

Report on the Chater Garden Incident

The arrest and handcuffing of journalists, and the setting up of designated press areas

**Jointly compiled by Hong Kong Federation of Journalists, Hong Kong
Journalists Association, Hong Kong News Executives' Association
and Hong Kong Press Photographers Association**

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Introduction

The arrest and handcuffing of journalists on April 25, 2002, during a police operation to clear right of abode protesters from Chater Garden has aroused great concern among the media and human-rights groups. We — the Hong Kong Federation of Journalists, the Hong Kong Journalists Association, the Hong Kong News Executives Association and the Hong Kong Press Photographers Association — are alarmed by the rough treatment of journalists by police at the scene. We have compiled this report to find out what happened on April 25. By doing so, we hope to set the record straight, solicit comments from fellow journalists about this incident and future media coverage arrangements, and contribute to striking a delicate balance between freedom of the press and maintenance of public order.

This report consists of four sections. Section One is an account of what happened on April 25, based on a survey of journalists who were present during the clearance operation at Chater Garden. Section Two examines the legal aspects of the arrest and handcuffing of journalists during that operation. This section, drafted by Dr. Yan Mei Ning, an assistant professor of journalism at Hong Kong Baptist University, considers the legal aspects of the police actions and their impact on the promotion and protection of media freedom in Hong Kong, including journalists' right to gather news and have access to public events. Section Three reports the findings of an industry-wide survey conducted by Dr. Clement So, an associate professor of journalism and communication at the Chinese University of Hong Kong. It reflects journalists' views on the Chater Garden Incident, the setting up of designated press areas by the police, and pool-reporting arrangements. Section Four contains our four organizations' conclusions and recommendations.

We sincerely hope that this report and our recommendations will contribute to the improvement of police practices in dealing with journalists and the upholding of media freedom and the public's right to know in Hong Kong.

I) What Happened?

On April 25, 2002, police mounted an operation to disperse right of abode claimants staging a demonstration at Chater Garden. During the operation, police clashed with reporters covering the event there. Two reporters were arrested and handcuffs were used in apprehending them. The reporters were released after being detained for about 15 minutes.

To ascertain what happened, our four journalists' organizations set up an ad hoc committee to look into the matter. Questionnaires were sent to reporters who covered the events at Chater Garden on that day. The following report is compiled with information obtained from the questionnaires and interviews with some of the reporters.

The Incident

On April 24, 2002, about 200 right of abode claimants who had been gathering at Chater Garden blocked the driveway of the Legislative Council Building, trapping the Secretary for Security, Mrs Regina Ip, in her car. More than a hundred policemen had to be deployed to set her free. Eight people were subsequently arrested.

On April 25, 2002, Chief Executive Tung Chee-hwa issued a statement condemning the protesters and said the police would take further action in response to the illegal act that happened the night before. At about 2 pm, reporters found that hundreds of police had gathered behind the Central Government Offices. Anticipating imminent action by the police at Chater Garden, media organizations sent more reporters to the scene.

At about 3 pm, about three hundred policemen, together with a special squad from the Immigration Department, marched into Chater Garden. Soon, police blocked all of the garden's exits and no one was allowed to leave or enter. Meanwhile, police announced through loudhailers that "we will clear the whole garden and police officers will check your ID card."

About 50 to 60 reporters, including writers and photographers from the electronic and printed media, were at the garden. They were close to where the right of abode claimants were and saw the police reading a statement to the protesters ordering them to leave the garden. At about the same time, the reporters learned that a designated press area would be set up. Almost all the reporters did not take immediate action to go there and stayed where they were. Police officers urged reporters to go into the press area, and most of them acted politely. Some reporters began to move, while some continued to ignore the officers' exhortations.

At that time, the police had not yet taken action to disperse the protestors. Some reporters then heard a police officer shout an order: “Get all the reporters out of the way.” Several photographers who were taking pictures were then surrounded by policemen. Every reporter was handled by two to four policemen. The reporters were either pushed or manhandled to the press area. The situation was chaotic.

Ming Pao reporter Mr Chan Chi Wai was one of the newsmen who were manhandled to the press area. He said about five to six policemen told him to go to the press area. He told them that “according to the Basic Law, I have the freedom to report.” But his words were ignored and the policemen proceeded to manhandle him to the press area. During the process, Chan’s eyeglasses fell onto the ground.

Sing Tao Daily photographer Mr Bobby Tsui said as he was moving towards the press area, he saw fellow journalists falling onto the ground. He therefore stepped forward to check what happened and tried to take photographs. But he was also pushed to the ground, sustaining injuries to his right elbow and a finger on his left hand. His flash was damaged and other photographic equipment was scattered across the ground. Despite his injuries, he got up to pick up his equipment, but was surrounded by several policemen who forcefully pushed him aside.

Mr Fung Shao Wing, a Ming Pao reporter, said while he was reporting, several policemen grabbed him from behind and tried to take him away. That was why he fell back several times. During the process, there was pushing and shoving between him and the policemen around him, but his limbs were grabbed by four to five policemen. He refused to leave the scene, and was handcuffed by police and taken from the “prohibited area” to a “custody area.” Mr Fung asked the police officer if he had been arrested. The reply was yes. Then the police officer read him a cautioned statement and told him that he was arrested for obstructing the police in the execution of their duty. About 15 minutes later, the police officer asked him if he was willing to go into the press area in exchange for freedom. As that was the only way he would be able to report, he agreed to go into the press area. The police then released him.

