

**CREDENTIALING FOR ONLINE
JOURNALISTS:
AN EVOLVING STORY**

SPJ REPORTS

RESOURCES YOU CAN USE

**The Society of Professional Journalists
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The 2000 Pulliam Kilgore Report

**CREDENTIALING FOR ONLINE JOURNALISTS:
AN EVOLVING STORY**

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I. Introduction¹

Salon.com stands out among the pioneer Internet publications. According to CBSMarketwatch.com, Salon "is one of the finest producers of opinion, features and news in the United States." Prestigious awards garnered by Salon include: "Web Site of the Year," by Time Magazine in 1996; "Best of the Web," by BusinessWeek in 1997; "Best of Multimedia," by Entertainment Weekly in 1998; and "Best Technology Site" and "Best Parenting Site," by Forbes Magazine in 1999. In 1998, during the presidential impeachment hearings, Salon beat its print and broadcast competition and broke a major story when it reported that House Judiciary Chairman Henry Hyde had had an extramarital affair.

However, when Jake Tapper, Salon's Washington correspondent, tried to attend two of Pat Buchanan's fund-raising events this year, he was refused credentials. Why? The official in charge was "not impressed" by the Salon web site.² Tapper's experience is not an isolated one. When Carrie Borzillo, managing editor of CDNOW.com's Allstar news, was denied access to this year's Grammy Awards, the official who handled publicity for the event explained, "There is no way that any of us have the time to investigate every one of these [requests]."³ Another prominent example of the shunning of Internet journalists was the National Collegiate Athletic Association's decision to deny media credentials to all web reporters who wanted to cover this year's men's basketball tournament.⁴

Whether the action is in Congress or on Wall Street, at the Super Bowl or the Academy Awards, the majority of major media events require press passes. Accreditation is a routine

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² See <http://www.salon.com/politics/feature/2000/06/13/buchanan/print.html>.

³ Keith L. Alexander, "Respect eludes net media: Online reporters fight for recognition in a growing pool," USA Today, Mar. 27, 2000, at 4B.

⁴ Darren A. Nichols, "Web journalists shut out of tourney," Det. News, Mar. 17, 2000, at A6.

procedure for most print and broadcast journalists, but it presents a serious problem for many online reporters. As these anecdotes demonstrate, Internet publications are having trouble “getting respect” - and getting access to press conferences, sporting events, and other news opportunities – even at a time when more Americans than ever are logging on for news. Considering the massive proliferation of media web sites, it is obvious that every online journalist cannot be issued press credentials. On the other hand, excluding all online journalists is simply not a viable solution either. The key is finding a fair balance and sensible criteria to apply.

Assessing the circulation of a daily newspaper or the viewership of a network is a task credentialing bodies have readily conquered; determining the reach and credibility of a web site, however, is an entirely different matter. The Internet is challenging credentialing boards to address some tough questions: What criteria should be used to define who qualifies as a “bona fide” online journalist? How should we measure – and audit – the size of a site’s readership? Should preference be given for sites associated with established news organizations? These questions are all the more compelling because of recent findings by the Pew Research Center for the People and the Press that the Internet is rapidly developing as an important source of news.

This year's Pulliam Kilgore Report examines the emerging policies regarding the credentialing of online reporters. Consistent and definable procedures are few and far between at this point, as many organizations are still scrambling to accommodate the surge in Internet journalism. The Report also considers the First Amendment background relevant to these policies, as well as the tensions that exist within the journalism profession on the issue. All the trends show that Internet news sites are becoming more essential to readers. Credentialing policies need to catch up with the marketplace.

II. Online Pioneers Make Their Case

Jack Tapper’s and Carrie Borzillo’s experiences do not tell the whole story, of course. Some Internet publications and online journalists have broken through the credentialing barrier.

Take Slate.com. Slate made its debut in 1996 and in a short amount of time was quickly accepted as one of the first serious web publications. Jack Schafer, Slate's Deputy Editor, attributes many factors to the web site's accomplishments. "Slate owes its success to . . . its excellent editor, Michael Kinsley, its talented staff of writers and editors, its supportive owners, Microsoft, and its smart luck of being on the web at the right time and building an audience as the web came of age." According to Schafer, Slate first received its Capitol Hill credentials in late 1996, shortly after its appearance on the scene. He is unaware of any instance where a reporter from Slate was denied access to an event.

"Online journalists can bring their credibility with them from the print world . . . or they can acquire it by publishing excellent work [on the Internet]," says Schafer.⁵

APBnews.com also has a better story to tell, at least on the credentialing front.⁶ James Gordon Meek, an APBnews staffer, appears to be the first cyberspace reporter accredited by the U.S. Capitol Hill Periodical Press Gallery. In October 1995, when Meek first acquired Capitol Hill accreditation, he was a twenty-six year old political editor for the CD-ROM magazine Blender. Meek applied to the Periodical Gallery and was granted credentials with relative ease. In retrospect, the landmark credentials were issued on the "eve" of the Internet explosion, and the galleries were probably not yet taking the Internet seriously.

