TO: ALL COMMANDS

RE: RECORDING OF POLICE ACTION BY THE PUBLIC

MEMBERS OF THE SERVICE ARE REMINDED THAT MEMBERS OF THE PUBLIC ARE LEGALLY ALLOWED TO RECORD (BY VIDEO, AUDIO, OR PHOTOGRAPHY) POLICE INTERACTIONS. THESE INTERACTIONS INCLUDE ARREST AND OTHER SITUATIONS. MEMBERS OF THE SERVICE WILL NOT INTERFERE WITH A PERSON'S USE OF RECORDING DEVICES TO RECORD POLICE INTERACTIONS. INTENTIONAL INTERFERENCE SUCH AS BLOCKING OR OBSTRUCTING CAMERAS OR ORDERING THE PERSON TO CEASE CONSTITUTES CENSORSHIP AND ALSO VIOLATES THE FIRST AMENDMENT.

IT SHOULD BE NOTED, HOWEVER, THAT PERSONS MAY NOT INTERFERE WITH POLICE OPERATIONS. MEMBERS, IF APPROPRIATE, SHOULD ADVISE THE PUBLIC NOT TO GET TOO CLOSE AND MAY TAKE ACTION ONLY IF THE PERSON INTERFERES WITH THE OPERATION OR THE SAFETY OF THE MEMBERS OF THE SERVICE OR THE PUBLIC. HOWEVER, MERE RECORDING OF AN INCIDENT DOES NOT CONSTITUTE INTERFERENCE.

COMMANDING OFFICERS WILL ENSURE THAT THE CONTENTS OF THIS MESSAGE ARE DISSEMINATED TO ALL MEMBERS OF THE SERVICE.

AUTHORITY: CHIEF OF DEPARTMENT
OPER: LT CORBETT
OPERATIONS ORDER
SUBJECT: INVESTIGATION OF INDIVIDUALS ENGAGED IN SUSPICIOUS PHOTOGRAPHY AND VIDEO SURVEILLANCE

DATE ISSUED: 04-03-09
NUMBER: 14

1. Members of the service are reminded that photography and the videotaping of public places, buildings and structures are common activities within New York City. Given the City's prominence as a tourist destination, practically all such photography will have no connection to terrorism or unlawful conduct. Since photography and/or videotaping is rarely unlawful, absent any other indicators of criminality (e.g., trespass, etc.), an investigation of a report of suspicious photography or videotaping thought to be terrorism-related is governed by the constitutional and statutory rules generally applicable to the investigation of any other type of suspicious activity or behavior. Forcible detention of an individual engaged in such activity may occur if the member of service can articulate reasonable suspicion that the suspect is engaged in photography or videotaping for some terrorism-related purpose. The investigation of these types of incidents will depend, in large part, upon the ability of the member to utilize the common law right of inquiry to ask questions.

2. Members of the service may not demand to view photographs taken by a person absent consent or exigent circumstances. When there is probable cause to believe that the camera, film or other media contains evidence of criminal activity, the item may be seized, and a search warrant must be obtained in order to view its contents. In addition, a person who has taken pictures should not be directed to delete or destroy images stored within the device.

3. Patrol Guide 212-21, "Photography on the New York City Transit System," provides the procedure for members of the service to follow when they encounter individuals taking photographs while in the transit system. Metropolitan Transportation Authority (MTA) regulations expressly permit photography and video recording in the subways, Long Island Railroad, and Metro-North systems; although permission is required for commercial shoots and/or the use of additional equipment such as lights and tripods (persons holding valid NYPD press passes may use such ancillary equipment). All such photographic activity must be in accordance with MTA rules and must not endanger public safety or the operation of the transit system. Furthermore, violators of these provisions may be issued a Transit Adjudication Bureau (TAB) Notice of Violation or a Criminal Court summons for violation of 1050.9 (c) of the New York Code of Rules and Regulations (NYCRR).

