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February 9th 2005

Heather Fong
San Francisco Police Chief
Hall of Justice
850 Bryant Street
San Francisco, CA 94103

Subject:

1. Failure of Police Officers to protect rights of citizen/journalist
2. Intimidation and inappropriate threat of arrest by SFPD Officer
3. Request for civil rights sensitivity training for SFPD Officers
4. Request for documentation, reports etc related to the event described below

Chief Fong:

On February 5th 2005 at approximately 5:15 PM, Fare Inspectors for the San Francisco Municipal Railway attempted to prevent me from taking photographs on the platform at Montgomery Station under threat of citation (Please see attached letter addressed to SF Muni). In their efforts to cite me for performing a legal, and as a photojournalist -- a constitutionally protected act, the Fare inspectors contacted the San Francisco Police Department.

Two officers arrived at Montgomery Station. Office Ryan (Badge #1796) and Officer Primiano (Badge #1953).

After much consultation between the SF Muni Fare Inspectors, the SFPD Officers and the BART Police, it became clear that there is no regulation or code forbidding photography in the MUNI System.

This letter constitutes an official complaint regarding the behavior and attitude of officers Primiano and Ryan:

Officer Primiano expressed extreme frustration with me as soon as I began speaking of my rights to photograph in public places. She wanted to debate the wisdom of my taking pictures and asserted that in the wake of the Sept 11th attacks on our country, I should be more interested in aiding officials in their efforts to increase security than my rights as a citizen or journalist. Despite my calm statement of my side of the issue, Officer Primiano waved her hands in the air, stated, "This guy is really pissing me off", and walked away, leaving Officer Ryan to talk to me. Luckily he exhibited a more rational, professional demeanor.

However Officer Ryan was of the opinion that I should not be taking photographs. I explained to him that I didn't want to argue the wisdom of my taking photographs, or the efficacy of a ban on photography in the MUNI System should one exist. All I was concerned with was the legality of my actions. If I had in fact committed a crime by taking photographs, I should (and in fact wanted to) be cited under the relevant law so that I could then pursue the matter in the courts and assert my First Amendment rights. Officer Ryan told me in a very straightforward manner that he did not wish to allow me the opportunity to assert my constitutional rights in court.

After walking over to the group of Fare Inspectors and BART Police Officers, Officer Ryan returned to speak to me. He expressed his frustration at the situation and me by saying: "Would it have been so difficult for you to just stop taking photographs when these guys told you to stop? If you weren't on your soapbox, I'd be out fighting real crime rather than standing around here dealing with you." He expounded further, "Even if there is no law forbidding photography in the MUNI System, the Fare Inspectors have the right to refuse you service for any reason they choose, including taking photographs. Once they refuse you service they can swear out a citizens arrest for trespassing. I, or other officers, will book you and you'll spend the rest of your weekend in jail. It won't be for taking photographs, so your weekend would be ruined yet you'd never get a chance to argue the matter of taking photographs before a judge."

He then asked me, "So, are you done taking your photos?" Clearly the message was that if I chose to further assert my right to photograph, I risked arrest. Truth be told I had finished taking the photos that I wanted to take, And I had already wasted more than an hour of my time on this encounter, so I said yes. However, there is no doubt in my mind that I was being threatened with arrest for trespassing should I attempt to exercise my right of taking photographs in a public place. As this episode came to a close, Officer Primiano returned and requested contact information from me for inclusion on an index card sized form she was filling out. I mentioned to my wife that I should probably arrive at the airport extra early next time I wanted to fly as my name would likely be on some federal list. Officer Ryan commented that they could refer the matter to another agency (I think the acronym used was SID), reporting it as a "suspicious incident". My identification was returned to me, and the encounter ended.

A citizen attempting to assert his rights should not be condemned by law enforcement officers that have sworn to uphold the law; to be threatened with arrest is totally unacceptable! I expect professional police officers to uphold the law. This means not only arresting those that break the laws, but also protecting the rights of citizens who behave in a law-abiding manner.

Upon failing to identify which code I was in violation of, your officers had a legal, ethical, and professional responsibility to inform the Muni Fare Inspectors that in the absence of a law, regulation, or code prohibiting my behavior they would not further involve themselves in the dispute. To threaten me with arrest, or describe a scenario whereby I could/would be arrested was a violation of the trust that citizens place in our Police Officers. This behavior diminishes respect for law enforcement among the citizens of San Francisco. Even if it was your officers OPINION that I should not be taking photos, they had no legal basis whatsoever to interfere with my photography.

The point of this letter is not to request disciplinary action, because I honestly do not feel that the behavior of your officers was malicious, and I have great respect for the brave men and women of your department that serve our city. The point of this letter is to request that your officers be trained to respect, and more importantly PROTECT, the rights of Citizens when they are violating no laws and behaving legally. It is of critical importance -- especially at a time when so many civil rights are impacted by the need for security -- that your officers be sensitive to this issue. Under the blanket term of "for security reasons" we have well intentioned but mistaken pseudo law enforcement officers attempting to curtail legal behavior. We rely upon professional, sworn, law enforcement officers to provide the balance against these overzealous people. On Saturday February 5th 2005, your officers did not meet this responsibility.

An incident or citizen contact report was filed by officer Primiano. Please consider this letter a formal request for any documentation, memos, reports, log entries, emails or any other information gathered or prepared as a result of this encounter. Since your officers mentioned the possibility of referring my name to federal anti-terrorism officials, I would like to know if my name was provided to another division of the San Francisco Police Department or any governmental or non-governmental agency as part of your officer's investigation, follow-up or any other aspect of this episode. I have broken no laws, and was cooperative throughout the entire event. I've provided no indication at all that I present any threat whatsoever to our national security. All I did was insist that my rights as a US Citizen be respected. Any implication otherwise will be met with extreme umbrage.

Thank you very much for your prompt attention to this matter.

Respectfully,

Steve Malik

CC:

Gavin Newsom -- San Francisco Mayor

Michael Burns -- Director San Francisco Municipal Railway

SF Board of Supervisors

American Civil Liberties Union of Northern California

Alicia Wagner Calzada -- Advocacy Committee Chair, National Press Photographers Association

Paul Sakuma -- President, San Francisco Bay Area Press Photographers Association

Editor -- San Francisco Examiner

Editor -- San Francisco Chronicle

Editor -- San Jose Mercury News