



National Press Photographers Association, Inc.

The Society of Visual Journalists

1100 M&T Center • 3 Fountain Plaza
Buffalo, NY 14203
Phone: (716) 566-1484 • Fax: (716) 608-1509
lawyer@nppa.org

VIA EMAIL

March 22, 2012

Charles H. Ramsey
Police Commissioner
Philadelphia Police Department
750 Race Street
Philadelphia, PA 19106

RE: Ian Van Kuyk
DKT # MC51-0010679-2012

Dear Commissioner Ramsey:

As general counsel for the National Press Photographers Association (NPPA) I have just been made aware of an incident that occurred on March 14, 2012 at approximately 7:45 p.m. near 1516 South 17th Street, involving Philadelphia police officers from the 17th District. It is my understanding that Ian Van Kuyk, a photojournalism student at Temple University was sitting on his front steps with his girlfriend, Meghan Feighan, when they noticed police pull over a vehicle for what appeared to be a routine traffic stop. Being a photojournalism student and having a “shooting at night” assignment he began taking pictures. Although he never came closer than ten feet (10’) to the scene he was ordered back, voluntarily backed up and was at least thirty feet (30’) away when a uniformed police officer approached Mr. Van Kuyk in an aggressive manner demanding that he stop taking pictures. Mr. Van Kuyk politely told the officer that he was a Temple University photojournalism student and also that he was within his rights to be taking photos on a public street.

Without provocation the officer then began pushing and shoving Mr. Van Kuyk. In response to Mr. Van Kuyk’s statement that his rights were being violated in public domain the officer is alleged to have responded “Public domain, yeah we’ve heard that before!” whereupon he threw Mr. Van Kuyk to the ground and began pushing his face into the sidewalk. In order to avoid having the camera (which he announced was school property) damaged during this assault by your officer Ms. Feighan attempted to retrieve it from Mr. Van Kuyk’s hand but was also taken to the ground by another officer. They were then both handcuffed and placed in patrol cars.

After being transported to the 17th District police station they observed officers spend the next 15 – 20 minutes conversing with one another (ostensibly to get their “stories straight”) while Mr. Van Kuyk and Ms. Feighan remained handcuffed in the back of the patrol cars. During this time

it is also alleged that at least two (2) officers came up to Mr. Van Kuyk's window and made threatening comments to him. He was then taken to the 1st District police station where he was held for nearly twenty-four (24) hours. He was not allowed to make a telephone call for nearly eight (8) hours at which time he was told (for the first time) that he was being charged with disorderly conduct.

Upon Mr. Van Kuyk's ROR he came to learn that he was being charged with five (5) offenses (four (4) misdemeanors and one (1) felony): Obstructing Justice, Resisting Arrest, Hindering Apprehension, Disorderly Conduct and Disorderly Conduct – Fight II. Ms. Feighan, who originally was at the same station was later taken to a different station where she was detained for more than eighteen (18) hours. Neither of them were told the names of the officers involved, nor did they receive a copy of an accusatory instrument. Ms. Feighan's preliminary trial was held on March 20th (less than a week after the incident) and Mr. Van Kuyk's is scheduled for April 16, 2012.

The Mission Statement of the Philadelphia Police Department reads in pertinent part, "Our mission is to be the model of excellence in policing by working in partnership with community and others to: Fight crime and the fear of crime, including terrorism; Enforce laws while safeguarding the *constitutional rights of all people*; Provide quality service to all of our residents and visitors (emphasis added).

NPPA asserts that your officers failed miserably to uphold any of those values. Furthermore, any police officer should know that photography on a public street is a First Amendment protected activity. It is truly abhorrent that not only did your officers abrogate that right while creating a fear of crime themselves, but then chose to add insult to injury by overcharging Mr. Van Kuyk with offenses he did not commit.

As our organization, founded in 1946 with over 7,000 members, has pointed out to numerous groups and law enforcement agencies – reliance by officers to interfere with, detain and arrest those engaged in a lawful activity under color of law is reprehensible. At best, behavior that chills free speech, is extremely unprofessional, at worst it is criminal.

