTER OF
THE SOCIETY OF PROFESSIONAL
JOURNALISTS

REPORTERS COMMITTEE FOR FREEDOM
OF THE PRESS

cc: Thomas R. Burke, Esq.
Counsel for The Berkeley Scanner

¹ It should be noted that under California law, officially issued press credentials are not necessarily required for reporters to cross police or fire lines. See Penal Code §§ 409.5, 409.6, 409.7; 67 Ops. Cal. Atty. Gen. 535, 539 (1984).