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July 26, 2011

Deputy Commissioner Paul J. Browne
Office of the Deputy Commissioner of Public Information
New York Police Department
1 Police Plaza
New York, NY 10007

Re: Photography Incidents

Dear Deputy Commissioner Browne,

I write on behalf of all the media companies listed below as signatories. On July 26, 2011, Mickey H. Osterreicher, general counsel for the National Press Photographers Association (NPPA), sent a letter to DCLM Andrew Schaffer, expressing his concern about two recent incidents involving your officers unduly restricting members of the press (letter attached). Without minimizing the first incident described in his letter, we are concerned that days after the tragic murder of Leiby Kletzky, officers continued to keep the street of the accused murderer Levi Aron closed to the media - - who were being kept in a press pen down the block - - while the public was allowed to pass by unfettered. You and Commissioner Kelly were also sent copies of that letter. To date no response has been forthcoming from your Department.

As Mr. Osterreicher pointed out in his letter, the actions by members of your department in these incidents are in contravention of NYPD General Order 14 and NYPD Patrol Guide Section 212-49. It is our understanding that the original language in these documents came about as a result of conversations between Floyd Abrams (on behalf of the media), then Corporation Counsel Michael D. Hess and Police Commissioner Howard Safir in July 1999 (see attached letter).

Mr. Hess concluded his letter to Mr. Abrams by thanking him “for the professional and effective manner” in which a situation (similar to the ones recently brought to your attention) had been handled. We once again wish to demonstrate our willingness to working with your department cooperatively, but we hope and assume that the Police Department is likewise willing to work with us to ensure that the agreed-on rules are being followed and that press photographers are not being treated worse than the public at-large.

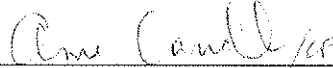
Part of what was agreed to in the letter was a commitment by the Police Commissioner and Corporation Counsel to meet with media representatives to evaluate and address "any issues arising from police-media interaction." We would greatly appreciate it if we could do the same now.

Thank you for your attention in this matter. We look forward to your response.

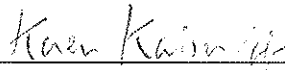
Very truly yours,



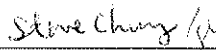
George Freeman
The New York Times



Anne Carroll
The Daily News



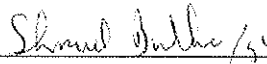
Karen Kaiser
Associated Press



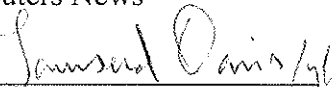
Steve Chung
NBC Universal
WNBC-TV



Nicholas Poser
WCBS-TV



Shmuel Bulka
Reuters News



Townsend Davis
WABC-TV

cc: S. Andrew Schaffer, Esq.
Commissioner Raymond Kelly
Michael Cardozo, Esq.
Mickey Osterreicher, Esq.



National Press Photographers Association, Inc.

The Society of Professional Photojournalists

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VIA FACSIMILE (646.610.8428)

July 19, 2011

S. Andrew Schaffer, Esq.
Office of the Deputy Commissioner for Legal Matters
New York Police Department
1 Police Plaza
New York, NY 10007

Re: Photography Incidents

Dear Deputy Commissioner Schaffer,

As the general counsel for the National Press Photographers Association (NPPA) I am concerned about recent incidents involving our members. The first occurred on July 16, 2011 on 42nd Street. Mr. Felix Maurent, was detained and handcuffed by one of your officers (see video at: <http://www.pixiq.com/article/nypd-handcuff-videographer-in-times-square-for-recording-arrest>) while he was videotaping an incident involving other police officers. What is most disturbing is that the officer in question repeatedly requested to see Mr. Maurent's identification even though he was wearing an NPPA Member ID on a lanyard around his neck. That ID displays his name and photograph as well as the expiration date of the ID.

It is apparent from the video that Mr. Maurent was not obstructing the sidewalk or the flow of pedestrian traffic and that he was reasonable and complied with the officer's requests. According to Mr. Maurent, once he stopped taping he was approached again by this officer, forcible thrown against a trash can, handcuffed and detained. He was never told what he was being charged with and after approximately ten (10) minutes he was released. As a law-abiding citizen this caused him much embarrassment in the middle of a tourist mecca, not to mention the fact that the officer interfered with his lawful right to photograph in public.

The second is an ongoing matter related to the tragic death of Leiby Kletzky. NPPA members report that five days after the murder, officers continues to keep East 2nd Street between Avenue C and Cortelyou Road in Brooklyn closed to the media but open to the public. It is my understanding that NYPD has set up a "press pen" 300 feet northeast of the home of the accused murderer, Aron Levi. The street remains sealed-off to the press while the public is allowed to passby unfettered. Only Mr. Levi's home has crime scene tape and police barricades in front of it. It is my further understanding that calls to DCPI have been unsuccessful with a Det. Ceruti claiming that "she knew nothing about it." When NY Daily News desk editor, Reggie Lewis, called DCPI he was told that "the street was open.