Mr Putt Kwong Lai, a news cameraman of Cable TV, said he continued to film while he was moving towards the press area. While moving along, he saw a reporter fall onto the ground. He stopped his feet to film, but was stopped by the police. The police officers questioned his identity and asked him to show his press card. He said he did not have the press card with him, but it was in his photographic bag. A Cable TV reporter, Mr Cheung Chi Chong, offered to prove Mr Putt’s identity, but that was not accepted by the police. During the argument over his identity, Mr Putt was handcuffed. He was released about 15 minutes later.

Mr Cheng Yat Yu, photographer of Apple Daily, refused to go into the press area after being politely asked by police to do so. He was then shoved into the area by two policemen.

At about 3:30 pm, police had all the reporters under control inside the press area. They then started to deal with the more than 100 right of abode protestors one by one. Although some of them had to be carried away, no clashes occurred during the whole process. The operation finished at about 4:00pm.

Reporters observed and photographers filmed or took pictures of the operation from the press area, which was about 14 metres away from where the right of abode claimants were. However, scores of policemen lined up to form a human wall in front of the press area, blocking the view of journalists. Some photographers climbed up their own ladders to get a better view, but were blocked by the police's camera crew.

Why did reporters reject the designated press area?

Reporters have to observe what is happening, the closer to the scene the better. Reporters also understand law enforcers have reasons to keep certain scenes clear, such as for the protection of evidence or the apprehension of suspects, and that happens quite often. Although cooperation between police and reporters is far from perfect, it works. Reporters know how to judge the situation too. If they find that a scene is chaotic, they would not do anything to impede police action to maintain order.

When reporting demonstrations, the most important thing that reporters want to find out is whether police have abused their power or used force during their law enforcement operations. Shortly before the Chater Garden Incident, in reporting another demonstration, reporters had complied with police arrangements to report from a designated press area, but they were "fooled". That prompted them to resist the idea of having a designated press area.

On March 14, 2002, 16 Falun Gong followers protested in front of the Liaison Office of the Central Government in Hong Kong. Police negotiated with the protestors for a very long time, warning them time and again that arrest action would be taken. About 20 to 30 reporters were reporting at the scene. Before the police started taking action to arrest the protestors, they told reporters that a press area would be set up. All reporters complied with the police request to go into the press area, which was about 10 meters from the protestors. Being confined to the press area created difficulties for photographers. But policemen even lined up in front of the press area to form a human wall, blocking the view of photographers. Reporters once wanted to go out of the press area, but were stopped by the police.

On the day of the Chater Garden Incident, police had sealed off the garden. Reporters who were already inside the Garden could only get out and were not allowed in again if they left. Reporters who came later were not allowed to go in. Such an arrangement which allowed no freedom of movement, also made reporters reject the press area.

Were the handcuffed reporters “emotionally unstable”?

Mr Fung Shao Wing of Ming Pao and Mr Putt Kwong Lai of Cable TV were handcuffed by the police, while other reporters were pushed and shoved. The commander of the operation, Chief Superintendent Mr Wong Pak Nin, explained that the police had urged reporters to go into the designated press area several times, but some did not comply. The police decided to arrest the two reporters after several warnings were made in vain. He also said that handcuffs were used to restrain the reporters because they had become “emotionally unstable”. Handcuffs were used to prevent the pushing and shoving from causing injuries to reporters and policemen, he said. Mr Wong also said: “I understand reporters have a job to do. But when they affect our work, I have no choice. We freed them after they have calmed down.”

The use of the expression “emotionally unstable” by the police is very controversial. According to the police, the reporters were emotionally so unstable that they could injure themselves or the police officers. However, Mr Fung pointed out that while he was taking pictures, some policemen had dragged him from behind to try to take him away from the scene. That was why he had at one stage fallen backwards, while pushing and shoving with several policemen. As the policemen had grabbed his arms and legs, he could hardly put up a struggle. When he was arrested for failing to leave the reporting scene, he was merely arguing with the police calmly over his right to gather news, and the officers concerned were very polite. But he was soon handcuffed and taken to the custody area.

Mr Putt Kwong Lai said he tried to step forward to take pictures on seeing two photographers falling onto the ground while pushing and shoving with the police. But the police said he was trying to push his way forward and therefore handcuffed him. Mr Putt said a senior police officer swore in his ear. During the process, someone even said “If you don’t go away, (we’ll) beat you”.

According to the accounts of these two reporters who were handcuffed, they could not be described as “emotionally unstable” because they were at working mode. Even if they had an intention to push their way forward, it was only because they wanted to take pictures, not because they wanted to clash with police. Even if there was pushing and shoving, the reporters

were acting passively. Moreover, as the police greatly outnumbered the reporters, it was not possible for the officers to fear being attacked. Lastly, the reporters only wanted to stay at the scene. They had no intention to escape. Therefore, the police's allegation that the reporters were "emotionally unstable" is totally unfounded.

Follow-up Action

After the incident, Ming Pao, Cable TV, Hong Kong Federation of Journalists, Hong Kong Journalists Association, Hong Kong News Executives' Association and Hong Kong Press Photographers' Association issued statements condemning the police's inappropriate use of handcuffs on reporters. They demanded an explanation from the police and requested to meet the Commissioner of Police. On April 26, 2002, Mr Putt Kwong Lai formally lodged a complaint with the Complaints Against Police Office (CAPO).

On April 27, the Police informed the four journalist's organizations that Commissioner of Police Mr Tsang Yam-pui would meet their representatives at 11:30am. Nine representatives expressed their grievances over the incident. Police declined to discuss details of the Chater Garden Incident on the grounds that the case was being handled by CAPO. However, police stressed that this was an isolated incident and should not be seen as an example of poor relations between police and the media. Both sides expressed their appreciation of the other side's difficulties in discharging their duties and explored measures aimed at avoiding similar clashes in future.

