



CONSTITUTIONAL & EFFECTIVE EMPLOYEE RESPONSES TO CITIZENS WHO VIDEOTAPE IN TOWN OFFICES

John Sofis Scheft, Esq. Law Enforcement Dimensions, LLC

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Context

Most citizens are well meaning municipal government supporters. However, there are some citizens who, driven by our internet culture, seek to provoke a reaction on videotape by municipal employees. They hope to cast doubt on your professionalism and, in some cases, enhance their social media reputation (and even benefit financially). Your department depends on you to respond professionally and, ideally, to establish a basic human connection with people who demonstrate this mindset.

Legal & Communications Foundation

Essential Two-Step Communication Framework

1. **Identify yourself** – calmly, slowly and, if possible, with a pleasant expression! -- by name and department. Essential mindset: I am starring in a reality TV show! This sets the tone of the whole interaction.
2. **Ask if citizens need any municipal services.** If they do, help them! If they do not, you are no longer professionally obligated to speak with them. At this point, calmly and politely:
 - **Disengage** (e.g., “I have to get back to my report.” “Hey, good talking with you. I think it’s great you’re making sure we’re open to the public.”). The First Amendment places no duty on a government employee to respond to questions or comments from citizens that are not related to a direct need for services. *King v. McKenna*, 2015 WL 5168481 (Superior Court of Delaware, Kent County) (government officials have no duty to provide information to journalists or to provide access in all cases); and/or
 - **Provide referrals** (e.g., “You will have to talk with my supervisor . . .” or “If you want help with property taxes, you need to visit the third floor.”); and/or
 - **Establish boundaries**
 - Physical (e.g., “You cannot go into the office, that is a restricted area.”); and/or
 - Behavior (e.g., “If you want to sit in the lobby, you can. But you cannot interrupt our work.”).

Useful Communications Perspectives/Strategies

- **Articulate “respect” and, if you are comfortable, “connect” with citizens.** This goes a long way to defusing the situation. Many confrontational visitors just want to be acknowledged; a “good” interaction often disarms them.
- **Name the game . . . and reframe** (e.g., “You are yelling at me. This not productive. Please stop or you’ll have to leave.”).
- **Do not get into legal arguments.** Simply tell people what you are prepared to do. Legal discussions just invite further debate and will be used by “litigious” types to catch you saying something incorrect.

Video & Disruption Policy

Video

- **Review this with your town manager, who can consult as necessary with town counsel.**
- **Most common policy/approach:** Citizens are allowed to video in areas of public access in municipal buildings or on municipal property, but they are not authorized to video in restricted areas without permission.

Disruption

- **Disruptive behavior unacceptable.** *Hurley v. Hinckley*, 304 F.Supp. 704 (D. Mass. 1970) held that 266, § 120 applies on government property. In this case, twenty people came to the Barnstable welfare office and, in the confined space of the office, used loud, profane, and threatening language toward the director. The protesters had already been given a reasonable opportunity to present their grievances in an orderly manner, and they were arrested when they refused to leave. This was proper. In contrast, a woman at the Somerville welfare office should not have been arrested when she insisted on making a statement to someone in charge that related to welfare, which was relevant to this agency. At that point, she had not disrupted the “business of the agency.”
- **Call police.** The drama of conflict is sometimes the goal of citizens in these situations. Polite conversation and disengagement often resolve these encounters. However, do not hesitate to call police for persistent disruptions, threats, or other inappropriate conduct.
 - Ask citizen to stop, then warn, then ask citizen to leave. *Minnesota Majority v. Mansky*, 708 F.3d 1051 (8th Cir. 2013).
 - Notify police. Police have power to eject and/or arrest for trespassing in violation of 266, § 120.
 - *Important note:* This sequence can be done in either order, depending on the situation.

Follow up Harassment

- **Report to supervisor.**
- **Report to police.** After consulting with your supervisor, do not hesitate to report the situation to police for investigation and potential criminal charges, including:
 - Criminal Harassment, 265, § 43A.
 - Threat to Commit a Crime, 275, § 2.
 - Annoying or Obscene Electronic Communication, 269, § 14A.



