

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEES ON PUBLIC SAFETY, GOVERNMENT OPERATIONS AND TECHNOLOGY**

Comments on T2023-4261:

**Oversight—Media Transparency: NYPD Radio Encryption, Press Credentials Process, and
Government Social Media Archiving**

Hearing Date: November 21, 2023

Comments By:

ROBERT ROTH
Attorney At Law
240 Kent Avenue
Brooklyn, New York 11249
(212) 398-2040
robert@roth.nyc

Introduction

1. On November 20, 2023, the New York City Council Committees on Public Safety, Government Operations and Technology held a hearing (“the Hearing”) to explore issues surrounding NYPD Radio Encryption, Press Credentials Process, and Government Social Media Archiving. These comments will address the first two of these issues.

Summary

2. The NYPD has failed to justify its radio encryption. The Mayor’s Office of Media Entertainment needs further work in the press credentials process as well as the general running of their office.

Background of Commenter

3. I am both a media lawyer and a journalist. I started working in journalism in 1977 and was admitted to the Bar in 1980. During this period, I have held and continue to hold numerous press credentials including: The City of New York Press Card, The NYPD Working Press Card, the NYPD Press Identification Card, The NYPD Press Vehicle Card, various daily use press cards from the White House and Secret Service and the press credential issued by the United Nations.

4. A brief summary of my journalism career follows. For more than 15 years I worked for United Press International as a contract photographer (“stringer”) in the Manhattan bureau for whom I covered numerous spot news events such as fires, bombings, crime, demonstrations, riots and plane crashes. My photographs appeared in major newspapers including the New York Times, The New York Post and the New York Daily News and magazines such as Time along with major newspapers around the world. I also reported on news events. In my television career, I worked as the on-air Aviation Analyst for

Fox News Channel covering major plane crashes. I did similar work as a guest expert for ABC News, NBC News and MSNBC. Today, I continue my journalism work on a freelance basis.

5. I am a member of the New York Press Photographers Association, the professional organization representing photographers in the New York City press corps and a former Trustee. I also served as Chair of Government Relations for which I represented the organization before a variety of government agencies including the NYPD.

6. Since 2010 when the NYPD proposed drastic changes in their press credential system in response to *Martinez-Alequin v. City of New York*, 08-Civ 9701, SDNY, I have testified or commented on every New York City government hearing on press credentials.

7. As a media lawyer, I have been appointed by multiple presidents of the New York State Bar Association as a member of the Committee on Media Law where I chair the Subcommittee on New York City News Gathering. I also serve on the New York City Bar Association Communications and Media Law Committee.

I. The NYPD Has Failed to Demonstrate that its Unsubstantiated Need for Radio Encryption Outweighs the Interests of the Press and Public to Listen.

8. *Police radio encryption is a solution in search of a problem.*

9. On November 20, 2023, the Committees heard testimony from NYPD Chief of Information Technology Ruben Beltran. It is clear from his testimony that Chief Beltran instituted radio encryption without any concern of the needs of the press and public as he consulted neither prior to this action.

10. Chief Beltran offered the committees a two-prong excuse for using encryption: a) that criminals use scanners to *listen* to police activity thereby aiding them in committing crimes; and/or b) that criminals *transmit* false information on the police channels.

11. The first is more easily disposed of. First, scanner radios are sold with the ability only to *listen* to radio broadcasts.

12. Here is a picture of a common handheld scanner radio used by journalists, a Uniden Bearcat SR30C shown in virtually exact size on 8 1/2 x 11 paper.



13. Of particular note:

- a) This device has no microphone;
- b) This device has no transmit button;
- c) This device is completely incapable of transmitting any radio signals, especially not voice.

14. In his testimony, Chief Beltran made several unverifiable allegations that criminals, when arrested, were found to be in possession of scanners. (These allegations are unverifiable because they were devoid of essential data including dates, times and places.) Chief Beltran never articulated precisely *how* listening to police radio transmissions aided in the commission of these crimes. *In fact, logically speaking, if the criminals were arrested, then having the scanners must not have worked.*

The NYPD Has Failed to Demonstrate that its Unsubstantiated Need for Radio Encryption of Police Transmissions Is the Only Way to Ensure Officer Safety.