II) Legal Aspects of Setting Up of Designated Press Areas

Issues raised by the police action

In a briefing paper on the Chater Garden Incident presented to the Legislative Council Panel on Security in early May, the police said: “During the operation, two members of the media refused to move into an area that was designated for use by the press. These two persons were arrested for ‘obstructing police officers in the execution of duty’ and handcuffed. They were, however, released shortly after they were removed from the scene.”

Several issues of serious concern have arisen from the Chater Garden Incident. First, under what circumstances can the authorities, the police in particular, impose restrictions on press freedom and the right to gather news? Second, is the setting up of a designated press area in this case confining the movement and newsgathering activities of journalists a justified restriction? Third, can the arrest and handcuffing of journalists who refused to go into the designated area be justified?

Freedom of the press and the right of newsgathering

Article 27 of the Basic Law provides that Hong Kong residents shall have freedom of speech, of the press and of publication. Moreover, Article 39 stipulates that the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong shall remain in force and shall be implemented through the laws of HKSAR. Article 19(2) of the ICCPR guarantees freedom of expression and makes it clear that the right to freedom of expression shall include *freedom to seek, receive and impart* information and ideas of all kinds. It has long been recognised that Article 19(2) of the ICCPR protects press freedom including the right of newsgathering by journalists. Although Article 27 of the Basic Law does not specifically mention the right of newsgathering, it is submitted that it is an essential and integral component of freedom of the press

The right to freedom of expression stipulated in Article 19(2) of the ICCPR is not absolute. Nor is freedom of the press protected in the Basic Law absolute. Furthermore, media freedom does not give journalists an unfettered right to gather news. Yet any restrictions on freedom of expression or freedom of the press have to satisfy conditions laid down in Article 19(3) of the ICCPR. First, they have to be prescribed by law. Second, they should fall within one of the following grounds: for respect of the rights or reputations of others, or the protection of national security or of public order (*ordre public*), or of public health or morals. Third, the

restrictive measures must be necessary and proportionate to the aims sought to be achieved. The Court of Final Appeal of the HKSAR reiterated in *HKSAR v Ng Kung Siu*: “In considering the extent of a restriction, it is well settled that any restriction on the right to freedom of expression must be narrowly interpreted. ...It is common ground that the burden rests on the Government to justify any restriction.” Moreover, the United Nations Human Rights Committee in its General Comment on Freedom of Expression has specifically noted that “when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy of the right itself.”

An unjustified and disproportionate restriction on media freedom

The police definitely imposed a severe restriction on media freedom and the right of newsgathering in the Chater Garden Incident by confining journalists to a designated press area during the police operation of removing by force abode-seekers who were holding their protest there, since views of the protest were blocked and confined journalists were therefore prevented from witnessing and taking photographs of the removal and arrests of protesters. Indeed, such a restriction amounts to a ban on reporting.

In the briefing paper on the Chater Garden Incident presented to the Legco Panel on Security, the police asserted that the setting up of designated press areas had been a long-standing practice, maintaining that the guiding principle was “to facilitate press coverage in an orderly and safe manner” and “to ensure that the presence of the media should not cause undue hindrance to police operations or pose a safety hazard to themselves or other members of the public.”

Paragraph 2 of Chapter 39-06 of the Force Procedures Manual, which spells out internal guidelines in the handling of the media, states: “Photographers and TV cameramen in particular should be given an opportunity to have vantage points; they have the right to take photographs or TV footage in a public place. The officer-in-charge of an incident should consider the provision of an outer-cordon which restricts the general public and of an inner cordon or an area which gives advantage to members of the media and their photographers. This will result in more positive reporting and reduce friction with media representatives.”

In the Chater Garden Incident, it is obvious that the standing instructions given in the above paragraph of the Force Procedures Manual were not closely followed in the setting up of the designated press area. Nor did the designated press area facilitate any press coverage. Instead, it certainly hindered and even prevented the reporting of the police operation there. Indeed, confining journalists to a designated press area on that occasion, creating an inhibiting

effect on newsgathering, cannot be regarded as a justified restriction under Article 19(3). The newsgathering activities at the time had not given rise to any law and order problems or any issues relating to the protection of the rights of others, which might have been raised to justify the police measure of restricting the movement and activities of journalists in the vicinity. Moreover, the restrictive measure of setting up such a designated press area is certainly not proportionate. Less restrictive measures were available if the sole aim was to prevent undue hindrance to police actions at the scene.

The office of the United Nations Special Rapporteur on Freedom of Opinion and Expression, established in 1993 by the UN Commission on Human Rights, has over the years sought to clarify the precise nature of the right to freedom of expression guaranteed by the ICCPR. In his 1996 Annual Report, the Special Rapporteur endorsed *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information* as an authoritative interpretation of the Article 19. Principle 19 of *The Johannesburg Principles* deals with access to restricted areas: “Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists.... from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists.... from areas that are experiencing violence or armed conflict except where their presence would pose a clear risk to the safety of others.” In the light of Principle 19, neither the setting up of exclusion zones to prevent journalists from entering nor the setting up of designated areas to confine the movement and newsgathering activities of journalists can be regarded as justified restrictions on the right to freedom of expression. They can therefore be regarded by the Special Rapporteur as violations of Article 19 of the ICCPR. In the upcoming scrutiny by the UN Human Rights Committee of the HKSAR’s implementation of the ICCPR in 2003, such a restriction by the Hong Kong police of the newsgathering activities of journalists might be treated by the Committee as a subject of concern.

