

Are the police trying to stop you from taking that cellphone video? Check your First Amendment rights.

By **Margaret Sullivan**

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Words matter. Reporting matters. But sometimes, it's a video that matters most.

When a Minneapolis police officer knelt on George Floyd's neck for more than eight minutes while he died, gasping for breath, a cellphone video shot by a teenage girl on her way to get a snack made the horror undeniable.

"The world needed to see what I was seeing," Darnella Frazier [told the Minneapolis Star Tribune](#).

Days later, when Buffalo police knocked down 75-year-old protester Martin Gugino and a pool of blood spread under on the sidewalk under his head, a cellphone video enraged people all over the world.

"It just so happens I was in the right place at the right time with exactly the right angle," Mike Desmond of the local public radio station WBFO [explained to the Buffalo News](#).

Video can change the world — or at least a few million opinions. But what about the potentially explosive video that can't be shot — or never gets seen — because law enforcement has confiscated cameras or arrested the people using them?

This week, New York University's First Amendment Watch released "[A Citizen's Guide to Recording the Police](#)" a primer for amateur videographers on the rights they are entitled to in these encounters. The guide explains why, under most circumstances, the police can neither seize nor demand to view such recordings — though some may try — and it provides case-law examples to back up its assertions.

It comes along at a crucial time.

"In this new era, we have armies of citizens out on the streets capable of producing evidence that checks the conduct of public officials," said Stephen D. Solomon, the organization's founding editor. The First Amendment right to record public officials, such as the police performing their official duties in public, is central to our democracy, he said.

Who can forget the bizarre and disturbing [arrest of Omar Jimenez and a CNN crew](#) while on live television in Minneapolis on May 29? That incident was roundly denounced by press freedom groups and resulted in an apology from Minnesota Gov. Tim Walz: "There is absolutely no reason something like this should have happened."

But less heralded and far less visible offenses have happened throughout the United States, as the [U.S. Press Freedom Tracker](#) makes clear.

Sue Brisk, a freelance photographer, told the Tracker that she was photographing demonstrations at 42nd Street in Times Square that same day with her NYPD-issued press pass clearly displayed. "I watched the police beat people with billy clubs and then they threw a woman up against a pole right in front of me," Brisk said. "After that it's a blur."

Brisk said that, before she knew what was happening, her head was slammed to the ground and she found herself pinned under at least three New York City police officers. Weeks later, she was still trying to retrieve her camera.

By the Tracker's count, well over 400 "aggressions against the press" — including dozens of examples of equipment being damaged

— have marred recent Black Lives Matter protests.

The NYU guide cites a 2012 U.S. Court of Appeals for the 7th Circuit decision that drew a direct connection between the creation of a recording and something that's better understood to be constitutionally protected: the publication or dissemination of a recording.

“The right to publish or broadcast an audio or audiovisual recording would be insecure, or largely ineffective,” the decision in *ACLU v. Alvarez* stated, if *making* the recording were unprotected. “Restricting the use of [a recording] device suppresses speech just as effectively as restricting the dissemination of the resulting recording.”

However, the right to record police isn't, well, bulletproof, at this moment.

About three-fifths of the U.S. population lives in states where federal appeals courts have recognized a First Amendment right to record the police in public, the guide says. The U.S. Supreme Court hasn't ruled directly on the issue.

That means legal protections aren't nailed down everywhere. Yet the outlook is good: “Given the resounding support so far for this First Amendment protection, it seems highly likely that the remaining federal appeals courts would reach the same conclusion if the issue appears on their docket.”

Of course, the legal right to record is no guarantee of respectful treatment when events are unfolding. And they are small comfort to journalists or members of the public who have been injured or had their equipment seized as they tried to document protests.

Still, Solomon told me, it's helpful to know your rights to confidently assert them when it matters most. After all — like 17-year-old Darnella Frazier who started a movement by pointing her cellphone — almost anyone can capture evidence of what “the world needed to see.”

Should that happen, it's good to know the First Amendment has your back.

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