

May 15, 2005

Civilian Complaint Review Board,
40 Rector St.
New York, NY 10006

Sub : **Harassment and Intimidation by NYPD**

Dear Sir,

I am a film-maker from India, on a screening tour through USA since March 22 with my latest film across several universities including NYU, Ann Arbor (Michigan), University of Pennsylvania, Hawaii, Wyoming, Georgetown, Vermont to name a few. The film – **Final Solution** – has won over a dozen international awards at various prestigious international film festivals in Berlin, Hongkong, Zanzibar and at the Three Continents film festival (France) and Big MiniDV film festival (New York; Long Island University). The UK-based Index on Censorship (which monitors instances of censorship worldwide) felicitated the film in March 2005 by giving it the **Freedom of Expression award** (Best film). I enclose some information about the film in the annexure titled "A note about the film".

I write to you to lodge a formal protest and a complaint about my harassment by NYPD on May 13 while I was taking some candid shots with my tourist-grade Sony palmcorder (PDX 10P). For nearly 3 hours, I was 'detained' for no apparent reason, physically and verbally assaulted by a plainclothes detective and harassed and questioned by several others. Since I am not a US citizen, I am not totally familiar with nuances of US police procedures and laws safeguarding against abuse but it appears to me that several of my rights were wilfully compromised. I enclose details of the harrowing episode as an annexure titled "sequence of events".

As is apparent from the detailed account, I was subjected to needless mental and physical anguish in spite of my co-operation with your officers. I not only promptly identified myself, showed them my papers and answered all their questions but also repeatedly suggested several ways to establish my antecedents as an internationally reputed film-maker. Though I am sure you would take appropriate action, I am deeply perturbed about a few issues, which I'd like you to respond to as well:

1. Do visitors to New York need police permission to click photographs and take random, candid shots on the streets of Manhattan? If not, was I deliberately misinformed and misled by one of NYPD detectives? Further, what should a visitor do when accosted by a seemingly 'off-duty' police officer and falsely accused of taking shots of "sensitive buildings"? Is the Metlife building a sensitive building and if yes, why are there no signs prohibiting photography? Did the officer have justifiable cause to detain and interrogate me for a prolonged period and cause my humiliation in front of hundreds of passers-by and customers at the local Starbucks outlet? Was the officer right in confiscating my passport? Though I was never arrested formally, I was not free to leave, not allowed to use my cellphone, not even allowed to buy water from Starbucks, right outside which I stood 'detained' on the sidewalk for nearly two hours!

2. Does the application for a visa to visit USA imply the suspension of all rights while the visitor is in USA? I specifically suggest that during my 'detention' and 'interrogation', several of my rights were violated including but not limited to my personal right to free speech as well as my right to freedom of expression as a film-maker. Additionally, my individual civil liberty rights were violated repeatedly during the 'interrogation' by 3 different sets of officers - the detective who detained me, the Sergeant and the two senior detectives who finally 'released' me. I further suggest that my right to privacy was violated repeatedly and my artistic rights were violated through a scrutiny of the footage shot by me, especially since it was done at the 17th precinct after my identity had firmly and formally been established. May I also point out to you that though this specific tape contained no interviews of any kind, an illegal preview by your

detectives would invade the privacy of any of the subjects interviewed by a film-maker! What follows then - harassment and raids for those who consented to be interviewed?

3. I was physically and verbally assaulted by an NYPD detective even after I had clearly identified myself, produced my passport and offered to put him in touch with my hosts - Professors at Columbia University as well as the New School. I felt his entire tone and tenor to be racist in nature and found him to be intimidatory. It was my impression that the officer's hostility towards me was driven at least in part by the fact that I am brown-skinned and have a beard. To quote him - "We know how to deal with you guys, asshole". Though later he did offer me a conditional apology "if I was all clear", the question that begs to be asked is - even if I weren't "all clear", does the officer have a right to abuse me physically and verbally, intimidate me and violate my rights?

Sir, I have been under the impression that USA is a democracy. Since I come from India, the largest democracy in the world and a country which has lived under a threat of terrorism for decades, I have been deeply distressed to notice through various newspaper reports the ease with which peoples' fundamental rights and civil liberties can be violated in USA in the name of War on Terror. Now, I have my own personal experience to cite. Sir, may I suggest that such intimidation by your officers clearly do not win your department, the city and the country a deep appreciation of the concept of liberty and freedom of expression enshrined in your Constitution.