The right and duty of the press to report demonstrations and confrontations

The UN Special Rapporteur on Freedom of Opinion and Expression, together with the Organisation for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and the Organisation of American States (OAS) Special Rapporteur on Freedom of Expression jointly issued a statement in 2000 on key issues and challenges in freedom of expression. Two issues mentioned in the joint statement are of particular relevance to the Chater Garden Incident. The first is about reporting conflict situations: “Conflict situations are inevitably instances of the greatest public interest, often raising issues of fundamental

humanitarian and human rights. Public scrutiny of such situations is essential to controlling abuse of rights and promoting accountability. Exclusion of media workers from gaining access to and reporting on conflict is a severe restriction on freedom of expression and the public's right to know and should not be practices except where their presence would pose a clear risk to the safety of others. Instead of excluding media workers, authorities should, wherever possible, take appropriate measures to ensure the safety of those working in conflict zones." It is submitted that this principle should be applicable not only to conflicts of a very severe nature such as wars and internal rifts, but also to confrontations between police and protesters during peace time.

The other issue is about the restriction on freedom of expression in the name of public order and national security. The joint statement by the three experts pointed out: "Restrictions purporting to serve public order and national security interests are often excessively broad and vague." Restrictions of this kind exist in Hong Kong. Section 10 of the Police Force Ordinance provides that the duties of the police force shall include taking lawful measures for regulating processions and assemblies in public places and for preserving order in public places and at public meetings. Yet the Ordinance stipulates neither the substance nor the details of what constitute lawful measures to be taken under the pretext of preserving public order. Instead, it is left to the police in devising internal guidelines for the purpose.

It is submitted that the current practices of the police in setting up exclusion zones or designated press areas cannot measure up to well recognised international human rights standards in striking a delicate balance between the right to freedom of expression and the necessity of preserving public order. To ensure that such restrictions do not exert an excessive chilling effect on freedom of expression, they should not be imposed unless they meet the conditions set out in the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, including the following: "there is a significant risk of imminent harm; the risk is of serious harm, that is to say violence or other unlawful action; there is a close causal link between the risk of harm and the expression; and the expression was made with the intention of causing the harm." In fact, the newsgathering activities of journalists at the Chater Garden Incident did not create a risk of imminent harm that would justify the police adopting restrictive measures on newsgathering activities.

Applying the above arguments, police measures in the Chater Garden Incident including the setting up of a designated press area confining the movement of journalists, the subsequent arrest and handcuffing by the police of journalists who refused to go into the designated press area were definitely not justifiable restrictions under Article 19(3) and amounted to violation of Article 19.

Civil liberties and police power

Journalists should have the right to report and take photographs of public events on public property, free from unjustified police interference. Such a right is essential especially when the police are taking actions against protesters. Journalists at the scene can perform a monitoring role to reduce any chances of abuses of power by the police. Indeed, the media have to be present in order to perform properly the important duty of public informer about government actions and events of public interest. As noted by a United States Supreme Court judge, Justice Brennan, the press “is not only protected when it speaks out, but when it performs all of the myriad tasks necessary for it to gather and disseminate the news.”

Risks posed to journalists by existing laws

Existing Hong Kong laws, nonetheless, provide the police with extensive powers, most of which they can exercise at a wide discretion with not much legal accountability. This would in practice not only severely impede the daily working routine of journalists but also infringe their personal liberties.

Section 50A of the Public Order Ordinance provides that any person who obstructs anyone exercising any powers or performing any duties conferred by the Ordinance shall be guilty of an offence. Furthermore, section 17B of the same ordinance stipulates that any person who at any public place behaves in a noisy or disorderly manner, with intent to provoke a breach of the peace or likely to breach the peace shall be guilty of an offence. Section 36 of the Offences Against Person Ordinance also provides that any person who resists or wilfully obstructs any police officer in the execution of his duty shall be guilty of an offence. All these provisions confer wide powers and discretions by the police. In practice, journalists at work who dare to resist on the spot any unjustified police interferences would risk committing one or both of these two offences. Deployment by the police of such offences towards journalists on assignment has an immense chilling effect on the right of newsgathering and media freedom.

Arresting and handcuffing journalists at work

Meanwhile, section 45 of the Public Order Ordinance stipulates that any police officers may use such force as may be necessary i) to arrest any person committing or reasonably suspected of being about to commit or of having committed any offence under the Public Order Ordinance and ii) to overcome any resistance to the exercise by the police officers of any of the powers conferred by the Public Order Ordinance. This provision, together with sections 50A and 17B, have bestowed upon police officers very far-fetching powers, exercised with wide

discretion, to restrain and arrest by force anyone who does not follow police instructions in a speedy and obedient manner. Journalists at work who refuse to obey any unjustified police instructions or dare to dispute with police officers at the scene would risk being overcome or arrested by police officers by force and subsequently charged with offences under sections 50A and 17B. Any physical attempt by journalists to prevent police arrest might even lead to further charges of resisting arrest and assault. It is submitted that the public order provisions mentioned above together with the wide discretion attached have led to an unjustifiable tip of the balance towards police power to the detriment of freedom of the press and the right to freedom of information of the general public.

On the other hand, case law has long required the police to show clear legal authority to justify invasion of the right of others. Police actions would become unlawful if they are acting outside their legal authority. The police have to pay damages if torts are committed or even face prosecution when crimes are committed. In essence, the police have to be accountable in law.