There is no excuse for your officers to intentionally disregard a citizen's right to photograph an event occurring in a public place. Law enforcement agencies are established to uphold and enforce existing laws not to use them as a pretext to punish someone exercising their free speech right to photograph in public, in blatant violation of the First and Fourth Amendments.

Your department could well take some guidance from the language found in *Glik v. Cunniff*, 655 F3d 78 (2011). The United States Court of Appeals for the First Circuit noted that the First Amendment's protection extends beyond the prohibition against governmental abridgment of freedom of speech, or of the press. Such protection "encompasses a range of conduct related to the gathering and dissemination of information." The opinion cites cases establishing "that the Constitution protects the right to receive information and ideas" and that "there is an undoubted right to gather news 'from any source by means within the law.'" Having previously recognized that "the

videotaping of public officials is an exercise of First Amendment liberties” the Court observed that the “state has a special incentive to repress opposition and often wields a more effective power of suppression.” This also applies to police officers, “who are granted substantial discretion that may be misused to deprive individuals of their liberties.” As in *Glik*, the officers here clearly acted outside the scope of their authority, where Mr. Van Kuyk’s photography was protected by the First Amendment. Therefore, also as in *Glik*, your officers will not be entitled to protection under a qualified immunity defense.

The three judge panel went further, finding that these First Amendment protections applied to both the press and the public, stating that “the public’s right of access to information is coextensive with that of the press.” The Court also pointed 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;” and went on to state that “the same restraint demanded of law enforcement officers in the face of ‘provocative and challenging’ speech must be expected when they are merely the subject of videotaping that memorializes, without impairing, their work in public spaces.” Therefore, “such peaceful recording of an arrest in a public space that does not interfere with the police officers’ performance of their duties is not reasonably subject to limitation.”

Mr. Glik was also absurdly charged with aiding in the escape of a prisoner along with disturbing the peace and violating the Massachusetts wiretap statute. All charges were dismissed for lack of probable cause, with the lower court stating: the fact that the “officers were unhappy they were being recorded during an arrest . . . does not make a lawful exercise of a First Amendment right a crime.”

In reviewing a long line of similar cases, the court also recognized “the fundamental and virtually self-evident nature of the First Amendment’s protections” of the “right to film government officials or matters of public interest in public space.” The court concluded 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 the defendants’ course of conduct in arresting and charging Glik was clearly unconstitutional. For this reason, the court held that the officers were not entitled to qualified immunity.

Sharp v. Baltimore City Police, et al, involves Baltimore police, who allegedly seized the camera and deleted the recordings made by a citizen of their arrest of another individual. The U.S. Department of Justice recently filed a Statement of Interest in that case, saying among other things:

This litigation presents constitutional questions of great moment in this digital age: whether private citizens have a First Amendment right to record police officers in the public discharge of their duties, and whether officers violate citizens’ Fourth and Fourteenth Amendment rights when they seize and destroy such recordings without a warrant or due process. The United States urges this Court to answer both of those questions in the affirmative. The right to record police officers while performing duties in a public place, as well as the right to be protected from the warrantless seizure and destruction of those recordings, are not only required by the Constitution, they are consistent with our fundamental notions of liberty, promote the accountability of our governmental officers, and instill public confidence in the police officers who serve us daily.

NPPA is extremely concerned that the apparent lack of discipline and training of your officers will result in further incidents. We take this opportunity to offer our assistance in working with your department to help develop reasonable and workable policies, practices and especially training in order to avoid similar situations. In the meantime we respectfully request that all charges be dismissed. Additionally, please let this letter serve as a formal complaint. This incident must be fully investigated with commensurate disciplinary measures for the officers involved. We further request that your department immediately issue orders directing officers to cease such activity and also that your department implement revised training for all officers regarding these matters.

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: Hon. Michael A. Nutter, Mayor, *City of Philadelphia* (via email)
Hon. Seth Williams, District Attorney, *City of Philadelphia* (via facsimile)
Philadelphia Police Internal Affairs (via email)
Sean Elliot, President, *NPPA* (via email)