

*Creates exemption to prohibition on recording conversations for person **openly** recording law enforcement officer while officer is performing official duties in **public** place.*

This is a rule of law already extant in case law and broad public practice. It is also part of case law that OPEN recordings where police are explicitly notified from the start may be recorded.

This law may prevent departments who remain ignorant of this from 1983 suits and officers from charges under Oregon and Federal Statutes from being charged with obstruction of justice and tampering with evidence or its creation. Citizens have a First Amendment right to create evidence of a violation of their rights in general and Fourth Amendment rights in particular.

The State of Oregon creating such a law as this clarifies the scope of employment of officers tampering with evidence. Without it, State and Local Agencies can be civilly liable. With this law it puts far more of that liability civilly and criminally on the individual officer. This is for the protection of the People in common, as well as the individual citizens. Officers have qualified immunity with broad latitude. When they act outside the scope of their employment, they need to be held accountable.

## Case Law On Public Videotaping of Police and Other Officials:

Those of us who are public officials and are entrusted with the power of the state are ultimately accountable to the public. When we exercise that power in public fora, we should not expect our actions to be shielded from public observation.

— Judge Emory A. Plitt, Jr., *Maryland v. Graber*

[http://www.aele.org/Md\\_Graber.pdf](http://www.aele.org/Md_Graber.pdf)

"Any governmental interest in protecting conversational privacy is not implicated when officers are performing duties in public places." *Am. Civil Liberties Union of IL v. Alvarez*

<https://www.youtube.com/watch?v=hheZHNDfmPk>

<http://law.justia.com/cases/federal/appellate-courts/ca7/11-1286/11-1286-2012-05-08.html>

<https://www.youtube.com/watch?v=2DxltZb1RIM>

ANTONIO MUSUSECI ; Plaintiff, v. UNITED STATES  
DEPARTMENT OF  
HOMELAND SECURITY et al.,

FPS will provide a written instruction to its officers and employees engaged in law enforcement, stating that for federal courthouses under the protective jurisdiction of

FPS, there are currently no general security regulations prohibiting exterior photography by individuals from publicly accessible spaces, absent a written local rule, regulation, or order. The instruction will also inform FPS officers and employees of the public's general right to photograph the exterior of federal courthouses from publicly accessible spaces. Counsel for defendants will provide written notice to counsel for plaintiff upon issuance of such a written instruction.

[http://www.nyclu.org/.../Final Stip and Order 10.18.10.pdf](http://www.nyclu.org/.../Final_Stip_and_Order_10.18.10.pdf)

[http://www.nyclu.org/files/releases/FPS%20Photography%20Bulletin%208-2-2010%20\(redacted\).pdf](http://www.nyclu.org/files/releases/FPS%20Photography%20Bulletin%208-2-2010%20(redacted).pdf)

Glik v. Cunniffe, 655 F.3d 78 (1st Cir. 2011) was a case at the United States Court of Appeals for the First Circuit that held that a private citizen has the right to record video and audio of public officials in a public place, and that the arrest of the citizen for a wiretapping violation violated the citizen's First and Fourth Amendment rights.

[http://scholar.google.com/scholar\\_case?case=10945354769903429853&q=Glik+v.+Cunniffe](http://scholar.google.com/scholar_case?case=10945354769903429853&q=Glik+v.+Cunniffe)

Garcia v. Montgomery County, Maryland et al  
Assault/Arrest/False Charge of Disorderly Conduct for  
attempt to photograph on a public thoroughfare.

42:1983 Civil Rights Act

[https://nppa.org/sites/default/files/garcia\\_complaint.pdf](https://nppa.org/sites/default/files/garcia_complaint.pdf)

Statement of Interest from DOJ

[http://www.justice.gov/crt/about/spl/documents/garcia\\_SOI\\_3-14-13.pdf](http://www.justice.gov/crt/about/spl/documents/garcia_SOI_3-14-13.pdf)

Christopher Sharp v. Baltimore City Police Department, et. al. Confiscation and Destruction of Recording of Video: Opinion of DOJ in SHARP, Plaintiff, v. Civil No. 1:11-cv-02888-BEL BALTIMORE CITY POLICE DEPARTMENT, et al.

