



# National Press Photographers Association, Inc.

*The Society of Visual Journalists*

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**VIA FACSIMILE (856.968.2458)**

January 9, 2012

Hon. Tom Corbett, Chairman  
Delaware River Port Authority  
PO Box 1949  
Camden, NJ 08101-1949

**Re: PATCO Safety & Security Web Page**

Dear Chairman Corbett,

As general counsel for the National Press Photographers Association (NPPA) I have recently been made aware of language contained on the "Safety & Security" page of the PATCO website (<http://www.ridepatco.org/safety/suspicious.html>). Specifically, I direct your attention to the top of the page entitled "What Should I Consider Suspicious?" The very first bullet point states, "Individuals observed filming or photographing passing trains, locomotives, freight cars, passenger cars, rail yard operations, tracks, bridges, tunnels, commuter rail trains, subway trains, transit trains, stations and platforms."

On behalf of NPPA and its members, I strongly object to PATCO's depiction of photography as "suspicious" or somehow being equated to terrorist activities. As our organization, founded in 1946 with over 7,000 members, has pointed out to numerous groups and law enforcement agencies, photography in all its forms (still, film, digital and video) are First Amendment-protected activities and should not be considered suspicious absent articulable facts and circumstances that support the suspicion that the behavior observed is not innocent, but rather reasonably indicative of criminal activity associated with terrorism or other crimes.

Unfortunately the practice by government officials to question, detain and interfere with lawful behavior by photographers under the guise of preventing terrorist activities has become a daily occurrence and has resulted in a significant increase in the harassment and arrest of photographers nationwide. The abridgement of a constitutionally protected form of expression because of that erroneous belief is only reinforced by your specific reference to photography as being part of some sinister act or pernicious activity. We are gravely concerned that by placing the words "individuals observed filming or photographing" at the top of your list of activities the public should "consider suspicious" PATCO has unnecessarily and unconstitutionally planted the seed that photography is a distinctly suspect pursuit.

Even if PATCO were attempting to follow the ISE-SAR Criteria Guidance table which lists and defines "photography" as "taking still or moving pictures of sensitive locations within a facility that have no apparent aesthetic value (e.g., personnel, security camera or guard locations, equipment,

systems, emergency evacuation instructions), etc.” you have failed, in that your statement is far too broad and cannot be viewed as a reasonable time, place and manner restriction because it limits far more speech than is necessary to serve a substantial government interest.

In any free country the balance between actual vigilance and over-zealous enforcement is delicate. It is one thing for law enforcement or government employees to act when there is probable cause; it is quite another to abuse that discretion in order to create a climate that chills free speech under the pretext of safety and security. It is our position that your web page, targeted at the general public, does just that.

It should also be noted that nowhere on your pages are there any rules and regulations either allowing or limiting photography. In the past NPPA has been instrumental in working with Amtrak and other agencies to develop reasonable guidelines concerning photography for both the public and its employees (see: <http://tinyurl.com/y8uzseh>). Another suggestion would be to look at the commonsense approach to photography found in the connecting transit SEPTA policies at <http://tinyurl.com/7v7cdeg>.

I would also direct your attention to a series of articles in the Baltimore Sun (<http://tinyurl.com/7bx6s3d> and <http://tinyurl.com/6mkpov4>), where the Maryland Transit Administrator acknowledged the public’s right to take pictures on its system in response to a threatened lawsuit by the Maryland Chapter of the ACLU. Your misguided depiction of photography as “a suspicious activity” fosters the erroneous public impression that filming is related to terrorist or criminal activity. NPPA is concerned that statement could easily lead PATCO personnel to interfere with or infringe upon the constitutional rights of the press and the public.

NPPA stands ready to work with your agencies to help develop appropriate guidelines and implement proper training in order to avoid these situations. In the meantime we would respectfully request that “photography” be removed from the list of suspicious activities and that you modify your public information and announcements as well as the directives to your employees and police officers so as to reinforce the concept that photography is a permitted form of free speech/press under the United States Constitution and is not by itself a suspicious activity. To rephrase PATCO’s “Safety & Security” statement: NPPA is “alert”, “involved” and “prepared” to address and correct such government “misinformation” by any and all means necessary.

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

Very truly yours,

*Mickey H. Osterreicher*

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General Counsel  
National Press Photographers Association

cc: Sean Elliot, President, NPPA (via email)  
Hon. Janet Napolitano, Secretary, U.S. Department of Homeland Security (via fax)  
Ed Barocas, Legal Director, ACLU of New Jersey (via email)