

Memo on Covering Demonstrations and Rallies in Hong Kong

Part 1: Legal basics

Constitutional rights enjoyed by the media

- ✧ Press freedom is a basic human right. Article 27 of the Basic Law says: “Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.”
- ✧ If the government limits these rights, it has the responsibility to explain the legal rationale and basis for the restrictions. Such restrictions have to pass a strict constitutional test to ensure citizens’ rights are safeguarded.
- ✧ The test can be divided in two steps:
 - ✧ First, the restrictions are prescribed by law. Police usually cite “protection of public security or order” as a reason to restrict the right of the media to cover and report events.
 - ✧ Second, the government must demonstrate the restrictions are necessary to protect public order and security in a democratic society. When law enforcement agencies take measures to restrict journalists, by putting up a police cordon and metal fences for example, the measures must be no more than necessary and must not go beyond the original purpose of “protection of public safety or order”.

Think twice before you break the law

- ✧ Press freedom enjoyed by journalists (including photojournalists) does not mean they have the right to break through police cordons to do reporting. They could be charged for obstructing police officers in execution of their duties, or assaulting police officers.
- ✧ Police officers at the scene take instant actions based on the actual situation, intelligence and their own judgment. If their actions are challenged, the court, in applying the legal test to a rights restriction, will consider the specific facts of the case. Reporters should therefore really think twice before they decide to break the law at the scene.
- ✧ If a journalist feels that a law enforcement agency has made an unlawful decision, he or she has the following options:

(1) seek a judicial review of the law enforcement agency’s decision;

- (2) if a reporter is prosecuted, he or she should invoke the provisions in the Basic Law regarding as a defence;
- (3) complain to the Complaints Against Police Office of HK Police Force or the Independent Police Complaints Council.

Part 2: Preparation

Things to prepare

- Get at hand the contacts of your supervisors, company lawyers and colleagues. Consider setting up an emergency phone so you can reach them at one click of a button.
- Familiarise yourself with the reporting scene and the nearest place for shelter.
- Make sure your communications equipment functions normally and is fully charged.
- Police may use force and even pepper spray, tear gas and water cannons to disperse protesters. Journalists should take care of their own safety and prepare protective gear such as:
 1. masks or goggles
 2. towel
 3. baby shampoo
 4. clothes for changing
 5. water
 6. some food
 7. one-off raincoats
 8. basic first-aid equipment

Part 3: At the scene of a demonstration or a rally

Things to note

- ◇ Wear your press badge that shows the name of your organisation so that police and protesters can identify you as a journalist.
- ◇ Police may ask reporters to provide personal data and ask if they are working as journalists. In fact, journalists have the right not to tell police their identity. When police request personal data from anyone, they must act according to the law—reporters should therefore ask officers which piece of legislation they are relying on for demanding the personal data.

- ✧ Remember to stay neutral. Do not participate in designing or directing news events. Do not involve yourself too much in what is happening at the scene. Avoid making speeches or acts that are strongly opinionated.
- ✧ Reporters may encounter protesters that try to provoke or disturb them. Stay calm and avoid running into conflicts.
- ✧ Police or protesters may try to hit or block reporters' cameras. In this case reporters should not respond with vulgar or provocative language but focus only on reporting. It is not the journalist's job to argue with any party.

Clearance

- ✧ When police remove protesters from a public place, they should not set up press zones to restrict the media. If police do it because they want to let journalists get closer to the clearance area than other people do, the restriction should be minimal. Police should also ensure that nothing will block the sight of those in the press zones and that the zones are as near the scene as possible. Journalists can request the co-ordination of the media division of the Police Public Relations Branch.
- ✧ According to Chapter 39 of the Police General Orders, all officers at the scene of an incident shall “facilitate the work of the news media as much as possible and accord media representatives consideration and courtesy; and not block camera lenses”.
- ✧ In the past, police would first ring protesters with metal barriers and a human chain. This could make it difficult for the media to shoot and cover the scene. If circumstances allow, the media can request the police not to place the barriers unnecessarily and to use a cordon instead of barriers to separate protesters from others.
- ✧ Reporters should keep a distance from the centre of a clash.
- ✧ If the situation intensifies, reporters should help out each other and avoid getting injured.
- ✧ If police use pepper spray or tear gas to disperse protesters, reporters have to protect themselves, wearing goggles and masks to cover their faces or eyes.
 - (1) Pepper spray used to be made of pepper but it is now made with chemicals, which causes a burning sensation. If someone is sprayed, he or she should use a dry tissue paper to absorb it, or use diluted baby-shampoo to rinse it. The contaminated clothes should be changed.
 - (2) Tear gas not only stimulates the eyes but also contracts the windpipe and makes breathing difficult. It hurts the skin, makes one drool and make the nose run. If people are stuck in an area filled with tear gas, they

should cover their mouths, ears and noses with wet towels or clothes and walk through the wind.

- (3) If police employ water cannons, reporters should make sure their equipment, cell phones and laptops are put in a water-proof bag. If reporters are stuck within the cannon range, they should seek shelters and avoid being targeted. They should also lie down on the ground so that they will not be hit by the cannons, lose balance and get hurt.
- ✧ If reporters are treated violently or unreasonably, or if they see someone else being so treated, they should record it by taking photos, videos or voice-recording to collect evidence against any rights violation.

Part 4: How should journalists react if they are arrested by the police?

- ✧ Stay calm. Tell police you are a journalist and contact your company or a lawyer (a legal consultant of your company or other practising lawyers).
- ✧ When you are taken to a police station or a detention centre after the arrest, you should again identify yourself: your occupation and the media organisation you work for.
- ✧ Be clear about everyone's right to silence. Journalists should further tell police of their duty to stay neutral and give no evidence to police. The criminal law does not say one has to co-operate with police--there is no such thing as "a requirement to assist police investigation". Police may insist reporters give evidence, but the latter absolutely have the right to refuse.
- ✧ When a lawyer arrives at the police station, he or she will ask police whether officers know a particular journalist is arrested. If officers confirm they know that, the lawyer must press them for reasons for arresting the reporter, and whether there is any doubt about the identity of the journalist. If police say there is doubt, lawyers must ask whether an enquiry has been made with the journalist's organisation. All this is to block a possible excuse on police's part that they were not aware of the journalist identity of the arrestee.