"If the facts alleged in Mr. Sharp's Complaint are true, they make out a violation of the Fourteenth Amendment. Defendants have not submitted any evidence suggesting that they have remedied the alleged violations, so summary judgment on this claim should be denied. " JOSHUA C. DELANEY (Bar #024664)

Trial Attorneys U.S. Department of Justice Civil Rights Division

Email: [joshua.delaney@usdoj.gov](mailto:joshua.delaney@usdoj.gov) [http://www.justice.gov/crt/about/spl/documents/Sharp\\_SOI\\_1-10-12.pdf](http://www.justice.gov/crt/about/spl/documents/Sharp_SOI_1-10-12.pdf)

"Supervisors should be present at the scene to approve any arrest for conduct related to the use of cameras or recording devices. For example, an arrest for quality of life offenses, including "hindering" or "loitering," may be based upon the individuals' alleged interference with police duties while using a recording device. See, e.g., Justin Fenton, In Federal Hill, Citizens Allowed to Record Police – But Then There's Loitering, The Baltimore Sun, February 11, 2012 (BPDBPD should clarify the role of supervisors. A supervisor's presence at the scene should be required before an officer takes any significant action involving cameras or recording devices, including a warrantless search or seizure. If feasible, supervisors

should be present prior to an individual's arrest related to the use of a recording device. At a minimum, supervisors must be present to approve such arrests before an individual is transported to a holding facility.

BPD's general order does not include mandatory language requiring supervisors to be present during these occurrences, but rather advises supervisors to be present "if possible." General Order J-16 at 4."

[http://www.justice.gov/crt/about/spl/documents/Sharp\\_ltr\\_5-14-12.pdf](http://www.justice.gov/crt/about/spl/documents/Sharp_ltr_5-14-12.pdf)

See *Schneckloth v. Bustamonte*, 412 U.S. 218, 228 (1973) ("[T]he Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force. For, no matter how subtly the coercion was applied, the resulting 'consent' would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed.").

<http://supreme.justia.com/cases/federal/us/412/218/case.html>

<http://www.law.cornell.edu/supremecourt/text/412/218>

CARLA GERICKE, Plaintiff Appellee v GREGORY C  
BEGIN WEARE POLICE CHIEF

"Accordingly, we hold that the district court properly denied qualified immunity to the officers on Gericke's section 1983 claim that the wiretapping charge constituted retaliatory prosecution in violation of the First Amendment. Affirmed."

<http://media.ca1.uscourts.gov/pdf.opinions/12-2326P-01A.pdf>

In *Robinson v. Fetterman*, 378 F.Supp.2d 534, 541 (E.D. Pa. 2005), the court ruled that there is a free speech right to film police officers in the performance of their public duties. Robinson claimed to be concerned about the way police were conducting truck inspections on a local road, so he decided to document their behavior by filming them from an adjacent property. Robinson videotaped from a position approximately 20 to 30 feet from the highway and never physically interfered with police activities. The police told him to knock it off and, when he refused, they arrested him for harassment.

Robinson was convicted of harassment, but the conviction was overturned on appeal, and Robinson filed a § 1983 action against the troopers. The judge found that no officer could reasonably believe that Robinson was violating the Pennsylvania harassment law. The court ruled against the troopers and took the rare step of awarding punitive damages against the individual officers in addition to general compensatory damages.

*Robinson v. Fetterman*, 378 F. Supp. 2d 534 - Dist. Court, ED Pennsylvania 2005

[http://scholar.google.com/scholar\\_case?case=14311957668125449626](http://scholar.google.com/scholar_case?case=14311957668125449626)

42 U.S. Code § 1983 - Civil action for deprivation of rights

<http://www.law.cornell.edu/uscode/text/42/1983>

Brian D. KELLY, Appellant v. BOROUGH OF CARLISLE;  
David J. Rogers, individually and as a police officer for the  
Carlisle Borough Police Department.

In *Robinson v. Fetterman*, 378 F.Supp.2d 534, 541 (E.D. Pa. 2005), the court ruled that there is a free speech right to film police officers in the performance of their public duties. Robinson claimed to be concerned about the way police were conducting truck inspections on a local road, so he decided to document their behavior by filming them from an adjacent property. Robinson videotaped from a position approximately 20 to 30 feet from the highway and never physically interfered with police activities. The police told him to knock it off and, when he refused, they arrested him for harassment.

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42 U.S. Code § 1983 - Civil action for deprivation of rights  
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding

for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATE v. UNDERWOOD TC 80,1217; CA A20054; SC 28112. 648 P.2d 847 (1982)293 Or. 389  
STATE of Oregon, Respondent On Review, v. Walter UNDERWOOD, Petitioner On Review.

