

Can You Be Arrested For Taking Video of the Police?

August 31, 2011 – There are a variety of cases winding their way through federal and state court systems concerning the rights of citizens who choose to video tape police or other government employees while they are on the job. The cases pit privacy against the First Amendment rights of free speech and freedom of the press. And because the police have arrested a number of people for taping them, these cases just ooze with all of the makings of conspiracy theories and big brother thuggery. Now there comes a decision from the 1st Circuit Court of Appeals that will not make the police happy, and which actually may throw fuel on the fire.

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You might think that there is nothing wrong with standing on the corner and filming a police traffic stop or an arrest. But the police don't necessarily see it that way and they are using anti-wire tapping laws to arrest people when they don't comply with requests to stop the video taping.

There are 12 states that have laws that require the consent of anyone being tapped, but nine of these states have exceptions for taping in public. The Supreme Court has repeatedly ruled that when people are in public, they have no expectation of privacy. The two states that don't have such an exception in their laws are Massachusetts and Illinois. And with the First Circuit ruling, the law in Massachusetts was just effectively changed.

The court ruled that openly taking a video of police officers engaged in their duties is an unambiguously a First Amendment Right. The court further ruled that police that arrest people for video taping them were not immune from being sued for violating the First and Fourth Amendment rights of the person being arrested.

The ruling came as a result of the arrest of an attorney by the name of Simon Gilk for video taping Boston police while they were making an arrest. The police arrested Gilk, supposedly for violating the state's anti-wire tapping law, helping a prisoner escape and disturbing the peace. Although the case was dropped, Gilk filed suit.

The ruling by the court was very strongly worded and leaves no doubt that Gilk was within his rights to do what he was doing. "Changes in technology and society have made the lines between private citizen and journalist exceedingly difficult to draw. The proliferation of electronic devices with video-recording capability means that many of our images of current events come from bystanders with a ready cell phone."

They went on to say that, "a straightforward reading of the statute and case law cannot support the suggestion that a

recording made with a device known to record audio and held in plain view is "secret." The police involved in Gilk's arrest admitted knowing that Gilk had a cell phone and that he was openly displaying it as he filmed them.

The ruling leaves only Illinois in the position of offering no protection to its citizens when engaged in the filming of the police. And there is a case in Illinois right now where a man, Michael Allison, is facing up to 75 years in prison for doing something similar to Gilk.

In Allison's case, he had filed a harassment suit against the police over enforcement of local zoning laws. In one of the confrontations he had with the police, he openly recorded the incident. The police cited him and a court date was set. The day prior to the court date, he requested that a court reporter be present. He also let the court clerk know that if the request for a court reporter was denied, he would make an audio recording of his court proceedings.

When he arrived at court the next day, there was no court reporter so he turned on the recorder on his cell phone. Then the judge asked him if he had a recorder present and if it was turned on. When he answered yes to both questions, the judge had him arrested for violating the judge's privacy rights under the state's anti-wire tapping law.

The judge had Allison thrown in jail for the recording and also charged him with four other counts for recording conversations with the police. Each felony count carries up to 15 years in prison.

Allison's case demonstrates a complete abuse of government power. Depending upon its outcome, and the outcome of other similar cases in other federal circuits, the cases could eventually find their way to the Supreme Court. If other federal circuits rule differently than the 1st Circuit, only the Supreme Court would be in a position to settle the matter for the entire country.

Our hope is that the courts side with those making the video tapes. The public has a right to know what government employees "police or otherwise" are doing when they are in public. They should have no right to privacy that wouldn't be extended to non-government employees who were also out in public.

The First Circuit ruling covers the states of Massachusetts, Rhode Island, New Hampshire, Maine and the territory of Puerto Rico. Other circuits are likely to take the ruling into consideration but they are not obligated to rule the same way.

by Jim Malmberg

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