

## NO PHOTOS ALLOWED

WHO WILL PROTECT US FROM THE PROTECTORS?

BY TIM MOHR

**W**ith the power to enforce the law comes an obligation never to live above the law. Unfortunately, police routinely break this societal bargain, so much so that we shrink at the notion of questioning the authority of cops for fear of arbitrary arrest. That speaks volumes about the state of American law enforcement today.

Take the recent arrest of Pepin Tuma, a 33-year-old white lawyer in Washington, D.C. Tuma had been discussing the Henry Louis Gates kerfuffle with friends and, apparently impassioned after the conversation, chanted “I hate the police” when he happened upon a traffic stop in the tony northwest section of the city on the way home. The police response to his use of freedom of speech? “Who do you think you are talking to?” according to Tuma. Another witness says the cop continued, “Who do you think you are to think you can talk to a police officer like that?” When Tuma—again, a lawyer—replied that it was legal to express his opinion, the officer allegedly shoved him into a utility box and called him a faggot. The next series of events is established beyond mere allegations: Tuma was cuffed, charged with disorderly conduct and taken to a holding cell. This is a disorderly conduct charge being used as a gag order against complaining about the government.

When it comes to stifling free expression, perhaps even more chilling is police treatment of photographers. It’s important first to clarify that it is legal to photograph anything that can be viewed in or from a public space—and certainly that includes (and damn well should include) public officials. But as a practical matter, police are loath to be captured on film, and this sometimes spills into harassment of those taking pictures. One person who knows this is Carlos Miller, who started a website—headlined PHOTOGRAPHY IS NOT A CRIME—to compile news on crackdowns against photographers after he had a run-in with the Miami police while taking pictures on a public street in 2007. After a lengthy process Miller was eventually found guilty in 2008 of resisting arrest, prompting the Society of Professional Journalists to release a statement: “The fact that Mr. Miller

was arrested for taking pictures in a public place was the first violation of his First Amendment rights. Those rights were violated again when Mr. Miller’s statements in his blog became factors in his sentence.”

Ordinary police are not the only culprits, and sometimes the orders apparently come from on high—from the very top even. When Michelle Obama went to get a burger and onion rings at Washington, D.C.’s Good Stuff Eatery this past summer, Secret Service agents entered and confiscated camera phones from other patrons so no photos could be taken of her visit. No wonder the National Press Photographers Association took issue with Homeland Security secretary Janet Napolitano in July when she urged Americans to report to

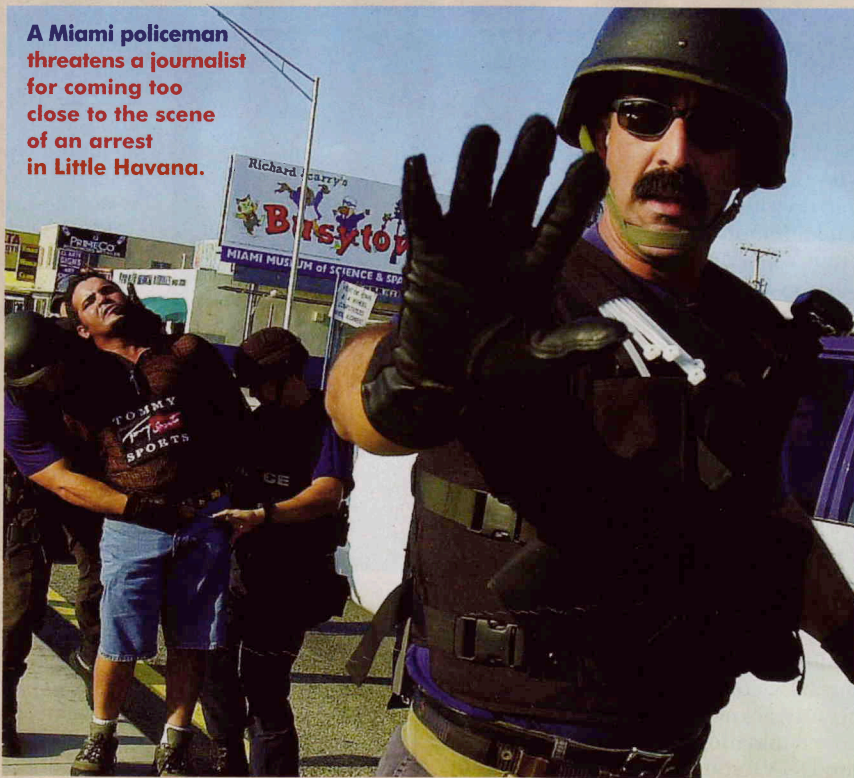
the police “someone continually taking photographs” as a potential terrorist.

This attitude is apparently so ubiquitous among New York City law enforcement personnel that the NYPD issued an “operations order” earlier this year on the subject, alerting the force that not all photography is terrorism. It explains to rank-and-file cops that “members of the service may not demand to view photographs taken by a person absent consent or exigent circumstances,” that “a person who has taken pictures should not be directed to delete or destroy images stored within a device” and that subway and commuter

rail regulations “expressly permit photography and video recording.” The dissemination of that order followed not long after an off-duty subway worker was arrested for taking pictures of a train despite citing to the arresting officers the specific paragraph of the transit authority code that permits photography.

The point of our system of government and the documents that established it was to avoid this sad state of affairs, to make clear that the government’s power and legitimacy derive solely from the citizenry and, with the Fourth Amendment, to ensure clarity on that issue at the individual level. In frequently and arbitrarily harassing, tasing and arresting fellow citizens over petty slights (though the same would be true no matter how great the slight), for personal or departmental convenience (such as obscuring their own missteps)

**A Miami policeman threatens a journalist for coming too close to the scene of an arrest in Little Havana.**



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## FORUM



Miami cops (left) bust Carlos Miller for taking their photo without permission. When police shot and killed Oscar Grant on an Oakland train platform (right), citizens documented the scene. In Philadelphia (below), police stop photographers from taking video of a questioning.



or on grounds tangential to enforcing the spirit or letter of any law, the police do more than muddle this arrangement; they subvert it at the most fundamental level.

The founding fathers did not frame their arguments with the same austerity Ice Cube did while writing rhymes for N.W.A, but it is not ahistorical or inaccurate to say their

thinking, formed against the backdrop of the arbitrary exercise of power by the British crown and its agents, was the same when it came to defending freedom from overreaching government representatives. It's time to reverse the current trend and force law enforcement agents to uphold—or at least comply with—our ideals.

### CONTEMPT OF COP

It's not a good idea to mouth off to the police, but it shouldn't be against the law

Strip away the layers behind the Henry Louis Gates incident and you are left with this core: a citizen being arrested for voicing displeasure with a government agent—that is, engaging in explicitly political speech—in his own house. Ignore the media hype. As far as we're concerned, the lesson to be learned from this is unambiguous, but it has nothing to do with race (or class, for that matter). It is a textbook example of the authoritarian mentality behind much of today's law enforcement—a classic case of police abusing the law to arrest someone for "contempt of cop." Massachusetts dis-



orderly conduct laws used to criminalize "abusive language" and "unreasonable noise or offensively coarse utterance, gesture or display." But the state courts found that unconstitutional: Mouthing off to a police officer—or any fellow citizen—is protected by the First Amendment, uniform and sidearm be damned. Yet cops in Massachusetts and across the country continue to bust out disorderly conduct charges whenever they please. Being unpleasant or erratic is not a crime, and we must demand that police stop dealing with insults and inconveniences with force and arrest.