I request you to order an enquiry into my harassment by NYPD and take punitive action against officer(s) responsible for it. I expect a written apology as well as your assurance that formal steps would be taken to ensure that visitors to your city are not harassed and intimidated by NYPD. Since I am leaving USA on May 16, may I offer to respond by email to any questions that your investigators may have to further clarify, if necessary, the nature and degree of intimidation I was personally subjected to and extent of violation of my rights. Though I am sure you'd examine the issues involved in detail, please advise me whether I need to seek legal assistance for prompt redressal of my complaint and to ensure that I am appropriately compensated for the physical and mental anguish I have suffered as a result of humiliation and intimidation by your officer(s). I have stopped shooting in New York (even though I had plans to do so) due to the consequent anxiety and apprehension of further intimidation by NYPD.

I have copied this mail to several people and agencies. Over the next few weeks, I am also approaching friends and colleagues in the film-making community worldwide for their help and support; they are far too numerous to be individually copied. I look forward to an early and comprehensive response.

Kind Regards

Rakesh Sharma

Email : actindia@vsnl.com; US cellphone : 201 920 0537; India cellphone : +91 98203 43103
PO Box 12023, Azad Nagar post office, Mumbai 400061, India

cc : 1. Sanjay Ruparelia, Columbia University
 2. Prof Arjun Appadurai, New School, NY
 3. Minister for Information and Broadcasting, Government of India, New Delhi
 4. Ambassador Ronen Sen, Indian Embassy, Washington DC
 5. The Mayor, New York city
 6. Chief of Department, NYPD
 7. American Civil Liberties Union (ACLU), NYC
 8. The Centre for Constitutional Rights, NY
 9. Index on Censorship, UK

A note about the film : Final Solution (India; 2004; shown at 60 international film festivals).

Awards :

Wolfgang Staudte award (Best film at the International Forum for New Cinema) and Special Jury Award (Netpac), **Berlin International filmfest** (2004).
Montgolfiere d'Or for Best Documentary and Le Prix Fip/Pil' du Public – (Audience award), **26th Festival des 3 Continents** at Nantes (France; 2004).
Humanitarian Award for Outstanding Documentary, **HongKong International filmfest**(2004)
Best Film, **Freedom of Expression awards** (2005) by Index on Censorship
Best Feature -length Documentary, **Big MiniDV** (USA; 2004)
Silver Dhow, **Zanzibar International film festival** (2004)
Special Jury Mention, **Munich Dokfest** (2004)
Nominated for the prestigious **Grierson Awards** (UK; 2004)
Special Jury Award, **Karafilmfest** (Pakistan; 2004)
Special Mention, **Bangkok International film festival** (2005)
Special Award by NRIs for a Secular and Harmonious India (NRI-SAHI), NY-NJ, USA.
Special award by AFMI (North America)

Final Solution is a study of the politics of hate. Set in Gujarat during the period Feb/March 2002 - July 2003, the film graphically documents the changing face of right-wing politics in India through a study of the 2002 ethnic violence in Gujarat. Final Solution is anti-hate/ violence as "*those who forget history are condemned to relive it*".

At **Berlin**, the **jury citation** said : "...An epic documentary focussing on a culture of hatred and indifference. The directness, clarity and accuracy of the film enables the viewer to both reflect on the universality of the subject matter and relate this to his or her own human attitudes..."

The **Durban International filmfest** called it "A powerful and articulate plea for tolerance" while **Fribourg International film festival** said it is "A brilliant documentary which imposes itself like a work of reference in political documentary cinema."

Sequence of Events : May 12 ; approx 3 pm - 6:20 pm

Locations : Corner of 39th St and Park Ave and 17th precinct, Manhattan

On May 12, a screening of the film was scheduled at New School, NY (66W 12th st.) , co-organised by the school and Columbia University. I arrived in New York from LA where I held my previous screening. On May 12 and 13, I was staying at Hotel Bedford (118 E, 40th St., between Lexington and Park Ave).