Meek's second credentialing experience was nowhere near as smooth as the first. He left Blender in 1996 and with his partner, Mike Rosenberg, started a "webzine" called Politics, Gridlock & Load. Together they applied to the Periodical Press Gallery for press passes to cover Capitol Hill. The Committee took six months to make its decision and then denied the credentials. In a terse letter, the Gallery said that it could not see how Meek and Rosenberg could draw their primary source of income from the webzine. In such circumstances, they could

⁵ Interview with Jack Schafer (July 7, 2000).

⁶ APBnews filed for bankruptcy protection this July. At presstime, the site was still in operation.

not be considered full-time journalists. The Gallery stated that it saw no advertisements on the webzine, an observation that, according to Meek, was inaccurate.

Meek's feeling is that, at the time, the Periodical Gallery was simply leery of the Internet. "I do have genuine affection for them, but the Washington press corps can be very stodgy, stuffy, and set in their ways," said Meek. After their rejection, Meek and Rosenberg sought a different avenue, and temporary credentials were granted to them by the Photographer's Press Gallery. By the time their temporary passes had expired, United Press International ("UPI") had picked up their webzine. They were then able to obtain their credentials from the Daily-Print Press Gallery, through their affiliation with UPI.

In July of 1999, Meek joined APBnews' staff as the Washington Bureau Chief. He was then faced with his third attempt at applying for a congressional press pass as an online journalist. APBnews applied through the Daily-Print Gallery, the oldest of the press galleries on Capitol Hill and the one known for setting the highest bars to "new media." But, as a result of his pioneering experiences, Meek had become very familiar with the system. He presented a full dossier of his journalistic achievements and the recent accomplishments of APBnews.com. The web publication was issued Capitol Hill accreditation in a few week's time.

Meek suggests that "politics" plays a significant role in the grueling procedure. "Getting credentials in Washington is part process," said Meek. "But is as political as everything else in Washington."⁷

Chris Schmit, who recently left his Washington correspondent position at TheStreet.com, was granted Capitol Hill credentials this June. Although some people on Capitol Hill might have been a little puzzled as to who TheStreet was, Schmit insists he had no real procedural problems. Schmit, who at the time covered regulation and finance at TheStreet, describes his experiences as an online reporter as being quite customary. "It's all been very normal," says Schmit. Coming from a strong print background, he sees little difference in the way the newsroom at TheStreet is

⁷ Interview with James Gordon Meek (July 7, 2000). For more on Meek's credentialing experiences, see <http://www.gridlockmag.com/press>.

run as opposed to his old newsrooms at print publications. “If your goal is to have quality journalism, the medium doesn't matter; if you're going to do a good story, it doesn't matter if the story is going to appear in print or online, as long as your goal is to do quality journalism.”⁸

III. Credentialing Conundrums

Meeks and Schmit managed to get through the system, but their experiences do not speak to the institutional barriers still standing in the way of many online reporters. As the following survey of government, financial and athletic organizations demonstrates, credentialing for Internet journalists is still an iffy – an unscientific – proposition.

Government Bodies

Journalists who want to cover news on Capitol Hill must have a press credential from one of the four accredited news galleries: Daily-Print, Radio-T.V., Photographers, or Periodical. The first thing a journalist needs to know is to which gallery he or she should apply. On the face of it, the answer to this question may seem self-evident to most reporters. If a reporter works for a daily newspaper such as the Washington Post, the Daily-Print Gallery is the proper authority. If you are Annie Leibowitz, the Photographer's Gallery is the clear choice; if you are Dan Rather, obviously the Radio-T.V. gallery will handle your application.

As there is no gallery that specifically deals with online media, the dilemma for Internet journalists is finding the right gallery to which they should present their credentials. For example, many online publications include video and sound components, which may make them seem like “broadcasters.” Numerous web sites update their information hourly, let alone daily, so it would be reasonable for them to assume they would fall under the Daily-Print Gallery. Indeed, a news web site could arguably possess the qualifying factors set forth for all four Capitol Hill Press Galleries. The Periodical Press Gallery states that the majority of online publications are accredited through its office, but each of the four galleries admits to credentialing an online journalist at one time or another.

⁸ Interview with Chris Schmit (July 7, 2000).

The online publication Politicallyblack.com initially applied to the Periodical Press Gallery for credentials, but in May of 2000 was told that it should have applied to the Radio-TV Press Gallery. According to Faye Anderson, a reporter for Politicallyblack, “We assumed we fell under the Periodical press gallery because that’s what the rules say.”⁹ Politicallyblack is a publication solely committed to online political journalism; it is not affiliated with an “established” broadcast or print organization.

Most online publications fall into one of two distinct categories: Cyber-publications with established print or broadcast affiliates such USA Today.com, or “stand alone” publications such as Salon and Politicallyblack. If an online publication already has an established print or broadcast affiliate with media credentials, in the majority of cases it can use its “parent affiliation” to gain access to Capitol Hill. But what about all those start-ups without any “establishment” connections? How much more difficult is it for the web publications without such affiliates to acquire press passes?

Vigdor Schreiber has an answer to that question. The editor of the Federal Information News Syndicate (“FINS”), an independent Internet news publication that reports on federal legislation and governmental policies, Schreiber was unable to get credentials from the Periodical Gallery. His request was denied on the grounds that his publication was not published for profit and that he did not receive a salary from FINS, thus undercutting his claim that he was a “full-time” journalist. To be sure, Schreiber brought minimal journalism experience to FINS, and in this respect some may feel that the Periodical Press Gallery acted reasonably. He eventually sued for a credential, as the Report explains below.

