



Public Recording of Police Activities

Instructor's Guide



COPS
Community Oriented Policing Services
U.S. Department of Justice





IACP EXECUTIVE LEADERSHIP

Vincent Talucci
*Executive Director/Chief
Executive Officer*

Gwen Boniface
Deputy Executive Director

COPS EXECUTIVE LEADERSHIP

Ronald L. Davis
Director

Toni Morgan
Program Manager

Our special thanks to the Dunwoody (GA) Police Department, the Seattle (WA) Police Department, and the Tucson (AZ) Police Department for their generous contributions to this project. We would also like to thank the Alexandria (VA) Police Department for their assistance in hosting focus group meetings that proved essential to the development of the content of these documents.

Cover Photo Credit: Mickey H. Osterreicher

This project was supported by cooperative agreement 2013-CK-WX-K005 awarded by the Office of Community Oriented Policing Services, U.S. Department of Justice. The opinions contained herein are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice. References to specific agencies, companies, products, or services should not be considered an endorsement by the author(s) or the U.S. Department of Justice. Rather, the references are illustrations to supplement discussion of the issues.

Published 2017

Contents

Acknowledgments	v
Training Objectives	1
Training Materials and Equipment	2
Introduction	3
Purpose of Course	4
Class Ice Breaker	7
Current Climate	8
First Amendment Right to Record	9
Limitations on the Right to Record	13
Audio Recordings	18
Media Recordings	21
Search and Seizure Guidelines	22
Course Review	29
About the IACP	32
About the COPS Office	33

Acknowledgments

This project could not have been completed without the professional assistance and oversight of its Project Advisory Board. Our special thanks to the following members of the board.

Fred H. Bealefeld

Commissioner of Police (Ret.)
Baltimore City (MD) Police
Department

Eric Daigle, Esq.

Daigle Law Group
Southington, Connecticut

James Dermody

Captain
Seattle (WA) Police Department

Mary Gavin

Chief of Police
Falls Church (VA) Police
Department

Billy Grogan

Chief of Police
Dunwoody (GA) Police Department

Francis Healy

Captain
Philadelphia (PA) Police Department

Will Johnson

Chief of Police
Arlington (TX) Police Department

Lisa Judge, Esq.

Police Legal Advisor
Tucson (AZ) Police Department

Mickey Osterreicher

General Counsel
National Press Photographers Association

Ralph Price

Deputy Chief/General Counsel
Chicago (IL) Police Department

The IACP would also like to thank the following individuals who participated in a focus group meeting held at the Alexandria (VA) Police Department on July 23, 2014.

Edward P. Bergin

Major
Anne Arundel County (MD) Police
Department

Michael Burton

Sergeant
Baltimore County (MD) Police Department

Kevin Gaddis

Deputy Chief
Metro Transit (DC) Police Department

Jason Johnson

Major
Prince George's County (MD)
Police Department

Ryan Morgan

Assistant Commander
Fairfax County (VA) Police Department

Kimberly Schneider

Lieutenant
US Capitol Police Department

Zygmund Slevinski

Sergeant
Alexandria (VA) Police Department

Steven Thompson

Major
Prince William County (VA) Police Department

Training Objectives

At the conclusion of this training, participants should be able to answer the following questions:

- What are the constitutional rights of the public and the media to record police activities?
- What are the limitations on those constitutional rights to record?
- Why might law enforcement officers perceive video and audio recording as unwarranted, confrontational, a threat, or an insult?
- How can law enforcement officers avoid responding negatively to being recorded?
- What are the appropriate police strategies for responding to recording?
- Do audio recordings violate state or federal wiretapping laws?
- When and how can recording devices be seized?

Training Materials and Equipment

- Student handouts
 - Officer's Study Guide on Public Recording of Police Activities
 - IACP Model Policy and Concepts & Issues Paper on Recording Police Activity
- Presentation equipment
 - PowerPoint with Videos

Introduction



- Introduce yourself; provide a brief overview of your experience, credentials, and relevant training.
- Introduce any assistant instructors or guest presenters. They should present their background, credentials, and training experience before presenting.

Purpose of Course

➤ Introduce the video

Let's start by taking a look at the first of our videos. It provides a good backdrop for our discussion of public recording of police. The video clips included in this presentation are meant as learning tools only. They are in no way meant to embarrass the officers or their departments.

➤ Play embedded video 1 in slide 2



➤ Ask the class

- Does anyone have a comment about what you saw in this situation?
- Could the situation have been handled differently?

Instructor's Note: The criminal charge of obstructing governmental administration in this 2011 incident was dropped. The photographer successfully sued the police department for violation of his First Amendment rights, winning a judgment of \$200,000.



Learning Objectives

- Discuss civilian interest in recording police actions
- Review the impact of social media on police activity
- Define First Amendment right to record
- Examine limitations of the First Amendment right to record police activity
- Explore police responses to recording activities

Public Recording of Police

➤ **Ask:** What do we want to accomplish in the training today?

- First, as background, we'll consider why civilians as well as the media are interested in recording police and the role of social media in police activity.
- Most important, it is essential to understand a civilian's constitutional First Amendment right to record police—and, on the other side of the coin, the limitations of this right.
- We want to examine some of the common police responses to these recordings—and we'll do that, through the use of actual video scenarios.