4. Members of the service are reminded to follow P.G. 212-12, "Citywide Intelligence Reporting System" when suspecting or obtaining information about the involvement of a person or other entity (e.g., business, vehicle, association of criminals, etc.) in ongoing criminal activity or suspected terrorist activity and unable to effect a summary arrest. Additionally, when a uniformed member of the service has a suspect stopped and develops information that may indicate that the subject is connected to terrorism, they will comply with Interim Order 32, series 2008, "Communications Between the Intelligence Division and Units in the Field Regarding Suspected Terrorist Activity."
5. Uniformed members of the service are reminded that they MUST follow all federal, state, and local laws whenever they stop a person for investigation, summons or arrest. Members of this Department will NEVER base a stop or other enforcement action solely on an individual’s race, perceived ethnicity, appearance, etc.

6. For a further discussion of filming or photography in public places, including those circumstances wherein permits may be required, as well as appropriate enforcement options, members of the service are directed to review Operations Order 48, series 2008, "The Mayor’s Office of Film, Theatre and Broadcasting (M01-1B) Permits,"

7. Members of the service who may have questions concerning filming or photography in public places are encouraged to call the Legal Bureau at (646) 610-5400.

8. Commanding officers will ensure that the contents of this Order are brought to the attention of members of their commands.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION
All Commands
Patrol Guide under PG 208-03 Arrests - General Processing, effective 01-01-2000. In pertinent part that section reads as follows:

**OBSERVERS AT THE SCENE OF POLICE INCIDENTS**

As a rule, when a police officer stops, detains or arrests a person in a public area, persons who happen to be in or are attached to the area are naturally in position to and are allowed to observe the police officer's actions. This right to observe is, of course, limited by reasons of safety to all concerned and as long as there is no substantive violation of law. The following guidelines should be utilized by police officers whenever the above situation exists:

a. A person remaining in the vicinity of a stop or arrest shall not be subject to arrest for Obstructing Governmental Administration (Penal Law, Section 195.05) unless the officer has probable cause to believe the person or persons are obstructing governmental administration.

b. **None of the following constitutes probable cause for arrest or detention** of an onlooker unless the safety of officers or other persons is directly endangered or the officer reasonably believes they are endangered or the law is otherwise violated:

   (1) Speech alone, even though crude and vulgar

   (2) Requesting and making notes of shield numbers or names of officers

   (3) Taking photographs, videotapes or tape recordings

   (4) Remaining in the vicinity of the stop or arrest.

c. Whenever an onlooker is arrested or taken into custody, the arresting officer shall request the patrol supervisor to the scene, or if unavailable, report the action to the supervisor where the person is taken.

This procedure is not intended in any manner to limit the authority of the police to establish police lines, e.g., crowd control at scenes of fires, demonstrations, etc. (emphasis added).
P.G. 212-49 Incidents Involving Media Representatives

Date Effective: 01-01-00

PURPOSE

To cooperate with media representatives by not interfering or allowing others to interfere with media personnel acting in their news gathering capacity.

NOTE: A member of the press with proper credentials may not be excluded from an area where the general public has access.

PROCEDURE

Whenever a member of the service (uniformed or civilian) becomes involved in an incident or confrontation with media personnel or media personnel are assaulted, harassed or their vehicles/equipment are vandalized/damaged at the scene of news events:

UNIFORMED MEMBER OF THE SERVICE

1. Determine if any threat to safety of media representatives exists and take appropriate action.

2. Request response of a supervisory officer.

SUPERVISORY MEMBER

3. Cooperate with and assist media representatives and provide safe access to the scene, if possible.

4. Conduct immediate investigation if member of the media is assaulted, harassed or their vehicle/equipment is vandalized/damaged.

5. Attempt to obtain third party witnesses if confrontation with members of the service or others.

6. Request all parties, including witnesses, if possible, to report to precinct of occurrence for further investigation, when necessary.

7. Notify the Office of the Deputy Commissioner, Public Information at (212) 374-6700, without delay.

NOTE: The Office of the Deputy Commissioner, Public Information, is available 24 hours a day, 7 days a week for consultation and/or response to incidents involving the media. Members of the service are required to immediately notify the Deputy...
Commissioner, Public Information, at (212) 374-6700 of any incident involving the media, regardless of the outcome of that incident.