It is just not the “new kids on the block” who are being denied access. Stateline.org is an online news service for journalists covering statehouse public-policy developments. A publication exclusively devoted to online journalism, Stateline has no established print or

⁹ Anderson’s comments were made at a May 31, 2000 symposium sponsored by the Freedom Forum on the credentialing process for online reporters. To listen to a recording of the symposium, see <http://199.183.110.96/freeradio/schedule/may2000.asp>.

broadcast affiliates. Stateline's editor, Ed Fouhy, at one time or another has been the Washington Bureau chief at all three networks. Gene Gibbons, the managing editor, was the president of the Radio-TV Gallery at one point in his career and was for 12 years the chief White House correspondent for Reuters. Although the leadership of Stateline.org has a total of over 50 years of Washington journalism experience, the publication was still denied Capitol Hill credentials. Fouhy remains puzzled about the gallery's denial of press passes. "It's difficult for us to understand why we have been denied credentials," said Fouhy, "given our long personal histories in Washington and reputations for devotion to the highest standards of journalism."¹⁰

The Congressional press galleries also assist the Republican and Democratic parties with credentialing reporters to cover the national political conventions. Convention coverage on the Internet was a major focus at the 2000 conventions, but many web reporters could have easily found themselves misled and confused by the actual application process. The Republican National Convention Committee's web site instructed online publications interested in credentials to contact the Periodical Press Gallery. The Democratic National Convention Committee's web site stated that if a publication has an established print or broadcast affiliate, the parent should include the online newsgatherer's request with its own. Additionally, the Democrats instructed nonaffiliated online publications to apply to the "proper" press gallery. But that issue, of course, is the one that has been bedeviling Internet reporters for years!

The importance of obtaining congressional accreditation cannot be underestimated as a tool to leverage further privileges. "It's just not access to Capitol Hill," says Anderson. "It's also the ripple effect."¹¹ "If you get the Capitol Hill credentials, you're in," confirms Meek. "It's golden." Indeed, to be an accredited journalist at the White House, one of the first prerequisites is a congressional press pass.

¹⁰ Interview with Ed Fouhy (June 29, 2000).

¹¹ See Freedom Forum symposium, supra note 9.

While the White House thus follows congressional credentialing decisions in many respects, it has taken the lead in one important way: it has now delegated a specific individual to handle credentials for Internet reporters covering the President. But the White House has not taken the next step - establishing a detailed set of guidelines for web sites that want to credential their reporters for service at 1600 Pennsylvania Avenue. Snagging a press pass, for Internet journalists in Washington, still seems to come down to chance.

Stephen Trimble, a reporter for Military.com, appears to have become the first web reporter to receive a press pass from the Pentagon. He accomplished this feat even though the Pentagon has no specific policy pertaining to the credentialing of online journalists, according to Pentagon Press Spokesman Glenn Flood. "It's the same procedure for print, broadcast, and all types of media," said Flood.

The catch-as-catch-can approach prevalent in Washington appears to be dominant in the states as well, if New York is any guide. There is no policy for credentialing online journalists at the New York State Assembly, for example. While the Assembly has credentialed online publications such as capitolwire.com, the number of such requests from online reporters has been so minimal that there has been no need for a specific policy, according to a spokesperson.¹²

Financial Institutions

A reporter from TheStreet.com was recently denied access to cover a Goldman Sachs investment symposium in Palm Springs, California. According to TheStreet's executive editor Jonathan Krim, "Goldman Sachs only credentialed print journalists from major print publications, and CNBC." TheStreet sent its reporter anyway, and on the second day of the convention he was confronted by one of the conference functionaries and thrown out. Krim says the reason given for this action by Goldman Sachs was that it was "very disruptive during the session to have them [online journalists] jumping up in the middle, and going out and filing

¹² Interview with the New York State Assembly Press Office (July 5, 2000).

when they hear someone say something.” Krim responded by suggesting that instead of simply excluding web publications, they create a general “no distraction” rule.

“In the financial world, the problem is that when you are dealing with the private sector, it's even harder than when you are dealing with the public sector, because access is not assured as a right to begin with,” said Krim. Microstrategy Inc., a Virginia “dot-com” that has been much in the news as of late, first banned reporters from its annual shareholders meeting on June 19, 2000, then later decided to allow “accredited reporters” to attend. But who knows what that means.

The International Monetary Fund (“IMF”) denied press credentials for its spring 2000 meeting with the World Bank to members of the alternative media. “We had to cut it off somewhere,” said Senior IMF Press Officer Bill Murray. “We don't have a convention center so we basically set out some very straight forward guidelines: no student media, no academic publications, no community radio, no public access TV.”¹³

According to Murray, issues of personal security played a role in the IMF's decision to exclude certain media. He claims that the IMF received information that many organizations were planning on shutting down the spring meeting. When large numbers of applications were received from publications that were relatively unknown, the IMF drew the line. Murray said that the IMF accredited roughly 2200 journalists to attend its spring meeting, while the average number of reporters for such events is usually around 600. He stated that the press restrictions were not meant specifically for online publications; in fact, some were credentialed to cover the meeting, including CNN.com.