- Explore recommended police strategies when confronted with recording activity
- Review audio recording and wiretapping laws
- Define when and how recording equipment may be seized

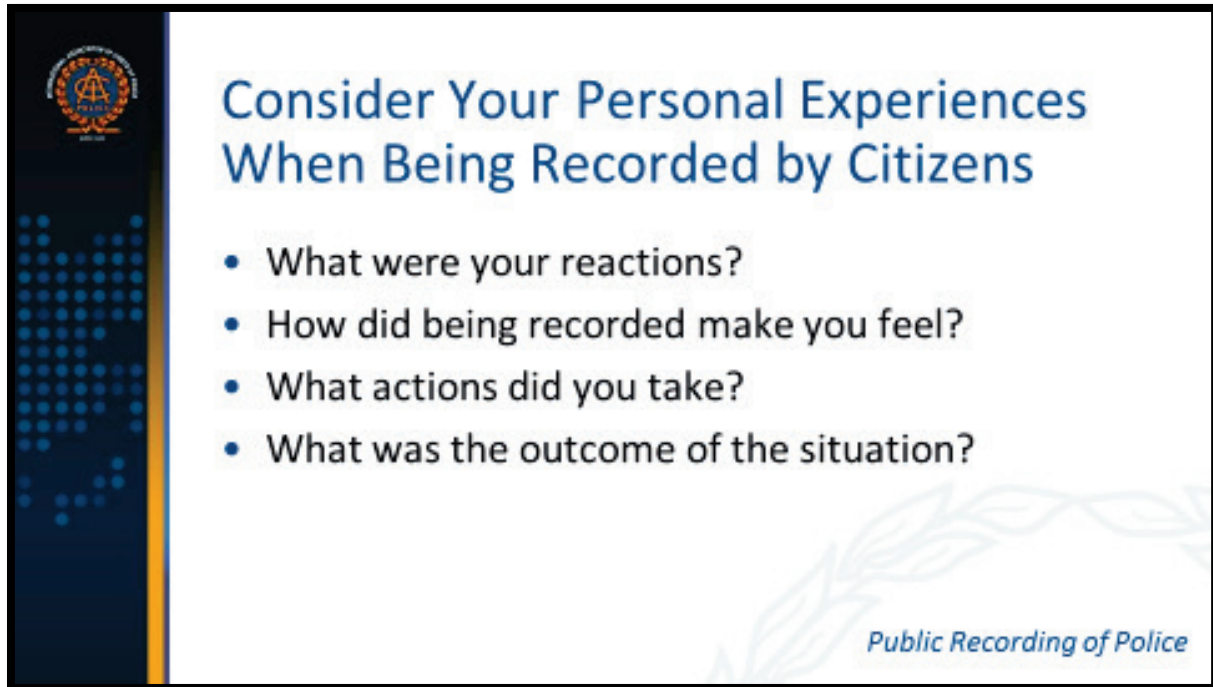


Public Recording of Police

➤ **Outline** the following:

- Next, we want to explore some strategies that you can use to avoid negative outcomes and diffuse or deflect police-civilian confrontations.
- We'll examine whether audio recording violates any state eavesdropping or wiretapping laws.
- And finally, we'll discuss when and how video equipment or recordings can be seized.

Class Ice Breaker



Consider Your Personal Experiences When Being Recorded by Citizens

- What were your reactions?
- How did being recorded make you feel?
- What actions did you take?
- What was the outcome of the situation?

Public Recording of Police

- **Instruct** the class to take a moment to think about any situation where they have been recorded while performing official police activities
- **Ask** the class
 - What were your reactions?
 - Did the recording make you uncomfortable, irritated, annoyed? Did you feel like the recording person was trying to “catch” you doing something improper?
 - Did you just ignore it?
 - Did you or others take any actions to intervene in the recording activities?
 - How did the situation get resolved? In hindsight, was there anything that could have been done differently?

Current Climate



Current Climate Surrounding Recording the Police


- Proliferation of recording devices
- Ability to post video on social media instantly
- Police officer's duty to protect constitutional rights
- Importance of community-police relations

Public Recording of Police

➤ **Discuss** the following:

- Even though it happened in 1991, let's talk about the Rodney King case. Following a high-speed car chase and while drunk, Rodney King was beaten by several officers while other officers stood by watching. A witness videotaped much of the beating from his balcony and sent the footage to a local news station. Parts of the footage were aired around the world. This event was the first high-profile incident in which police officers were videotaped.
- Recording devices in smartphones are everywhere today. The public is now more likely than the media to record police incidents. And it is very easy to quickly post those recordings on social media sites where they often go viral, with thousands of views.
- Among the primary concerns facing law enforcement is to ensure that we recognize and protect the constitutional rights of citizens. This is what we pledged to do when we took the oath of office. Our relationship with the community is largely based on upholding that obligation.
- In addition to these constitutional rights, officers must be aware of how any inappropriate reactions to recordings may negatively affect public trust.
- One cause for inappropriate police response to recordings has been that many, if not most, police departments have not developed or trained on policies and procedures related to the right of citizens or the media to record police. As a result, officers have largely been left to themselves to make decisions and take whatever actions they feel are most appropriate.

First Amendment Right to Record



First Amendment Right to Record

- Recording police activity is protected speech under the First Amendment.
- The public can record police when they are conducting business in a public place where the individual has a legal right to be present.
- The public has the same right to record as the media.
- This right is not absolute, but rather governed by reasonable time, place, and manner restrictions.

Public Recording of Police

➤ **Note** the following:

- Recording public officials, including the police, is considered protected speech under the First Amendment.
- The ability to observe and, if desired, to photograph, video record, or audio record agents of the government is guarded by the Constitution.
- Individuals have a First Amendment right to record police when they are conducting business in a public place and where the individual making the recording has a legal right to be present.
- The U.S. Supreme Court has also held* that the First Amendment protects the right to collect and record publicly available information and to publish that information in any medium of a person's choosing. In the present context, we are often talking about YouTube, Facebook, or similar sites.
- In effect, the public has the same rights to record police as the media.
- But, like most constitutional rights, freedom to record is not absolute. It is governed by reasonable time, place, and manner restrictions.

***Instructor's Note:** See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), *Smith v. Daily Mail*, 443 U.S. 97 (1979).



Free Speech Restrictions

- An individual's First Amendment right is governed by the following restrictions:
 - Time (rush hour on a crowded street)
 - Place (traditional, limited, and non-public)
 - Manner (e.g., camping out in parks overnight)
- Law enforcement agencies have increasingly chosen not to enforce these restrictions.