15. In his testimony, Chief Beltran again made several unverifiable allegations that criminals had illegally transmitted false “officer needs assistance” calls on police radio channels thus diverting police officers from the location of a crime. (These allegations as well are unverifiable because they were devoid of essential data including dates, times and places.)

16. It should be noted, for the record, that the unauthorized transmission of anything on a radio frequency licensed to police is itself a federal crime (citations omitted). If the NYPD actually apprehended anyone doing so, were they prosecuted?

17. If in fact, these incidents actually happened, they raise the question of what measures the NYPD undertook prior to encrypting radio transmissions. After all, there are other areas in society where an unauthorized radio transmission can cause serious public

safety issues. Take aviation, for example. If transmitting false information on the radio is as simple as Chief Beltran believes, then why has the Federal Aviation Administration not encrypted all Aviation radios? Clearly, they do not consider it a problem worthy of the drastic and costly measure of encryption.

18. But, unlike the FAA, Chief Beltran sees a problem, as farfetched as it may be, for two alleged reasons. They are: first, that criminals have *transmitted* false information on police radio channels causing interference with police work; and second that criminals have *listened* to police radio channels to aid in the commission of crimes. Neither of these alleged justifications were ever established at the hearing. As a former network television news aviation reporter who covered major aircraft disasters such as Egyptair Flight 990, I am not aware of a single airline crash that was attributable to a false radio transmission.

19. Is there a problem with false information being *given* to the police? Certainly. The NYPD has known for years that it sometimes receives false information. According to the US Department of Justice, “After independence, New York adopted the London police model and established a paid professional police force in 1828.”¹ It is reasonable to assume that many false reports have been made in the nearly 200 years since.

20. Perhaps one of the best known was a horrific event in the City’s history. On April 14, 1972, NYPD Officer Phillip Cardillo was shot to death while responding to an incident at the Nation of Islam Mosque No. 7 located at 102 West 116th Street.

¹ *HISTORY OF NEW YORK CITY POLICE DEPARTMENT*, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/history-new-york-city-police-department>, retrieved 11/26/2023.

21. As the New York Times² wrote:

Officer Cardillo and several other policemen went to the mosque — now called Malcolm Shahann Temple No. 71—that Friday morning after a man who identified himself as Detective Thomas of the 28th. Precinct, *placed a call to the police emergency number* and said that a policeman was in trouble on the mosque's second floor. [emphasis added]

22. (Thousands of words in articles and books have been written about this tragedy which can be read by those searching for further details. So as not to go further from the topic of radio encryption, we omit them here.)³

23. As we now know, there was no Detective Thomas and the call was fake.

24. *That event happened **fifty-one (51)** years ago.* What has the NYPD done about false telephone reports since then? Apparently not much if anything.

25. I am informed and believe that if a call is placed to the citywide 911 emergency number from a cell phone that the police have no idea of the geographical location of the caller. In that case, what has Chief Beltran done to prevent another fake “Detective Thomas” from using a cellphone to place another fake “officer needs assistance” call?

26. Given this history, it should have been obvious to Chief Beltran that other things could have at least been tried. First, the NYPD has long employed a “color of the day” system to aid in identifying plainclothes officers. A similar system can be used as a “challenge and response” on the radio. Under Chief Beltran’s system, if a signal 10-13 (“officer needs assistance”) is received on his encrypted radio system, the department will

² *Mosque Trial Ends in Hung Jury*, The New York Times, By Dena Kleiman, Nov. 28, 1976, <https://www.nytimes.com/1976/11/28/archives/mosque-trial-ends-in-hung-jury-panel-102-in-favor-of-conviction-102.html?smid=nytcore-ios-share&referringSource=articleShare>, retrieved 11/26/2023.

³ The Google search “1972 Harlem Mosque Incident” brings up more than 850,000 results.

dispatch all available units in the area. That begs the question: what if a false report is made on the telephone as it was 51 years ago?

27. Second, Chief Beltran would have the Council believe that anyone with a bootleg radio can transmit a false “officer needs assistance” call from anywhere in the city and that the only way to prevent this is by encrypting all the radio transmissions. Let us examine this misconception.