But, of course, a rule that excludes “alternative media” will have a disparate impact on Internet publications.

In general, the IMF does not have a special approach to credentialing online journalists, though according to an IMF spokeswoman it is an issue that the organization is looking at very

¹³ Interview with Bill Murray (August 1, 2000).

closely. The IMF admits that accreditation from another Washington institution might guarantee IMF credentialing. "If a journalist is based in Washington, and has a press pass from either the White House, the Treasury, or the State Department, we would accredit them for the meetings," said the spokeswoman. "The Internet is becoming the wave of the future, and we do have to be sensitive to that," says Murray. "But it does have its down side, and we have to be sensitive to that, too." The downside being, according to Murray, that anybody today can claim to be a journalist.

Many online journalists were even denied credentials to cover the February 2000, CeBit computer and Internet trade fair. Despite the Internet theme of the gathering, the show's organizers decided to apply their own criteria for who is a legitimate online journalist. "We decided to look at the homepage to see if it really has journalistic content," said Inga Buss CeBIT press manager. "We asked questions like, 'Is it published daily?' and 'Is there advertising on it?' and 'Is it kind of neutral journalism?'" Of the 6,500 journalists credentialed to cover the event, an estimated 100 were online reporters.¹⁴

Internet reporters clearly have a way to go in the financial world, but there are some signs of acceptance: CBSMarketwatch.com recently became the first "dot com" to obtain a seat in the pressroom at the United States Treasury Department.

Sporting Events

Since the NCAA denied media credentials to all web reporters who wanted to cover the men's basketball tournament this spring, not one Internet reporter was able to cover NCAA's biggest event of the year. With their reporters not allowed on the floor, services such as CBS Sportsline.com and USAToday.com were forced to pursue alternative avenues to cover the games.

Jim Marchiony, media director for the NCAA, said web sites affiliated with traditional media outlets could use information gathered by their print or broadcast reporters. "There's just a finite amount of seats and space, and there's no legitimate way to distinguish between legitimate

¹⁴ Steve Kettmann, "Net event shuts out web press," Wired.com, Feb. 24, 2000.

and non-legitimate web sites,” said Marchiony.¹⁵ Lack of physical space to accommodate all reporters, it appears, was the main excuse given by the NCAA. However, it was also reported that the decision was made in order to block other online services in favor of an exclusive NCAA web site.

“We can't get credentials and that's frustrating,” said Tom Crawford, associated publisher of “Bitter Rivals,” a sports news site that covers the athletic programs at Michigan State and the University of Michigan. During this year's Final Four, the web site was getting 200,000 weekly hits. Crawford tried to cover the Michigan State team as it marched toward the 2000 national title. “I don't understand the rules,” he said.¹⁶

When this issue first surfaced, back in 1997, USA Today President Thomas Curley claimed that the NCAA advised USA Today's parent company, Gannett, that it would be denied credentials on the ground that Gannett operates a web site that competes against a proprietary web site of the NCAA. Curley sent a letter to NCAA officials urging them to rescind their ban on Internet reporters. “The position of the NCAA is as unconstitutional as it is anti-competitive, high-handed and unfair,” wrote Curley.¹⁷ The NCAA, however, felt that it was not capable of treating all the web sites equally. “We try to treat all newspapers equally – and we can do that because we have the circulations to go by,” said David Cawood, who was the assistant executive director of the NCAA at the time and the executive in charge of credentialing the press.

Other collegiate and professional sports organizations have shared the NCAA's concerns, though not all have responded the same way. Syracuse University's Athletic Communications office has an “overall policy” concerning the credentialing of media organizations, not just online publications, according to Sue Edson, SU's Director of Athletic Communications. She said that some schools do have a policy that simply does not allow online publications press box space,

¹⁵ Nichols, supra note 4.

¹⁶ Nichols, supra note 4.

¹⁷ Steve Outing and Mark Fitzgerald, “Online reporters denied credentials,” Editor & Publisher, Apr. 12, 1997, at 30.

but Syracuse is not one of them. The research that goes behind the decision to grant online publications credentials can be daunting, said Edson. "It has presented rigorous challenges for media relations folks." The limited amount of "press box space" plays a large role in determining who will be given press access to an event. "Since there is limited spacing at our events, media who have covered us all year are given priority," said Edson.¹⁸

The University of Notre Dame has no blanket policy pertaining to the credentialing of online journalists. The University does have its own web site that frequently updates the status of games, so it does have concerns over the "live portion end of the issue," according to a spokeswoman from the Office of Sports Information at the University. To eliminate competition, the University would be less likely to credential a publication that includes live status reports during the coverage of the game, said the spokeswoman.

Bill Shapland, Senior Sports Communication Director at Georgetown University, said that Georgetown athletics does not have a hard and fast policy for credentialing online journalists. "You have to credential the Internet people, just as you would the newspaper people," said Shapland. His major concern deals with misuse of the privilege. "It has to do with abuse . . . where it gets to the point where the actual coverage of the team is not showing up on the web site."¹⁹

The National Basketball Association claims to have no real problem with online credentialing issues. According to a spokeswoman from the public relations office at NBA headquarters, the majority of online publications that have applied for credentials - such as ESPN.com - are usually linked to an established affiliate. The NBA expects to take a look at its entire credentialing procedure this year.

