

DMLP Pocket Guide to Reporting at the RNC and DNC Full Guide Available at <http://www.dmlp.org/conventions>

Note: *This guide provides general information about the law as it pertains to Tampa, FL, and Charlotte, NC, as of August 2012, and might not apply with respect to other times and jurisdictions. Specific facts and circumstances often alter outcomes in specific cases. This document is not a substitute for legal advice specific to your situation and does not create an attorney-client relationship between you and the Digital Media Law Project.*

I. General Principles

The rights of the press to speak and to gather news are in general the same as the rights of the general public. Status as a member of the press does not give you authority to violate generally applicable laws against trespassing, unlawful assembly, invasion of privacy, etc.

Be careful of relying on pre-existing relationships and understandings with police. Your expectations might not reflect the special security arrangements in place in Tampa or Charlotte, particularly given that the U.S. Secret Service will take the lead in law enforcement.

The government may impose some restrictions on where, when, and how newsgathering activity is conducted, but may not discriminate based on viewpoint of a reporter. That said, your First Amendment rights apply only against government officials. Owners of private property are permitted to eject you for any reason, including their dislike for your viewpoint or that of your employer. Entry onto private property without permission or refusal to leave when asked may give rise to trespassing and other criminal charges.

II. Packing for the Conventions

Restricted items

Tampa

- Rope, wire, glass bottles, all locks, and gas masks within the area surrounding the Convention Center and Forum.
- Aerosol cans, containers, lengths of wood and metal, and projectile launchers carried with the intent to harm.
- Tripods, bipods, and monopods are not allowed within the "Public Viewing Area"

Charlotte

- Police scanners are likely not allowed within the area surrounding the convention.
- Chains, cables, wires, aerosol containers, non-water-soluble paints, and most sharp objects are not allowed in the area surrounding the convention.
- Backpacks, duffel bags, satchels, and coolers are not allowed if carried with the intent to conceal weapons.
- Masks, scarves, pepper spray, and body armor if worn or used in order to avoid identification or to resist arrest.

Items to Bring

- Press credentials or other press identification
 - Only official RNC/DNC credentials will allow you into the conventions; other credentials might help with police. Do NOT forge credentials from any organization for any purpose.
- Water
- Hearing protection (in the event of use of LRADs)
- Government-issued ID
- Sufficient cash or a credit card to cover bail
- Quarters (for a jail pay phone)
- Essential phone numbers (attorney or legal hotline)

Items to Leave Behind

- Consider leaving any smart device containing sensitive information at home, and bringing a disposable phone instead. If you are arrested, the police may attempt to search the contents of your device.
- Leave contact information for your attorney or a legal hotline with a trusted person at home, in case you need a friend to locate legal help for you.

III. Attending the Conventions Proper

The time for applying for credentials to enter the conventions themselves has already passed. If you do not already have credentials, it is unlikely you will be able to obtain them.

Inside the conventions, you will be subject to the rules and regulations imposed by the parties as to your behavior. As private organizations, the parties may exclude you for any reason.

IV. Restricted Areas Around the Conventions

Certain streets and other areas near the convention halls will be closed to vehicle and foot traffic. Check the Secret Service's press releases for current information on street closures, available at http://secretsservice.gov/press_release.shtml.

Parades and demonstrations may be required to obtain a permit from the city in order to march or assemble. Journalists should be careful if a particular group appears to be marching outside of designated routes or assembling unlawfully, because of the risk of being caught up in a sweep arrest (see Section V, below).

Apart from specific street closures and restrictions on parades, neither Tampa nor Charlotte has indicated that demonstrators or journalists will be restricted to particular areas. Both Tampa and Charlotte have established "free speech zones" for protestors and demonstrators in the general area of the conventions:

Tampa: The zone consists of three sections of land extending north up South Nebraska Avenue from the Tampa Bay Times Forum, including a square section of land bordered by Eunice Street, South Caesar Street, and East Walton Street, and two

sections underneath the Crosstown Expressway on either side of South Jefferson Street.