On May 13, I left my hotel around 2.30 pm to walk around the city and shoot some cityscapes, which I normally do in various prominent cities worldwide in the course of my travel to film festivals. I walked around the block and found an interesting visual – yellow cabs emerging from the underpass and receding against the backdrop of tall buildings. I took several shots and started walking to the next block, en route to Times Square (Broadway) when I was approached by a gentleman wearing a pair of jeans and a shirt, who flashed or rather rapidly flipped a badge and identified himself as Detective Elimeyer of NYPD. He asked me to identify myself and accompany him back to the corner of 39th St. and Park Avenue. I complied and gave him my passport. I also told him I was a film-maker visiting the city, had a screening the previous evening attended by over 100 people and was staying at the Bedford hotel. He asked me why I was taking shots of the Metlife building for over half an hour, to which I responded by telling him that I had no specific interest in the building; I was primarily shooting traffic and had tilted up to the only well lit building getting direct sunlight among a cluster of other buildings in shadows. I also told him that I was working on a multi-country film that involved seeing a city through the eyes of a taxi driver; that these shots might form exterior shots for my conversations with them as they drove around. The detective told me that he found me suspicious because I had been shooting at the spot for half an hour; he happened to be parked there as his car had broken down. I thought I had allayed his apprehensions by promptly identifying myself and even

offering to even put him in touch over cellphone with my hosts in New York city - professors at the two universities responsible for the screening of my film the previous evening. He asked me to wait while he summoned two patrolmen from across the street to watch over me while he made some calls. As soon as he finished, I asked him whether there was a continuing problem.

He then told me that I needed to be investigated further. He insisted that I was shooting a "sensitive" building. He said " it was okay if you were walking and shooting for a minute or two", at which point I asked him whether there was a law I had broken or if I needed police permission to take candid shots on the streets of Manhattan or whether there was indeed a ceiling on the number of minutes I could shoot at a spot. He said less than 5 minutes was fine but when I asked what about 15 or 20 or more, he said - "buddy, that's going to be a big problem". I told him I was going to be in NY for another couple of days and may take more shots, especially at the WTC memorial as well as visit several spots immortalized by Woody Allen in his film Manhattan, esp the Brooklyn bridge. The detective advised me to take prior permission from every precinct before I took a shot. Since it sounded preposterous to me, I asked him whether it was really a law and whether NYPD handed formal permissions centrally. He asked me to " go to One, Police Plaza" for such permissions like people who shoot films on streetcorners/ public spots with actors and heavy equipment. I reminded him I was a tourist and a documentary film-maker; not making a big budget Hollywood film! He continued to insist that by virtue of standing at one spot and taking shots for half an hour, I had indulged in "suspicious behaviour". I suggested to him to ask anyone at his precinct to do a google search with my name and the title of the film - they'd find hundreds of webpages, details about me and even my photographs online, clicked at various filmfests worldwide.

He then told me he wanted to look into my shoulder bag (which has no flaps; it is open anyway). When I asked him whether that was legal, he said - "I am asking you for your permission. Are you denying me your permission? What are you hiding anyway? Do you have something to hide? And what is in your pockets?". Even though I felt that it was illegal, but, since the detective had already been intimidatory, had seized my passport and I wanted the situation to be quickly resolved, I allowed him a peak into my bag which contained an umbrella, a banana, a copy of the New York Times cityguide and a copy of Time Out, NY. He walked a few paces away to speak to one of the patrolmen when I turned the player mode 'on' and was in the middle of offering to playback the shot to him to set his apprehensions totally at rest when he charged at me, shoved me, snatched my camera and said to me – "We know how to deal with you guys, asshole". He said he was "authorised to punch me if necessary". I was stunned and as I tried to speak to him, he told me "stay right there" ; I told him to at least switch the camera/ player off so the battery did not get drained. He further told me – "Don't move, you are lucky it is me or else you would be down there (pointing to the ground) with hands cuffed behind your back." He accused me of trying to erase my footage, an allegation I found shocking. I denied it firmly.

He then walked away and made some more calls from his cellphone. As I had found his aggression to be near-brutal and completely unwarranted, I asked the patrolmen why the detective misbehaved; they said "they didn't know". Since I was apprehensive about my physical safety at the hands of an abusive police officer, I asked the patrolmen whether I could use my cellphone to make some calls (basically to call up my hosts and some journalist friends in the city). The patrolman said he didn't have any problem but I shouldn't as the detective seemed to have a problem with me.

For nearly two hours, I was made to stand on the sidewalk outside Starbucks, with my camera and passport in the detective's possession, not allowed even to move, not allowed to use my phone. During this time Sgt McCann arrived and questioned me, asked me for any other professional ID, which I furnished. I repeated most of the information to him as well. I asked him whether I could at least buy water from the Starbucks outlet; he refused and asked a patrolman to take the money from me and get me a water bottle. At this point, I asked Det.

Elimeyer whether we were waiting for anything further, he informed me that more experienced detectives were on the way. He said to me in the presence of the two patrolmen - "no hard feelings". I interjected with - " But you did call me an asshole". First he denied it and when I pointed out that the patrolman had heard him too, he said - "when this is over and you are in the clear, I'd be the first to apologise a hundred times, even buy you a beer". He then shook my hand even as I continued to be under 'detention'.