The biggest sports story of 2000, of course, was the Sydney Olympics. All U.S. media who wanted to cover the Olympic games were instructed to apply through the United States

¹⁸ Interview with Sue Edson (July 24, 2000).

¹⁹ Interview with Bill Shapland (July 24, 2000).

Olympic Committee for press passes. The USOC, however, looks to the International Olympic Committee to credential online journalists. As of August 2000, the IOC had not established a policy pertaining strictly to the credentialing of web reporters. According to Gene Policinski, director of media relations and special projects at the First Amendment Center, the Olympics are a fascinating study of controlled information. “The value of the information is established, marketed and sold to the highest bidder, and then they go to extremely great lengths to keep everybody else out.”²⁰

IV. The Legal Picture

In the early 1970s, the Supreme Court uttered some famously ambiguous words in Branzburg v. Hayes, 408 U.S. 665, 681 (1972): “[W]ithout some protection for seeking out the news,” the Court said, “freedom of the press could be eviscerated.” A number of federal and state courts have had to divine the reach of this “newsgathering” right in the context of press credentialing. The prevailing legal standard that has emerged from these cases suggests that while government is permitted to restrict the number of press passes it issues to journalists, it must show that it has “compelling” interests and has narrowly tailored its regulations to meet this end.

Sherrill v. Knight, 569 F.2d 124 (D.C. Cir. 1977), perhaps the leading case in this area, involved a challenge to the White House’s decision to deny a press pass to journalist Robert Sherrill. The Court held that that the Secret Service, based on security concerns, had the discretion to reject Sherrill’s application for a White House press pass. However, the court said that the Secret Service must make public its standards used in determining whether a journalist will receive a pass, must provide the journalist an opportunity to rebut, and must provide a final written statement of its reasons for denial. The court specifically said that “arbitrary or content-based criteria for press pass issuance are prohibited under the first amendment” and that “access [can] not be denied arbitrarily or for less than compelling reasons.” Id. at 129.

²⁰ See also Felicity Barringer, “Leery of the Web, Olympic Officials Set Limits on News,” N.Y. Times, Sept. 25, 2000, at A1.

According to Los Angeles Free Press, Inc. v. City of Los Angeles, 9 Cal. App. 3d 448 (1970), state authorities may place “reasonable” limitations on press credentialing. In this case, the Los Angeles Free Press was denied a press credential by the Los Angeles Police department on the grounds that the paper did not regularly report on police and fire news. One issue before the court was whether an individual's status as the publisher of a weekly newspaper gives him or her, under the First Amendment, a right of access to the scenes of crimes and disasters superior to that of the general public. The answer, according to the court, was a clear no. The court also concluded under the Equal Protection Clause that there is no constitutional requirement that the city of Los Angeles show uniform treatment to all publications or news media in issuing press passes; the only requirement is that there be a “reasonable” basis for the classification imposed. Id. at 456. The court was satisfied that Los Angeles’s classification was reasonable and that it did not base its credentialing decisions on the content of any reportage. Id. at 457.

While Los Angeles Free Press spoke in the language of “reasonableness,” other reported decisions addressing credentialing have more closely echoed Sherrill, requiring governmental bodies to narrowly tailor their regulations and to present a compelling interest justifying the restriction. See Quad-City Comm. News Service, Inc. v. Jebens, 334 F. Supp. 8 (S.D. Iowa. 1971); Mintz v. Calif. Dept. of Motor Vehicles, 9 Med. L. Rptr. 1301 (BNA) (9th Cir. 1982).

Only a few Internet-related credentialing cases have been decided against this backdrop, and none of them squarely addresses the standard laid out in Sherrill. Theodore Smith, an attorney who runs “Netbuffs.com,” a web site dedicated to the coverage of University of Colorado's sports teams, was denied access to the University's athletic events and practices. Initially, Smith did have frequent access to the sporting events, until Assistant Athletic Director Dave Plati began to have differences with him. Smith cited several instances where Plati undertook a course of action that made it difficult for him to gain access to information ordinarily provided to the press. Smith sued Plati claiming he deserved the same treatment as traditional media. On July 22, 1999, a federal judge dismissed his case. See Smith v. Plati, 56 F. Supp. 2d. (D. Colo. 1999).

Based on his claims for relief, it appeared that Smith, who handled the case pro se, argued that he had a legally enforceable right or entitlement to be recognized as “media” or the “press.”²¹ The court held that there is no law or legal precedent that would place a duty on Plati or the University to recognize Smith as “media” or “press” just because Smith operates a web site. The court said that Plati and the University were entitled to exclude individuals such as Smith from access to information, as “the First Amendment does not ensure anyone . . . access to special information or treatment.” Id. at 1205. The court concluded that Smith had not alleged a deprivation of the First Amendment and dismissed the case. Unfortunately, the judge did not even attempt to distinguish the Sherrill line of cases.

