Vermont League of Cities & Towns

Public Recording of Government Buildings & Officials

VMCTA 2023

Presented by:

Trevor Whipple

Law Enforcement Consultant

twhipple@vlct.org

(802) 229-1929



Legal Disclaimer



Not



- This presentation is informational only
- It should not be considered legal advice
- When any legal question arises, should always contact your town attorney.

Learning Objectives

- Discuss civilian interest in recording government actions
- Review the impact of social media on government activity
- Define First Amendment right to record
- Examine limitations of the First Amendment right to record government activity
- Explore police, and other employee, responses to recording activities
- Explore recommended strategies when confronted with recording activity

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?

"The freedom of individuals verbally to oppose or challenge police/government action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation f[illegible] state."




PRESS NEW HAMPSHIRE NOW
We The People
1ST AMENDMENT AUDIT

Purpose of 1st Amendment Audit





- Test government's knowledge of citizen rights
- Hobby
- Internet fame and likely income
- Opportunity for litigation

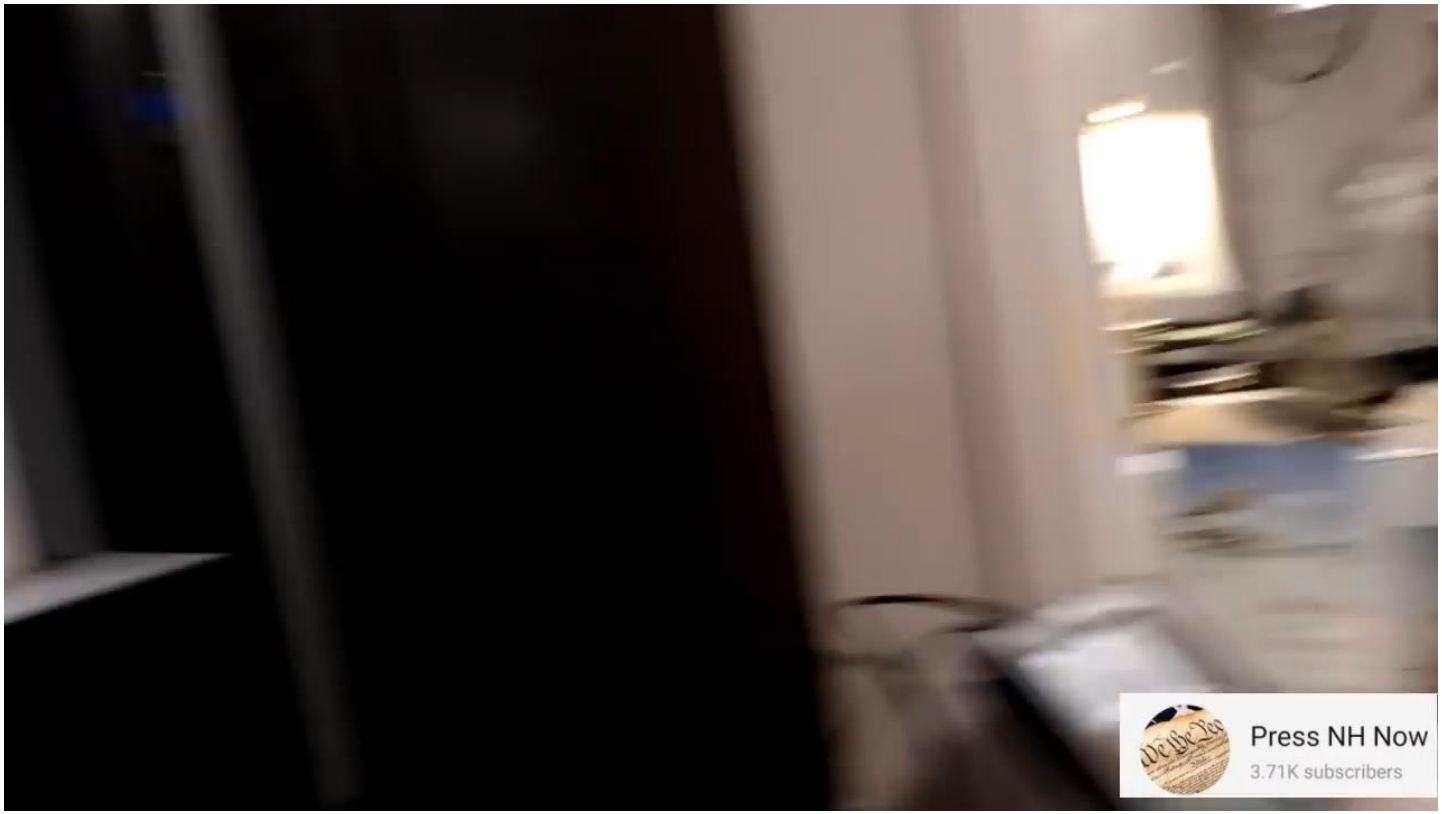
Current Climate Surrounding Recording the Government Officials

- "Government officials" includes anyone who works for the town or city, civilian and police

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

First Amendment Right to Record

- Recording government activity is protected speech under the First Amendment.
- The public can record government officials 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 journalists.
- This right is not absolute, but rather governed by reasonable time, place, and manner restrictions.


Press NH Now
3.71K subscribers

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.

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
  - Non restricted parking lots
  - NOT – rest room or locker room


TOWN CLERK

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 business activities.

Material Interference

- Interference must be based on conduct that materially inhibits, obstructs, delays, or in other ways negatively affects government operations. (Caution in warned meetings)
- The act of recording, by itself, does not constitute interference.
- Police officers must have an objective, articulable reason for their actions in asking someone to leave or making an arrest.
- Where such interference exists, officers / government officials should direct the recording party to another location within a reasonable distance.

When Can Someone Who Is Recording Be Arrested?



- A person who is recording can be arrested only when an 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!


Press NH Now
3.71K subscribers

Protecting Privacy

- If the activity is taking place in a public area there is no expectation of privacy.
  - Take sensitive transactions to a nonpublic area
- Youth programs open to the public would allow filming
- Polling places would allow filming
- Libraries open to the public would allow filming
  - If you believe there are exceptions check with your attorney
- The public employee must secure computer screens and sensitive documents
- Discuss – Front of House vs Back of House / Parking Lots / vaults / recreation programs / library

Deflection and Disengagement

- Individuals may engage government employees in debate or arguments about recordings.
- Employees should
  - deflect inflammatory comments
  - develop disengagement techniques
  - have a programmed response prepared
- Individuals may monitor police response by scanner
- If a government employee records the auditor that image/video becomes a public record



Programmed Response

A. Please let me know if I can be of any assistance.

B. I know that you have a right to record.

   1. Auditor may provoke for response

C. If requesting public records:

   1. Provide form to request records.

      1. Form not required, must accept verbal requests

      2. No requirement for the requestor to provide name/identification/or reason for request

      3. Can legally request names / positions of employees / salary information – ANY DOCUMENT or recording (Subject to legal review)

D. Do not call police unless there is a law violation

Review

- The public has a First Amendment right to record government 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 government business. (The act of recording alone does not constitute interference.)
- The less resistance from government officials, the better the outcome
- You don’t want to be the YouTube star or defendant

Vermont League of Cities & Towns

Public Recording of Government Buildings & Officials

Presented by:

Trevor Whipple

Law Enforcement Consultant

twhipple@vlct.org

(802) 229-1929