

PRESS PHOTOGRAPHERS ACHIEVE HISTORIC SETTLEMENT WITH NEW YORK CITY POLICE DEPARTMENT

Federal civil rights lawsuit arising from George Floyd protests results in agreement by NYPD to respect First Amendment rights of journalists and the public

Sept. 5, 2023 – Five renowned photojournalists today joined in a settlement agreement with the New York City Police Department (NYPD) that promises to transform police conduct and training while reinforcing the First Amendment protections accorded to both journalists and the public.

The settlement resolves a federal lawsuit brought three years ago by Davis Wright Tremaine LLP, in partnership with the National Press Photographers Association (NPPA), and noted civil rights attorney Wylie Stecklow, on behalf of five prominent photographers who were assaulted and/or arrested in New York City while covering the racial justice protests of 2020.

“The treatment that our clients received at the hands of the NYPD was not only unconstitutional, it was unconscionable, and a direct threat to our democratic principles,” said attorney Robert D. Balin, who led the litigation for Davis Wright. “I’m proud that these brave photojournalists chose to hold the police department accountable for their actions and I look forward to seeing the terms of this settlement implemented for the benefit of all journalists.”

“Journalists are an essential part of a functioning, civil society and it’s essential that they be allowed to conduct their work free of harassment and assault, especially from state actors,” said Mickey H. Osterreicher, general counsel to the NPPA. “On behalf of our members and all visual journalists, who perform a vital role as watchdogs and witnesses to history, I am very pleased with the terms of this agreement and the changes to police behavior that it demands.”

Under the terms of the settlement agreement, the NYPD is now obligated to implement policies and trainings designed to ensure that members of the press are free from the threat of wrongful arrest and harassment.

Among its key terms, the agreement:

- flatly prohibits NYPD officers from arresting, restricting, or interfering with members of the press for merely observing or recording police activity in public places;
- requires that the NYPD provide journalists with access “to any location where the public is permitted” and bars NYPD officers from putting up crime/accident/incident scene tape or establishing “frozen zones” for the purpose of preventing members of the press from viewing or recording events in public places;
- mandates that neither a press pass nor any other form of press identification is needed to observe or record police activity occurring in public places, including areas where protests, crimes, or other matters of public concern are taking place;
- permits credentialed journalists to continue to do their jobs and remain in the area even after a dispersal order is issued to the general public;
- discourages unconstitutional “catch and release” practices, under which journalists have all-too-often been unlawfully detained at police stations for hours before charges against them are finally dropped; and
- requires that the NYPD recognize the legitimacy of press passes that are issued by jurisdictions outside New York City.

In the agreement, the NYPD also—for the first time ever—formally acknowledges that the press has a clearly established First Amendment right to record police activity in public places, and commits itself to respect that right.

Equally important, the settlement agreement also requires that the NYPD provide extensive annual training to all of its officers—ranging from police academy cadets to high-ranking executive personnel—on the First Amendment rights of the press and establishes a police-media relations committee to monitor and discuss future incidents involving the press. Additionally, for a period of three years, a committee headed by the New York City Department of Investigation will monitor police activity at protests to ensure that the NYPD complies with its commitments to respect the rights of peaceful protesters, journalists, and legal observers.

While pervasive mistreatment of journalists covering the George Floyd protests was the catalyst for this litigation, the scope of the agreement reaches much further. “The provisions in this settlement agreement related to the press are not limited to protest situations,” said Balin. “These are big, important First Amendment principles that apply whenever members of the press are covering police activity in public.”

Abigail Everdell, a Davis Wright lawyer who has been working on the case since its genesis, added: “In New York City, of all places, no journalist should ever fear arrest or assault for simply doing their job. Police must learn how to facilitate newsgathering on important events, not react violently against it. That is precisely what this settlement agreement aims to accomplish.”

These terms are all part of a larger settlement announced today of several consolidated lawsuits that were brought on behalf of peaceful protestors by the New York State Attorney General’s Office, the New York Civil Liberties Union, The Legal Aid Society, the civil rights firms Cohen & Green PLLC and the Aboushi Law Firm PLLC, and civil rights lawyer Gideon Oliver.

The parties in the consolidated lawsuits today filed a joint motion asking the court overseeing the litigation to retain jurisdiction to enforce the terms of the settlement agreement for its duration and to incorporate the agreement into an order of the court.