DESK OFFICER

8. Notify:
   a. Commanding officer/duty captain
   b. Lieutenant platoon commander
   c. Operations Unit.

LIEUTENANT PLATOON COMMANDER

9. Respond to command, if in the field, and under the supervision of the commanding officer/duty captain, conduct investigation of incident.

   NOTE: The commanding officer/duty captain will perform the duties of the lieutenant platoon commander, if the platoon commander is unavailable.

10. Prepare report on Typed Letterhead containing details of incident and results of investigation and forward to:
    a. Chief of Patrol/bureau chief concerned
    b. Borough commander concerned
    c. Commanding Officer, Public Information Division
    d. Command file.

   NOTE: The Office of Deputy Commissioner - Public Information will maintain a central repository of all reports received of incidents involving news media representatives.

11. Forward supplementary report, if necessary.

COMMANDING OFFICER/DUTY CAPTAIN

12. Respond to command and supervise the investigation and preparation of the report by the lieutenant platoon commander.

ADDITIONAL DATA
Members of the service will not interfere with the video taping or the photographing of incidents in public places. Intentional interference such as blocking or obstructing cameras or harassing the photographer constitutes censorship. Working Press Cards clearly state the bearer "is entitled to cross police and fire lines." This right will be honored and access will not be denied. However, this does not include access to interior crime scenes or areas frozen for security reasons.

In order to cooperate more fully with members of the news media and provide them with access to cover newsworthy events, the following guidelines will be adhered to unless safety interests or proper performance of police duties require otherwise:

a. To the extent it is feasible to do so, the media's access to demonstrations on private property will not be impeded by the Department.

b. The media will be given access as close to the activity as possible, with a clear line of sight and within hearing range of the incident.

c. When incidents spill over or occur on private property, members of the media will not be arrested for criminal trespass, unless an owner or representative expressly indicates that the press is not to be permitted to enter or remain on the property.

d. If the ranking officer at the incident determines that press access must be restricted in certain circumstances (i.e., in order for the Department to carry out its law enforcement functions), he retains the discretion to do so.

RELATED PROCEDURES
Information Concerning Official Business of Department (P.G. 212-76)
Release of Information to News Media (P.G. 212-77)

FORMS AND REPORTS
Typed Letterhead
July 29, 1999

Floyd Abrams, Esq.
Cahill, Gordon & Reindel
90 Pine Street
New York, New York 10005

Dear Mr. Abrams:

In light of our discussions to resolve the issues identified by your clients regarding police interaction with members of the media, and to ensure that access is provided to working members of the press to the fullest extent possible, the New York City Police Department ("NYPD") is reaffirming and implementing the following procedures:

1. The Police Commissioner will issue a formal Policy Statement no later than August 14, 1999, which will, as discussed with your client, reaffirm the NYPD's commitment to Patrol Guide Sections 116-21 and 116-53. As with all policy statements, this will become a permanent record of the NYPD and will be binding on all members of the Department.

2. The Policy Statement will be distributed to the Department’s Executive Staff within three (3) days of its issuance. Additionally, an official message will be transmitted via the fastest means System which will direct that the Policy Statement be read at ten consecutive roll calls and will further direct Members of the Service to the relevant provisions of the Patrol Guide with an indication that such provisions should be reviewed and adhered to strictly. (The relevant provisions of PG - 116-51 and 116-53 will be transmitted in their entirety).

3. The Police Academy will amend and simplify existing training curricula to reflect the provisions of the Policy Statement.

5. The NYPD, through the auspices of the Office of the Deputy Commissioner for Public Information, ("DCPI") will continue to have a representative available 24 hours a day, seven days a week to accept telephone calls from the press or Members of the Service. Additionally, DCPI will track all Unusual Occurrence Reports prepared pursuant to Patrol Guide Section 116-53 in a system which will
be developed for such purpose. To the extent information is available and to the extent it is practicable, DCPI will provide notice of receipt of such report to the relevant editorial manager. Such information will be made available to the public upon request.