Public Recording of Police

➤ **Ask:** What are time, place, and manner restrictions?

- TIME restrictions may be placed on persons when, for example, they would significantly affect the free flow of traffic and business. Holding a public forum in the middle of Times Square during rush hour would clearly not be permitted.
- PLACE restrictions may be imposed on locations generally considered to be publicly accessible. For example, a convention center may be restricted to the public when it is leased to an organization for a private function. Private property may not be used for photography without the permission of the landowner, tenant, or authorized user.
- MANNER restrictions are often associated with what is called "symbolic speech." For example, the government may restrict individuals from camping out in public parks to protest their causes, as was seen during the Occupy Movement. The government has a legitimate right to protect these public places from damage and to ensure that they are accessible to all.
- It should be noted however, that many local governments have increasingly chosen not to enforce these types of restrictions. In both Washington, DC, and New York City, for example, protesters have been given great latitude to camp out for considerable periods of time in public parks, to block traffic, and to otherwise cause disruptions in daily life.



What Is a Public Space?

- A public space is
 - accessible and open to the public;
 - an area where an individual has a legal right to be present.
- Examples:
 - Parks and beaches
 - Streets and sidewalks
 - Public portions of government buildings

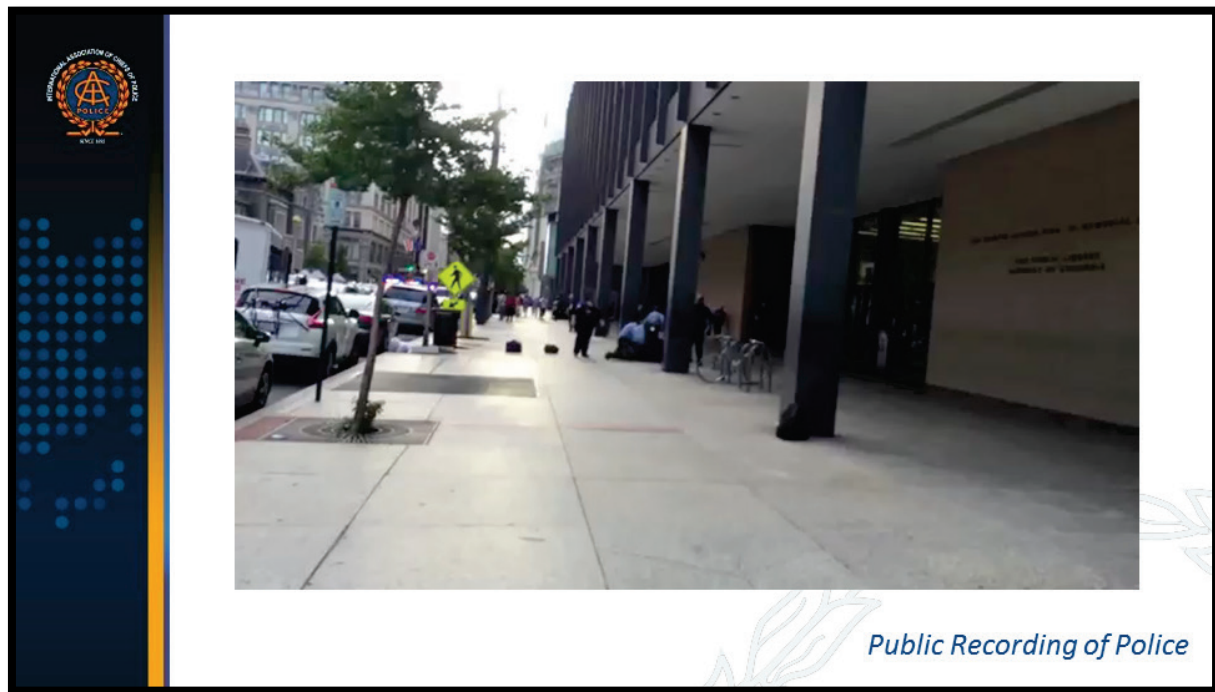
Public Recording of Police

- Another limitation is that the individual must have a legal right to be present at the location of recording. In most cases, recordings occur in public spaces. Public spaces are typically those places that are accessible and open to the public and where a person has a legal right to be present, such as community parks, malls, and beaches; streets and sidewalks; public buildings, like libraries and post offices; and the publicly accessible portions of government buildings, such as city hall.
- Even though places like shopping malls and other places of commerce are designed for public access and use, they may be privately owned, and a person may need the owner's permission to photograph or record at these locations.

➤ **Introduce** the video

Now let's look at another video example of officers being recorded while doing their jobs. Take some mental notes as you watch and ask yourself what actions you would have taken—and would not have taken—under these or similar circumstances.

➤ **Play** embedded video 2 in slide 10



➤ Get feedback on what was done well and what was not

➤ What actions could have made the outcome better?

Instructor's Note: This incident occurred on September 7, 2014. The police department had instituted a clear policy on public recording in 2012 and had trained all its officers on that policy. The officer was disciplined for this incident.

Limitations on the Right to Record



The slide features a dark blue sidebar on the left with a circular seal at the top and a pattern of blue dots below. The main content area is white with a blue title and a bulleted list. A faint graphic of a laurel wreath is in the bottom right corner of the slide.

First Amendment Limitations

Individuals who are recording cannot

- place themselves or others in danger;
- trespass on private property;
- enter a marked crime scene; or
- “materially interfere” with police activities.