In the past decade or so, there were increasing incidents in the United Kingdom of journalists being handcuffed and arrested by the police while reporting or taking photographs of protests and demonstrations. In most of these cases, the police did not press criminal charges subsequently. Yet these police actions had significant impact on the journalists involved. Some suffered trauma or injuries. Many missed their deadline because of police arrest and detention. Some had their photographs and equipment confiscated or destroyed. A few aggrieved journalists, with the assistance of the UK's National Union of Journalists (NUJ), sued the police for wrongful arrest and assault. According to the NUJ, these lawsuits were settled out of court by the police paying damages. The latest case involved three journalists getting 18,000 sterling pounds compensation from the police in 2001. Another photographer won damages for separate incidents of arrest and assault, 25,000 sterling pounds in 1989 and 5000 sterling pounds in 1994. The preference for paying damages over full court hearings indicates the police expected it would be hard to persuade the court that they were acting within their lawful power in arresting and detaining these journalists at work.

In the United States, the Los Angeles Police Department reached a settlement in late 2001 with seven journalists assaulted and arrested at an earlier Democratic Convention, paying damages of \$60,000. The settlement conditions also require the police department to institute a policy that recognizes the media has the right to cover public assemblies, even if police have declared them unlawful (*Crespo v. City of Los Angeles*).

The Hong Kong police has so far refrained from commenting on the specific use of

handcuffs in the Chater Garden Incident pending an investigation by CAPO. Nonetheless, the police in the briefing paper presented to the Legco Panel on Security did refer to the Police General Orders Chapter 29-09, which stipulates the circumstances under which a police may use wrist restraints: i) to ensure the security and control of a person whom he has reason to believe is likely to escape; or ii) to protect himself or another person, include the person to be restrained, from any injury.

The above two scenarios specified in the Police General Orders did not arise in the Chater Garden Incident. The journalists handcuffed did not escape or attempt to do so. Nor did their behaviour at the time lead to any lawful excuse for using handcuffs under the pretext of offering protection and ensuring safety. Moreover, there was no breach of the peace or any imminent violence. In arresting and handcuffing journalists who merely refused to go into the designated press area, the police had misjudged the situation and used excessive force, and therefore exceeded its lawful authority. The police misjudgment can also be indirectly proven by the release of the two journalists shortly afterwards and by the police's failure to press the charge of obstruction against them. Such actions of arresting and handcuffing had not only unlawfully interfered with journalists' right of newsgathering but also infringed their personal liberty, which is protected by Article 28 of the Basic Law. The police actions amounted to false imprisonment and assault, actionable as both torts and crimes.

III) Views of the Industry

Research Objectives

A survey of journalists' views on the Chater Garden Incident was conducted by Dr. Clement Y. K. So, associate professor at the School of Journalism and Communication, Chinese University of Hong Kong. He was responsible for designing the questionnaire and the data collection method, analyzing the results and writing the survey report. The research objectives are:

1. To understand the views of journalists on the Chater Garden Incident;
2. To understand the views of journalism professors on the Chater Garden Incident; and
3. To compare the views of journalists and journalism professors.

Research Method

There were two survey targets, one being the local journalists who might run into this kind of situation. They include frontline journalists, photojournalists, editors and management staff. The questionnaires for the journalists were distributed in June using a random sampling method. First, each media organization decided on how many of their staff would be involved in such social issues. Fifty percent of the identified staff was given the questionnaire to be filled out by themselves. A total of 404 completed questionnaires were received, representing a response rate of 71.6%. These respondents were from 22 local news organizations, including Commercial Radio, RTHK, Metro Radio, ATV, TVB, Cable TV, *Ming Pao Daily News*, *Hong Kong Economic Journal*, *Hong Kong Economic Times*, *Sing Tao Daily*, *South China Morning Post*, *Apple Daily*, *Sing Pao Daily News*, *Hong Kong Commercial Daily*, *Ta Kung Pao*, *Next Magazine*, *Eastweek*, *Express Weekly*, *Ming Pao Weekly*, *Asiaweek*, Reuters, and Associated Press.

Among the sampled journalists, the sex ratio was 60.8% (male) to 39.2% (female). About half of them (51.3%) belonged to the age group of 25-34, and 27.3% were between 35-44. The median length of news experience was exactly 7 years. In terms of job duties, frontline journalists comprised 56.7% of the sample, photojournalists 14.7%, editors and management staff 23.3%, and the rest 5.3%. Judging from the sampling method and the demographic characteristics of the sample, the results of the survey should be representative.

The other survey target was full-time journalism professors at the Chinese University of

Hong Kong, Hong Kong Baptist University and University of Hong Kong. A total of 23 journalism professors returned the questionnaire in June, yielding a response rate of 74.2%.

Survey Results

A. The setting up of “press area”

1. Are you in favor of or are you against the setting up of “press area” by the police or other organizations?

	Strongly favor	Favor	No Opinion	Against	Strongly Against
Journalists :	1.9%	26.9%	15.6%	42.0%	13.7%
Professors :	0.0%	17.4%	13.0%	43.5%	26.1%

2. Do you agree or disagree with the following statements?

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
a. Setting up a press area is more of a hindrance than a help to reporters					
Journalists :	24.7%	40.6%	20.4%	12.2%	2.0%
Professors :	36.4%	40.9%	18.2%	4.5%	0.0%
b. The Police should try to negotiate with the media before they set up a press area					
Journalists :	49.7%	38.2%	4.5%	3.0%	4.5%
Professors :	43.5%	47.8%	4.3%	4.3%	0.0%
c. I agree to the setting up of a press area by the police to bring order					
Journalists :	8.2%	37.5%	16.6%	28.8%	8.9%
Professors :	4.5%	22.7%	4.5%	40.9%	27.3%

