

Thank you so very much for your time and attention.

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I. TESTIFIER'S INTEREST

My name is Mario Cerame. I am a second year law student at Quinnipiac University School of Law. Since August 2010, I have been researching and writing about the right to record police in Connecticut, and I have garnered a fair amount of expertise. My Law Review Note on this topic has been selected for publication. The Connecticut Law Tribune¹ and the Quinnipiac Chronicle² have quoted me on this issue. I have been invited to present at a conference in Winnipeg on this topic. In this testimony, I hope to offer you an informed opinion.

My research has been broad in scope. I have studied policies, judicial orders, opinions, and settlement agreements across the country. I am in constant communication with attorneys in Connecticut dealing with this issue, as well as groups in other states. My research draws extensively on interviews with both police officers and citizen watchdogs, surveying arguments on both sides. I have found my dialogue with police union representatives particularly valuable.

Today I implore you to pass a law that will provide the men and women of law enforcement with the guidance they require and deserve. I implore you to protect those who serve and protect us. All of these opinions are my own. I do not represent the interests of my school or any other group in any way.

II. BACKGROUND

Because of advancements in technology, everyday folks now have the ability to document police conduct easily, cheaply and casually. A number of incidents between police and civilian recorders have appeared in the news lately: you may be familiar with the stories of Father Manship,³ Luis Luna,⁴ Kenneth Hartford,⁵ the prohibition against recording police violence during the Elevate Lounge raid in New Haven,⁶ or the mysterious Kelly video.⁷ These

¹ Christopher Nolan, *Cameras, Cops Create Controversy*, THE CONNECTICUT LAW TRIBUNE (Mar. 7, 2011) available at <http://www.ctlawtribune.com/getarticle.aspx?ID=39805>.

² Matt Ciepielowski, *Senior arrested after filming another student's arrest*, THE QUINNIPIAC CHRONICLE, (September 28, 2010) available at <http://www.quchronicle.com/2010/09/video-senior-arrested-after-filming-another-students-arrest/>.

³ Thomas MacMillan, *Cross-Border Cops Arrest Father Jim*, NEW HAVEN INDEPENDENT (Mar. 3, 2009) available at http://newhavenindependent.org/archives/2009/03/new_haven_pries.php.

⁴ Thomas MacMillan, *Top Cop: You're Arrested For Videotaping Us*, NEW HAVEN INDEPENDENT (November 11, 2010) available at

http://newhavenindependent.org/index.php/archives/entry/videotaper_arrested_by_top_police_brass/

⁵ Matt Ciepielowski, *Senior arrested after filming another student's arrest*, THE QUINNIPIAC CHRONICLE, (September 28, 2010) available at <http://www.quchronicle.com/2010/09/video-senior-arrested-after-filming-another-students-arrest/>

⁶ Thomas MacMillan, *DeStefano: We Shouldn't Have Sent The Swat Team*, THE NEW HAVEN INDEPENDENT, (Oct. 8, 2010) available at http://www.newhavenindependent.org/index.php/archives/entry/mayor_swat_was_a_mistake/; see also Egidio DiBenedetto & Colin Ross, *Police conduct questioned after raid on Morse-Stiles screw: Bust comes as NHPD cracks down on nightlife*, THE YALE DAILY NEWS (Oct. 2, 2010) available at <http://www.yaledailynews.com/news/2010/oct/02/five-arrested-raid-morse-stiles-screw/>; Jordi Gasso et al.,

episodes glean considerable media attention, but many incidents go unreported. For instance, in December 2010, an officer threatened a Connecticut Post staffer documenting police response to an emergency in public. One Florida blogger wrote about the police misconduct,⁸ but the Post declined to. In my research, I have come across a number of anecdotes from other people who have been accosted for recording police in public. These encounters erode faith in the justice system; often individuals do not complain because they believe nothing will be done, and because they fear retaliation. As one local activist put it, "They've heard the horror stories."

There seems to be a consensus in our state that there is a right to record police. New Haven Mayor John DeStefano said, "This is America. Anyone can film anytime they want, including you, me and the PD [Police Department] while on duty."⁹ New Haven Police Chief Frank Limon said, "In no way are we saying that people don't have a right to videotape police officers while they are conducting any type of contact with the public."¹⁰ New Haven Police Department Union Vice-President Frank Lombardi said, "Everyone knows people are allowed to videotape."¹¹ But what does all that mean, exactly? What is the scope of that right?

Police officers need a bill now. The vast majority of police officers are hardworking men and women who risk their lives on a daily basis for our safety. These public servants require clear policies on what is permissible and what is not; they need to make quick decisions in dangerous situations. They cannot work with a vague policy. The legislature must act now in giving clear guidance to officers, courts and civilians on what is permissible and what is not.