Public Recording of Police

➤ **Discuss** the following:

- As mentioned, while the public has a right to record police, the police also have a job to do and an obligation to do it in a safe and effective manner.
- There may be instances in which individuals, even though legally present in a public place, may be required to submit to the legal commands of an officer.
- For example, recording parties cannot position themselves in a place that would create a danger to themselves or others, including police officers. Examples include
 - standing in a highway;
 - getting in the way of officers, emergency medical personnel, or other first responders; and
 - blocking the free flow of pedestrians.
- For officer safety, photographers, like other persons, should be required to maintain a safe distance from officers. To ensure that a safe distance is maintained by all persons present, an officer may request backup assistance.
- Also, recording individuals may be required to move from places where they could endanger themselves or compromise police operations such as serving a high-risk arrest or search warrant. However, these and related situations should not be used as a pretext to prevent recording.
- People also cannot enter a marked crime scene, a police perimeter, or a police line that has been physically established and verbally identified to them.
- And, in general, they cannot “materially interfere” with police actions or duties.




Material Interference

- Interference must be based on conduct that materially inhibits, obstructs, delays, or in other ways negatively affects police operations.
- The act of recording, by itself, does not constitute interference.
- Officers must have an objective, articulable reason for their actions.
- Where such interference exists, officers should direct the recording party to another location within a reasonable distance.

Public Recording of Police

➤ Ask: What is the meaning of “interference”?

- This has been widely interpreted by some agencies and misused to stop recordings.
- Interference has to be more than the act of recording in and of itself, even if you feel the recording party is aggravating and unwanted.
- Interference has to be conduct that **materially** inhibits, obstructs, delays, or otherwise unreasonably affects police activities.
- You must have an objective, articulable reason for restricting the location from which an individual may record or for taking actions that negatively affect an individual’s ability to record.
- Actions such as moving the person to an unreasonable location or blocking the recording without cause are not appropriate.
- If someone is interfering materially, you should direct the individual to move to a place where he or she can record but not be in the way of police business or pose a risk to their own or officer safety.
- Verbal criticism and derisive comments made by recording parties or others from a location that has no direct impact on police operations or safety are not actionable by themselves.
- Remember that the simple act of recording, by itself, does not constitute interference and does not justify actions to stop, block, obstruct, coerce, or threaten recording parties with citation or arrest.



When Can Someone Who Is Recording Be Arrested?

- A person who is recording can be arrested only when the officer has probable cause to believe that a violation of the law has been committed.
- Arrest, citation, or other enforcement action must not be based on the fact that the person is recording!

Public Recording of Police

➤ **Ask:** When can someone who is recording be arrested?

- The answer to that is the same as in any other situation—if you have probable cause to believe that a violation of the law has been committed, aside from any consideration concerning the recording.
- Officers should be reminded—if they wouldn't arrest the individual without the recording device, then they shouldn't arrest with the device!



Perimeters


Officers can require a reasonable distance be maintained from enforcement or related police duties.

- Hostage/barricade incidents may necessitate larger perimeters than altercations on public sidewalks.
- Perimeters should apply to everyone, not just those with cameras.

Public Recording of Police

➤ **Emphasize** the following:

- The use of perimeters or crime scene lines can be used to keep recording parties from materially interfering with or otherwise hindering police business and, at the same time, protect the scene. However, perimeters should be designated at a reasonable distance from the crime or incident scene based on the nature of the event, not simply as a pretext to prevent recording.
- For instance, a barricade or hostage incident may require a much larger perimeter than for example, the street incident that we just saw in the video.
- If persons who are recording are barred from an incident scene, all other persons should be barred as well.
- Discuss how, in the previous video, only the person recording was told to move, while other pedestrians were allowed to walk freely through the immediate area without intervention.



Protecting Privacy


- Officers may wish to take measures to protect the private information of victims and witnesses in public spaces by
 - Shielding victims
 - Moving all parties to a private area
- Intentionally blocking only those with cameras is not appropriate.

Public Recording of Police

➤ **Note** the following:

- In some cases, perimeters are useful to help protect the privacy of victims and witnesses from video and audio recordings.
- Some witnesses are reluctant to cooperate if they know they are being recorded for fear of reprisals or for other personal reasons. By the same token, victims may not want their worst moments potentially posted on YouTube or some other social media site.
- In these cases, it may be possible and would be acceptable to shield victims from public view by surrounding them, or, if possible, moving both victims and witnesses to a private area in order to get a statement. If this is not possible, a follow-up interview may be arranged at a later time.
- Intentionally blocking only those with cameras is not appropriate.

Audio Recordings



Audio Recordings of Police

- Audio recording statutes are normally intended to protect private electronic and wire communications from surreptitious recording.
- The law is clearly established that a traffic stop is not a private encounter.
- Individuals have a *protected* right to make audio recordings of police officers performing their duties in *public*.
- Absent required consent, there is no right to audiotape conversations held in *private* places, where there is a reasonable expectation of privacy.

Public Recording of Police

➤ Highlight the following:

- In most cases, smartphones and similar devices have audio recording capability.
- The question has come up in a number of incidents whether persons are free to record conversations without permission of those individuals involved.
- Audio recordings without permission of police officers have been the subject of some legal concern and litigation

➤ Review the facts of the *Graber* case:

- One notable case is that of *State v. Graber*, a 2010 incident that took place in Maryland.
- Graber was a motorcyclist driving recklessly at high speed while also recording his actions on a helmet-mounted camera. He was stopped by an off-duty officer.
- Graber recorded the officer exiting his personal vehicle with a drawn handgun and subsequently posted the encounter, including the verbal exchange with the officer on YouTube.
- Graber was arrested for traffic violations and later was charged with recording the conversation with the officer without his permission, on the assumption that it was a violation of Maryland's wiretapping statute.
- The trial court held that there is no expectation of privacy during a traffic stop, so neither audio nor video recording violated the wiretapping statute.