At this point, two detectives in black suits in an unmarked car arrived and though they both identified themselves, I only remember one name - Det. Daniel D'Alessandro (who later, while finally 'releasing me' gave me his contact details : Cold case squad, phone : 718 834 4580). Det. Elimeyer and Sgat McCann briefed the two detectives and handed over my camera and passport to Det D'Alessandro's and his partner. They asked me all the standard questions - date of entry, my travel schedule within the US. I answered each query. They finally asked me whether I'd accompany them to the precinct. Since I had been given no other options, treated like a "suspect", made to stand at one spot for nearly two hours (and humiliated in front of hundreds of passers-by and onlookers), physically and verbally assaulted by Det Elimeyer and the situation seemed to be getting out of hand, I agreed under duress. Both detectives repeatedly expressed their appreciation of my compliance, drove me to the 17th precinct and returned my passport but kept my camera in their possession. In the car, I told them that about Det. Elimeyer's conduct, specifically about the way he snatched my camera and called me an "asshole". Det. D'Alessandro apologised and said - "we have some young detectives who aren't so experienced".

At the precinct, Det D'Alessandro brought in a laptop within the first 5 minutes at about 5:27 pm into the room where I was placed. In presence of both the detectives, I did a google search, which showed them hundreds of webpages about me. The BBC 4 website showed details about my film (screened by them in March 2005), an interview and my photograph. Det. D'Alessandro expressed his apologies and told me - " It shouldn't have come to this. We are sorry for this. I appreciate your coming to the precinct as it helped sort out things faster, things would have taken much longer if were still at the street corner, it spares you the embarrassment and humiliation". I told him it was a humiliating enough experience thus far and that such a thing had never happened to me before in any city anywhere the world. I said - " I'd understand if someone has a question, however, once you respond and your credentials are clear, it is okay. But Det Elimeyer misbehaved with me and was abusive." He said - "The problem is many senior detectives have been moved and the younger ones aren't trained and don't benefit from training under a senior detective". He once again offered to apologise on behalf of the detective.

My camera had been in his partner's possession and when I asked for it, he said - " you don't mind if I take a look". I asked him - "do we need to do this" and when he insisted politely yet firmly, I offered to playback the last few shots but Det D'Alessandro told me his partner was an "expert with cameras", who started to rewind the tape. I told him that the first 30-odd minutes of the tape were shot in Disneyland in Los Angeles and weren't relevant, he told me he was going to take a look anyway. When he started watching the footage, I protested. He then fast forwarded a bit, cued it to the shots I had taken in NY the previous day and specifically asked my where I had shot those; I told him these were taken from the office building at the New School, while I waited for my screening to end, before I went back to the auditorium for a Q and A.

Both detectives then left the room with my camera. Det D'alessandro peeped in twice to say his partner was "showing the footage to his supervisor" and "it'll take only a little while more". Very specifically, I did not authorise the detective to either look through all my footage or show it to anyone else or indeed even watch it himself. At the street corner and at the precinct, under duress, I had only offered to personally playback the last few shots, if necessary, to allay any suspicions that I was a potential terrorist recci-ing potential 'targets'. It took a further 29 minutes before the detectives returned. I was able to note this timeline because of the laptop; I wear no watch and use the cellphone to check time (at the street location where I was 'detained', I wasn't

allowed to put my hands in my pocket to even take out my cellphone to check time, let alone make a call!). I was finally 'released' and escorted back to the street outside the precinct by the two detectives. Det. D'Alessandro apologised again on behalf of NYPD and told me his colleague complimented me on my photographic skills.

I then proceeded on the subway to a book release event at 7 pm on West St. - a book about the cab industry in New York called "Taxi". I later noticed that the back of the LCD screen flap on my camera was scratched and a crack developed in the display window on the back of the flap. I can not pinpoint the detective responsible for the damage, but it is more than likely that the damage was inflicted when Det Elimeyer snatched my camera.

Note : I am not quite sure whether Det. Elimeyer spells his name this way. I am phonetically reproducing the name he told me; when he flipped his badge for 5 seconds, I could not read his name or rank. I only saw the shield.

Witnesses : Det. Elimeyer, Cold case squad detectives (Det. D'Alessandro and his partner), Sgt McCann, two patrolmen (who'd been on duty across the street at the corner of Park Ave and 40th St. and then stood guard), hundreds of passers-by, Customers and employees at Starbucks at the corner of 39th St and Park Ave.