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Artists Behind Bars: When the Taste Police Are Real

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We can make jokes about the "Taste Police."

However, a news photographer recently found out the Taste Police are real, when he was detained for taking pictures "with no apparent aesthetic value" outside a Long Beach oil refinery.

We've re-posted the entire article about this incident, below, with the kind permission of the Long Beach Post.

From Matthew Brady to Robert Capa, from Nick Út to YouTube videos of the Arab Spring, photographers, along with other artists, create images of things we may not wish to look at but need to see. Often the images challenge authority, which is why it is dangerous for those in authority to determine aesthetic value.

"He asked me why I was taking pictures, and I told him that I was an artist," the photographer said, before the police detained him. We live in a world where terrorism is a reality, and I'm sure that was on the policeman's mind, but when taking photographs is a suspicious activity, and being an artist is a suspect profession, we can begin to see that, for some, creativity and lawlessness are the same.

– Adam Leipzig

Police Chief Confirms Detaining Photographers Within Departmental Policy

by Greggory Moore | Long Beach Post | August 15, 2011

9:45am | Police Chief Jim McDonnell has confirmed that detaining photographers for taking pictures "with no apparent esthetic value" is within Long Beach Police Department policy.

McDonnell spoke for a follow-up story on a June 30 incident in which Sander Roscoe Wolff, a Long Beach resident and regular contributor to Long Beach Post, was detained by Officer Asif Kahn for taking pictures of a North Long Beach refinery.1

"If an officer sees someone taking pictures of something like a refinery," says McDonnell, "it is incumbent upon the officer to make contact with the individual." McDonnell went on to say that whether said contact becomes detainment depends on the circumstances the officer encounters.

McDonnell says that while there is no police training specific to determining whether a

photographer's subject has "apparent esthetic value," officers make such judgments "based on their overall training and experience" and will generally approach photographers not engaging in "regular tourist behavior."

This policy apparently falls under the rubric of compiling Suspicious Activity Reports (SAR) as outlined in the Los Angeles Police Department's Special Order No. 11, a March 2008 statement of the LAPD's "policy … to make every effort to accurately and appropriately gather, record and analyze information, of a criminal or non-criminal nature, that could indicate activity or intentions related to either foreign or domestic terrorism."

Among the non-criminal behaviors "which shall be reported on a SAR" are the usage of binoculars and cameras (presumably when observing a building, although this is not specified), asking about an establishment's hours of operation, taking pictures or video footage "with no apparent esthetic value," and taking notes.

Also listed as behaviors to be documented are "Attempts to acquire illegal or illicit biological agent (anthrax, ricin, Eboli, smallpox, etc.)," "In possession, or utilizes, explosives (for illegal purposes)," and "Acquires or attempts to acquire uniforms without a legitimate cause (service personnel, government uniforms, etc.)." Special Order No. 11 does not distinguish between how these behaviors should be handled and how (e.g.) photography should be handled.

McDonnell says that LBPD policy is "on-line" with all instructions contained in Special Order No. 11, "as is everyone else [i.e., other police departments] around the country."

In response to Long Beach Post's coverage of the incident, the National Press Photographer's Association has written to Chief McDonnell expressing concern "about the misplaced beliefs that photography is in and of itself a suspicious activity."

Deputy City Attorney Gary Anderson says that the legal standard for a police officer's detaining an individual pivots on whether the officer has "reasonable suspicion of criminal activity"; and that whether taking photographs of a refinery meets that standard "depends on the circumstances the officer is confronted with." For that information, Anderson says, we must know what is in the officer's mind.

Officer Kahn did not reply to repeated attempts to contact him in order to determine what was in his mind when he allegedly detained Wolff; and the LBPD Public Information Office referred pertinent questions to Anderson.

According to Anderson, Kahn claims that Wolff complied with Kahn's request to see his license, and that it was unnecessary for him to compel Wolff to do so — a version of events Wolff flatly contradicts. "I absolutely asked him if showing him my license was necessary," Wolff says, "which is when he gave me his little spiel about Homeland Security [allowing Kahn to detain Wolff under the circumstances]."2

Anderson reports that Kahn asserts Wolff denied being a reporter, which Wolff says is untrue. "I never denied being a reporter," Wolff says. "He never asked me about being a reporter. He asked me why I was taking pictures, and I told him that I was an artist."

Regarding whether Kahn felt Wolff's behavior gave him "reasonable suspicion of criminal activity," Anderson initially replied, "I never asked [Kahn] that question." Agreeing that "we can't

go any further in discussing [whether Kahn had ‘reasonable suspicion of criminal activity’] without knowing what was in the officer’s mind in this specific instance,” Anderson agreed to follow up with Kahn on that matter.

However, when reached 10 days later, Anderson stated, “I’m not going to get into the officer’s subjective state of mind at this point. … That’s attorney-client privilege.”

As to why Anderson failed to cite attorney-client privilege initially, Anderson says only that he has “been thinking about it more”; and, “We have no further comment. Seriously.”

1 After running Wolff’s driver’s license, Kahn left the scene without ordering Wolff to desist.

2 Legally, a police detention has occurred when “a reasonable individual” in that circumstance would be believe he or she is not free to leave.

Image: A photograph shot by Sander Roscoe Wolff on June 30 before he was detained by Long Beach Police. (Click image to enlarge.)

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