28. Anyone with a smartphone today is well aware of the cellular function known as “location services.” As Apple explains it: “Location Services uses device sensors, including GPS and Bluetooth (where those are available), along with crowd-sourced Wi-Fi hotspot and cell tower locations to determine your device’s approximate location.”⁴

29. That is why when you use a “ride share” app such as Uber or Lyft, the company can dispatch a car to your location without you needing to know the address since *they know where you are*. That is also why when you are waiting for the car you can see where it is on a map. This begs the question: **Why doesn’t the NYPD know where its officers are?**

30. What has Chief Beltran done to enable 911 operators to determine the location of an emergency caller who uses a cell phone?

31. What has Chief Beltran done to enable NYPD radio dispatchers to know the location of each of the department’s 42,000 radios?

32. The answer to both of these questions is apparently not much. But can anything be done?

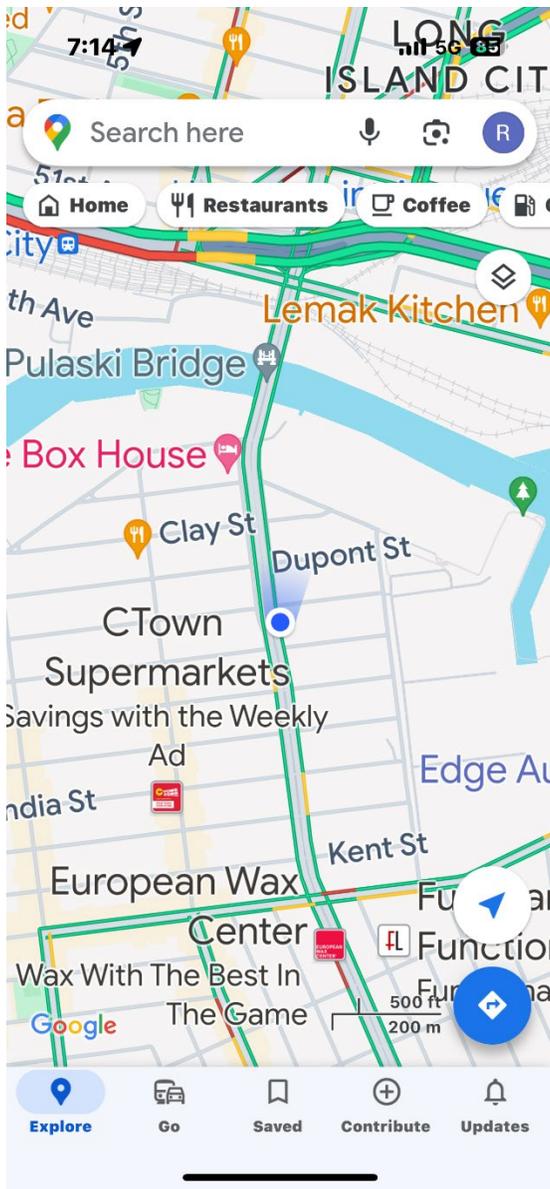
⁴ *Location Services & Privacy*, Apple Legal, <https://www.apple.com/legal/privacy/data/en/location-services/> retrieved 11/26/2023

33. What would happen if instead of replacing the police radios in North Brooklyn with encrypted models, Chief Beltran ordered instead radios that transmitted the location of the officer? Do such radios even exist?

34. Most assuredly they do. In fact, Motorola, the very same vendor of the NYPD encrypted radio system that costs hundreds of millions of dollars already makes different walkie talkies that transmit location. See, for example, one such Motorola system of which the company claims, “SmartLocate delivers GPS location information every few seconds, so you know where your [officers] are with complete confidence.”⁵

35. How would location services work in practice? How would this answer Chief Beltran’s concerns? How would it benefit the public? Look at the map below for reference:

⁵ https://www.motorolasolutions.com/en_us/products/p25-products/apx-mission-critical-applications/smartlocate.html# retrieved 11/26/2023



36. Chief Beltran has alleged that criminals using bootleg radios illegally transmit false “officer needs assistance” radio calls to divert police resources away from their crimes. Let’s review the following hypothetical which fits with his testimony.

37. Suppose criminals wanted to commit a crime in North Brooklyn near the Williamsburg Bridge. Using a bootleg radio they fake an “officer needs assistance” call far north of their location at the top of the borough near the Pulaski Bridge as shown with the **blue dot** (•)in the map above.

38. If the NYPD were using location transmitting radios, then no matter what they radio call said by voice, the location would have to match the transmission or the officers would not be dispatched.

