

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Mustafa Hussein,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-cv-1410 JAR
)	
County of Saint Louis, Missouri, et al.,)	
)	
Defendants.)	

DECLARATION OF MICKEY H. OSTERREICHER

I, Mickey H. Osterreicher, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I am the general counsel for the National Press Photographers Association (NPPA), a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution.
3. NPPA’s approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry.
4. Since its founding in 1946, the NPPA has vigorously promoted and defended the rights of photographers and journalists, including freedom of the press in all its forms, especially as it relates to visual journalism.
5. I have also been a photojournalist in both print and broadcast for more than 40 years, having covered many news stories including protests from those against the Vietnam War to Occupy Wall Street.

6. My work has appeared in such publications as the New York Times, Time, Newsweek and USA Today as well as on ABC World News Tonight, Nightline, Good Morning America, NBC Nightly News and ESPN.

7. I am also a uniformed reserve deputy sheriff with the Erie County Sheriff's Office, having served in that capacity since 1976 and am certified as having been trained under the National Incident Management System (NIMS).

8. I am a member of the International Law Enforcement Educators and Trainers Association (ILEETA), as well as being a member of the *Public Recording of Police* Advisory Committee of the International Association of Chiefs of Police (IACP).

9. I have been an adjunct lecturer in Photojournalism at SUNY at Buffalo and an adjunct law professor in media and the law at the University at Buffalo Law School.

10. I have provided training regarding First and Fourth Amendment issues to law enforcement agencies and associations throughout the United States and have moderated and participated on panels nationwide, speaking about the right to photograph and record in public – most recently in Dallas, Texas for over 130 law enforcement officers; Purdue University in Indiana; the California Western School of Law in San Diego; in Los Angeles with the LAPD and LA County Sheriff's Department; and in Chicago at the ILEETA Conference.

11. I have also presented workshops and provided model guidelines regarding the right to photograph and record in public at the Legal Officers Section of the IACP, the National Sheriffs Association, the Georgia Chiefs of Police, the New York State Sheriffs Association, the International Bar Association, the Broward County ACLU, the Washington, DC Metro Police Department and the National Press Club in Washington.

12. I have also written about and been quoted extensively on this topic in such publications as the National Sheriffs Association and the International Business Times.

13. In 2012 I provided training regarding First and Fourth Amendment issues to the Chicago, Tampa and Charlotte-Mecklenburg Police Departments in preparations for the NATO Summit and the Republican and Democratic National Conventions, respectively.

14. I then returned to each of those cities during the event to monitor and work with those agencies to avoid journalists being interfered with and or arrested for doing nothing more than their jobs.

15. On Thursday, August 14, 2014 I sent a letter via facsimile to Ferguson Police Department Chief Thomas Jackson expressing the NPPA's strong objections to the actions of Ferguson police officers for the unwarranted arrest and detention of journalists Ryan Reilly and Wesley Lowery who had been reporting on protests taking place in and around Ferguson, Missouri, in the aftermath of the shooting death of Michael Brown on August 9, 2014.

16. I also noted his department's complete lack of understanding and respect for the First Amendment as it applies to newsgathering, stating that "In any free country the balance between providing police protection with integrity and over-zealous enforcement is delicate. It is one thing for officers to act when there is reasonable suspicion; it is quite another to abuse that discretion by chilling free speech and creating a climate of fear and distrust under the pretext of safety and security."

17. I also offered NPPA's assistance in working with his department "to help develop reasonable and workable policies, practices and especially training in order to alleviate these situations and foster better relations between the police, the public and the press."

18. On August 15, 2014, I joined in a letter by the Reporters Committee for Freedom of the Press on behalf of NPPA along with more than 40 other media organizations expressing deep concerns over the unwarranted detention of those two journalists.

19. That letter was addressed to Chief Thomas Jackson, of the Ferguson Police Department; Chief Jon Belmar of the St. Louis County Police Department and Colonel Ronald K. Replogle of the Missouri State Highway Patrol.

20. On Monday, August 18, 2014, I received a telephone call from another photographer, Joshua Lott, informing me that Scott Olson, an NPPA member working as a photographer for Getty Images, had been arrested while covering those protests.

21. I contacted attorneys for Getty Images to inform them of this fact and see if there was anything else that I could do.

22. I also received numerous calls from other NPPA members who were covering the protests telling me that they had been interfered with by authorities and threatened with arrest while lawfully photographing and recording these events.

23. The NPPA president then directed me to fly to Ferguson, Missouri to see if I might be able to help avoid these incidents as I had done in Chicago, Tampa and Charlotte in 2012.

24. I arrived in Ferguson, Missouri on the morning of August 19, 2014 and went to the police command center where I introduced myself to the National Guard units guarding the perimeter and asked to speak to someone in charge of the operation.

25. I was led into the command compound and met briefly with Al Nothum of the Missouri Highway Patrol and Rick Eckert of the St. Louis Police Department.

