



By Email

Vance A. Funk, III, Mayor
City of Newark
220 Elkton Road
Newark, DE 19711

Dear Mayor Funk:

I write regarding the actions of Newark police officers in preventing a Newark resident, Daniel Dedinas, from taking photographs of a passing train because he refused to provide them with identification they were not entitled to demand. The officers' actions were in clear violation of the First Amendment. The purpose of this letter is to obtain an apology for Mr. Dedinas, a mechanism to prevent Newark police from doing this to him again, and training for the Newark police force so that other railroad photographers will not be treated similarly.

Mr. Dedinas, a Railfan/Model Railroader, was near the train tracks behind the FedEx store on Newark-Elkton Road waiting to photograph a special locomotive that was expected to pass by. He was approached by Newark Detectives Delia (Badge No. 9583) and Szep (Badge No.9529), who asked what he was doing. In the ensuing discussion he told them he was there to photograph the train, they acknowledged they had no probable cause to believe he was committing, or about to commit, a crime, they insisted he provide proof he was the person he told them he was and he, standing on his constitutional rights, refused to provide it. He offered to give his name and address, and that did not satisfy them. Det. Szep then told him they would report him to the railroad for trespassing. After Mr. Dedinas responded by telling them he was not on the railroad's property, Det. Szep said "I don't know where the line is." The officers then sought to use the in-car computer to bring up a photograph that would supposedly show whether Mr. Dedinas was who he said he was. They forbade him from taking photographs while that process was ongoing. The locomotive he was there to photograph passed by before they were done, and he was not permitted to take the photograph.

The Fourteenth Amendment makes the First Amendment applicable to the states, *see Gitlow v. New York*, 268 U.S. 652 (1925), and to their political subdivisions, *see Lovell v. City of Griffin*, 303 U.S. 444 (1938). It protects people who want to take photographs. *See Kaplan v. California*, 413 U.S. 115, 119-20 (1973) (stating that First Amendment standards apply "to moving pictures, to photographs, and to words in books....As with pictures, films, paintings, drawings, and engravings, both oral utterance and the printed word have First Amendment protection); *United States v. Thirty-Seven (37) Photographs*, 402 U.S. 363, 376-77 (1971) (plurality opinion) (applying First Amendment-based procedural

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requirements to the seizure of photographs); *ETW Corp. v. Jireh Pub., Inc.*, 332 F.3d 915, 924 (6th Cir.2003) (holding that “[t]he protection of the First Amendment ... includes ... music, pictures, films, photographs, paintings, drawings, engravings, prints, and sculptures”); *Bery v. City of New York*, 97 F.3d 689, 696 (2d Cir.1996) (“[P]aintings, photographs, prints and sculptures ... always communicate some idea or concept to those who view it, and as such are entitled to full First Amendment protection.”); *Robinson v. Fetterman*, 378 F. Supp. 2d 534, 541 (E.D.Pa. 2005) (concluding that private individual had First Amendment right to videotape state troopers conducting truck inspections on public highway out of concern about safety of inspections).

The Los Angeles Police were pilloried in the press when they threatened a man who was photographing subway turnstiles. (George Will, *A Snapshot of Our Times*, The Washington Post, January 18, 2012) The City of New York had to pay two ACLU clients, including the president of the Wilmington chapter of the National Railway Historical Society, when they briefly handcuffed the men for taking “unauthorized photographs” of trains. New York City also had to pay attorney fees to the ACLU. (*Barry v. City of New York*, July 31, 2012 Stipulation and Order.) When the Union Pacific Railroad sought to bar people from photographing trains in the Chicago area, it quickly backed down. (*Railroad Rescinds Ban on Photos from Metra Platforms*, Chicago Tribune, August 28, 2006) One railroad attorney who was quoted in the press on that dispute observed “There is nothing in statute that prohibits photography from public areas. There is no federal law on this, and nothing from Homeland Security. The U.S. Supreme Court considers photography a part of free speech protected under the First Amendment.” (August 21, 2006 Press Release).

In the United States, we don’t have to show our “papers” to take photographs of passing trains or any other activities that take place in public. Mr. Dedinas has a damages claim against the officers and the City of Newark, itself, if the officers’ actions resulted from a Newark policy or failure to provide appropriate training to its police force. However, at this time he is willing to resolve the matter in return for a written apology from the two officers, the Newark police chief’s card and cellphone number so he can call him if he is wrongfully stopped by the police again, and the institution of proper training for the Newark police.

Please let me know promptly if this matter may be resolved without further action by the ACLU.

Sincerely yours,



Richard H. Morse