



National Press Photographers Association, Inc.

The Society of Visual Journalists

3200 Croasdaile Drive • Suite 306
Durham, NC 27705-2586
Phone: (716) 983-7800 • Fax: (716) 608-1509
lawyer@nppa.org

VIA FACSIMILE (414.935.7109)

September 22, 2011

Chief Edward A. Flynn
Milwaukee Police Department
951 North James Lovell Street
Milwaukee, WI 53233

Re: Arrest of Clinton J. Fillinger

Dear Chief Flynn,

Although I have yet to receive a response to my letter dated 9/20/11 I have had an opportunity to listen to the comments you made to the Milwaukee media yesterday. I find it quite disturbing to hear you say that “if the cameraman had simply complied with the instructions, had simply complied with the instructions to back off from a working fire none of this hullabaloo would be taking place.” As is clearly evident from Mr. Fillinger’s video he was complying with the sergeant’s unlawful order when he was forcefully pushed to the ground and arrested. In case you did not have an opportunity to read the decision by the United States Court of Appeals for the First Circuit that I sent, it is well established that the “fundamental and virtually self-evident nature of the First Amendment’s protections” guarantees the “right to film government officials or matters of public interest in public space.”

In the decision, which dealt with the issue of qualified immunity in a civil suit against officers who unlawfully arrested a citizen exercising his First Amendment right to record in public, the court concluding that “the state of the law at the time of the alleged violation” provided a reasonable police officer in a similar situation with “fair warning” that their course of conduct in arresting and charging Glik was clearly unconstitutional. The officers, therefore, were not entitled to qualified immunity. The Court also points out that the police “are expected to endure significant burdens caused by citizens’ exercise of their First Amendment rights” in the nature of “verbal criticism and challenge directed at police officers.” This is no less true for the press.

I agree with you that this entire incident should not have happened but assert that the blame lies with your officers’ lack of adequate training and their failure to exercise proper discretion. We would hope that commonsense will ultimately prevail and once again respectfully request that the Milwaukee Police Department immediately drop all charges, fully investigate the incident, discipline the officers if necessary and most importantly adopt comprehensive guidelines by which to properly train its officers.

As I stated before NPPA stands ready to work with your department to help develop reasonable and workable policies and practices in order to avoid similar situations.

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: Jim Lemon, News Director, Fox6Now (via email)
Sean Elliot, NPPA President (via email)
Anne Schwarz, PIO (via email)