➤ **Discuss** other rulings concerning wiretapping:

- Illinois had one of the most stringent state wiretapping statutes. It made it a criminal offense to record oral communication without the consent of all persons involved and made provisions banning the recording of officials, including the police, even in open spaces. The Illinois Supreme Court overturned this statute as a violation of the First Amendment in March 2014.
- So court decisions in Illinois, Maryland, and other federal and state court cases have made it clear that audio recordings made in public are part of the same protected right under the First Amendment as video recordings.

Instructor's Note: Twelve states, including Maryland, have electronic “two-party” wiretapping laws that have been employed to challenge such recordings. Two-party consent means that all persons involved must agree to be recorded. However, the court in Graber held that two-party consent applies only in situations where there is a reasonable expectation of privacy by those parties, such as on the telephone, and not on a public street.

*State v. Graber (No. 12-K-10-0647 Md. Cir. Ct. Harford Cty. Sept. 27, 2010)

➤ **Introduce** the video

Now let's take a look at another example of how a law enforcement officer reacted to being recorded. This was videotaped by a civilian in April 2015.

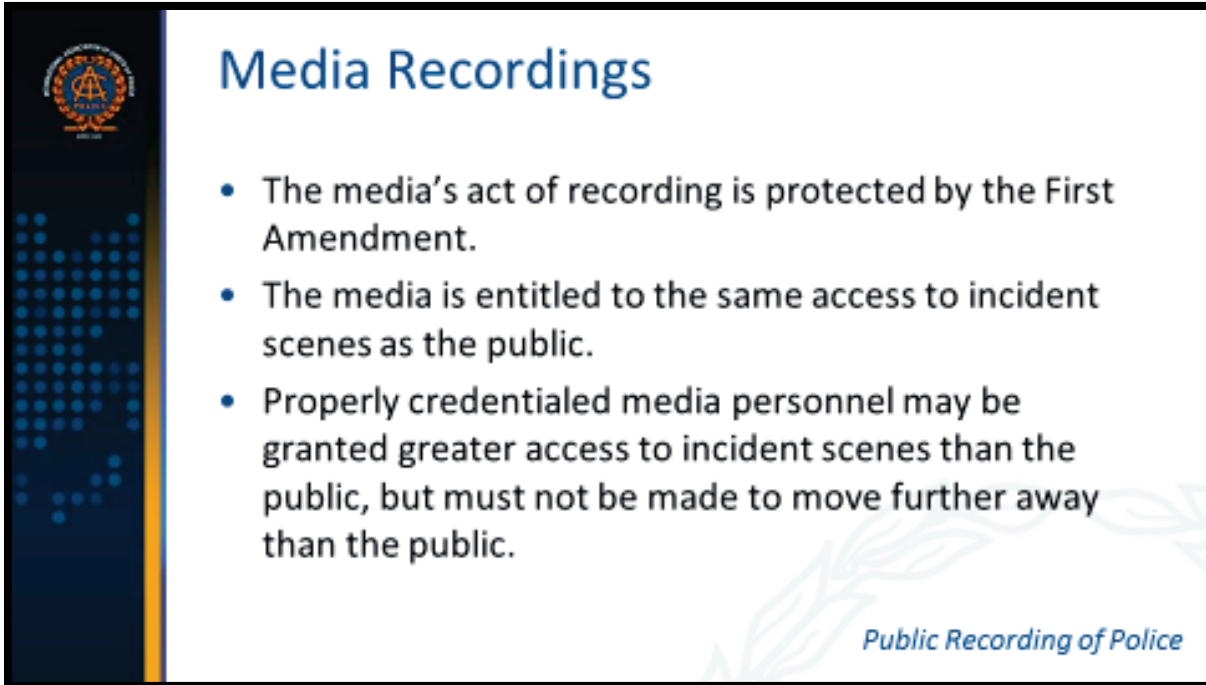
➤ **Play** embedded video 3 in slide 17



➤ **Discuss** the following:

- That was a pretty clear example of what not to do, and certainly underscored the rule that recordings and recording devices may never be destroyed—even if you have a legal basis, such as a warrant or exigent circumstances, to seize the device.
- Another point clearly made in the video is that recording devices are everywhere, so it is best to assume that you are being recorded at all times when in public and act accordingly. In this particular case, even the woman recording the incident was being recorded.

Media Recordings



The slide features a dark blue sidebar on the left with a grid of dots and a small circular logo at the top. The main content area is white with a blue title and a list of three bullet points. The footer is in blue text.

Media Recordings

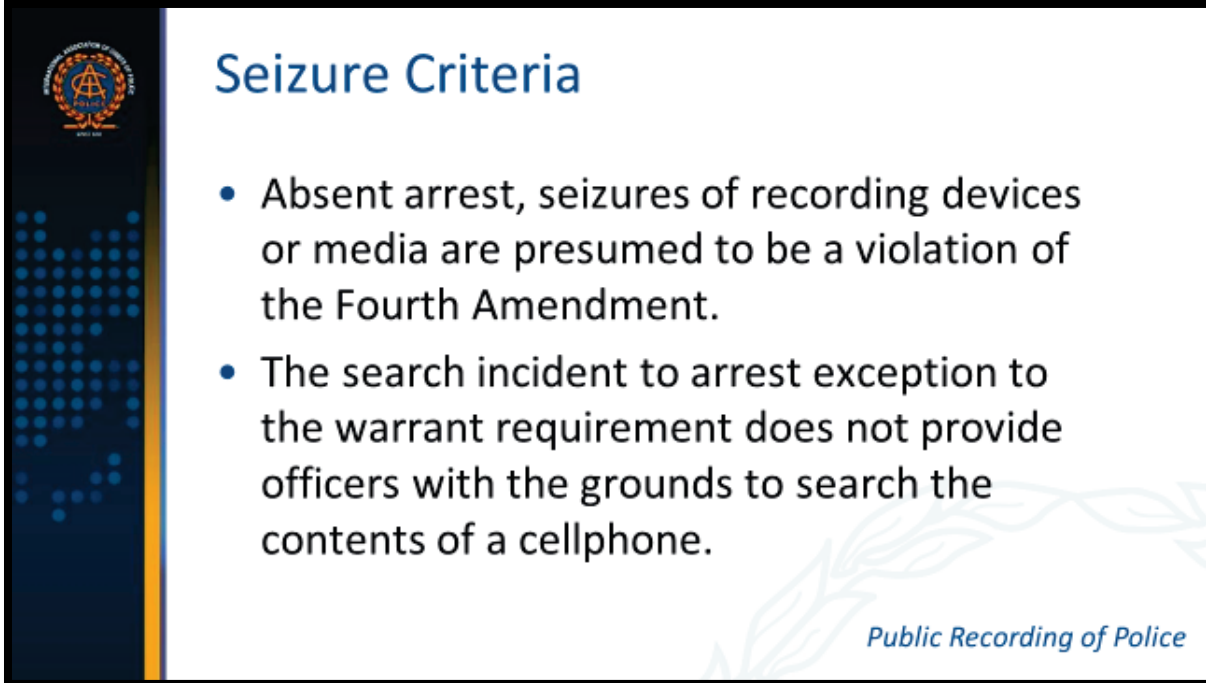
- The media's act of recording is protected by the First Amendment.
- The media is entitled to the same access to incident scenes as the public.
- Properly credentialed media personnel may be granted greater access to incident scenes than the public, but must not be made to move further away than the public.

