



香港記者協會
HONG KONG JOURNALISTS ASSOCIATION

The handcuffing and beyond

Among their many duties, journalists have to try, sometimes against the opinion of society's mainstream, to scrutinize the treatment of less fortunate minorities. Doing so shouldn't make them heroes or outcasts. They are ordinary people trying to do a job no different from a bus driver or a banker. When someone thus peacefully going about his business is abruptly prevented from doing so by police who act with apparently dubious justification, and when he hesitates is physically attacked, treated as a criminal and then let go later without half an apology, something seems very wrong. That basically sums up the issues arising from what happened in Chater Garden on April 25th. The Hong Kong Journalists Association believes the incident raises questions about the use of handcuffs in general, and it also raises questions about the enforcement of designated zones which impedes legitimate news-gathering during police operations.

The handcuffing incident

In the afternoon of April 25th, police closed off all of Chater Garden before moving to remove Right of Abode demonstrators in the park. Reporters already in the park were forced into a small designated zone within the park or excluded from the park altogether. They were treated roughly. At least one was pushed to the ground by several officers, kept face down, and handcuffed with his hands behind his back. Another cameraman was handcuffed. A third was detained without being handcuffed.

All available evidence indicated that the three newsmen made attempts to identify themselves as journalists. None were seen to have acted violently or emotionally (as the police later alleged in attempts to justify their action).

The media restricted

The handcuffing is the tip of the iceberg of a larger issue: restrictions on legitimate news gathering during police operations. The police declared Chater Garden a restricted zone on April 25th and the peaceful demonstrators were contained inside a police human wall. The journalists, who were outside this wall, were herded into a smaller designated zone where all they could see was a distant view of the back of the human wall. Police photographers, on the other hand, moved about freely, further causing obstruction to the journalists.

We are aware of provisions in the Police Force Ordinance that allow for the establishment of restricted zones to facilitate operations. Once a restricted zone is set up, no ordinary citizens are allowed in. Designated zones, although not specifically mentioned in the provisions, are presented by the police as an accommodation to journalists. Too often,

the opposite is more true. In a recent Falun Gong protest, the journalists there were confined within a designated zone and did not realize protesters got roughed up by police until later when they saw the action on videos shot by the protesters. The Chater Garden incident illustrates this situation even more clearly. No wonder the journalists present were reluctant to enter the designated zone. And no wonder the police reacted strongly, because their plan to operate out of the public view was being thwarted.

Questions of legality

Although the administration has stressed that the setting up of designated zones are not unlawful, we hold a different view. Article 27 of the Basic Law provides that Hong Kong residents shall have freedom of the press and freedom of assembly. Article 28 of the Basic Law provides that the freedom of the person of Hong Kong residents shall be inviolable. Article 31 provides that Hong Kong residents shall have freedom of movement within the HKSAR. These rights can only be restricted where it is necessary to do so and any restrictions imposed must be proportionate to the need (see *Secretary for Justice v Ng Kung Siu* [2000] 1 HKC 117).

We strongly believe any action by the police under Section 10 of the Police Force Ordinance to restrict entry of journalists into an area must therefore be necessary and a proportionate response to the problem which the police are addressing. In the case of a wholly peaceful demonstration restricting journalists to a designated zone would appear to be wholly unjustifiable, and so unlawful. Any form of physical restraint or detention of journalists in these circumstances would be likely to give rise to a claim for damages for trespass to the person and or false imprisonment.

The HKJA demands

We view the general use of designated zones to be unacceptable except in special circumstances such as the visit of high-risk dignitaries or when an event takes place inside a closed area, such as the airport. The police should not have total discretion to decide when a designated zone is justifiable. Transparent rules governing the use of designated zone should be created after consultation with the media. Each time the police seeks to impose a designated zone it must provide its justification in writing. In certain cases pool arrangements should be used so that at least some photographers could get a clear view of police operations.

With respect to the handcuffing, the overwhelming force and the nastiness in the treatment of the three journalists were totally inappropriate given that there was neither a life-threatening emergency nor a crime being committed, and the HKJA feels the actions should be condemned. The police also must make sure its internal review into the handcuffing will be fair and impartial, that the review's findings will be fully published, and that any misconduct will receive appropriate punishment. Furthermore, the police must review existing guidelines on the use of handcuffs with a view to determining whether they leave too much room for potential abuse, with the result that handcuffing becomes a weapon of intimidation.

Finally we would like to draw attention to a case in the U.K. where three journalists

got 18,000 pounds compensation from the police who handcuffed them during an animal rights demonstration in the United Kingdom last year. One of the plaintiffs, Roddy Mansfield, said the case was a victory for the principle that journalists carrying press accreditation should be free to operate without restraint at marches, protests and other events which represent a potential threat to public order.

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