“This is not an agreement that will simply sit on a shelf,” said NPPA deputy general counsel Alicia Calzada. “It has real teeth and real mandates for improved training of police at all levels. We are hopeful this will truly change law enforcement culture when it comes to First Amendment activities on the street.”

“The NYPD’s abuse of the media has been a systemic issue for decades and today’s injunctive settlement hopefully provides a brighter future for protest and the ability of the press and public to document police interactions at First Amendment activities and beyond in this great city,” said Wylie Stecklow. “But today’s announced settlement is not the end, it’s just the beginning of re-training and new NYPD policies to ensure there is respect and protection for the press, up and

down the NYPD hierarchy. We cannot expect the rank and file to follow these rules related to the respect of First Amendment rights of the media if high-ranking officers are able to violate the rights of the media with impunity and immunity.”

Supporting Balin in this significant civil rights litigation was a team that consisted of Davis Wright attorneys Abigail Everdell, Alison Schary, Kathleen Farley, Alexandra Settelmayer, Nimra Azmi, Megan Amaris, Jean Fundakowski and Veronica Muriel Carrioni, and paralegal Megan Duffy. Osterreicher was joined by the NPPA’s deputy general counsel, Alicia Calzada.

The five plaintiffs in the case—Amr Alfiky, Diana Zeyneb Alhindawi, Mel D. Cole, Jae Donnelly, and Adam Gray—are widely respected visual journalists who have published their work in leading global news outlets, including Reuters, The New York Times, The Times of London, The Guardian, The Wall Street Journal, National Geographic, Paris Match, Le Monde, CNN, the BBC, The Atlantic, Rolling Stone, and more.

Amr Alfiky was arrested while photographing police activity on the Lower East Side and, in a second incident, violently attacked by an officer while covering protests at the Barclays Center in Brooklyn. Diana Zeyneb Alhindawi was hit in the face by a baton-wielding officer while photographing police beating a young man in Lower Manhattan. Mel D. Cole was documenting police-protester clashes from the Brooklyn Bridge footpath when he was arrested, stripped of his cameras, and held for seven hours. Jae Donnelly was violently assaulted by a baton-wielding officer while photographing protestors in the Hell’s Kitchen neighborhood. Adam Gray was pushed to the ground without warning, arrested, and detained overnight while covering protests in and around Union Square. They will all receive monetary compensation in the settlement.

Adam Gray, former chief photographer for the British press agency South West News Service and repeat recipient of the Photographer of the Year Award by the British Press Photographers’ Association, was the first plaintiff to join the case following his wrongful assault and arrest while covering the protests.

“I’m extremely grateful for the no-cost representation provided to me and the other news professionals by Rob, Mickey, Wylie and their teams,” said Gray. “These protests happened during a critical inflection point for U.S. society, and I am hopeful this settlement will mark a major change in New York’s police culture as well.”

About Davis Wright Tremaine

Davis Wright Tremaine LLP is an AmLaw 100 law with more than 600 lawyers serving clients across the U.S. and around the world. The firm is regularly recognized as the country's leader in First Amendment litigation and has been named Law360 Media & Entertainment Practice Group of the Year six times. Robert Balin, a partner in the practice, has represented journalists and news organizations in all aspects of media and First Amendment law for more than 35 years and has been teaching media law to the next generation of lawyers as an adjunct professor at Columbia Law School for more than 15 years. He is regularly recognized as a national leader in First Amendment litigation and media law by Chambers USA, Best Lawyers, and Thomson Reuters. He is also the recipient of the National Press Photographers Association’s Kenneth P. McLaughlin Award of Merit. For more information, visit www.dwt.com.

About the National Press Photographers Association

NPPA is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing, and distribution. NPPA’s members include video and still photographers, editors, students, and representatives of businesses that serve the visual journalism community. Since its founding in 1946, the NPPA has been the Voice of Visual Journalists, vigorously promoting the constitutional and intellectual property rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism.

About Wylie Stecklow PLLC

Wylie M. Stecklow has been litigating NYPD policies and practices for more than fifteen (15) years, including cases involving journalists’ rights of access to document enforcement action by the NYPD. His civil rights practice was the first legal counsel retained by Occupy Wall Street, and he has successfully brought civil rights cases in New York, Maryland and Iowa. He is an adjunct professor at Fordham Law School (his alma mater), is the founder of the Civil Rights

Etouffee - a biennial civil rights CLE program in New Orleans, and he was awarded the Federal Bar Association's 2021 Sarah T. Hughes Civil Rights Award for a history of advancing civil and human rights.