The public needs a bill now. As with any profession, there are some officers who break the rules. Some authorities act in bad faith to illegitimately curtail the right to record police through "catch-all" criminal statutes, like C.G.S. § 53a-167a interfering with an officer and C.G.S. § 53a-182 disorderly conduct. By bringing charges, or just threatening criminal liability, some police officers informally censor media critical of police. Although this pertains to only a minority of officers, these few dangerously undermine a disproportionate amount of public faith. Additionally, if the legislature fails to act now, these criminal statutes may be challenged for facial vagueness because they implicate too many interests of the freedom of speech and press; the public would not be served should such laws be struck down. Note that both of these laws have been attacked as facially vague in the past for implicating speech and press interests.¹²

The legislature is the body best equipped for this issue. Complex policy should be decided here. If the legislature does not act now, you force officers, civilians, administrators, and judges to navigate a new area of law freewheeling from legislative guidance. Nationally and in Connecticut, the right to record is unclear. At the federal level, some courts have effectively

Administrators, students react to Elevate arrests, THE YALE DAILY NEWS (Oct. 2, 2010).

<http://www.yaledailynews.com/news/2010/oct/02/administrators-comment-arrests-elevate/>.

⁷ Paul Bass & Thomas MacMillan, *What Happened On Sept. 10(Maybe)*, THE NEW HAVEN INDEPENDENT, (Jan. 20, 2011) available at http://newhavenindependent.org/index.php/archives/entry/what_happened_on_sept_10_in_part/

⁸ Carlos Miller, *Connecticut State Police Officer Throws Tantrum Over Photojournalist*, PHOTOGRAPHY IS NOT A CRIME (Dec. 5th, 2010) <http://www.pixiq.com/article/connecticut-state-police-officer-throws-tantrum>.

⁹ Paul Bass, *Mayor on Cop Videos: "This is America,"* THE NEW HAVEN INDEPENDENT, (Oct. 4, 2010) available at http://newhavenindependent.org/index.php/archives/entry/alchemy_elevate_raid_prompts_brutality_charge/.

¹⁰ Kathleen Megan, *New Haven Police Chief Says The Public Has The Right To Videotape Police Actions*, NEW HAVEN INDEPENDENT, (October 4, 2010) available at http://articles.courant.com/2010-10-04/community/hc-new-haven-police-cell-phones-20101004_1_record-arrests-yale-students-police-officers.

¹¹ Miller, Tolnay, & Lombardi

¹² See, e.g., *State v. Williams*, 205 Conn. 456, 473 (1987), *State v. Indrisano*, 228 Conn. 795, 809 (1994).

upheld a right to record under the First Amendment.¹³ Some courts have been more equivocal about the right.¹⁴ Recently, a federal court held flatly that there was no First Amendment right to record police.¹⁵ The right is severely curtailed in Massachusetts, causing considerable tension between state and federal courts. Connecticut courts have yet to weigh in on the issue. Right now, the legislature has an opportunity to set the tone; in a year or so, that opportunity may be lost.

III. INTERESTS IMPLICATED BY CIVILIAN RECORDINGS

Encouraging civilians to record police may implicate two government interests: safety and efficient administration of the justice system. Safety is a paramount concern. The manner of recording, the increased stress of being recorded, pulling a recording device out, and the distractions caused by recording all can implicate safety interests. An inevitable increase in civilian recordings will have certain costs, both pecuniary and intangible. Officers will have to be trained in how to properly respond to being recorded. Recordings may be taken out of context or may present a limited point of view, and law enforcement will want to supplement investigations with its own video evidence. Civilian recordings may delay investigations should some witnesses or victims choose not to cooperate with police while being recorded, and civilian recordings may cause some officers to feel disrespected.

On balance, the benefits significantly outweigh most of these costs. Civilian recordings provide valuable evidence for both police and civilians, and permitting multiple recordings mitigates their limited point of view. Officers have shared stories with me about how they have personally benefited by confronting individuals with civilian recordings of an incident. Additionally, recordings incentivize police departments and individual officers to adopt better procedures. Furthermore, recording police is a kind of civic participation for many individuals.

Most of all, preventing civilians from recording police erodes the faith of the community in the police department. It just looks bad, and undermines police legitimacy in the eyes of the people. New Orleans has a massive crisis on its hands because juries do not believe police; police have lost all legitimacy in their eyes. We should learn from that horrible example; there is a growing, similar danger in some communities in our state.

Officer safety remains a compelling concern. But bad faith actions of some officers complicate matters; some will abuse procedures to create a pretext to suppress recordings.

IV. THE LANGUAGE OF S.B. 1206 (RAISED)

There are a number of merits to the language of the bill. Because the law tracks the language of C.G.S. § 53a-167a interfering with an officer, the scope fits easily into current law. Ostensibly, the right to record begins where § 53a-167a interfering with an officer ends. On its

¹³ See, e.g., *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (The injured party “had a First Amendment right, subject to reasonable time, manner and place restrictions, to photograph or videotape police conduct.”); *Iacobucci v. Boulter*, 193 F.3d 14, 25 (1st Cir. 1999) (holding that the plaintiff recorded town officials in “exercise of his First Amendment rights,” and no reasonable officer would have believed that the plaintiff violated the disorderly conduct statute in doing so); *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995) (holding that there is “a First Amendment right to film matters of public interest”).