26. I provided them with hard copies of my letter of August 14, 2014 to Chief Jackson and also asked them how I could be of service in de-escalating the tensions between the police and the press.

27. In response, Rick Eckert specifically asked me if I would convey to the media the importance of their abiding by orders to remain in the “media area.”

28. I did my best to explain that while we appreciated the police establishing a media area for the convenience of the press it was absurd to think that was the only area where the press could be. I went on to state that while the press may not have a greater right of access to cover these events than the public; that they had not less right either and that the press was allowed to cover matters of public interest from traditionally public forums such as a sidewalk or a park and did not have to remain inside of an area specifically designated for them.

29. From my perspective in dealing with law enforcement on many previous occasions, this explanation was met with surprise and disappointment by these police officials.

30. It was apparent to me that they lacked any understanding regarding the First Amendment rights of either the press or the public.

31. I spent my time in Ferguson speaking with NPPA members and other photographers about the situations they were encountering and providing my contact information in case any of them were interfered with or arrested.

32. I also spent much time on West Florissant during the protest marches observing the media and the police as well as the protestors.

33. On the evening of August 19, 2014 I was contacted by NPPA member Raffae Lazarian who was covering the Ferguson story.

34. Mr. Lazarian told me that in response to his asking the simple question – “which way do I need to go in order to get to the media area?” – an officer drew his weapon and pointed it at Mr. Lazarian in a threatening manner and then used it to gesture in the direction he wanted him to go.

35. On August 20, 2014 I sent a letter of protest via email along with a request for a formal investigation into that incident to Chief Thomas Jackson, of the Ferguson Police Department; Chief Jon Belmar of the St. Louis County Police Department and Colonel Ronald K. Replogle of the Missouri State Highway Patrol, with copies to the Hon. Eric Holder, Jr., United States Attorney General, the Hon. Jay Nixon, Missouri Governor and the Hon. James Knowles, City of Ferguson Mayor.

36. I also noted our objections to police officers ordering members of the media into a press area while the general public was free to walk the street and protest.

37. I also stated that “such actions must be addressed and corrected immediately before someone is seriously injured or worse.”

38. The letter also noted the “widespread uniformity by officers of obscuring their names and badge numbers and refusing to identify themselves when asked or responding with expletives.” Something which I had personally observed.

39. I concluded the letter by once again offering NPPA “assistance to help develop reasonable and workable policies, practices and especially training in order to alleviate these situations and foster better relations between the police, the public and the press.”

40. I departed Ferguson on August 21, 2014.

41. Not having received a response to either of my letters, on September 24, 2014, I sent an email to Sgt. Brian Schellman, Public Information Coordinator, Office of the Chief of

Police, St. Louis Police Department, to inquire about the unanswered letters. I also noted that despite the NPPA offer of assistance the media were reporting (<http://www.nydailynews.com/news/national/ferguson-police-pr-lesson-article-1.1947980>) that local police agencies in Ferguson were planning to offer a continuing education session called “Officer-involved shooting - You can win with the media.”

42. With training subtopics such as “Meet the 900-pound Gorilla” and “Feeding the Animals,” it left me wondering how authorities would believe that a workshop by a public relations firm could substitute for very specific legal training regarding journalists’ civil rights.

43. Sgt. Schellman responded on October 6, 2104, requesting that I send my emails with letters to St. Louis Police Deputy Chief Ken Cox and their Executive Director Bill Howe, which I did that same day but to this date have yet to receive an acknowledgement or reply from either of them.

44. On October 16, 2014 I received an email from Sergeant Colby Dolly, Chief’s Aide, Office of the Chief of Police, St. Louis County Police Department informing me that she had reviewed my letter to Chief Jon Belmar requesting a formal investigation into the exchange between photojournalist Raffe Lazarian and an unnamed officer.

45. She also acknowledged my offer to work with their department in developing policies and training to foster better relations with the media.

46. She then advised me that Mr. Lazarian would have to be the one to submit a complaint to their Bureau of Professional Standards, by either calling that office or filing an online complaint.

47. She requested that in order to better evaluate my offer of training, that I submit a formal proposal with a course outline to their continuing education coordinator.

48. On October 18, 2014 I forwarded Sgt. Dolly's email to Mr. Lazarian.
49. On October 19, 2014 I sent a formal training proposal via email to Ms. Becky Murphy, Continuing Education Coordinator, St. Louis County & Municipal Police Academy.
50. On October 20, 2014 I received an email from Ms. Murphy thanking me for my email and stating she would "be in touch."
51. I sent follow-up emails to Sgt. Dolly on 10/24/14 and 11/3/14 and have yet to receive a reply.
52. I sent a follow-up email to Ms. Murphy on 11/6/14 and have yet to receive a reply.
53. Attached are true and correct copies of the above-referenced letters.
54. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 13th day of November, 2014.

By: *Mickey H. Osterreicher*
Mickey H. Osterreicher, Esq.