In a more recent case, a Massachusetts judge ordered the Massachusetts Interscholastic Athletic Association (“MIAA”) to allow an Internet publication, MassLive.com, access to cover the state's weeklong basketball championships. MIAA had taken a number of steps against MassLive during the course of the season due to its dislike of content posted on the web site. According to the Associated Press, MIAA's executive director stated, “MassLive is providing a forum for high school students to make threatening comments about students and fans for other rival schools.”

When a reporter from MassLive showed up to cover the tournaments, he was told that he would not have access to the sporting event. MassLive filed a request for injunctive relief in state court seeking access to cover the final games of the tournament. The Internet publication argued that, in the absence of a compelling state interest, the only reason for exclusion visible in the record is content-based. “It's like banning FOX network from covering the White House,

²¹ The test for who qualifies as bona fide “media” or “press” for the purposes of credentialing is a question mostly independent of the standard for who is eligible for the protections of the federal reporters’ privilege or of a particular state shield law. In the former situation, government may be asked to show that its exclusion of certain journalists from the pool of credentialed reporters was required by some compelling interest and is narrowly tailored to serve that interest. In the latter scenario, however, any person who performs the functions of a journalist should qualify for the privilege; a court cannot deny the protections of the privilege on the grounds that a particular reporter performed these functions on the Internet. See Von Bulow v. Von Bulow, 811 F.2d 136, 142 (2nd Cir. 1987); Shoen v. Shoen, 5 F.3d 1289 (9th Cir. 1993); Madden v. Turner Broadcasting Systems, Inc., 151 F.3d 125; (3rd Cir 1998).

because the president doesn't like their politics,” said civil rights attorney, William C. Newman.²² The Massachusetts judge granted the preliminary injunction. There is, however, no reported decision in the case.

What is particularly disturbing about the University of Colorado and MIAA conflicts is that they seem to have been based more on control of content, rather than on lack of space or of familiarity with the credentialing applicant – the cry typically heard from credentialing bodies to justify shutting out Internet reporters.

As of October 2000, there has only been one reported case addressing the issue of an online journalist being denied access to the Press Galleries of the U.S. House and Senate – and it never reached the merits of the dispute. In Schreibman v. Holmes, 1997 U.S. Dist. LEXIS 12584 (D.D.C. Aug. 18, 1997), Internet publisher Vigdor Schreibman challenged his rejection from the Periodical Press Gallery as an infringement of his constitutional guarantees of freedom of the press. He asserted that the Executive Committee of Correspondents was biased against him because his publication was distributed on the Internet, rather than in print. Schreibman, as described previously in the Report, is the editor of the Federal Information News Syndicate, an Internet news publication that covers federal legislation and governmental policies. The case was dismissed as a “nonjusticiable question,” following an earlier D.C. Circuit precedent on this issue, Consumers Union v. Periodical Correspondents’ Assoc., 515 F.2d 1341 (D.C. Cir. 1975).

So the questions still linger out there, and one day courts will undoubtedly have to confront them: how does government “narrowly tailor” restrictions on Internet press credentialing? What kind of “compelling” interests must it show in order to ration press passes to online reporters? Can objective measurements be made of an Internet publication’s legitimacy? Will firm yardsticks such as a daily newspaper’s circulation or an evening newscast’s viewership prove to be elusive in the Internet world?

²² Stephanie Barry, “Suit marks test over Internet protection,” Union News, Mar. 17, 2000. See also “Massachusetts Court Enjoins Denial of Access: Web site Permitted to Cover High School Basketball Tournament,” LDRC LibelLetter, Apr. 2000, at 35-6 (on file with author).

The NCAA's Cawood pointed to this concern in explaining the organization's policy of denying press passes to web-based reporters.

"We didn't want to be awarding some sites, and not others and then find out we did it incorrectly," he said. Moreover, he continued, "newspapers with circulations of 60,000 to 100,000, are entitled to one press credential and then the amount of credentials goes up from there. When you come to non-newspaper web sites, well, what is an equitable measurement to use so you can treat them all the same?"

His views were seconded by NCAA spokeswoman Katherine Reith. "There needs to be a way for the organization to determine if a credentials request is being made by a legitimate news operation . . . [or] from a college student who has put up a web site from his dorm room," she said.

Perhaps it will take the Online News Organization, a professional organization for Internet journalists, to one day tackle the challenge of developing a model policy for credentialing web-based reporters.²³ But for now, the terrain is still wide open.

V: The Role That "Establishment" Journalists Play in the Credentialing Process

In many cases, it's not the government but fellow journalists who present hurdles to online journalists seeking credentials. "It's not usually the government but groups of established journalists who are deciding whether online people get credentials," says Washington Post media reporter Howard Kurtz. "I'd give them to anyone who writes for a bona fide site."