Charlotte: The zone consists of a section of land bordered by South Boulevard, East Stonewall Street, Interstate-277, and Stonewall Station, about 1/2 mile from the Time Warner Cable Arena.

It is unclear whether other parks and public spaces will be available for assembly, or whether police will attempt to encourage journalists and demonstrators to move into the "free speech zones." Legal challenges to the sufficiency of the "free speech zones" are unlikely to be resolved in the field, as opposed to subsequent proceedings in court.

Be careful, particularly in Charlotte, of publicly accessible but privately owned spaces. Courts in Florida and North Carolina have been reluctant to limit a private owner's right to control access, even when a space is generally open to the public.

V. Laws Governing Public Assembly

Unlawful Assembly

Unlawful assembly is a very common criminal charge at mass demonstrations, and the law is enforced through sweep arrests that can capture nearby journalists. Unlawful assembly laws usually are enforced first by ordering a crowd to disperse; refusal to disperse is a frequent cause of arrest.

While the law does not require it, officers may choose to treat members of the press separately from an unlawful assembly, so try to distinguish yourself as a journalist as soon as you can. Police tend to think of "journalists" as those affiliated with formal institutions, and may be more lenient toward members of the "traditional" press or credentialed reporters, while not affording any special treatment to non-traditional press or citizen journalists. That said, the more you act like an independent observer, the more likely the police are to treat you as one.

Tampa: Florida's unlawful assembly law applies when three or more people assemble with a common unlawful purpose in a way that would give those nearby a well-grounded fear of a breach of the peace. Florida law grants officers broad powers to disperse an unlawful assembly, allowing officers to command the assistance of nearby persons and to arrest anyone who refuses to assist or ignores the dispersal order. Police are presumptively justified if members of an unlawful assembly are injured or killed, but if an officer is killed or wounded, all individuals unlawfully assembled may be held responsible.

Charlotte: North Carolina's unlawful assembly law applies when three or more people have the common intent to commit disorderly acts interfering with the rights of others, in a way that would cause those nearby to apprehend a breach of the peace. North Carolina law gives officers the power to order an unlawfully

assembled crowd to disperse, and any person who remains is presumptively engaged in the crime of riot.

Disorderly Conduct

Both Tampa and Charlotte prohibit violent or disorderly behavior, but such regulation is generally limited to conduct, instead of pure speech. Both cities prohibit gathering in a way that disrupts normal pedestrian and vehicle traffic. Again, be careful of situations where police cannot easily distinguish you from others acting unlawfully.

VI. Recording in Public

In general, you are permitted to record both audio and video of activity occurring in public, unless a specific law says otherwise.

The most common laws limiting recording are “wiretapping” statutes that prohibit electronic recording of oral conversations.

- You are allowed to record with the consent of the parties to a conversation; in Tampa, you must obtain the consent of all parties, while in Charlotte, the consent of one party is enough.
- In either city, you may freely record conversations without permission if the parties have no reasonable expectation of privacy. Even in public spaces, however, people may reasonably attempt to converse privately, so beware of recording if the parties are taking steps to keep their conversation to themselves.
- Wiretapping laws do not prohibit video-only recording, at least when the recording does not capture the substance of any communications.

If you are recording the actions of police or other government officials in public, you might have a First Amendment right to record that overrides state laws requiring consent. The federal appeals court with jurisdiction over Florida has held that there is a right to record police conduct; North Carolina has yet to formally recognize this right. This right is not unlimited, and does not permit you to interfere with an arrest or other police activity.

Certain best practices can avoid many issues with recording:

- When conducting interviews, start by informing the person that you will be recording, and asking for consent on the recording.
- Do not record a conversation when it appears that the parties are trying to keep the conversation private. Be especially careful when using sensitive microphones or telephoto lenses.
- When recording the police, be careful not to interfere with police activity.