39. If the NYPD used radios that transmitted officers' locations along with their voices, then false transmissions would not work, but the press and public would still be able to listen to the radios.

40. Here is another example. A citizen is robbed and assaulted. They cannot see the street, much less the address. They dial 911 for help. But since the NYPD is using location services, the 911 operator knows exactly where they are and can send help.

41. While Chief Beltran listed an impressive array of statistics on equipment bought with taxpayer money including 42,000 radios, he failed to mention the smartphones the department has already issued to every officer. He also did not mention portable computers with which each radio motor patrol car (RMP) commonly known as a "police car" is equipped.

42. Cannot these phones and computers be used to transmit sensitive information that only officers could receive thus thwarting the claim that such information on the radio is a "security risk?" Also, if every officer is already equipped with a phone, cannot these phones be used to transmit authenticated "officer needs assistance" calls? Aside from Motorola, another big supplier to the NYPD is Sabre. Although known for its pepper spray, the company also makes something called SABRE Personal Safety 4+ Mobile Safety Alert System.⁶

⁶ <https://apps.apple.com/ca/app/sabre-personal-safety/id1492726591>, retrieved 11/26/2023

43. This is an app with a “panic button” that “sends help alerts to selected contacts with your GPS location.” In some ways this is better than an encrypted radio that requires an officer in distress to transmit a location clearly and coherently.

44. But if an app for a smartphone is not acceptable, then another solution is to produce a modified smartphone for the NYPD with its own external dedicated panic button. I am confident that with an order of 42,000 telephones, the department should find no shortage of suppliers among Apple, Samsung, Google, Motorola, et al willing to produce one.

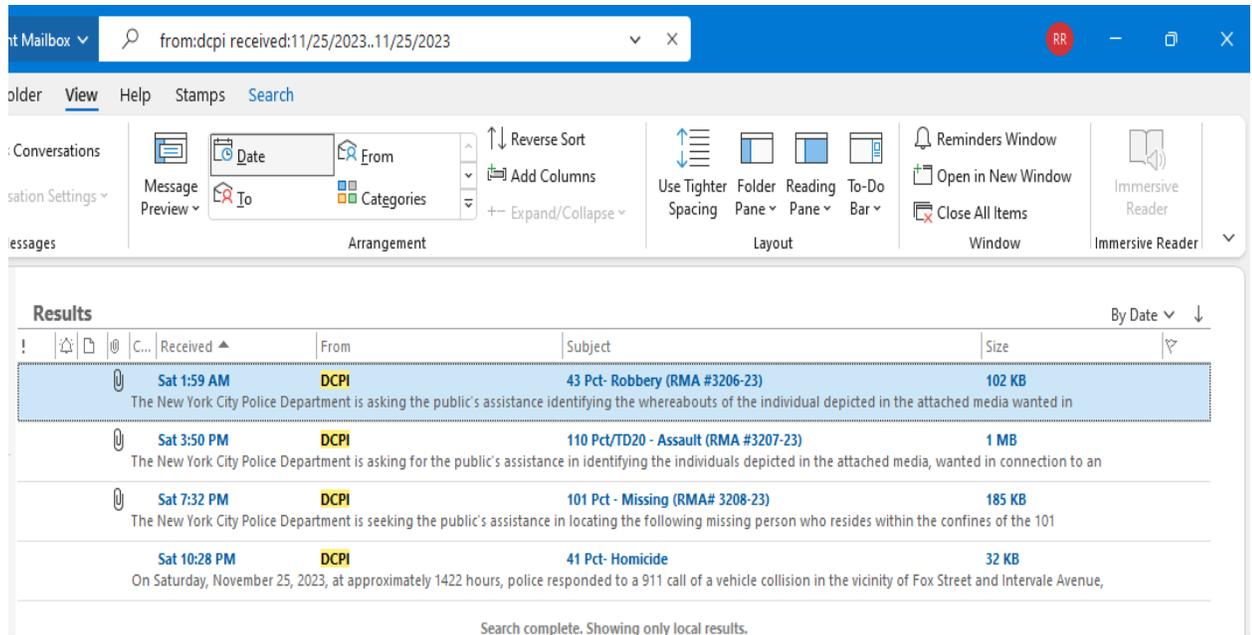
45. If the NYPD employed such a phone then any call for assistance would be instantly verified, would send the precise location of the officer and would not be vulnerable to criminal impersonation.

