

# Should the state decide if press is bona fide?

I was writing a column about press credentialing in Missouri for the viewing of crime scene photographs and videos when the assassination attempt of Donald Trump happened.

By this time everyone will be familiar with the photograph of former President Donald Trump's blood-smeared face, braced by Secret Service agents, raising a defiant fist with the flag in the background. One of the most profound images of recent times. It was taken by Associated Press photographer Evan Vucci, who has been covering Trump for years.

Another image: The whirl of a bullet smeared through a photograph by the *New York Times* photojournalist Doug Mills.

Both photographers were near Trump when the shots rang out, in what is described as a buffer area a few feet from the candidate, where pool reporters were stationed.

But depending on prior coverage, it's possible neither journalist could have been in the right place at the right time.

In April of this year, *Vanity Fair* published an account of the press pool attached to the Trump campaign, in which reporters from the Washington Post, Axios, and *Vanity Fair* had experienced revocation of their press credentials by the campaigns at various times following their stories. The Trump campaign still allows evicted press to attend events as a member of the public, even if they are "unable to secure a coveted press badge," Trump spokesman Steven Cheung told the magazine.

Press credentials present an intriguing double edge. They're really useful. They manifest the idea of press exceptionalism – that reporters and editors, devoted to newsgathering, are performing an essential democratic function recognized in the First Amendment. And therefore, they deserve protections and benefits, such

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as first rights to scarce resources like a slot in the buffer area at a Trump rally. They help us deliver the news.

But the other edge is sharp – press credentialing enables and invites government control of the press. That's something that's not good for papers or a democratic society.

In July, the Missouri Department of Public Safety issued a proposed rule concerning the process by which "bona fide" members of the press can view certain crime scene photographs.\* But part of the rule also sought to define what "bona fide" would mean.

Thirteen years ago, Jean Maneke, writing about the eventual statute authorizing the proposed rule at issue here, warned MPA members about the dangers this posed to press freedom: "Would you want the Department of Public Safety making decisions about what standards to use to recognize you as a member of the media?"

That phrase "bona fide" pops up frequently in laws and rules touching upon press access. Sometimes agencies attempt a definition. Other times, though, the phrase is left undefined. Still other times, the law

leaves the definition of "bona fide" up to the press itself. The third option, in my view, is the best option because it avoids having the government venture into selecting who or what can be the media and thereby influence, even if indirectly, the content of news coverage.

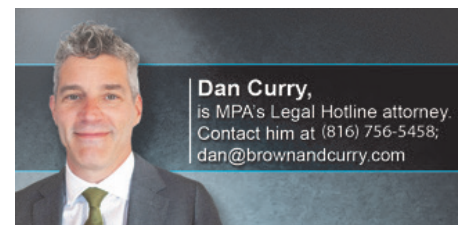
The Missouri Department of Public Safety's proposed rule would define "bona fide media organization" as an organization that "has demonstrable editorial oversight, a verifiable street address and telephone number, and has reported on matters of public concern."

What would the state consider to be "demonstrable editorial oversight"? What if it was a one-person operation?

What is "public concern"? Answers might vary depending on who's in charge and would require a state actor to make judgment calls on the paper's content. If the state actor starts making decisions based on viewpoints or content, the First Amendment is implicated.

MPA has submitted a comment to the department urging it to remove the proposed rule language seeking to define the press. Where press credentialing is necessary, it is best left to the press to determine what it means to be "bona fide."

*\*The proposed rule, 11 CSR 30-19.010, would allow bona fide members of the media submit to the records custodian a written request to view crime scene videos and photographs that the agency closed pursuant to 610.205 RSMo. Media would then be able to view – not copy or record – closed materials within 15 days of the request.*



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