VII. Interactions with the Police

In all encounters with police, try and remain as professional and calm as the circumstance allows. Police are allowed to ask you to surrender your rights voluntarily; you are permitted to ask whether an instruction is a request or a command. It is rarely if ever helpful to waive any rights voluntarily.

Private Security

It is important to distinguish police from private security details, if possible. Private security may regulate behavior on private land, and ignoring an order from private security on private property may lead to a trespass claim. Private parties may also temporarily detain individuals, but only when the private party personally witnessed a serious crime or a breach of the peace. Only the police have the general power to arrest you.

If You are Stopped by Police

Florida has a “stop and identify” law, which allows police to temporarily detain a person in order to identify that person, if the officer has reasonable suspicion that the person has committed, is committing, or will commit a crime. In contrast, North Carolina does not currently have such a law. Police may ask you to voluntarily provide them with identification, but you are not under a duty to respond.

If the Police Ask You to Move or Stop Recording

The police may not order you to move to prevent you from reporting on an event, but they may have legal reasons for asking you to move. When confronting an order to move, consider asking if there is another location from which you can report. Refusing an order to move will likely result in your arrest. Document the encounter as best you can and consult with an attorney.

An order to stop recording is likely a violation of your First Amendment rights, especially if done to suppress a critical depiction of the police. However, the ultimate constitutionality of an order to stop recording will not be resolved in the field. Again, disobeying such an order will likely result in your arrest.

If You or Your Property is Searched, or Your Property is Seized

Contact an attorney if you or your property is searched or seized by police. Police may ask for your voluntary consent to a search. You will waive your rights to object to the search later if you consent without being coerced; there is usually no benefit to you from agreeing to a voluntary search.

Involuntary searches require a warrant or a warrant exception:

- If searched pursuant to a warrant, save a copy of the warrant, do not interfere, and contact an attorney immediately.
- The police may search you as part of a lawful arrest.
- The police may search you without a warrant under certain “exigent circumstances,” where obtaining a warrant is impossible. Containers that are seized under this exception should only be searched after the officer obtains a warrant.
- An officer is allowed to make a brief protective “frisk” if he/she has reasonable suspicion that you are armed and dangerous.

Police may search the contents of digital devices in your possession after arresting you, or if they have reason to believe that data on the device may be remotely deleted. A court may or may not be able to compel you to reveal any passwords or

decryption keys. However, officers may command you to reveal such information or face additional legal charges.

Identifying yourself as a journalist at the time of a search might help prevent the police seizing your property. The ability of police to seize copies of expressive material such as photographs and videos is limited. There is also a specific federal law limiting the ability of police to seize a journalist’s work product or other documentary materials, unless the materials relate to a crime committed by the journalist (or, in the case of non-work product, that obtaining a warrant will result in destruction of evidence).

There is no valid reason that police should delete photographs or video from a seized device. If you find that your data has been deleted, stop using the device and contact a forensics expert to help recover your files. Also consider using a service which maintains a remote copy of the material.

If You are Arrested

If you are caught up in a crowd disturbance or other situation likely to lead to your arrest, attempt to contact a trusted person. Let them know where you are, that you are likely to be arrested, and that you need an attorney.

If you are arrested, identify yourself as a member of the press, ask to speak to an attorney, expressly invoke your right to remain silent, and then remain silent. Do not physically resist or obstruct the arrest as it is happening. At your earliest opportunity, call an attorney. The following organizations have provided hotlines for legal assistance:

Reporters Committee for Freedom of the Press:

- General Hotline: 800-336-4243
- RNC: Thomas & LoCicero PL: 813-984-3076 or 813-984-3078 (Aug. 24th - close of convention)
- DNC: McGuire Woods LLP: 704-343-2063; backup 704-904-5834 or 919-428-5883 (Aug. 31st - close of convention).

National Lawyers Guild:

- RNC: 813-241-0101
- DNC: 704-372-4200

Student Press Law Center (student press only):

- General Hotline: 703-807-1904



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