46. Why did Chief Beltran not try this before cutting off the press and public from access to NYPD radio transmissions?

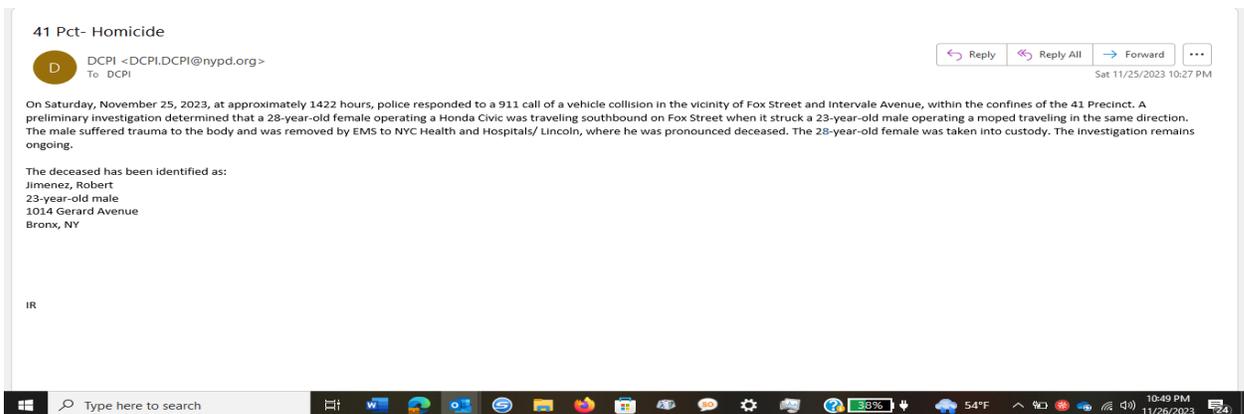
47. Consider that the chief testified that, “The NYPD is the most transparent police force in the country.” To paraphrase a judge, I do not find these words worthy of belief.

48. Let’s take a look at what information the press and public could expect from the Police Department in the event that all radios were encrypted.

49. The department maintains an office at Police Headquarters run by a former precinct commander with the title Deputy Commissioner Public Information. This office puts out email alerts to those journalists who qualify for its distribution list. Here is a list of all the emails this office sent out to the press list on Saturday, November 25, 2023:



50. To be clear, in the entire 24 hours of Saturday, *these were exactly four (4) emails*. Of these, the first three are called “RMAs,” otherwise known as Requests for Media Attention. These are requests *from* DCPI *to* the press asking that the press help the department by publicizing some need for information, e.g. identifying someone.
51. Let us more closely examine the fourth one:



52. This is an actual report of a crime, a homicide. That’s the kind of crime that makes the news. But look more closely. The email was sent out at 10:27 PM. When did the crime occur? At “1422 hours,” in other words, 2:22 PM, **eight hours earlier!**

53. After eight hours, it is next to impossible to report the story. The crime scene has been sanitized and probably closed off by the police. Witnesses, if there were any, may no longer be around. These are only several problems.
54. If this is what Chief Beltran calls “the most transparent” then fortunately he is not working for a national organization that distributes news information or it might now be getting around to distributing information on the inauguration of President Obama.
55. The following neatly sums up the problem:
- “The Adams administration has been boasting that they want to be the most transparent administration, yet this is such a regressive implementation of trying to keep the public and the media from knowing what’s going on in the city,” [New York Press Photographers Association Bruce] Cotler said. “If it wasn’t for the police radios and a Daily News photographer listening to the radios, we would have never known about Eric Garner.”⁷
56. Much discussion has been had over other cities encrypting their police radios but then affording the press some sort of access usually with some sort of delay and perhaps through an intermediary.
57. In the City of New York, the birthplace of Freedom of the Press,⁸ it ill behooves the agency charged with protecting people’s rights to take away their right to be informed and to seriously impinge on the ability of the press to inform the public.