We find that a reading of the interception statutes as a whole makes it clear that no interception occurs when one party records a communication. This reading is consistent with federal caselaw under a prior form of the federal law regarding interception of communications, former 47 U.S.C. § 605, which allowed recording with one party consent. See *Rathbun v. United States*, 355 U.S. 107, 78 S.Ct. 161, 2 L.Ed.2d 134 (1957).

We hold that when a police officer participates in a telephone communication with a person and records the communication, the evidence is not an "interception" under ORS 133.721(4) and is therefore not subject to suppression under ORS 133.735 when obtained without a court order.

[http://www.leagle.com/decision/19821495648P2d847\\_11461.xml/STATE%20v.%20UNDERWOOD](http://www.leagle.com/decision/19821495648P2d847_11461.xml/STATE%20v.%20UNDERWOOD)



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[http://www.aele.org/Md\\_Graber.pdf](http://www.aele.org/Md_Graber.pdf)

Wherefore, the court grants the motion to dismiss finding the Illinois Eavesdropping Statute lacks a culpable mental state and subject wholly innocent conduct to prosecution. Under Illinois Supreme Court Rule 18, the court finds the Illinois Eavesdropping Statute is unconstitutional on its face and as applied to defendant as the statute is violative of substantive due process. The court finds that the statute violates substantive due process under the Fourteenth Amendment to the United States Constitution (U.S. Const. Amend. XIV) and Article I, Section 2 of the Illinois Constitution (Ill. Const. 1970, Art. I, Sec.2). The court further finds that the statute cannot be constructed in a manner that would preserve its validity and judgement cannot rest on an alternative ground. Notice under Illinois Supreme Court Rule 19 was given.

[http://www.rcfp.org/sites/default/files/docs/20120322\\_135203\\_drew\\_decision.pdf](http://www.rcfp.org/sites/default/files/docs/20120322_135203_drew_decision.pdf)

On Oct. 13, 2010, a federal judge signed a settlement in which the federal government agreed that no federal statutes or regulations bar photography of federal courthouses from publicly accessible property. It agreed to

issue a nationwide directive to members of the Federal Protective Service (the agency responsible for all government buildings) instructing them about the rights of photographers. Since Musumeci had been charged with violating a regulation that applied to all federal property, not just courthouses, the NYCLU hold the position that the settlement in effect covers photography og all federal buildings.

[http://www.nyclu.org/files/releases/Final\\_Stip\\_and\\_Order\\_10.18.10.pdf](http://www.nyclu.org/files/releases/Final_Stip_and_Order_10.18.10.pdf)

[http://www.nyclu.org/files/releases/FPS%20Photography%20Bulletin%208-2-2010%20\(redacted\).pdf](http://www.nyclu.org/files/releases/FPS%20Photography%20Bulletin%208-2-2010%20(redacted).pdf)

<http://www.photoattorney.com/wp-content/uploads/2011/02/Photographing-the-Exterior-of-Federal-Buildings.pdf>

[http://www.rcfp.org/newsitems/docs/20111027\\_171350\\_aclu\\_complaint.pdf](http://www.rcfp.org/newsitems/docs/20111027_171350_aclu_complaint.pdf)

<http://documents.latimes.com/aclu-photographers-lawsuit/>

## ILLINOIS V. CHRISTOPHER DREW

Wherefore, the court grants the motion to dismiss finding the Illinois Eavesdropping Statute lacks a culpable mental state and subject wholly innocent conduct to prosecution.

Under Illinois Supreme Court Rule 18, the court finds the Illinois Eavesdropping Statute is unconstitutional on its face and as applied to defendant as the statute is volative of substantive due process. The court finds that the statue violates substantive due process under the Fourteenth Amendment to the United States Constitution (U.S. Const. Amend. XIV) and Article I, Section 2 of the Illinois

Constitution (Ill. Const. 1970, Art. I, Sec.2). The court further finds that the statute cannot be constructed in a manner that would preserve its validity and judgement cannot rest on an alternative ground. Notice under Illinois Supreme Court Rule 19 was given.