3. Under what conditions will you accept the setting up of a press area by the police?

	Totally Acceptable	Acceptable	No Opinion	Unacceptable	Totally Unacceptable
a. To protect major political figures					
Journalists :	23.1%	60.6%	7.8%	6.5%	2.0%
Professors :	22.7%	45.5%	9.1%	13.6%	9.1%
b. The site has space limitations					
Journalists :	9.9%	58.5%	14.9%	13.9%	2.8%
Professors :	13.0%	52.2%	8.7%	13.0%	13.0%

c.	In a restricted area (like airport, border)					
	Journalists :	15.6%	66.3%	9.0%	7.3%	1.8%
	Professors :	22.7%	50.0%	9.1%	9.1%	9.1%
d.	Major ceremonies and events					
	Journalists :	13.1%	58.4%	9.8%	15.9%	2.8%
	Professors :	21.7%	56.5%	4.3%	4.3%	13.0%
e.	To protect evidence at the scene					
	Journalists :	16.5%	63.0%	14.0%	5.5%	1.0%
	Professors :	27.3%	50.0%	4.5%	9.1%	9.1%
f.	To protect safety of reporters in dangerous situations					
	Journalists :	11.1%	41.7%	21.0%	21.7%	4.5%
	Professors :	13.0%	21.7%	13.0%	34.8%	17.4%
g.	In all demonstrations and gatherings					
	Journalists :	1.0%	4.6%	8.9%	45.6%	40.0%
	Professors :	0.0%	0.0%	4.3%	13.0%	82.6%
h.	When the police start arresting people					
	Journalists :	1.3%	11.1%	18.1%	43.8%	25.7%
	Professors :	4.3%	0.0%	4.3%	30.4%	60.9%

4. From your own experience or observation in the past two years, has press coverage of events been affected by difficulties caused by the setting up of press areas?

A Lot	Some	A Bit	None
23.4%	40.1%	33.0%	3.6%

5. If you have ever experienced reporting difficulties due to the establishment of press areas, what were the difficulties you encountered? (You can choose multiple answers)

	Have Experienced	Have not Experienced
a. Freedom to cover restricted	66.0%	34.0%
b. Photographic angles restricted	64.5%	35.5%
c. View blocked by police	63.6%	36.4%
d. Press area too far from the actual scene	82.2%	17.8%
e. Could not leave the press area	62.2%	37.8%
f. Others	4.8%	95.2%

6. If certain public gatherings or marches have not received prior consent by the police and thus become illegal, do you think reporters should have the right to cover the event and not be deterred by police?

7.		Journalists	Professors
	Reporters have the right to cover the event and should not be deterred	91.3%	100.0%

Reporters have the right to cover the event but police can intervene	8.7%	0.0%
Reporters have no right to cover the event	0.0%	0.0%

Among the journalists, slightly over half of them opposed the setting up of press areas by the police. Close to 30% favored the idea, and about 15% said they had no clear view. Journalism professors (70%) usually opposed the practice of having press areas.

Most of the journalists viewed the press area as a hindrance to their work. They usually encountered difficulties such as the press area being too far away from the scene of action, restricting photographic angle, obstruction of their view by the police, and not being able to leave the press area. More than 60% of the journalists expressed similar views. Almost all of them held that journalists had the right to cover the event and not be deterred by the police, even if the public gathering was classified by the police as illegal. All the journalism professors agreed to this view.

Most of the respondents thought that the police should hold discussion with the news media before they set up a press area. The journalists were divided on whether setting up a press area could actually bring order to press coverage. Some said it could but others disagreed. Most professors thought it could not achieve such goal.

Quite a lot of reporters said that it actually depends on the situation before they can decide whether the press area would be an acceptable arrangement. They however agreed that in the following six situations setting up a press area is acceptable: protecting major figures, protecting criminal evidence, in restricted areas like the airport, in major ceremonies, physical limits imposed by the venue and personal safety. Other acceptable situations include helping the wounded in a disaster. But the journalists clearly expressed that press areas should not be set up in a public demonstration or a police arrest action. Journalism professors even held a stronger view than the journalists.

B. Use of handcuffs by the police

8. In the Chater Garden Incident, do you think the police should have used handcuffs to lock up reporters?

	Definitely Should	Should	No Opinion	Should Not	Definitely Should Not
Journalists :	0.5%	0.5%	4.0%	21.1%	73.9%
Professors :	0.0%	0.0%	8.7%	4.3%	87.0%

9. Do you accept the use of handcuffs by the police in the following situations?

	Totally Acceptable	Acceptable	No Opinion	Unacceptable	Totally Unacceptable
a. The reporter broke the law (e.g., seriously assaulting people)					
Journalists :	39.3%	52.0%	5.3%	2.3%	1.3%
Professors :	43.5%	52.2%	0.0%	0.0%	4.3%
b. The reporter refused to enter the press area					
Journalists :	0.0%	0.5%	8.4%	37.2%	53.9%
Professors :	0.0%	0.0%	4.3%	39.1%	56.5%
c. The police are trying to prevent the reporter from being harmed					
Journalists :	0.5%	3.1%	10.5%	29.1%	56.9%
Professors :	0.0%	0.0%	0.0%	34.8%	65.2%

Both journalists and academics thought that in the Chater Garden Incident the police should not have handcuffed reporters. Only when a reporter had clearly breached the law should the police arrest and/or handcuff the reporter. Both groups of respondents did not accept excuses like “preventing the reporter from being harmed,” or the reporter refusing to enter the designated press area as a justification for the use of handcuffs. In answering the open-ended item in the questionnaire, some respondents even questioned the double standards practised by the police: they handcuffed innocent reporters in the Chater Garden Incident but did not do so in the case of a police officer who was being charged with a serious offense.