⁷ *Over and out? NYPD evades media access questions at City Council hearing on police radio encryption*, By Dean Moses, November 20, 2023, <https://www.amny.com/news/nypd-media-access-hearing-police-radio-encryption/> retrieved 11/27/2023

⁸ See for example, *Federal Hall, National Museum New York*, National Park Service: “26 Wall Street was the site of New York City's 18th-century City Hall. Here John Peter Zenger was jailed, tried, and acquitted of libel for exposing government corruption in his newspaper - an early victory for freedom of the press.” <https://www.nps.gov/feha/learn/hc.htm>, retrieved 11/27/2023

58. Even assuming *arguendo*, the validity of Chief Beltran's arguments, and assuming that radio encryption is not stopped, what should be done with the press? The only acceptable solution must incorporate the *methods* used for the past decades which involve:
- a) The ability to listen to the radio in real time, without delay;⁹
 - b) The ability to do receive the radio transmissions directly from the Police Department through unfiltered, unedited and uncensored transmissions;
 - c) No requirement to use an independent company;
 - d) No requirement to use a smartphone app;
 - e) No charge imposed for listening or receiving data.
59. As previously noted, the NYPD has tremendous buying power when it comes to radio technology. Surely the NYPD can submit specifications for the manufacture of a small batch order of **receive-only walkie talkies** that can be sold to the press at cost.

II. The Mayor's Office of Media and Entertainment Needs Further Work to Improve its Dealings with the Press Corps

60. On February 9, 2021, I testified before the Committee on Government Operations and submitted written comments on Introduction 2118 (2021) the bill which, when subsequently enacted as Intro 2118-A, transferred the issuance of press credentials from the NYPD to the Mayor's Office of Media and Entertainment through Local Law 46. When the law took effect, MOME established a Press Credentials Office.

⁹ To paraphrase the Supreme Court in *McCulloch v. Maryland*, 17 US 316, (1819), The power to delay [the news] involves the power to destroy [the press].

61. At the Hearing, MOME's director of its press credentials office, Samer Nasser touted as an achievement that the office was issuing "three types of press credentials," namely, the Press Card, the Single Event Press Card and the Reserve Press Card.
62. However, this is hardly an achievement when a) the NYPD was issuing the same three cards; and b) this is exactly what Intro 2118-A (enacted as Local Law 46 and Administrative Code § 3-119.4) requires MOME to do. Paragraph c. begins: "The mayor's office of media and entertainment shall issue press cards, reserve press cards and single event press cards. . ."
63. It is telling that this paragraph, enacted into law, continues, "and may establish by rule additional types of press credentials." However, to date, despite requests MOME has failed to establish any additional types of press credentials.
64. This is significant for a number of reasons. First, on or about the Fall of 2009, photojournalists and other accredited members of the press began applying to DCPI to renew their press credentials. At the time, these consisted of two separate documents, the NYPD Press Card and the NYPD Press Vehicle card.
65. When photojournalists appeared at the DCPI office located at Room 1320, One Police Plaza to collect their credentials they were told that their Press Cards were renewed but that the Vehicle Cards were "delayed" "because of a lawsuit." *This statement was not true.*
66. In fact, there was at the time exactly one lawsuit pending against the NYPD on the subject of press credentials, *Martinez-Alequin v. City of New York*, op. cit. I am well familiar with this case and can state with certainty that no part of the complaint dealt with

the subject of the Press Vehicle Card. Rather, Martinez-Alequin and others brought suit to have their Press Cards renewed or restored.

67. In reality, a person or persons unknown within the administration of Mayor Bloomberg unilaterally decided to end the Press Vehicle Card system which had existed in one form or another for more than five decades.
68. This action was taken with *no notice* to the affected photojournalists, and *no opportunity to be heard* thus depriving them of a significant tool in news gathering without a hearing and therefore denied Due Process to all of them.
69. Several months later, on April 7, 2010, as part of a settlement agreement in *Martinez-Alequin*, the NYPD held a hearing on revising its rules concerning press credentials and formally omitted any mention of the Press Vehicle Card.
70. In addition to this rewrite, the NYPD removed from its rules the ability to issue the Press Identification Card. The significant difference between the Press Identification Card and what was formerly called the NYPD Working Press Card (later renamed to simply the Press Card) was that the Press Identification Card did not allow the crossing of police lines.
71. There was an immediate and significant effect in the de facto repeal of the Press Identification Card. Huge numbers of bona fide legitimate journalists lost their police accreditation because they could not meet the new qualifications. The most significant example is sports photographers. A photojournalist for a major news organization can be assigned to cover the Yankees, Mets, Knicks, Nets, Rangers or any of the other professional sports teams even on a full-time staff basis yet this person is not eligible for a Press Card since under the revised NYPD rules (the relevant portion of which was

essentially copied by MOME), sports does not fall under the category of “qualified event.” Under the MOME rules¹⁰, to qualify for a Press Card (again, the only credential a photojournalist may qualify for), one must cover:

(a). . .

i. emergency, spot, or breaking news events, or public events of a non-emergency nature where police or fire lines, or other restrictions, limitations, or barriers established by the City of New York have been set up for security or crowd control purposes; or

ii. events sponsored by the City of New York that are open to members of the press.

72. Clearly, sports photojournalism does not come within either of these two categories thus making these legitimate members of the press unable to provide official identification to the police when they are en route to or from the major stadiums and arenas where they cover the news.

73. November 23, 2021, MOME held a hearing on its proposed (since enacted) rules and I requested the restoration of both the Press Identification Card and the Press Vehicle Card.

74. MOME made no response and since then has done nothing to alleviate the two problems mentioned herein that face journalists. There is no dialogue open with MOME on this subject.

MOME has a built-in conflict of interest when it comes to the press.

75. This became apparent even before MOME began issuing press credentials. At the November 23, 2021 MOME hearing mentioned above, I testified as to one such conflict.

According to its website, “The Mayor's Office of Media and Entertainment's mission is to

¹⁰ See in pertinent part 43 RCNY §16-03.

support and strengthen New York City's creative economy and make it accessible to all.”¹¹ However, there has long been a prejudice in favor of the film and television businesses and against the press.

76. In my testimony at the November 23, 2021 hearing, I told MOME:

“On Sunday, October 10th your agency allowed a production company to take over the entire New York Press parking zone on 6th Avenue and 51st Street even though they were not shooting that day. But who was shooting? The many still photographers and videographers who were covering the Columbus Day Parade and whose parking spots were reserved by the Department of Transportation.”

77. To sum up, MOME overruled the Department of Transportation (despite having no apparent statutory authority to do so), gave away the parking spaces reserved for journalists knowing full well that there was a parade going on that day that would be covered (since it is every year) and also knowing that there would be no film or TV shooting that day.

78. Yes, this is not the most egregious example of MOME favoring film and television production over the press. There is a lawsuit pending in Federal Court in Brooklyn, *Xizmo Media v. City of New York*, 1:21-cv-02160-ENV-MMH (EDNY) which has sought to invalidate the city’s regulatory scheme when it comes to Small Unmanned Aerial Systems (commonly known as “drones”) as applied to their use in aerial cinematography for the film and TV businesses.

79. According to several minute entries in the docket of this case as retrieved through PACER, there were several settlement conferences during which MOME, although not a named party, appeared through its general counsel, Lori-Barrett-Peterson. Although

¹¹ <https://www.nyc.gov/site/mome/about/about.page>, accessed 11/27/2023

MOME issues press credentials, I am informed and believe that no member of the press, particularly no photojournalist who covers spot news, was able to give input into these discussions.

80. As a result, the case is virtually settled. As part of the settlement, the parties agreed with MOME's blessing that the NYPD would draft regulations that would allow Xizmo Media and other similarly situated film and television companies to use drones but not photojournalists covering breaking news.

81. A brief excerpt from my written comments before the NYPD's hearing July 7, 2023¹² will provide greater clarity:

26. In my article, "Photojournalism and Drones in New York City: Recent Legal Issues," NYSBA *Entertainment, Arts and Sports Law Journal*, Fall 2020, Vol. 31, No. 4, <https://nysba.org/entertainment-arts-and-sports-law-journal-fall-2020/> (hereafter "Photojournalism and Drones," copy attached for reference), I detailed how in 2020 two photojournalists were arrested by the NYPD when each used a drone to photograph the burials of impoverished victims of COVID-19.

27. No one was injured and no property was damaged while these pictures were taken yet *misdemeanor charges* were brought charging violations of Administrative Code Section 10-126.

28. The basis of the *Xizmo* suit is the allegation by plaintiffs that because they are engaging in aerial photography for the purpose of movie making, this is a constitutionally protected activity under the Freedom of Speech clause of the First Amendment.