According to Anderson of Politicallyblack, "You have credentialing bodies dominated by old media types, who are quite frankly threatened by online journalists, by web-news sites. To the extent they can use the credentialing process to stifle competition, to keep out new voices, to

²³ At its first meeting, the ONA took a broad approach regarding who qualifies on as online journalist: "It is the job, and not the environment, that defines who is eligible," says Rich Jaroslovsky, the organization's first president. "You can't go by the site, or by our own opinion of the quality work." Nicholas Stein, "New Media, Old Values," *Columbia Journalism Review*, July/August 1999, at 11.

keep out new entrants into the news and information industry, they will. I think it really is about the bottom line protecting the bottom line.”²⁴

To illustrate Anderson’s point, as of September 2000, the five-member credentialing committee of the Capitol Hill Daily Print Gallery consisted of reporters from Reuters, the Milwaukee Journal, Associated Press, USA Today, and Congressional Quarterly. The six-member credentialing committee for the Radio/Television gallery was made up of journalists from C-Span, CNN radio, WTOP radio, Hearst-Argyle-television, CBS news, and NBC news.

Anderson proposes creating a Capitol Hill press gallery for reporters strictly engaged in Internet newsgathering. Levins of APBnews, on the other hand, thinks that instead of singling out the online journalists by giving them a separate press gallery, the real issue should be “to create a new level of sensitivity within the credentialing committees.” Levins further suggests that, in his opinion, this sensitivity is already developing. “APB’s credentialing was proof of that . . . they are moving in the right direction.”

Steve Klein, co-founder of Sportseditor.com, who has worked for more than 30 years as a sports journalist, has seen many changes since taking sports journalism online. “Just imagine my bewilderment these past four years since becoming an online sports journalist - as the very people who welcomed me and often invited me into their press boxes - now question my right to work and live in their neighborhood,” said Klein. He further stated, “The very organization, Associated Press Sports Editors, that protected my right to do my job when I was a print journalist, now avoids and excludes me like food poisoning You would think an organization like APSE, which was created more than a quarter century ago to collectively protect the access and accreditation rights of print journalists, would recognize the greater threat to the media in general as a result of this specific inclusion.”

Print journalists were slow to recognize radio and television reporters as their equals under the First Amendment. As the wheel turns, it is now the Internet reporters who are feeling

²⁴ See Freedom Forum symposium, supra note 9.

what television and radio reporters did so many years ago. “There has always been an ‘Old Boys’ vs. the ‘New Kids’ mentality at play in the evolution of media on Capitol Hill,” says Jim Mills.²⁵ “The print people looked down their noses at the radio people. Then the radio people looked down their noses at television. Then “old boy” TV folk looked down their noses at CNN and even C-SPAN. And now some of the broadcasters, no doubt, are worried about the Internet folk. It's part of the tradition.”

Some Internet pioneers wear their outsider – and “uncredentialed” – status as a badge of honor. In a 1998 speech before the National Press Club, Matthew Drudge responded to a question concerning schooling and journalistic credibility by playing down the importance of credentials: “Again, I don't maintain that I am licensed or have credentials, I created my own,” said Drudge. “I don't know what the problem is with that.”²⁶

According to U.S. Senate Historian Donald Ritchie, Washington reporters have an unfortunate history of using technology as an excuse to exclude competitors.²⁷ He told Vigdor Schreiberman that the actions taken by the Press Galleries to deny credentials to FINS was the same kind of behavior that others have to contend with in the past, whenever a new media has come on the horizon, such as weekly press, periodical press, or radio and television.²⁸

“Throughout the history of the Congressional Press Galleries, members of the established press organizations have always tried to control access by limiting members to those who use the prevailing technology,” said Schreiberman. He further states that “at each junction, moving from stenographic reporters under contract with Congress, to the ‘letter writers’ who were the first

²⁵ Jim Mills, “New kids on the block,” Roll Call, June 9, 2000. The article can be accessed at <http://www.rollcall.com/pages/columns/mills/00/mills0609.html>.

²⁶ Matthew Drudge, Address before the National Press Club, June 2, 1998 (on file with author).

²⁷ Michael Wines, “An Internet service is denied access to the Capitol,” N.Y. Times, Feb. 26, 1996, at D7.

²⁸ Vigdor Schreiberman, “An idea whose time has come: FINS lays plans for Internet press galleries at US Capitol,” FINS Special Report, Feb. 27, 1996 (on file with author).

daily news reporters, to weekly and periodical press, radio, television, and now Internet based reporters, a fight was waged to open the press gates. Each change brought a new press gallery, and we must now press for a new Internet Press Gallery.”

“With all the hype surrounding the role of the Internet at this year’s political conventions, it’s hard to remember that television was once the brand-new technology sweeping America,” said reporter Steve Fox on Washingtonpost.com.²⁹ Although television first tried to cover the political conventions in 1948, it wasn’t until the 1952 political conventions that television displaced radio as the primary source of information.

This fact presents an interesting analogy. Although Internet reporters showed up to cover the 1996 political conventions, they really weren’t taken seriously until this year. The Republican and Democratic parties went out of their way to be hospitable to the “dot coms,” according to Tina Tate, superintendent of the House Radio Gallery. “The parties really want to be inclusive, so they provided enough [space] on the television level to include both the ‘dot coms’ and traditional television,” said Tate.³⁰

“There’s been a big change this time around,” said America Online spokesman Andrew Weinstein of the company’s experiences at the 2000 conventions.”³¹ Four years ago, Weinstein noted, “We ended up getting placed with the college press in the nosebleed section.”

