

NEWARK POLICE DEPARTMENT TRAINING BULLETIN

NOVEMBER 2011



" Making a Difference "

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TOPIC:

"VIDEOTAPING AND PHOTOGRAPHING OF POLICE OFFICERS"



" Making a Difference "



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Newark Police Academy In-Service Training Bulletin

NOVEMBER 2011

"VIDEOTAPING & PHOTOGRAPHING POLICE OFFICERS"

INTRODUCTION

As Law Enforcement Officers, we are obligated to enforce laws and statutes during the course of our duties. We must also realize that *our own behavior and actions are governed by the same laws we are sworn to uphold.*

Enforceable laws can be something as minor as a traffic violation, or on a larger scale, The US Constitution and Bill of Rights.

The 1st Amendment of the Bill of Rights protects a person's freedom of speech. Freedom of speech not only means words that are spoken, but also includes actions and expressions. Examples of this could be photographing, videotaping or protesting by holding up a sign.

Recent court rulings have *clearly defined a person's constitutional rights* when it concerns videotaping and photographing police personnel.

OVERVIEW

In a 2011 court case in Boston, MA., Glik v. Cuniffe, a citizen was using his cell phone to record several Boston police officers engaged in the arrest of an individual. The citizen who was recording the police was arrested and charged with several offenses related to the use of his cell phone.

The court ruled *against* the police, stating that "*The filming of government officials engaged in their duties in a public place, including police officers performing their responsibilities fits comfortably within the principles [of protected 1st Amendment activity].*

WHAT DOES THIS MEAN TO YOU AS A POLICE OFFICER?

What this means is that citizens have a right to photograph, videotape or record police personnel as long as they do not interfere with the officers' duties. If you are uncomfortable with being filmed, that is OK! But it does *not* give you the right to place that person under arrest or order them to stop filming.



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There are rules, however, for the person using the recording device as well as the officers being recorded.

- A person can record police officers who are performing their duties using video photography or audio as long as the focus of the material being recorded is:
 - In plain view
 - In a public place
- Officers generally may not confiscate or demand to view photos or video without a warrant
- Officers may not delete photos, video or audio under any circumstances
- Officers can order citizens to cease recording only if those activities truly interfere with legitimate law enforcement operations
 - *Remember...* The right to record does not give a person the right to break the law

*** An easy way to remember the law is; If a person is taking cell phone pictures or video from a vantage point that they are legally entitled to be in... They are not breaking any law and may continue.

Ask yourself... Is the person recording the police supposed to be there? If they are, then they can legally record police actions.

- Recording you from behind a police barricade at a concert – **YES**
- Recording your partner from behind police crime scene tape – **YES**
- Walking underneath crime scene tape to get a better view – **NO**
- Recording you while you are making an arrest - **YES**

SUMMARY

Knowing the law and how it affects your job is part of your duty as a Law Enforcement officer. We are all obligated to stay current with new legislature that may influence our decisions during the performance of our duties. **REMEMBER; if you don't know the law... how can you apply the law?**

STAY ALERT, STAY ALIVE!

NPD-TB # 11-12 Inf 11.7.11

Reference: Director's Memorandum 11-808 Addendum

Glik v. Cuniffe, et. al. (First Dist. Court of Appeals 8/26/11)



NEWARK POLICE DEPARTMENT
DIRECTOR'S
MEMORANDUM



To: ALL COMMANDS Date: October 31, 2011

From: SAMUEL A. DEMAIO Police Director Number: 11-808 Addendum
Tickler: 11-989

Subject: VIDEOTAPING AND PHOTGRAPHING File Reference: PTL 1
POLICE OFFICERS xLEG 4-7

Department members are reminded that the 1st Amendment of the Bill of Rights protects the freedom of speech. Freedom of speech encompasses a wide variety of expression including the use of electronic devices which capture video images. Members of this Department must acknowledge that advances in technology and changes in society have resulted in the proliferation of devices which have the capability of recording seemingly ordinary events as well as events specifically related to our duties as Police Officers.

A recent court case in Boston involving a citizen recording, via his cell phone camera, police officers engaging in an arrest and possible excessive force incident resulted in a decision which illustrates the rights protected under the 1st Amendment. The decision handed down through the United States Court of Appeals for the 1st Circuit confirmed the rights of ordinary citizens to record public officials in the performance of their duties. In *Glick vs. Cunniffe, et. al.*, the court wrote:

"The filming of government officials engaged in their duties in a public place, including police officers performing their responsibilities, fits comfortably within these principles [of protected First Amendment activity]. Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting the free discussion of governmental affairs."

In light of the aforementioned information, Department members shall recognize the following when confronted by citizens engaging in photographing or video recording their actions:

- A citizen engaging in recording officers who are in the performance of their duties, via photography, video, or audio means, is protected under the 1st Amendment as long as the focus of the citizen's recording is in plain view and in a public place,
- Officers may generally not confiscate or demand to view photographs or video without a warrant.
- Officers may not delete photographs or video under any circumstances.
- Officers may legitimately order citizens to cease activities relating to their recording only if those activities truly interfere with legitimate law enforcement operations. The right to photograph or video does not give the citizen the right to break any law.



**NEWARK POLICE DEPARTMENT
DIRECTOR'S
MEMORANDUM**



This Memorandum shall be the subject of roll call training for a period of three (3) weeks.

All Bureau Commanders shall forward a signed copy of this Memorandum, indicating receipt and understanding, to the Office of the Police Director on or before November 14, 2011.

BY ORDER OF:

**SAMUEL A. DEMAIO
POLICE DIRECTOR**

SDM/DSL:jp