Public Recording of Police

➤ Highlight the following:

- Just like the general public, the media enjoys the same First Amendment protection to record police activities performed in public, under both the free speech and free press guarantees of the First Amendment.
- In some cases, credentialed media personnel may be given closer access to incident scenes than the general public.
 - For example, reporters may be permitted to cross police lines in order to better record natural disasters or other events that have particular interest and value to the community.
 - They may also be granted access to police personnel in order to gather comments or get greater insight for their stories when such access would not interfere with the duties and responsibilities of officers.
- On the other hand, while the media may be given additional access to a scene, they must not be made to move further away from a crime or incident scene than the general public.

Search and Seizure Guidelines

A presentation slide titled "Seizure Criteria" with a blue header and a dark blue sidebar on the left containing a logo and a grid of dots. The slide lists two bullet points about the Fourth Amendment and cell phone searches. The text "Public Recording of Police" is in the bottom right corner.

Seizure Criteria

- Absent arrest, seizures of recording devices or media are presumed to be a violation of the Fourth Amendment.
- The search incident to arrest exception to the warrant requirement does not provide officers with the grounds to search the contents of a cellphone.

Public Recording of Police

➤ **Discuss** situations and procedures for seizing recording devices

- Short of arresting someone, seizing their recording device is not permitted, except under some narrowly drawn exceptions.
- Absent an arrest, seizures of recording devices are presumed to be illegal under the warrant requirement of the Fourth Amendment. Even if an individual is arrested, and his or her recording device is seized incident to arrest, its contents cannot be viewed, duplicated, or otherwise examined without a warrant. The U.S. Supreme Court made this clear in its 2014 *Riley* decision.*

Instructor's Note: In the *Riley* case, the U.S. Supreme Court ruled that while officers may seize cellphones incident to arrest, they may not search or view the phone's contents without a warrant. The rationale behind this is that cellphones contain a great deal of personal information that is not normally available in other seized property. For example, cellphones don't compare to other typical seized property such as wallets, keys, or similar personal effects.

* *Riley v. California*, 573 U.S. __ (2014) No. 13-132, decided June 25, 2014, together with *U.S. v. Wurie*, No. 13-212, on cert. from the First Circuit Court of Appeals.



Seizures and Warrants

- A warrant is always the preferred method for viewing, duplicating, or otherwise examining media on a recording device.
- Even with a warrant, any photos, video, or audio recordings on a device may never be deleted, destroyed, or altered.

Public Recording of Police

- Obtaining a search warrant is the preferred practice in nearly all cases for viewing, duplicating, or otherwise examining the media contained on a recording device. Even then, photos and video or audio recordings must never be deleted, destroyed, or altered. In addition, officers may not order the person engaged in recording, or a third party, to delete, destroy or alter such recordings.
- As mentioned, however, there are some narrowly drawn exceptions to the warrant requirement involving seizure of cellphones.



First Exception to the Search Warrant Requirement

Three-Prong Test: Officers must have

1. a probable cause to believe that serious crime has been committed;
2. a good faith belief that there is evidence of that crime on the recording device; and
3. a good faith belief that evidence will be lost or destroyed absent seizure.

A search warrant is still required to view after seizure.


Public Recording of Police

➤ **Explain** the three-prong test for seizure under the first exception to the warrant requirement

- Absent an arrest, there are only two limited exceptions to the warrant requirement that may be used to seize a recording device or the device's recording medium. These "exigent circumstances" exceptions require the officer and his or her supervisor to exercise sound judgment and discretion.
- The first exception to the warrant requirement for seizure of a recording device involves three parts, all of which must be met:
 - An officer must have probable cause to believe that a serious crime has been committed.
 - The officer must have a good-faith belief the recording device contains evidence of that crime.
 - The officer must have a good-faith belief that evidence will be lost or destroyed absent seizure.

Even after such seizure, a search warrant is still required before viewing the recordings.

- A "serious" crime is one involving violence that may result in serious bodily harm or death. For example, a person happens to record a shooting during a robbery. It appears to the officer by the individual's account or the account of another person present that the video could be used to identify the perpetrator.
- Additionally, in the case of a journalist, it is highly doubtful that the third prong of the exigent circumstances test will ever be met. In those cases, it is advisable to obtain the contact information of the individual and caution them to preserve the evidence until a subpoena or court order for it can be obtained.
- Most departments require a supervisor be notified to make the final determination in seizing a device, or in any situation where a journalist is involved.



