

Steve Malik
San Francisco, California 94109

July 7, 2008

Nathaniel P. Ford Sr.
Executive Director
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Subject: Unlawful harassment of photographer by Station Agent #4378.

Dear Mr. Ford,

It is with great sadness and disappointment that I write this letter.

On Friday, June 27th, 2008, at approximately 4:00 PM, I was in the Van Ness Muni station waiting for a light rail train. I was amusing myself and indulging my photography habit by taking pictures of the station, on the platform and in other publicly accessible locations inside of the "Proof of Payment" area. I had paid my fare, had a valid transfer, and was using a handheld SLR camera without a tripod. I was in no way causing any disturbance, bothering any Muni customers, or in any way obstructing anyone. In short, I was minding my own business, exercising my right to take photos in a public place, while using the station for the intended purpose of waiting for my train..

As I was taking photographs of the sparsely populated station, I became aware that the Station Agent, in the Southern booth using the PA system, was trying to attract my attention. She indicated that she wanted me to approach the booth. I did so. She asked me if I was a Muni employee, and I indicated that I was not. She then told me, "Then you are not allowed to take photos here." I politely told her that she must be mistaken as it was a public place. She again insisted that photography was not allowed, "without permission". I asked her which regulation forbade photography. She was unable to answer my question, instead simply reiterating her belief that it wasn't allowed. I told her that since she couldn't tell me what rule, regulation, ordinance or law forbade photography, I would continue to take photographs. And I did. She continued to gesture and use the PA system to demand that I cease my photography.

Undeterred, I continued to shoot photos of the beautiful architecture of the Muni station. When I had finished taking the photos I desired, I sat down to continue my wait for my train. As I sat there, it occurred to me that while the agent had not been successful in her attempt to deny me my rights, she would probably continue in her efforts to deny the rights of others in the same circumstances. I approached the Station Agent at her booth and politely asked her if she would please research the matter because I was familiar with the law, and believed her take on the subject to be incorrect. She insisted that she was right, and said that she had her supervisor on the phone and that her supervisor had suggested she call the San Francisco Police Department. At this time the Station Agent called over the PA System requesting that SFPD come to Van Ness Station.

I remained calm and polite, but I was certain I was right, as I had gone down this path before with two Fare Inspectors (see attached letter to Muni), in an episode involving Bart Police and SFPD officers, and clearly there is no regulation prohibiting photography. If there was I would have been cited.

I informed the Station Agent that I would be filing a complaint with Muni regarding her harassment and requested her name. She indicated that she was not required to identify herself, and would not do so. After several rounds of me politely explaining to her that I intended to file a complaint and that I needed a way to identify her, she finally said that her ID# was: 4378.

At this time I returned to the platform and continued to wait for my train. I was prepared to defend my rights and my actions should SFPD officers arrive, but I was not going to wait for them as I had business to attend to. Several minutes later my train arrived and I departed.

As further evidence of the non-existence of a photography ban, see the attached letter from Michael Burns. While Mr. Burns doesn't say so specifically, the absence of a photography ban can be inferred by his request, not a requirement, that I contact the department's press office in advance to arrange for someone to

accompany me should I want to take photos. I had paid a fare, and was waiting for my train when this episode occurred, and I was not doing anything to interfere with access for other passengers.

In my role as a photojournalist and photography enthusiast, I do a great deal of spontaneous street photography. Coupled with the fact that newsworthy events rarely occur on schedule, it is an unreasonable and unwarranted burden upon me and Muni to request that I schedule photography in advance, and be accompanied by Muni press personnel. I hope that you agree with me on this matter. Should I desire to do any photography involving lighting gear or other disruptive equipment (like tripods), or in non-publicly accessible part of the system, I would be happy to make such arrangements through the press office. I should have pursued clarification of this matter immediately upon the receipt of Mr. Burns' letter, but I didn't, and I am doing so now with you.

My sense of sadness and disappointment that I mention above is caused by the continued efforts of Muni personnel to unlawfully interfere with lawful behavior of Muni patrons. There is no regulation prohibiting photography. I had thought that Muni employees had been made aware of this fact. Apparently not.

Without going into the subject too deeply, I would like to mention that the notion that a person with a camera presents a threat to the Muni system is laughable and completely without merit. Capturing photos of areas of the muni station that are easily visible to the tens of thousands of Muni patrons every day should not be considered suspicious or threatening behavior, and is in no way a threat or any more useful to someone with bad intent than a simple pencil drawn diagram. I never hear of anyone attempting to stop people from sketching or writing in the Muni system, a perspective that illustrates the silliness of a photography ban.

In fact, photography should be viewed as a potential source of increased security for everyone. After the London and Madrid attacks, officials put out a request for copies of any photos taken on the trains or in the proximity of the stations for help in solving the crimes. I'm not going to address how difficult it would be, given the widespread use of cell phone cameras and small digital cameras, to enforce a ban or how easy it would be to use hidden cameras to circumvent a ban. Attempting to prohibit photography would be futile and a wasteful diversion of limited Muni resources away from productive activities that could actually increase security within the system.

Here are the actions that I respectfully request of you:

1. Please communicate to me the current Muni policy regarding photography. Please directly and specifically address the sole issue of photography without confusing the issue, as Mr. Burns did, by raising other issues, such as interference with passengers, disruptive behavior, or other matters that are not related to photography and were not an issue in the episode described above.
2. If I am correct that there is no ban on photography within the Muni System, please communicate to me how you will make your employees aware of this fact, and stress to them the importance of not interfering with lawful, constitutionally protected behavior by Muni Patrons.
3. If photography is allowed on the Muni system, please indicate what law, code section, city ordinance etc forbids it. I'm not one to easily or willingly surrender my rights, and the First Amendment right to take photos in a public place is well established and has long been respected by law. If a Muni photography ban does exist, I stand ready to challenge the constitutionality of it, and will need to know the basis and authority for such a ban.

I remain a proponent of and advocate for Muni and Muni employees, and will continue to be a regular patron, and have no intention of leaving my camera at home. Please help to make Muni something we can all be proud of by insuring that regulations are properly and lawfully enforced, and imaginary regulations are not unlawfully enforced through intimidation and harassment.

Thank you very much for your timely response to this important issue.

Respectfully yours,

Steve Malik