C. Work guidelines and evaluation of the incident

9. In conflicts like the Chater Garden Incident, do you think the following actions are necessary?

	Totally Necessary	Necessary	No Opinion	Unnecessary	Totally Unnecessary
a. News management provides oral guidance to reporters					
Journalists :	11.3%	48.5%	19.7%	11.8%	8.7%
Professors :	9.1%	40.9%	9.1%	40.9%	0.0%
b. News management provides written guidance to reporters					
Journalists :	6.2%	27.5%	28.6%	23.4%	14.3%
Professors :	13.0%	17.4%	13.0%	43.5%	13.0%
c. Police management provides oral guidance to police officers					
Journalists :	21.9%	49.5%	16.5%	5.2%	7.0%
Professors :	27.3%	31.8%	31.8%	9.1%	0.0%
d. Police management provides written guidance to police officers					
Journalists :	19.9%	39.8%	22.8%	9.4%	8.1%
Professors :	26.1%	21.7%	30.4%	17.4%	4.3%

10. As for the conflict between the police and the press at Chater Garden, which side do you think bears most or all of the responsibility?

	Journalists	Professors
The police should bear full responsibility	15.6%	30.4%
The police should bear most of the responsibility	41.1%	60.9%
Both sides should be responsible	42.6%	8.7%
The press should bear most of the responsibility	0.8%	0.0%
The press should bear full responsibility	0.0%	0.0%

12. Do you agree with the following views about the police?

	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
a. There is a growing tendency by the police to strengthen social control					
Journalists :	30.1%	46.7%	16.6%	6.1%	0.5%
Professors :	30.4%	52.2%	17.4%	0.0%	0.0%
b. The police hold too much power now					
Journalists :	21.9%	42.9%	27.0%	7.4%	0.8%
Professors :	21.7%	43.5%	26.1%	8.7%	0.0%
c. Police control of reporters' activities would affect press freedom					
Journalists :	35.0%	52.2%	10.0%	2.3%	0.5%
Professors :	65.2%	30.4%	4.3%	0.0%	0.0%

Journalists agreed that news management should provide reporters with oral or written guidelines to deal with this kind of conflicts. They also thought that police management should do the same for frontline police officers.

In the Chater Garden Incident, slightly more than half of the journalists said that police should bear the responsibility. Close to half of them thought that both the police and the press should bear the responsibility. Almost none of them would say the press should bear the responsibility alone. Some respondents wrote in the questionnaire that the police was guilty of abusing their power. Most journalism professors took the view that the responsibility should lie with the police.

Most of the reporters thought that the police have stepped up social control measures recently. They also opined that the police have too much power, and restrictive measures on reporting would affect press freedom. Journalism professors echoed these views even more strongly.

D. Pool reporting

13. Sometimes the police or other organizations ask the press to do “pool reporting.” Generally speaking, are you in favor of or are you against this type of arrangement?

	Strongly Favor	Favor	No Opinion	Against	Strongly Against
Journalists :	2.3%	25.7%	36.6%	27.2%	8.1%
Professors :	0.0%	17.4%	21.7%	52.2%	8.7%

14. Under what conditions will you accept “pool reporting” by the press?

	Totally Acceptable	Acceptable	No Opinion	Unacceptable	Totally Unacceptable
a. To protect major political figures					
Journalists :	16.9%	57.1%	9.6%	13.7%	2.6%
Professors :	17.4%	43.5%	13.0%	8.7%	17.4%
b. The site has space limitations					
Journalists :	9.0%	61.9%	11.9%	14.5%	2.6%
Professors :	8.7%	65.2%	0.0%	17.4%	8.7%
c. In a restricted area (like airport, border)					
Journalists :	10.5%	52.5%	13.4%	20.1%	3.5%
Professors :	8.7%	65.2%	4.3%	13.0%	8.7%
d. Major ceremonies and events					
Journalists :	9.6%	41.8%	13.2%	26.9%	8.5%
Professors :	4.3%	39.1%	8.7%	30.4%	17.4%
e. To protect evidence in the scene					
Journalists :	9.6%	48.5%	17.3%	20.5%	4.1%
Professors :	13.0%	47.8%	8.7%	17.4%	13.0%
f. To protect safety of reporters in a dangerous situation					
Journalists :	4.4%	33.2%	21.9%	29.4%	11.1%
Professors :	0.0%	34.8%	8.7%	39.1%	17.4%
g. In all demonstrations and gatherings					
Journalists :	1.2%	6.7%	11.1%	39.8%	41.2%
Professors :	0.0%	0.0%	0.0%	26.1%	73.9%
h. When the police start arresting people					
Journalists :	1.2%	11.1%	16.1%	38.9%	32.7%
Professors :	0.0%	4.3%	0.0%	34.8%	60.9%
i. The police take action but reporters do NOT interfere with their action					
Journalists :	2.4%	12.5%	12.5%	32.5%	40.1%
Professors :	0.0%	0.0%	8.7%	17.4%	73.9%

j.	The police take action but reporters SLIGHTLY interfere with their action	Journalists :	2.8%	17.2%	29.1%	36.5%	14.4%
		Professors :	0.0%	4.3%	17.4%	52.2%	26.1%
k.	The police take action but reporters DO interfere with their action	Journalists :	5.2%	43.4%	29.1%	14.1%	8.3%
		Professors :	0.0%	45.5%	13.6%	13.6%	27.3%

About one-third of the journalists favored pool reporting, one-third opposed and the other one-third did not hold any clear view. But the majority of journalism professors opposed this kind of reporting arrangements. Both journalists and professors accepted that under certain conditions pool reporting was acceptable, such as protecting major political figures, physical restrictions of the venue, restricted zones, major ceremonies, etc. But they all agreed that only in special circumstances should pool reporting be arranged (just like the setting up of press areas). In case of demonstrations or police arrest actions, pool reporting is not an acceptable practice. When reporters do not interfere with police action, both journalists and professors do not accept pool reporting. Unless reporters do interfere with police action, then some respondents considered pool reporting as an option.