29. Under equal logic and under the same legal theory, aerial photography for the purpose of newsgathering is also a constitutionally protected activity under the Freedom of the Press clause of the First Amendment.

30. Yet the proposed rules, while mentioning neither movie-making nor newsgathering, work to benefit only the former.

¹² *In the Matter of Proposed Rules for Takeoff and Landing Of Small Unmanned Aircraft*, Comments of Robert Roth, Esq., July 6, 2023, filed in the New York City Police Department Legal Bureau.

31. To start, Proposed Section 24-03 provides for an application process for the proposed permit. It begins:

An application for a permit to take-off or land an unmanned aircraft within New York City must be submitted to the Department **at least thirty days (30)** prior to the proposed date of take-off or landing. [emphasis added]

32. Merriam-Webster defines “Spot News” as “up-to-date immediately reported news.” <https://www.merriam-webster.com/dictionary/spot%20news> (last accessed July 5, 2023). Clearly, there was no 30 days’ notice of the collapse of a multi-story parking garage in Manhattan on April 18, 2023. (See for example, New York Times: “One Dead in Parking Garage Collapse in Lower Manhattan,” April 18, 2023, <https://www.nytimes.com/2023/04/18/nyregion/nyc-parking-garage-collapse.html> (last accessed July 5, 2023). Nor is there ever 30 days’ notice of earthquakes, floods, fires and explosions or other such spot news events which are too numerous to list.

33. While Proposed Section 24-03 is of seemingly inconsequential importance to those who shoot feature films or network television shows, it will operate as a complete bar to using drones for covering breaking news in New York City.

34. In sum, while the Proposed Rules titled **Permits for Take-Off and Landing of Unmanned Aircraft** will help the business of movie and television aerial photography, it will reiterate the restrictions against an important tool for photojournalism.

82. Thus, while the press had no input into the drafting of these regulations, the city agency that issues press credentials to photojournalists did and it allowed these rules to be written knowing that they would never allow for the use of drones to cover spot news because no one would ever be able to give 30 days’ notice in advance of a spot news event just as no one can predict the future.

83. MOME has further problems when it comes to the press. Under its own regulations, MOME has the authority to decline applications for press credentials.

84. In response to a question at the Hearing, Samer Nasser stated, “Our office has discretion to conduct a background check if necessary.” I urge the Committees to demand further clarification of this statement.

85. I am informed and believe that the only units of government that can legally conduct a criminal background investigation of an individual person are those which are denominated *law enforcement*, e.g. the New York City Police Department and only for valid legal reasons. I am informed and believe that MOME has no such authority. During my many years of receiving press credentials, I was never aware of being the subject of a background investigation by the NYPD although I was subject to routine checks of the press corps by the Secret Service in order to cover the President. Again, these are law enforcement agencies and MOME is not.

86. Further, an attorney for MOME stated at the Hearing that some applications are denied. I believe the Committees should know how many of these applications have been denied, how many applicants appealed and what the disposition of these appeals were. (I note with surprise that even though I am a media lawyer, I have never heard of this man before and do not know his name which was unintelligible at the Hearing.

87. As noted at the Hearing, MOME also has the authority to *suspend* and *revoke* press credentials. To this date, as a media lawyer with a concentration in press credentials, I have yet to obtain answers to the following questions:

- a) Who is permitted to bring a charge against a journalist for allegedly violating the MOME rules?
- b) Who at MOME reviews these charges?

- c) Who determines if the charge will go forward and the journalist put at risk of a suspension or revocation?
- d) If there were to be a denial of an application or a suspension or revocation proceeding, who would represent MOME at the OATH hearing? Who would, in effect, prosecute the case?
- e) How many hearings to date in each of the categories of Application Denial, Suspension, and Revocation has MOME brought and what was the disposition of each?

88. As a concerned media lawyer, I appalled to say I do not know the answers to these questions and I urge the Committees to find out.

CONCLUSION

89. I urge the Committees to evaluate the testimony and comments and consider legislative measures to improve press and public access to police radio transmissions and to strengthen the rights of the press in the credentialing process.

Dated: Brooklyn, New York
November 27, 2023

Respectfully submitted,

/s/ Robert Roth

ROBERT ROTH, ESQ.
240 Kent Avenue
Brooklyn, New York 11249
(212) 398-2080
robert@roth.nyc