As of a few moments ago the ongoing farce continues. DCPI Det. Debonis told the media that the street was open and a Sgt. Stringer from the 66th Pct then told officers to open the street to media. Subsequently an unidentified detective from Crime Scene told the media that Chief Polaski of Major Case ordered press off the block and said no photographs could be taken. Media representatives again spoke to Det. Debonis and Sgt. Cavatollo who both insisted that they were unaware that the street was closed.

Both of these incidents are in total contravention of NYPD General Order 14 issued on April 3, 2009, which states in pertinent part that “members of the service are reminded that photography and the videotaping of public places, buildings and structures are common activities within New York City. Given the City’s prominence as a tourist destination, practically all such photography will have no connection to terrorism or unlawful conduct. Since photography and/or videotaping is rarely unlawful, absent any other indicators of criminality (e.g., trespass, etc.) Forcible detention of an individual engaged in such activity may occur if the member of service can articulate reasonable suspicion that the suspect is engaged in photography or videotaping for some terrorism-related purpose.”

Additionally NYPD Patrol Guide Section 212-49 reads in pertinent part “members of the service will not interfere with the video taping or the photographing of incidents in public places. Intentional interference such as blocking or obstructing cameras or harassing the photographer constitutes censorship.” The second incident also violates the First Amendment of the U.S. Constitution as well as Section 8, Article I of the NYS Constitution.

It is my understanding that Mr. Maurent has filed a formal complaint with the NYC Civilian Complaint Review Board. On behalf of one of our members please accept this letter as a formal complaint regarding both incidents. I also request that NYPD commence an immediate investigation of these incidents.

NPPA stands ready to work with your department to help develop reasonable and workable policies and practices in order to avoid similar situations. In the meantime we would respectfully request your department establish a formal and consistent chain of command to avoid the “he-said/she said” that is apparently ongoing in Brooklyn. I would also request that all officers receive a refresher copy of GO-14 and Patrol Guide Section 212-49 and that you implement additional training for all officers regarding photography/videography whether by the press or the public.

Thank you for your attention in this matter. I look forward to your response.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

cc: Commissioner Raymond W. Kelly (via email)
DCPI Paul J. Browne (via email)
Sean Elliot, NPPA President (via email)
Mr. Felix Maurent (via email)



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

MICHAEL D. HESS
Corporation Counsel

(212) 788-0800

July 29, 1999

Floyd Abrams, Esq.
Cahill, Gordon & Reindel
80 Pine Street
New York, New York 10005

Dear Mr. Abrams:

In light of our discussions to resolve the issues identified by your clients regarding police interaction with members of the media, and to ensure that access is provided to working members of the press to the fullest extent possible, the New York City Police Department ("NYPD") is reaffirming and implementing the following procedures:

1. The Police Commissioner will issue a formal Policy Statement no later than August 12, 1999, which will, as discussed with your clients, reaffirm the NYPD's commitment to Patrol Guide Sections 116-51 and 116-53. As with all policy statements, this will become a permanent record of the NYPD and will be binding on all members of the Department.
2. The Policy Statement will be distributed to the Department's Executive Staff within three (3) days of its issuance. Additionally, an official message will be transmitted via the Finest Message System which will direct that the Policy Statement be read at ten consecutive roll calls and will further direct Members of the Service to the relevant provisions of the Patrol Guide with an indication that such provisions should be reviewed and adhered to strictly. (The relevant provisions of PG - 116-51 and 116-53 will be transmitted in their entirety).
4. The Police Academy will amend and amplify existing training curricula to reflect the provisions of the Policy Statement.
5. The NYPD, through the auspices of the Office of the Deputy Commissioner for Public Information, ("DCPI") will continue to have a representative available 24 hours a day, seven days a week to accept telephone calls from the press or Members of the Service. Additionally, DCPI will track all Unusual Occurrence Reports prepared pursuant to Patrol Guide Section 116-53 in a system which will


be developed for such purpose. To the extent information is available and to the extent it is practicable, DCPI will provide notice of receipt of such report to the relevant editorial manager. Such information will be made available to the public upon request.

6. The Police Commissioner and myself will meet with you and your clients six (6) months from the date of this letter to evaluate any issues arising from police - media interaction. Of course, in the event that issues arise that should be addressed before that period of time, we will make ourselves available to you and your clients.

Allow me to thank you and your clients for the professional and effective manner in which this situation has been handled. By resisting the temptation to sensationalize the issues raised in connection with this matter, your clients have demonstrated their commitment to moving forward in their relationship with the NYPD. In the spirit of this agreement, I am pleased that your clients are continuing to exercise such professionalism and restraint. As we have discussed, although strong positions can be taken on behalf of the actions of each of our clients, it is my view that the goal of improving relations between our respective clients has been greatly served by the work we have done in putting those disagreements behind us.