Some Observations

Several points are worth noting from the survey results. First, journalists' views and demands in relation to the Chater Garden Incident were actually mild and reasonable. They did not blindly oppose the setting up of press areas but admitted that conditions at the scene were an important factor. However, they did not accept unreasonable arrangements. Being neutral and rational, the journalism professors also know the news operations. As a comparison, journalists' reactions were milder than the professors', indicating that the demand of the news profession is pragmatic.

Second, the views of the journalists and those of the professors were basically the same. From both the theoretical and practical standpoints, they have come to certain consensus. In fact, press freedom, check and balance, open society and citizens' right to know are all enduring values acceptable to all civilized societies. We should cherish and defend these values.

Third, we can see some worrying trends from the incident. The journalists saw that restrictive rules by the police have adversely affected freedom of the press. The police seem to have stepped up social control measures. The police power is seen as too excessive. In the

survey journalism professors even had stronger views on all these. The situation may damage the police's image among the public, and this certainly is not a good sign for Hong Kong.

Fourth, the incident shows that communication between the police and the press is not adequate. Both sides should establish more channels and mechanisms for communication, and should consider setting up guidelines to deal with such situations in order to prevent the same type of incidents from happening again.

IV) Conclusions and Recommendations

Although freedom of the press is guaranteed by the Basic Law and the International Covenant on Civil and Political Rights (ICCPR), protecting and promoting this freedom is far from simple. Because the Hong Kong government has a major role in upholding media freedom locally, inappropriate actions by the authorities — as in the Chater Garden Incident — will not only infringe media freedom directly but also set a bad example.

The designated press area in Chater Garden was legally unjustified

The setting up of a designated press area in Chater Garden on April 25 prevented journalists from witnessing and taking photographs as protesters were removed. This amounted to a severe restriction on media freedom and a ban on on-site reporting. As stated in Section Two of this report, the press area was not set up in compliance with the requirements of Article 19(3) of the ICCPR. Its creation was neither necessary nor proportionate. In future, the authorities should refrain from establishing designated press areas unless the prerequisites set out in Article 19(3) are clearly followed.

The media have a right and a duty to cover demonstrations and confrontations. The public has a right to know about these events, and a right to access, through media coverage, the information essential to meaningful participation in public policy debate. Furthermore, the presence of media representatives can help prevent abuses of power by the authorities. Journalists can fulfill their duty to the public only if they are allowed access to news events, and the authorities should, as much as possible, assist in this regard.

Consultation with the media on newsgathering restrictions

In the Chater Garden Incident, the police did not follow internal guidelines in the Force Procedures Manual, which emphasize journalists' right to cover news and take photographs. The police were highly arbitrary in designating the press area and did not publicize their internal guidelines, making public scrutiny impossible. Police decision-making must be made more transparent, and clearer guidelines should be laid down. Moreover, consultation with media organizations prior to the introduction and implementation of any restrictive measures is crucial if the authorities are to be seen to be truly sincere about protecting media freedom in Hong Kong.

The voice of journalists

Journalists consider it entirely legitimate to expect uninhibited access to the scene of a news event, according to our industry-wide survey. Most respondents oppose the setting up of designated press areas, and most who have had to work from such areas say they cause practical difficulties.

Even so, respondents say they might accept designated press areas in a limited range of situations, such as when police are providing security for dignitaries, when journalists are working in restricted areas, and when evidence must be protected at a crime scene.

Journalists surveyed say that police are stepping up controls and that these are having an adverse impact on press freedom.

Nearly all respondents feel strongly that it was wrong for the police to have handcuffed journalists covering the clearance operation in Chater Garden on April 25. Although feelings are less strong over who should be held responsible for the conflict, more than half of the respondents feel the police should bear most, if not all, of the responsibility. Clearly, journalists overwhelmingly reject the police's use of handcuffs in the incident.

Recommendations

Recommendations to the administration:

- 1) The authorities should ensure that designated press areas are set up only in a limited range of situations and on a limited scale. The police should review their internal guidelines to ensure they are in line with the Basic Law and international human-rights standards.
- 2) When a designated press area must be set up, guidelines agreed upon by the media and the enforcing authority should be observed. The two sides should meet regularly to review implementation of the guidelines and improve them if necessary.
- 3) Journalists should be allowed to perform their jobs effectively, even when they are confined within a designated press area. The prime consideration in setting up a designated press area is that it should commensurate with the nature of the police operation under way. The area should be as close to the scene as possible.
- 4) Once a decision is made to set up a designated press area, the management of media organizations should be notified as soon as possible.

Recommendations to the media:

- 1) Management should issue to front-line journalists oral or written guidelines on how to operate when a designated press area is set up.
- 2) Management should remind front-line colleagues of how they should behave while covering news.
- 3) Management should remind front-line colleagues to take care of their personal safety.

End