6. The Police Commissioner and myself will meet with you and your clients at (5) months from the date of this letter to evaluate any issues arising from police-media interaction. Of course, in the event that issues arise that should be addressed before that period of time, we will make ourselves available to you and your clients.

Allow me to thank you and your clients for the professional and effective manner in which this situation has been handled. By resisting the temptation to sensationalize the issues raised in connection with this matter, your clients have demonstrated their commitment to moving forward in their relationship with the NYPD. In the spirit of this agreement, I am pleased that your clients are continuing to exercise such professionalism and restraint. As we have discussed, although strong positions can be taken on behalf of the actions of each of our clients, it is my view that the goal of improving relations between our respective clients has been greatly served by the work we have done in putting these disagreements behind us.

As always, if I can be of any assistance, please do not hesitate to call upon me.

Very truly yours,

Michael D. Hess
MEMORANDUM TO: ALL PERSONNEL

SUBJECT: POLICY STATEMENT

The public's access to information regarding the official business of the Department is of critical importance to effective City government. Because the public receive much of this access through the news media, members of the service must ensure that Department procedures which provide for cooperation and assistance with press personnel and which allow press personnel to access the scenes of incidents are carefully followed.

On February 28, 1992, the Department promulgated Patrol Guide §§ 116-51 and 116-53, effective March 6, 1992, concerning "release of information to the news media" and "incidents involving media representatives". These guidelines reflect the commitment of the Department to upholding the principles of a free press and informed citizenry. I have determined that the NYPD, the press and the public would benefit from this Policy Statement providing certain specific guidance to members of the service.

Specifically, I am reaffirming sections 116-51 and 116-53 of the Patrol Guide which include but are not limited to the following:

(a) "To ensure the right of the public to be informed and to facilitate the accurate, timely and proper dissemination of information concerning the official business of the Department...[A]ll members of the service will make every effort to assist media representatives who request information or safe access to incident scenes. Information, assistance or access should be rendered to whatever extent possible when it does not:
   a. Pose undue risk to personal safety of members of the service, media representatives, or others.
   b. Interfere with police operations
   c. Adversely affect the rights of an accused or the investigation or prosecution of a crime."

(b) "To cooperate with media representatives by not interfering or allowing others to interfere with media personnel acting in their news gathering capacity...[S]upervisory officers should...[c]ooperate with and assist the media representative and provide safe access to the scene, if possible."
(c) "Members of the service will NOT interfere with the video taping or the
photographing of incidents in public places. Intentional interference such
as blocking or obstructing scenes or harassing the photographer
constitutes censorship."

(d) "Working Press Cards clearly state, the bearer is entitled to cross police
and fire lines. This right will be honored and access will NOT be denied.
However, this does NOT include access to interior crime scenes or areas
frozen for security reasons."

(e) In connection with demonstrations that occur on private property, "the
media will be given access as close to the activity as possible, with a clear
line of sight and within hearing range of the demonstration."

In addition, I am clarifying the Department's procedures regarding media access and incident reporting. As a general rule, members of the media possessing Working Press Cards which clearly state the bearer is entitled to cross police and fire lines will not be restricted or confined to press access areas by the NYPD in covering incident scenes, including but not limited to parade routes, demonstrations, City parks, and areas outside of frozen zones. Supervisors may restrict media access to an incident scene only in those exceptional circumstances where it is absolutely necessary for law enforcement or public order purposes. Furthermore, in situations where the creation of specific press access areas is necessary, these areas should be positioned as close to the event or incident as possible, consistent with the given situation, legitimate law enforcement needs, and the safety and security of the public and the media. Under no circumstances should the press be provided less access than that afforded the general public. As before, media personnel do not have a right to enter interior crime scenes or to enter areas which are frozen for security reasons.