¹⁴ See, e.g., *Kelly v. Borough of Carlisle*, 622 F.3d 248, 262-63 (3d Cir. 2010); *Gilles v. Davis*, 427 F.3d 197 (3d Cir. 2005) (holding that “videotaping or photographing the police in the performance of their duties on public property may be a protected activity,” *id.* at 212 n 14 (emphasis supplied); and that “videography that has a communicative or expressive purpose enjoys some First Amendment protection” *id.* (emphasis supplied)).

¹⁵ *ACLU v. Alvarez*, No. 1:10-cv-05235 ECF no. 42 (N.D. Ill. January 10, 2011) available at <http://ia700101.us.archive.org/5/items/gov.uscourts.ilnd.246599/gov.uscourts.ilnd.246599.42.0.pdf>.

face, this is a modest bill. The strongest part of the bill is the statement of purpose, announcing an important value, and which may on its own cure some of the concerns I articulate below.

I do have some concerns about the language of the bill, and I believe as written it fails to adequately serve the men and women of law enforcement as well as civilians. First, the language of the bill as written might suggest a negligence or strict liability tort, which I do not believe is the intent of the bill. There is no "intent" element to this statutory cause of action, and there should be, else accidental or unforeseeable conduct that interferes with the right to record would incur liability. This would lead to absurd results, and is easily cured with simple language.

Second, there is no reasonable "place" restriction, which could also lead to absurd results. For example, an individual could claim a cause of action if an officer interfered with someone who chose to record inside of a grand jury proceeding or a prison. Alternatively, the language as written could inadvertently give burglars and trespassers some protected right to record, which they should not have. I would limit the scope to where the recorder has permission or license to be present. This would protect the right to record in public and quasi-public settings, but also protect legitimate privacy interests. I would also include a savings clause ensuring that any preclusion must be otherwise constitutional.

Third, while the scope of the bill neatly tracks the language of § 53a-167a interfering with an officer, the lack of specificity is a problem for officers and civilians. If an officer is self conscious of being recorded, is that hindering? How do we know it is not? Could an officer in bad faith claim that he or she felt subjectively hindered by being recorded, even though there was no physical interference? This language may swallow the bill entirely, but deprive officers of notice, leaving them vulnerable federal and lawsuits. Therefore, to better aid and inform officers, I would limit the interference to physical interference. I would also give officers an express exception for an actual safety risk, or the perception of an actual safety risk. To comport with likely federal constitutional law, I would direct officers to make a reasonable accommodation if at all possible.

Fourth, given the ineluctable increase in civilian recordings because of ubiquitous cell phone cameras, I would mandate training on this issue for all police in the State of Connecticut. The men and women of law enforcement deserve such training so as to not be vulnerable to lawsuits for inadvertently violating federal civil rights.

Finally, to ensure that the most vulnerable populations are adequately protected by this law, I would include a provision providing reasonable attorneys' fees, like 42 U.S.C. § 1988.

Therefore, I urge the legislature to pass a bill that cures these deficiencies with more specific language. I would:

- include an "intent or recklessly cause" element, akin to an intentional tort
- qualify the open-ended "obstruct or hinder" language, which offers police and citizens none of the specific guidance they deserve, with the adverb "physically"
- include language that expressly gives officers an exception for an "actual, physical safety risk, or perception of an actual, physical safety risk"
- direct officers to make a reasonable accommodation if at all possible so as to comport with likely federal constitutional requirements
- include language limiting the scope of the bill to where the recorder has a license to be present
- include language circumscribing the scope of the bill to preclude application to recording inside certain government buildings, like prisons, police stations, and

courthouses, with a saving clause that would read, “so long as that preclusion is otherwise constitutional.”

- include language awarding attorneys’ fees to protect the population most vulnerable to abuses by the pernicious, illegitimate minority of officers
- include language mandating training for all officers in Connecticut

I implore you to pass a more specific bill now to better serve the men and women of law enforcement and the citizens of Connecticut, both of whom badly need and deserve such a bill.

If the legislature fails to pass a bill that offers guidance, you put the livelihoods of law enforcement officers at risk by making them vulnerable to suits under federal law. Please act now to protect the brave men and women who protect and serve us.

V. CONTACT INFORMATION

I welcome the opportunity to further develop any of these points, or address any questions you may have as best I can. I can be reached by phone at 607.351.3820 or by email at [mariokcerame\(at\)gmail.com](mailto:mariokcerame(at)gmail.com). My personal profile can be located at www.linkedin.com/in/mariocerame. Please do not hesitate to contact me if there is anything I can offer.