Second Exception to the Search Warrant Requirement

If it is objectively reasonable for officers to believe information contained in a recording could prevent imminent death or serious bodily harm, immediate viewing of the recording may be allowed without a warrant.

Public Recording of Police

➤ **Explain** the second narrowly defined exception to the warrant requirement

- The other exception to the warrant requirement involves situations in which it is objectively reasonable to believe that failure to view the recording could result in death or serious bodily harm.
 - For example, a person happens to be in a location where he witnessed and recorded a kidnapping. It may be reasonable to believe that the perpetrator and/or their escape vehicle may have been captured on the cell phone recording.
 - But, be aware that if it is later determined that such seizure and viewing of the recording did not meet the exigent standards, the recordings or images viewed may be excluded from evidence as a Fourth Amendment violation.
- But even in these situations, there are some less-intrusive options that can be explored to view recordings without risking violations of the Fourth Amendment.



Alternatives to Seizure

- Before seizing a recording device, officers should request consent to view the photos/video.
 - If consent is given and the recording is valuable, officers should ask for permission to take temporary custody of the device to make a copy.
- Officers should ask the owner if he/she would be willing to email a copy of the photo/video to an official agency email address.

Public Recording of Police

➤ Review steps to take if attempting to view, copy, or seize recordings

- First, the officer may ask the recording individual to voluntarily consent to allow the photos or video to be viewed. If voluntary consent is given, the officer can make a more informed judgment about the potential value of the recording. In addition, this allows the individual to safeguard video or photographs that are personal and not relevant to the incident.
- If the recording appears valuable, the officer can then ask for **voluntary** consent to take temporary custody of the recording device or the recording medium in order to make a copy of only the relevant material. Copying video that is not related to the incident is not permissible.
- If the recording party is not amenable to that option, the officer can ask if he or she would be willing to email a copy of the recording to a departmental email address.
- Once again, if the recording party permits none of these options, and the situation has met the exceptions to the warrant requirement, the individual may be temporarily detained until a supervisor can arrive to make a decision on whether to make an immediate seizure and seek a search warrant to view its contents.
- Officers should be reminded, however, that the individual cannot be detained for an unreasonable period of time to await the arrival of a supervisor without risking a complaint of unlawful detention.
- Whether the recording is seized under exigent circumstances or with a warrant, it should be kept by the department only for the minimum time necessary, and relevant recordings can be copied.
- The recording or any other files or media on the device must never be deleted, destroyed, or altered. In addition, officers may not order the person engaged in recording, or a third party, to delete, destroy, or alter such recordings.




Deflection and Disengagement

- Individuals may engage officers in debate or arguments about recordings.
- Officers should
 - deflect inflammatory comments
 - develop disengagement techniques
 - have a programmed response prepared

Public Recording of Police

➤ **Discuss** suggestions for interacting with individuals

- It is an all-too-common scenario that recording parties, whether for legitimate information purposes or for other reasons, purposely engage officers in conversation and questioning, sometimes just to record their reactions.
- Sometimes an officer can be baited into debates that are unnecessary and counterproductive—or that can escalate tempers and possibly result in negative outcomes.
- The best approach to avoid becoming mired in one of these conversations is to deflect provocative questions and disengage from the encounter.



Programmed Response

1. I know that you have a right to record.
2. Please do not interfere with my (activity – arrest, interview, investigation, etc.).
3. Please move back to (location).
4. Would you like to speak to my supervisor?

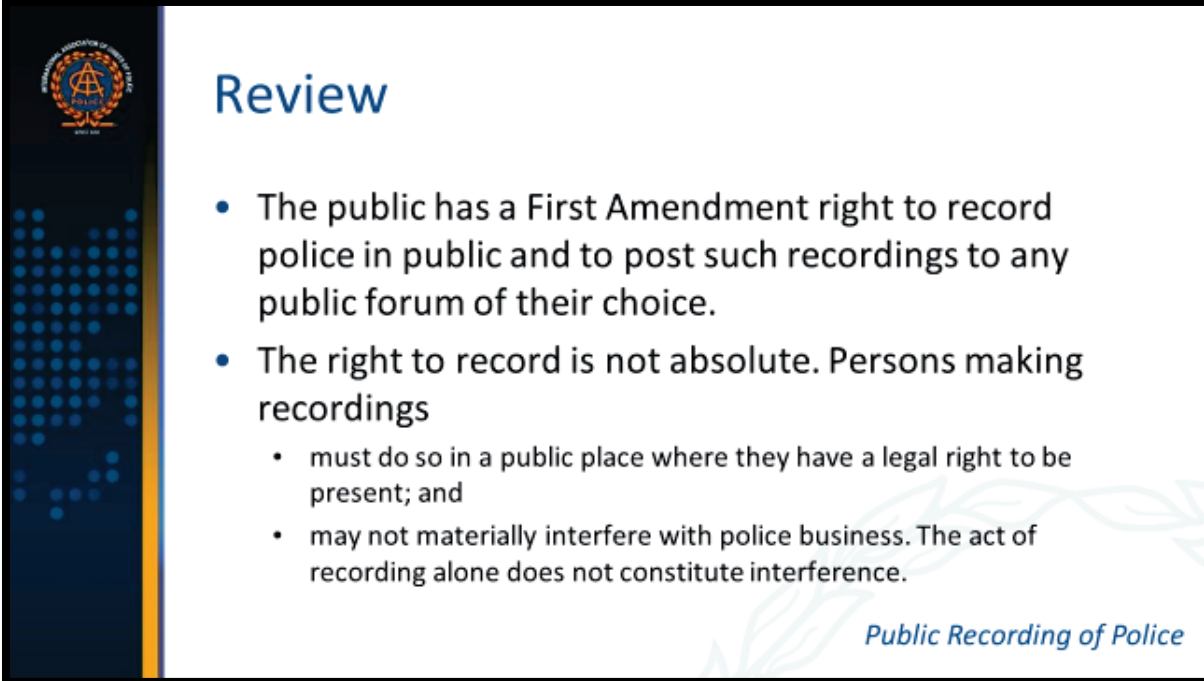
Public Recording of Police

➤ **Examine** the components of an appropriate programmed response

Officers might use a programmed response, such as the following:

