

## TRAINING BULLETIN NO. 2018-001

**TO: Police Personnel**  
**FROM: Warren Spencer, Legal Advisor**  
**RE: Persons videotaping the police, part 2**

This is an update to Training Bulletin 2017-001. That bulletin addressed the likelihood that courts would find some sort of protection for persons who are videotaping the police.

The US 5<sup>th</sup> Circuit decided the case of *Turner v. Lieutenant Driver*, 848 F3d 678. In that case the court reviewed the detention of a person who was videotaping the police station. This was a lawsuit brought by Mr. Turner, the person who was detained, against the officers and supervisor who participated in the detention.

A short recitation of the facts might help. Mr. Turner was standing on a public sidewalk across the street from the police station. He was videotaping the police station. Two officers approached him, asked him what he was doing and asked for identification. Turner refused to identify himself or answer their questions. He was handcuffed and placed in the back of a patrol car. A supervisor was called and after an unspecified period of time Turner was released. He sued the officers and the city.

One of the issues raised in the case was whether or not it was clearly established in the law that a person has a protected 1<sup>st</sup> amendment right to videotape the police. The 5<sup>th</sup> Circuit held that at the time of the encounter that right was not “clearly established.” It should be noted the officers’ claim for qualified immunity was denied on the false arrest claim.

The 5<sup>th</sup> Circuit held that, going forward, persons have a protected 1<sup>st</sup> amendment right to videotape the police. The government can impose reasonable restrictions, e.g. a videographer can’t walk into a crime scene or a crash site to film when those actions interfere with the police officer’s ability to render aid or do her job. The Court stated:

“We note that when police departments or officers adopt time, place and manner restrictions, those restrictions must be ‘narrowly tailored to serve a significant government interest.’”

A significant government interest is a relatively small category. For example, the following actions might be considered an unreasonable interference with significant government interests: (1) actions which place members of the public in immediate danger; or, (2) actions that physically interfere with an officer’s ability to work – stepping up to a crashed vehicle to film while the officer is assisting an injured occupant. The list of activity that would permit the police to interfere with the 1<sup>st</sup> amendment right to videotape the police will be very short. The nature of the action in each situation will dictate whether or not it is reasonable to interfere with the videotaping.

Simply recording the police from a public vantage point will not suffice as a basis to interfere with the videotaping, unless officers can specifically identify a danger or interference. Recording the police during a traffic stop will not suffice, again subject to the limitations discussed above.

Unless an officer can specifically articulate how the videographer's actions are placing someone in immediate danger or are physically interfering with an officer's ability to carry out her duties, the officer should not interfere with the videotaping. A videographer may be detained if the officer has reasonable suspicion the videographer is involved in criminal activity. A videographer may be arrested if an officer has probable cause to believe the videographer has committed an offense. Please note – it is not a crime to videotape the police.

Officers should recall there are three types of interactions between citizens and officers: consensual encounters, detentions, and arrests. Nothing in the 5<sup>th</sup> Circuit decision would impact an officer's ability to engage in a consensual encounter with a videographer – with the understanding that a person is under no obligation to answer questions during any police encounter and is only required to identify herself following a lawful arrest for a separate charge.

Lastly, can officers seize a recording device if the officer has a reasonable belief it contains imagery that could serve as evidence? The answer is most likely no. We know the police may not seize a journalist's recording device to search it for evidence and there is no reason to believe the rule would be different for any other videographer. The one possible exception might, emphasis on "might", be that the video image contains information that would assist the officer in saving a life, e.g. images that show where a kidnapper has hidden his victim – but even this is not clearly established in the law. Any officer confronted with such a possibility shall contact a supervisor for guidance.

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**Date:** 1/4/18

**Reviewed by:** 

**Date:** 1/10/18