<https://www.youtube.com/watch?v=QNcDGqzAB30>

[http://www.rcfp.org/sites/default/files/docs/20120322\\_135203\\_drew\\_decision.pdf](http://www.rcfp.org/sites/default/files/docs/20120322_135203_drew_decision.pdf)

NOTE: The First Amendment right to record does NOT give you the right to interfere in the performance of officials' duties, or violate generally applicable laws. You may still face criminal prosecution or civil liability if, while recording, you: interfere with an arrest; trespass into secure government areas or private property; fail to respond to legitimate measures by law enforcement to control riots or disturbances; or otherwise interfere with official activity or violate private rights.

Wherefore, the court grants the motion to dismiss finding the Illinois Eavesdropping Statute lacks a culpable mental state and subject wholly innocent conduct to prosecution. Under Illinois Supreme Court Rule 18, the court finds the Illinois Eavesdropping Statute is unconstitutional on its face and as applied to defendant as the statute is violative of substantive due process. The court finds that the statute violates substantive due process under the Fourteenth Amendment to the United States Constitution (U.S. Const. Amend. XIV) and Article I, Section 2 of the Illinois Constitution (Ill. Const. 1970, Art. I, Sec.2). The court

further finds that the statute cannot be construed in a manner that would preserve its validity and judgement cannot rest on an alternative ground. Notice under Illinois Supreme Court Rule 19 was given.

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41 CFR 102-74.420 - What is the policy concerning photographs for news, advertising or commercial purposes?

§ 102-74.420 What is the policy concerning photographs for news, advertising or commercial purposes?

Except where security regulations, rules, orders, or directives apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of—

- (a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;
- (b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned; and
- (c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

<http://www.law.cornell.edu/cfr/text/41/102-74.420>

### Privacy Protection act 1980

The Privacy Protection Act of 1980 ("PPA"), codified at 42 U.S.C. § 2000aa et seq., protects journalists from being required to turn over to law enforcement any work product and documentary materials, including sources, before it is disseminated to the public. Journalists who most need the protection of the PPA are those that are working on stories that are highly controversial or about criminal acts because the information gathered may also be useful for law enforcement. For instance, a criminal suspect may talk openly to a journalist who promises not to print her name, but will not go to law enforcement for fear of arrest. While law enforcement would like to obtain this type of information from a journalist, the PPA protects the journalist's freedom to publish such information under the First Amendment without government intrusion.

<http://www.law.cornell.edu/uscode/text/42/2000aa>

42 U.S. Code § 2000aa - Searches and seizures by government officers and employees in connection with investigation or prosecution of criminal offenses

(a) Work product materials

Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate:

Provided, however, That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, or section 2274, 2275, or 2277 of this title, or section 783 of title 50, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of

children under section 2251, 2251A, 2252, or 2252A of title 18); or

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.

(b) Other documents

Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize documentary materials, other than work product materials, possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate:

Provided, however, That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted

data under the provisions of section 793, 794, 797, or 798 of title 18, or section 2274, 2275, or 2277 of this title, or section 783 of title 50, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18);

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being;

(3) there is reason to believe that the giving of notice pursuant to a subpoena duces tecum would result in the destruction, alteration, or concealment of such materials;

or

(4) such materials have not been produced in response to a court order directing compliance with a subpoena duces tecum, and—

(A) all appellate remedies have been exhausted; or

(B) there is reason to believe that the delay in an investigation or trial occasioned by further proceedings relating to the subpoena would threaten the interests of justice.

(c) Objections to court ordered subpoenas; affidavits  
In the event a search warrant is sought pursuant to paragraph (4)(B) of subsection (b) of this section, the person possessing the materials shall be afforded adequate opportunity to submit an affidavit setting forth the basis for any contention that the materials sought are not subject to seizure.



Iacobucci v. Boulter, 193 F. 3d 14 - Court of Appeals, 1st Circuit 1999

[http://scholar.google.com/scholar\\_case?case=4821936205672491096](http://scholar.google.com/scholar_case?case=4821936205672491096)

CHANNEL 10, INC. v. GUNNARSON NO. 5-71 CIV. 33.  
337 F.Supp. 634 (1972)

[http://www.leagle.com/decision/1972971337FSupp634\\_1848.xml/CHANNEL%2010,%20INC.%20v.%20GUNNARSON](http://www.leagle.com/decision/1972971337FSupp634_1848.xml/CHANNEL%2010,%20INC.%20v.%20GUNNARSON)

This activist exercising our 1st, 2nd, 4th, and 5th Amendment rights by normalizing their use is ensuring our freedom as much as anyone in uniform. Police who fail to do this properly with criminals end up with evidence suppressed. Both are a failure to protect public safety.

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