VIDEO VISITORS IN TOWN HALL

The arrival of so-called First
Amendment Auditors!

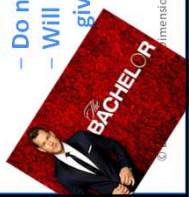
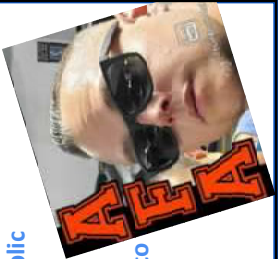


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THE CONTEXT:

- These are private citizens – part of our internet culture
- These are not “audits.” They have no procedure and report to no public agency.
- They:
 - Enter public buildings to record public employees in the workplace.
 - Do not announce themselves
 - Do not wear any ID
 - Will ask you your name but refuse to give their name.





BOTTOM LINE:

Preparation by your office!

- Video policy
 - Usually allow in areas of public access
 - Most municipalities: Path of least resistance
 - Can adjust – e.g., voting – if applied consistently
- Decide public vs. restricted areas
 - Barriers and signs are key. Don’t overdo it!
 - No ambiguity. 266, § 120 trespassing
 - Notice to members of the public [Thanks to Deputy Denise Casey in North Andover]
- Conceal sensitive stuff [e.g., turn computers around]
- Designate employee who is comfortable being videotaped!







To our valued residents and customers,
In MA, it is legal for private citizens to videotape our staff in public spaces while they are performing official duties.
It is also legal for private citizens to videotape members of the public while they are in public spaces.
If you are present when this occurs and feel uncomfortable, please call our office to make an appointment for a different time.
Thank you for your patience and understanding.
Melissa Murphy Rodrigues
Town Manager





Optional language

If you are present when this occurs and feel uncomfortable, you can notify our staff, who can talk with you in a private office or, if necessary, make an appointment with you to come back at another time.

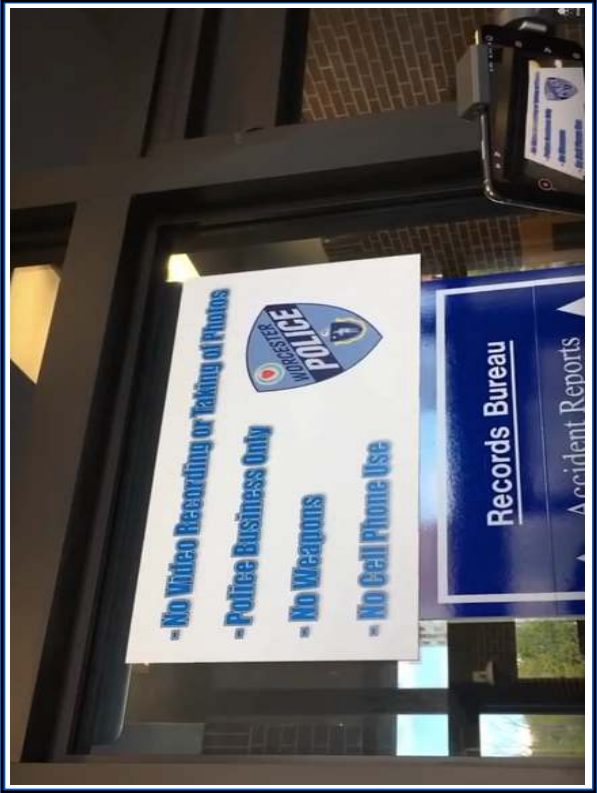
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BOTTOM LINE: *Preparation by you!*

- *Introduce yourself pleasantly*
- *How can I help you?*
- **Other communication tips:**
 - **Connect if you can** (e.g., humor, “where else have you been?”)
 - **Go back to work!** (“Thanks, I’ve got to finish my report”; disengage; go to a restricted area)
 - **Let the video tell your story . . .**
 - Don’t argue about restricted areas or procedure
 - Don’t argue about or do something just because they insist its “the law”
 - Refer to a supervisor
 - Calmly identify rude or disruptive behavior
 - **If disruptive or threatening, ask them to leave/call police** (You decide order!)

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*Athena Sofis Scheft says:
“We appreciate your public service!”*