As always, if I can be of any assistance, please do not hesitate to call upon me.

Very truly yours,



Michael D. Hess

**THE POLICE COMMISSIONER
City of New York**

MEMORANDUM TO: ALL PERSONNEL

SUBJECT: POLICY STATEMENT

The public's access to information regarding the official business of the Department is of critical importance to effective City government. Because the public receives much of this access through the news media, members of the service must ensure that Department procedures which provide for cooperation and assistance with press personnel and which allow press personnel to access the scenes of incidents are carefully followed.

On February 28, 1992, the Department promulgated Patrol Guide §§ 116-51 and 116-53, effective March 6, 1992, concerning "release of information to the news media" and "incidents involving media representatives". These guidelines reflect the commitment of the Department to upholding the principles of a free press and informed citizenry. I have determined that the NYPD, the press and the public would benefit from this Policy Statement providing certain specific guidance to members of the service.

Specifically, I am reaffirming sections 116-51 and 116-53 of the Patrol Guide which include but are not limited to the following:

- (a) "To ensure the right of the public to be informed and to facilitate the accurate, timely and proper dissemination of information concerning the official business of the Department...[A]ll members of the service will make every effort to assist media representatives who request information or safe access to incident scenes. Information, assistance or access should be rendered to whatever extent possible when it does not:
 - a. Pose undue risk to personal safety of members of the service, media representatives, or others.
 - b. Interfere with police operations.
 - c. Adversely affect the rights of an accused or the investigation or prosecution of a crime."

- (b) "To cooperate with media representatives by not interfering or allowing others to interfere with media personnel acting in their news gathering capacity...[S]upervisory officers should...[c]ooperate with and assist the media representative and provide safe access to the scene, if possible."

- (c) "Members of the service will NOT interfere with the video taping or the photographing of incidents in public places. Intentional interference such as blocking or obstructing cameras or harassing the photographer constitutes censorship."
- (d) "Working Press Cards clearly state, the bearer 'is entitled to cross police and fire lines.' This right will be honored and access will NOT be denied. However, this does NOT include access to interior crime scenes or areas frozen for security reasons."
- (e) In connection with demonstrations that occur on private property, "[t]he media will be given access as close to the activity as possible, with a clear line of sight and within hearing range of the demonstration".

In addition, I am clarifying the Department's procedures regarding media access and incident reporting. As a general rule, members of the media possessing Working Press Cards which clearly state the bearer "is entitled to cross police and fire lines" will not be restricted or confined to press access areas by the NYPD in covering incident scenes, including but not limited to parade routes, demonstrations, City parks, and areas outside of frozen zones. Supervisors may restrict media access to an incident scene only in those exceptional circumstances where it is absolutely necessary for law enforcement or public order purposes. Furthermore, in situations where the creation of specific press access areas is necessary, these areas should be positioned as close to the event or incident as possible, consistent with the given situation, legitimate law enforcement needs, and the safety and security of the public and the media. Under no circumstances should the press be provided less access than that afforded the general public. As before, media personnel do not have a right to enter interior crime scenes or to enter areas which are frozen for security reasons.

Additionally, the privileges afforded to media personnel bearing Working Press Cards must be respected. A member of the media who has been issued a Working Press Card must be allowed to cross police and fire lines. Valid press credentials shall not be confiscated or removed from media personnel engaged in news gathering activities without the approval of a ranking officer to the member of the service involved at the incident scene and upon consultation with a representative from the office of the Deputy Commissioner, Public Information, if possible. Such action should be taken only when absolutely necessary for law enforcement purposes and should be reported to the Deputy Commissioner, Public Information without delay.

Finally, members of the service are reminded that, consistent with Patrol Guide §116-53, whenever there is an incident or confrontation with media personnel or complaint about an incident or confrontation by a news organization, the Precinct Commander/Duty Captain is to prepare an Unusual Occurrence Report (UF-49) containing details of the incident and the results of any investigation and forward to (a) Chief of Patrol; (b) relevant Patrol Borough Commander; (c) Commanding Officer, Deputy Commissioner, Public Information and (d) Precinct file. The office of the Deputy Commissioner, Public Information will be developing a computerized

database which will serve as a central depository of all reports received of incidents involving news media representatives. This will assist the Department in tracking these types of complaints and improving our relationship with the press.

I recognize that the pressures of policing incidents from crime scenes to major public events place a great burden on both line and supervisory personnel. Members of the service must respect, however, the public's right to know about these events and the media's right of access to report on these events. Members of the service who unreasonably interfere with media access to incident scenes or who intentionally prevent or obstruct the photographing or videotaping of news in public places will be subject to disciplinary action.