It was reported that only five “dot coms” applied to the Periodical Press Gallery for convention credentials in 1996 – this year that number was much higher. For the first time, Internet broadcasters were granted the kind of press box space previously reserved for the broadcast media. AOL and PseudoPolitics.com were given access to cover the conventions from

²⁹ Steve Fox, “New Media Conventions: 1952 vs. 2000,” Washingtonpost.com, July 31, 2000.

³⁰ Cheryl Arvidson, “Convention Coverage Goes ‘Dot Com,’” The Freedom Forum Online, June 21, 2000. The article can be accessed at <http://199.183.110.96/news/2000/06/2000-06-21-06.asp>.

³¹ Howard Kurtz, “At the Convention, A Dot-Com Manifesto,” Wash. Post, Aug. 1, 2000.

sky boxes, and "Internet Alley," an area set aside for web reporters, was included in the press work area.

Another sign of the growing acceptance of Internet-based publications is the fact that many professional organizations that present awards for journalism excellence are now allowing web journalists to participate in their competitions and are even including "online" categories in which to enter. In late 1997, for example, the Pulitzer Prize Board announced that newspapers seeking the 1999 Pulitzer Prize for public service would be able to include online journalism in their entries. In April of 1999, the Society of Professional Journalists, in a ground-breaking move, awarded APBnews a Sigma Delta Chi award, marking the very first time the award went to a news web site. In February of 2000, APBnews also won the Scripps Howard Foundation's first National Journalism Award for Web Reporting.

VI: More and More People Are Getting Daily News From the Internet

The question of credentialing for Internet-based journalists is a compelling one because Americans in droves are now logging on to get their news. According to a recent survey by the Pew Research Center for the People and the Press, Internet news has not only arrived, it is attracting key segments of the national audience. This one of the principal findings of the Pew's biennial survey of the national news audience, "Investors Now Go Online for Quotes, Advice: Internet Sapping Broadcast News Audience."³² The Pew report shows that within only a few years the Internet has emerged as a key news source, while, at the same time, there has been a major decline in viewership of television news.

The study reports that the viewership of the nightly "network news" dropped from 38% in 1998, to 30% in 2000. It states that approximately one in three Americans now goes online for news at least once a week compared to 20% in 1998. It also reports that the "online news" audience is up from 13% in 1998 to 23% in the year 2000. It further states that nearly seven in ten Americans now use a computer on at least an occasional basis, up from 61% in 1998 and

³² The Pew report can be found at <http://www.people-press.org/media00rpt.htm>.

58% in 1996. According to the report, as Americans grown more reliant on the Internet for news, they also have come to find online news outlets more credible.³³

Another interesting trend contained in the Pew Report was how the growth of Internet news has had a dramatic impact on how Americans get information on business and financial matters. Forty-five percent of active investors - those who have traded stocks within the past six months - use the Internet as their main source for stock market updates. This, as opposed to the 21% of active traders who get stock market updates from newspapers and 24% from television. Furthermore, 16% of all Americans volunteered that they would turn first to the Internet for news if the market were to crash 1,000 points; cable news was the runner-up.³⁴

As Steve Case, co-founder and CEO of America Online, remarked at a Freedom Forum event in 1998, "In the 80's and 90's television was the place the country turned to when a big story broke. Today the Internet is beginning to become a contender, particularly when there is a story that people want to talk about."³⁵

VII. Conclusion

As the number of Internet reporters grows, government bodies and organizers of news events will increasingly be met with challenge of deciding which online publications to accredit. Forced to acknowledge the presence of online journalists, credentialing bodies have started to

³³ With the Internet becoming an increasingly important media for news, journalistic organizations must be vigilant to ensure that government remains even-handed in its treatment of Internet-based publications in areas beyond credentialing. For example, last year the U.S. Judicial Conference, the bureaucratic arm of the federal judiciary, initially denied a request from APBnews for copies of the annual financial disclosure forms submitted by federal judges for public inspection. The Conference stated that it was concerned about security breaches arising from the Internet dissemination of this information. Several months later – after APBnews sued – the Conference reversed its decision.

³⁴ Material presented at a June 2000 symposium hosted by the Brookings Institution supports the trends identified by Pew. There are 304 million people with Internet access in the year 2000. For the first time, less than half of the people with Internet access live in North America. There are currently 80 million stationary computers linked to the Internet. Projections are that by 2005 there will be 100 million portable computers hooked up to the Internet. The number of Internet sites has grown from an original thirteen to about 14 million. For further details about this symposium, see <http://www.brook.edu/pa/events/20000615.htm>.

³⁵ See <http://199.183.110.96/technology/1998/1/9casetscript.asp> for excerpts of Case's speech.

look at this issue. Consistent and definable policies, however, are far from being established. Internet reporters find themselves excluded from news events for an array of reasons, with lack of physical space apparently being the most frequently given excuse.

There are more troubling examples of web publications being denied credentials based on their content, as in the MIAA and Colorado cases. What is even more disturbing is that the MIAA and the University of Colorado have not adopted any criteria to determine which web publications are in fact “legitimate” entities for purposes of accreditation. As this situation unfolds, hopefully clear-cut policies will be established. But more likely than not, online journalists will continue to struggle in the short term to find their place among the accredited press corps.

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