Additionally, the privileges afforded to media personnel holding Working Press Cards must be respected. A member of the media who has been issued a Working Press Card must be allowed to cross police and fire lines. Valid press credentials shall not be confiscated or removed from media personnel engaged in news gathering activities without the approval of a ranking officer to the member of the service involved at the incident scene and upon consultation with a representative of the office of the Deputy Commissioner, Public Information, if possible. Such action should be taken only when absolutely necessary for law enforcement purposes and should be reported to the Deputy Commissioner, Public Information without delay.

Finally, members of the service are reminded that, consistent with Patrol Guide §116-33, whenever there is an incident or confrontation with media personnel or complaint about an incident or confrontation by a news organization, the Precinct Commander/Shift Captain is to prepare an Unusual Occurrence Report (UF-49) containing details of the incident and the results of any investigation and forward to (a) Chief of Patrol; (b) relevant Patrol Borough Commander; (c) Commanding Officer, Deputy Commissioner, Public Information and (d) Product File. The office of the Deputy Commissioner, Public Information will be developing a computerized

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database which will serve as a central depository of all reports received of incidents involving news media representatives. This will assist the Department in tracking these types of complaints and improving our relationship with the press.

I recognize that the pressures of policing incidents from crime scenes to major public events place a great burden on both line and supervisory personnel. Members of the service must respect, however, the public's right to know about these events and the media's right of access to report on these events. Members of the service who unreasonably interfere with media access to incident scenes or who intentionally prevent or obstruct the photographing or videotaping of news in public places will be subject to disciplinary action.
It is stipulated by and between the attorneys for the parties herein that it is the policy of the New York City Police Department and the defendants that when a person (or persons) is detained, stopped or arrested in public areas, a person or persons not involved in the conduct for which the first person is stopped or arrested may remain in the vicinity of the stop or arrest as an onlooker or onlookers, subject to the safety of the person stopped, the third persons, the general public, and officers of the Police Department, and to provisions of law e.g. P.L. §195.05. The provisions of this order are intended solely as a settlement of the above entitled litigation, and do not constitute an admission that the above policy has been violated by defendants, or any of them. In the following provisions, the term "officer" refers to New York City police officers, agents of the defendants.

1. A person remaining in the vicinity of a stop or arrest (herein after an "onlooker") shall not be subject to arrest for violation of Penal Law §195.05 unless the officer has probable cause to believe a violation of Section 195.05 exists.
2. None of the following constitutes probable cause for arrest or detention of an unlocker unless the safety of officers or other persons is directly endangered or the officer reasonably believes they are endangered or the law is otherwise violated:

   (a) Speech alone, even though crude and vulgar;

   (b) Requesting and making notes or sketch numbers or names of officers;

   (c) Taking photographs;

   (d) Remaining in the vicinity of the stop or arrest.

3. Whenever an unlocker is arrested or taken into custody, the arresting officer shall report the action to the supervisor at the station house or other place where the person is taken. Section 110-2 and 110-7 of the Patrol Guide of the New York City Police Department (copies attached), shall be complied with.

4. Defendants shall notify all officers and other employees of the Police Department of the terms of this stipulation by appropriate department order within 60 days of the entry of this order. Such order shall embody the terms of paragraphs 1 through 3 of this order. Area commanders will be informed that the basis for the said departmental order is the settlement of this litigation, and that the terms of this order are part of the departmental order. Area commanders shall inform precinct commanders of the existence of this order.
5. Costs, disbursements and attorneys' fees are waived by all parties and their attorneys.

The above provisions of this order shall and the same hereby do constitute the final judgment of this court upon the controversy between defendants, plaintiffs and the plaintiff class. In all other respects, the claims of the plaintiffs are dismissed with prejudice.

Dated: New York, New York
June 1, 1977

Paul G. Chevigny
ALAN H. LEVINE
Attorneys for Plaintiffs

W. Bernard Richardson

CORPORATION COUNSEL
Attorney for Defendants

SO ORDERED: Date 6/1/77

John M. Connell
U.S.D.J.

[Signature]

[Signature]

[Signature]

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