Do Cellphone Videos Help Police or Get in the Way?

When a New York police chase and shoot-out went on YouTube, got picked up by news outlets and confiscated by police on the scene, the issue zoomed again into the spotlight.

One of the surest signs of something big happening today is seeing crowds gathering, with the ubiquitous mobile devices raised in the air to capture a video of the situation. Sensational scenes almost don't really happen if they aren't recorded by everyday people and put online. But the tendency to record everything leads to sticky conflicts between police and the people they are sworn to protect and serve, complicated by the viral speed and ease of technology.

What Happened: A dramatic chase and fatal shooting between the New York Police Department and a knife-wielding suspect over the weekend in the city's crowded Times Square area was digitally captured by several smartphone-toting bystanders, according to reports from *The Verge* [1].

Police approached a 51-year-old man for reportedly smoking marijuana, but the suspect backed away and drew a kitchen knife. The pursuit lasted several blocks until police cornered the suspect ordered him to drop his weapon. When he didn't, police shot and killed him.

Crowds of witnesses, many with cellphone cameras rolling, saw the incident, and posted the jumbled footage, which often featured the huge crowds attracted to the action and not the police and the suspect.

What *Really* Happened: The huge amount of mobile phone video, from people from as far as Brazil, is sparking controversy over what sort of laws govern these

kinds of citizen-journalist actions and how they foster or impede law enforcement's efforts to protect public safety.

Reportedly, NYPD on the scene confiscated a Boston man's smartphone after he said he recorded the shooting itself on the device. The man said police told him not to talk to the media, but The police would not confirm or comment on his claims.

What's Next: The NYPD will investigate the incident and may use the video footage as evidence, since that is permissible under New York law. Also, the NYPD isn't out of line in asking the witnesses not to speak to the media, since this is routine procedure for all cases. Still, most experts expect the police will need a search warrant to view the video, but the increasing incidence of mobile devices and their use in recording police activity in action remains cloudy.

In many of America's big cities, the response to this trend is uneven. Police departments around the U.S. have prosecuted citizens for recording police activity, with arrests made in Seattle, Miami, Baltimore and many other cities. Some states, like Illinois, assert recording an officer with a smartphone is a serious crime, a law tested by a Chicago woman [2] who was trying to report sexual misconduct of a police officer and ended up being charged with a felony for using her smartphone to record the interview.

Laws vary by state, but most say it is okay to record an on-duty officer as long as it doesn't physically interfere with the officer. Still, many law enforcement officials object to the increasing number of smartphone-documented disputes, but the response from federal agencies is equally as strong.

Last May, the U.S. Department of Justice reprimanded the Baltimore Police Department for insufficiently supporting citizens' right to record officers on duty. The DoJ wrote, "policies should affirmatively set forth the contours of individuals' First Amendment right to observe and record police officers engaged in the public discharge of their duties."

While the DoJ's 11-page letter was directed to the Baltimore Police Department, it noted its application is a nationwide goal.

The Takeaway: As officials move forward with the Times Square investigation, they could take note of how a Boston case, involving a man arrested for filming an arrest on his phone, was settled this spring.

Boston Police charged Simon Glik with violating a wiretap law, disturbing the peace and aiding in the escape of a criminal, taking the stance that his behavior was illegal and interfering with their work.

Glik then sued the city for violating his First and Fourth Amendment rights, and the courts sided in his favor [3], awarding him $170,000 after concluding his documentation did not interfere with the arrest.

Law enforcement is likely to remain wary of unrestrained cell phone documentation,

which they assert can interfere with their ability to carry out their duties. Boston's win for citizen journalism, combined with the DoJ's affirmation of the practice as a First Amendment right, won't ensure there won't be future incidents raising difficult questions, but rather sets a precedent for how they should be resolved in the future.

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