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June 26, 2011

How much protection should we extend to 'citizen journalism'?

One could argue that some journalists' privileges should apply to anyone recording events in public.

By EDWARD WASSERMAN McClatchy Newspapers

On March 3, 1991, from his apartment balcony a Los Angeles plumber named George Holliday used a bulky Sony Handycam to record city police battering a drunk driver, Rodney King, after a high-speed chase.

Holliday offered police a nine-minute video of the beating but was rebuffed, so he sold it to KTLA-TV.

The footage became a national scandal, and four officers were charged. They were white; King was black. A year later an all-white jury let them off, and the city exploded in riots that claimed 53 lives.

Holliday's tape wasn't the first instance of high-impact citizen journalism. Nearly three decades earlier Dallas clothier Abraham Zapruder's 8mm Bell & Howell camera shot the most vivid photographic record of John Kennedy's murder.

But the Rodney King video made history out of an event that would have gone unnoticed, and today Holliday's heirs are everywhere.

With the universal spread of high-quality optics that require no skill, and of the means to publish images instantly and globally, the streets are full of ordinary people with greater communicative power in their pockets than the most influential news organization on earth had a generation ago.

Are they journalists? That's not a pointless question. The question of whether these unsalaried irregulars may merit some of the special standing journalists have traditionally had is becoming hard to ignore.

Journalists benefit from a combination of custom, law and constitutional protection that is meant to enable them to do their jobs without being hassled unduly by the powers-that-be.

Consider what the law calls the reporter's "qualified privilege." It's a recognition that because newsgathering is a civic good, journalists deserve insulation from some of the normal obligations of citizenship, like testifying in court.

Shield laws in 31 states allow reporters, under certain circumstances, to refuse to hand over interview notes, testify about newsgathering or expose confidential sources.

The idea is that news reporting shouldn't be impeded by, say, a litigant who suspects a reporter's notes might be helpful to his lawsuit, and that society benefits if people can talk to journalists without police demanding to know what was said.

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Those have always been touchy matters, and are especially so nowadays. Suppose the difference between the news photographer and the vacationer who filmed a spectacular drug bust is that the photojournalist has the title but the tourist has the pictures. Why treat them differently?

These questions arise alongside the latest incident with echoes of Rodney King -- the furious, late-night police shooting in Miami Beach over Memorial Day Weekend.

A 22-year-old named Raymond Herisse was shot to death in his car on Collins Avenue, the city's main drag, in a fusillade of more than 100 rounds fired by 12 cops.

His final moments were recorded by two witnesses -- one, Marces Benoit, from his SUV nearby. Benoit was spotted by a cop who approached, pointed his gun at Benoit's head and demanded the cellphone he was taking pictures with. The officer handcuffed him, took his phone and, Benoit says, smashed it. (Police say it was only damaged slightly.) Benoit had removed its memory card and hidden it in his mouth. Later he sold his video to CNN, which aired it.

The National Press Photographers Association protested Benoit's treatment much as if he'd been a TV cameraman. In a letter to the Miami Beach police chief, NPPA general counsel Mickey Osterreicher wrote: "Photography may not be restricted in a public place by officers wishing to avoid the documentation of their actions."

Osterreicher continued: "Recently in Egypt, Syria and Libya citizens and photojournalists have risked, and in some cases given, their lives to provide visual proof of repressive governmental activities. It is truly a shame that what is viewed abroad as heroic is considered as suspect at home."

Fair enough: The reason for keeping police from harassing observers is that the public benefits from the observing; the point of shielding reporters is to enable reporting. It's the practice, not the practitioner, that deserves protection.

So it makes sense that anybody who practices journalism -- who gathers significant information for the purpose of making it public -- should get the same break.

The problem with that, and it's a big one, is the fate of those other duties that the traditional, salaried journalist gets a pass on. Can you refuse to testify about something you learned because you posted it in a tweet?

That seems like a ridiculous question in Miami Beach -- but as Osterreicher suggests, it's a lot less ridiculous in Cairo or Damascus.

What's clear is that we are only in the earliest stages of realizing the full civic implications of technologies that enable any of us to bear witness, and practice journalism.

Edward Wasserman is Knight professor of journalism ethics at Washington and Lee University. He wrote this column for The Miami Herald. Readers may write to him at: The Miami Herald, 1 Herald Plaza, Miami, Fla. 33132; website: www.edwardwasserman.com.

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