



July 13, 2006

Colonel Douglas DeLeaver
Chief of Police
Maryland Transit Administration
6 St. Paul Street
Baltimore, MD 21202

Callista M. Freedman
General Counsel
Maryland Transit Administration
6 St. Paul Street
12th Floor
Baltimore, MD 21202

Re: MTA Photography Policy

Dear Colonel DeLeaver and Ms. Freedman:

We write on behalf of the American Civil Liberties Union of Maryland, regarding concerns we have about the Maryland Transit Administration's restrictions upon constitutional freedoms – particularly the recent actions of MTA Officer Johnson (Badge #164) toward ACLU employee Amy Cruice. While photographing an MTA bus station as part of an investigation into a complaint received by the ACLU, Ms. Cruice was approached by Officer Johnson and told she could not photograph the station or buses. As discussed below, we believe any policy prohibiting photography in public areas within the transit system violates state and federal constitutional law. We would like to know whether MTA has an official policy regarding photography, what that policy is, and whether Officer Johnson's conduct toward Ms. Cruice was aberrational, or consistent with MTA policy.

Summary of Facts

On Thursday, March 30, 2006, Ms. Amy Cruice was taking pictures with a hand-held camera at the Mondawmin Mall bus stop, as part of an investigation into a complaint the ACLU had received regarding suppression of voter registration efforts at MTA facilities. Five minutes after she arrived, at approximately one o'clock in the afternoon, she was approached by MTA Officer Johnson (Badge #164) and told that she could not take pictures on MTA property. Ms. Cruice asked the officer if she could remain on the property if she stopped taking pictures, and he replied that she could only remain on the property if she intended to take a bus or a train. He informed her that she could go across the street to take pictures, but warned that under no circumstances would she be permitted to photograph MTA buses. When Ms. Cruice asked the basis of that prohibition, Officer Johnson replied that "in today's world we can't have people taking

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pictures of buses.” The conversation was cordial, and Ms. Cruice left the property when the conversation was over, as Officer Johnson indicated she should.

**A Ban on Photography on all MTA Property Burdens a Valuable Activity
Fully Protected by the First Amendment.**

The public has a broad First Amendment right to photograph and record matters of public interest, and many courts have concluded that photography constitutes protected speech under the First Amendment.¹ Additionally, courts have held that railroad stations and municipal bus stations constitute public fora², areas in which First Amendment protections are at their maximum.³

Ms. Cruice “did not impede the movement of passengers or trains, distract or interfere with the railroad employees’ conduct of their business, block access to ticket windows, transportation facilities or other business legitimately on the premises”⁴ while taking photographs. She did nothing that would indicate that her picture-taking was improper, or in any way unprotected constitutionally. Rather, as a person exercising her First Amendment rights in a public forum, Ms. Cruice’s rights were at their zenith when she was approached by Officer Johnson.

Officer Johnson’s broad pronouncement that “in today’s world we can’t have people taking pictures of buses” is simply insupportable legally. Before and after the tragedies of September 11, 2001, photography has remained constitutionally-protected speech. In fact, “no specific post-September 11 federal law grants the government any additional rights to restrict visual newsgathering, photojournalism or photography generally.”⁵

¹ See, e.g., *Baker v. City of New York*, 2002 WL 31132880 at *5 (S.D.N.Y. Sept. 26, 2002) (noting that New York City admitted that the act of taking a photograph is protected First Amendment expression); *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (“The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.”); *Porat v. Lincoln Towers Community Ass’n*, 2005 WL 646093 at * 4 (S.D.N.Y. 2005) (noting “communicative photography is well-protected by the First Amendment.”)

² *Country Hills Christian Church v. Unified School Dist.*, 560 F. Supp. 1207, 1214 (D. Kan 1983) (citing *In re Hoffman*, 67 Cal. 2d 845 (Cal. 1967); *Wolin v. Port of New York Authority*, 392 F.2d 83 (2nd Cir. 1968)).

³ *United States v. Grace*, 461 U.S. 171, 177 (1983) (“In such places, the government’s ability to permissibly restrict expressive conduct is extremely limited.”); *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (“[T]he rights of the state to limit expressive activity [in a public forum is] sharply circumscribed.”).

⁴ *In re Hoffman*, 67 Cal. 2d at 851.

⁵ http://www.nppa.org/news_and_events/news/2005/08/rights.pdf.

Courts Consistently Hold That Photographs of Public Buildings Cannot Be Prohibited.

Even more untenable is Officer Johnson's contention that Ms. Cruice can be prohibited from taking photographs of buses from a public sidewalk across the street from MTA property. Streets and sidewalks have "immemorially been held in trust for the use of the public and . . . have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."⁶

Courts allow photography of publicly visible buildings and structures, specifically holding that building owners cannot prevent photographs of what is ordinarily visible from the public streets.⁷ Indeed, the MTA posts photographs of its buses on its website – making it even harder to fathom what security purposes could be advanced by the policy advocated by Officer Johnson. Moreover, courts allow public surveillance cameras to photograph public buildings noting that, where there is no expectation of privacy, police "may record what they normally may view with the naked eye."⁸ Certainly, if the government is permitted to monitor public spaces with cameras, a private citizen such as Ms. Cruice is free to do so.⁹

The ACLU is not aware of any law or regulation preventing photography within the MTA system, and we believe that any MTA policy limiting photography is unconstitutional. We ask for a copy of your official photography policy and determination as to whether Officer Johnson's conduct toward Ms. Cruice was aberrational, or consistent with MTA policy.

We look forward to receiving your prompt response. Thank you for your attention to this matter.

⁶ *Heffron v. Int'l Soc'ty for Krishna Consciousness, Inc.*, 452 U.S. 640, 651 (1981) (internal citations omitted). *See also, Baker v. New York City*, 2002 U.S. Dist. LEXIS 18100 at *19 (S.D.N.Y. 2002) (photographer who took pictures of tourists on the streets of Manhattan was exercising speech in a traditional public forum).

⁷ *See generally Leicester v. Warner Bros.*, 232 F.3d 1212 (9th Cir. 2000).

⁸ *Sacramento County Deputy Sheriffs' Assn. v. County of Sacramento*, 51 Cal. App. 4th 1468, 1984 (Cal. Ct. App. 1996) (citing *U.S. V. Taketa*, 923 F.2d 665, 677 (9th Cir. 1991)).

⁹ *See Generally Dow Chem. Co. v. United States*, 476 U.S. 227 (U.S. 1986) (Constitution does not prohibit taking photographs from generally observable areas); *Sanders v. American Broadcasting Companies*, 20 Cal. 4th 907, 914 (Cal. 1999) (plaintiff has no intrusion tort claim when merely photographed or recorded in a public place); International Association of Chiefs of Police, *Cutting Edge of Technology*, March 2001, <http://www.theiacp.org/documents/pdfs/Publications/UseofCCTV%2Epdf> (noting that according to James Falk Sr., a constitutional lawyer and chairman of the U.S. Department of Justice's National Institute of Justice Liability Panel, "Cameras in public places are legal; there is no expectation of privacy in public places.")

Sincerely,

Deborah A. Jeon
Legal Director

Sybil L. Dunlop
Law Clerk

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