- Acknowledge, where warranted, the individual's right to record police and/or ask legitimate, purposeful questions.
- Inform the individual that he or she cannot interfere with the police activity, no matter the type of incident that is involved.
- If the individual is materially interfering, for example, by standing too close, direct him or her to a location where he or she can still record without interfering.
- If the recording party persists in debating the issue or engaging, ask if he or she would like to speak to a supervisor.
- Remember that recording police is, in itself, not a crime. But the officer does not have to be so accommodating to recording parties that he or she, or others, are placed in danger. As noted earlier, recording parties need to stay a safe distance from officers to help guard against any sudden physical attack.
- As an example, during a nighttime vehicle stop, a person decides to record the officer and the light from the device impedes the officer's vision. The officer may direct the individual to turn off the light or, if that is not possible, to aim the camera in a direction that does not impede the officer's vision. It is best if the officer is able to verbally articulate these directives so that they become part of the recording. Such circumstances should be included in any incident or arrest report.

Course Review



Review

- The public has a First Amendment right to record police in public and to post such recordings to any public forum of their choice.
- The right to record is not absolute. Persons making recordings
 - must do so in a public place where they have a legal right to be present; and
 - may not materially interfere with police business. The act of recording alone does not constitute interference.

Public Recording of Police

➤ **Review** some of the most important points that the class should take away with them

- First, and foremost, the public and the press have a First Amendment right to record police when they are performing their official duties in a public place and where the individual making the recording has a legal right to be present.
- However, that right is not absolute. In particular, recording parties cannot materially interfere with officers or create dangers to themselves or others in order to make recordings.
- It is important to remember that the act of recording alone does not constitute interference, even if it is a distraction or annoyance.



Seizures and Searches Review

- In general, seizures and searches of recording devices and media require a court order or warrant.
- Warrantless seizures not related to an arrest must be based on narrowly defined exigent circumstances.
- Rather than seize a recording device, officers should consider alternatives, such as seeking voluntary consent.

Public Recording of Police

➤ **Remind** the class of the laws surrounding seizure and search of recording devices

- With few exceptions, seizures and searches of recording devices and recording media require a court order or a warrant.
- Exceptions to the warrant requirement must be based on articulable, narrowly defined criteria that establish exigent circumstances.
- Before making a seizure or seeking a warrant, you may use other alternatives, such as seeking voluntary consent to view or duplicate the recording or requesting the recording party to voluntarily email a copy of the recording to a designated official department email address.



This training was brought to you by



COPS
Community Oriented Policing Services
U.S. Department of Justice

About the IACP

The International Association of Chiefs of Police (IACP) is a professional association for law enforcement worldwide. For more than 120 years, the IACP has been launching internationally acclaimed programs, speaking on behalf of law enforcement, conducting groundbreaking research, and providing exemplary programs and services to members across the globe.

Today, the IACP continues to be recognized as a leader in these areas. By maximizing the collective efforts of the membership, IACP actively supports law enforcement through advocacy, outreach, education, and programs.

Through ongoing strategic partnerships across the public safety spectrum, the IACP provides members with resources and support in all aspects of law enforcement policy and operations. These tools help members perform their jobs effectively, efficiently, and safely while also educating the public on the role of law enforcement to help build sustainable community relations.

About the COPS Office

The Office of Community Oriented Policing Services (COPS Office) is the component of the Department of Justice responsible for advancing the practice of community policing by the nation's state, local, territory, and tribal law enforcement agencies through information and grant resources.

Community policing is a philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.

Rather than simply responding to crimes once they have been committed, community policing concentrates on preventing crime and eliminating the atmosphere of fear it creates. Earning the trust of the community and making those individuals stakeholders in their own safety enables law enforcement to better understand and address both the needs of the community and the factors that contribute to crime.

The COPS Office awards grants to state, local, territory, and tribal law enforcement agencies to hire and train community policing professionals, acquire and deploy cutting-edge crime fighting technologies, and develop and test innovative policing strategies. COPS Office funding also provides training and technical assistance to community members and local government leaders and all levels of law enforcement. The COPS Office has produced and compiled a broad range of information resources that can help law enforcement better address specific crime and operational issues, and help community leaders better understand how to work cooperatively with their law enforcement agency to reduce crime.

- Since 1994, the COPS Office has invested more than \$14 billion to add community policing officers to the nation's streets, enhance crime fighting technology, support crime prevention initiatives, and provide training and technical assistance to help advance community policing.
- To date, the COPS Office has funded approximately 125,000 additional officers to more than 13,000 of the nation's 18,000 law enforcement agencies across the country in small and large jurisdictions alike.
- Nearly 700,000 law enforcement personnel, community members, and government leaders have been trained through COPS Office-funded training organizations.
- To date, the COPS Office has distributed more than 8.57 million topic-specific publications, training curricula, white papers, and resource CDs.

COPS Office resources, covering a wide breadth of community policing topics—from school and campus safety to gang violence—are available, at no cost, through its online Resource Center at **www.cops.usdoj.gov**. This easy-to-navigate website is also the grant application portal, providing access to online application forms.



COPS
Community Oriented Policing Services
U.S. Department of Justice

U.S. Department of Justice
Office of Community Oriented Policing Services
145 N Street NE
Washington, DC 20530

To obtain details about COPS Office programs, call
the COPS Office Response Center at 800-421-6770.

Visit the COPS Office online at www.cops.usdoj.gov.



International Association of Chiefs of Police
44 Canal Center Plaza, Suite 200
Alexandria, VA 22314

<http://www.theiacp.org/>