Back in the day, a television show called “Candid Camera” featured unsuspecting ordinary people being captured by hidden cameras as elaborate pranks were played on them. For example, in one episode persons were filmed dealing with a desk rigged so that drawers would pop open when one was closed or an exit door which led into a brick wall. In another, the reactions of folks were filmed after they saw former President Harry S. Truman walking down the street, occasionally stopping to ask the time. For those of you too young or too unwilling to admit that you remember the show, the concept was recycled for more recent shows like Fox’s “Totally Hidden Video” and MTV’s “Punk’d,” and “Scare Tactics.”

In today’s world of advanced technology, video footage is taken and uploaded to the internet for worldwide consumption at a mind-boggling rate. Governments and private businesses use cameras in all sorts of places to keep people and property safe. But what about when Joe Citizen wants to video a police officer who is carrying out his or her official duties? Ever since the Rodney (“Can’t we all just get along?”) King videotaped encounter with the Los Angeles Police Department became one of the first ever “viral” videos; it seems we never go more than a week without seeing some video which purports to show the police doing something they shouldn’t.

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1 For those really old folks, “Candid Camera” started out on radio as “Candid Microphone.”
2 Who comes up with the names for these shows on Fox? World’s Wildest Police Chases! When Animals Attack! World’s Most Shocking Medical Videos! They actually renamed Totally Hidden Video to Totally New Totally Hidden Video. As Seth Meyers and Amy Poehler used to say on SNL: Really?!
3 Leave it to MTV to realize the full awesomeness of an apostrophe. No one would watch a show named “Punked.” But make it “Punk’d” and it’s cool! Millions will tune in, even if it’s hosted by Ashton Kutcher.
4 A sure sign of society’s decay: the clean and funny pranks of Candid Camera give way to elaborate schemes to make people believe they are being abducted by aliens or attacked by a monster on “Scare Tactics.”
5 YouTube reports that over 24 hours of new video footage is uploaded to their site every minute. Imagine a thousand years in the future what archeologists will say about our society when they discover these old videos.
6 Another sure sign of society’s decay: In today’s society, when we want to express the thought that something is spreading rapidly, we immediately think of viruses. Gross.
Imagine you stop a vehicle and the passenger whips out a small video recorder to film what is going on. What if you start to take someone into custody and a bystander closes in with a video camera? What are the limits to when the police may be recorded without their consent? Let’s take a common sense look at this issue.

**BEASLEY’S COMMON SENSE RULE #1:**
**FOR SOMETHING TO BE ILLEGAL, THERE MUST BE SOME SORT OF LAW THAT MAKES IT ILLEGAL.**

This is Constitutional Law 101. We live in a free country with a limited form of government. Our government only has those powers that the citizens have granted to it. As a result, we can do anything we want unless the government, through representatives elected by us, specifically makes that thing illegal. So our first question must be: Is there a law that might make videotaping police in a public place illegal?

Some officers might argue that if they order a person to stop videotaping them and they refuse, a charge of Resist, Delay, and Obstruct a Public Officer would be in order. Those officers would be incorrect. The fact that you are delayed in your official duties because every five minutes you take the time to order a citizen to stop doing something that they have a legal right to do does not allow you to arrest said citizen.

It is a completely different situation, however, when the videographer is acting in such a manner as to obstruct you from being able to carry out your duties. Putting the camera up in your face so that you can’t see or continually stepping in front of you to block your way would be two examples. In this case, a resist, delay, and obstruct charge might be perfectly appropriate. Another situation where such a charge would probably be warranted is if the videographer was in a dangerous or unlawful place and refused to listen to your instructions to leave. For instance, a citizen has no more right to be inside a crime scene simply because he or she has a video camera. The bottom line with respect to a resisting charge is that the person must do something more than simply videotaping you to be charged.

More advanced students of the law might try to use the state’s laws governing electronic surveillance in this situation. G.S 15A-287 prohibits (among many other things) the interception of oral communication without the consent of at least one party to the conversation. There are several problems with the application of this statute to outlaw videotaping police in public.

First, even if it did apply to that situation, it would only prohibit the capture of the audio. The capture of the video images would not fall under this statute, which would be of little to no help for an officer who has been filmed doing something wrong. Second,

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7 This is what Abraham Lincoln meant in the Gettysburg Address when he referred to a “government of the people, by the people, [and] for the people.” I don’t know what he meant by “fourscore and seven years ago.”
your conversations are only “oral communications” under the statute if “uttered by a
person exhibiting an expectation that such communication is not subject to interception
under circumstances justifying such expectation.” That sounds a lot like having an
expectation of privacy that society would recognize.\(^8\) A person would be hard pressed to
assert a reasonable expectation of privacy in a conversation held in public.

While there are a few states\(^9\) that apparently have surveillance laws that have been
used to prosecute citizens videotaping police, North Carolina law does not appear to
outlaw the practice. Therefore, unless the videographer does something more to obstruct
you, they are within their rights to videotape what you are doing. As an important aside,
I need to point out that although the videotaping is legal, there are limits as to how the
video may be published or used. In appropriate cases, the subject of the video could
bring civil suit for torts such as defamation, libel, or invasion of privacy.

**BEASLEY’S COMMON SENSE RULE #2:**
**IF YOU ARE NOT DOING ANYTHING WRONG,
IT SHOULDN’T MATTER THAT YOU
ARE BEING VIDEOTAPED.\(^{10}\)**

Isn’t this the argument that is used for police surveillance of the public? It seems
difficult to justify allowing the government to set up cameras all over town and then balk
when a citizen wants to videotape something occurring in public view. Besides, for every
video we see of a police officer behaving badly, there are many more videos that
exonerate police officers from false charges every day. Most of you remember the “don’t
Tase me, bro” case in Florida. That same video footage that was so popular ultimately
was instrumental in clearing the officers involved of wrongdoing. Video cameras are
among the very best friends an honest cop could have.

**BEASLEY’S COMMON SENSE RULE #3:**
**YOU SHOULD ALWAYS ASSUME
THAT YOU ARE BEING RECORDED
IN SOME FASHION.\(^{11}\)**

If I may digress down memory lane for a moment: I was in the fourth grade when
I got my first home computer\(^{12}\) – the Radio Shack TRS-80. The “TraSh-80” had a 1.77

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\(^{8}\) The definition of a “reasonable expectation of privacy.”

\(^{9}\) From a quick bit of research, it looks like Illinois, Massachusetts, and Maryland. There could be a few
more.

\(^{10}\) Before I get a lot of angry emails, I realize that this is a gross oversimplification and that there may be
legitimate reasons why an officer would not want his face captured on video especially if they are working
some sort of covert assignment. Unfortunately, this doesn’t change the legal analysis.

\(^{11}\) Even if your police car is not equipped with a camera.

\(^{12}\) They were called “home” computers because most computers at that time took up entire climate
controlled rooms and operated on punch cards or reel-to-reel film.
MHz processor, 4KB of RAM, and no hard drive. In high school, I graduated to a Commodore 64 and in college I bought an Apple Macintosh. Today, my cell phone (which is by no means top of the line) has a 528 MHz processor, 288 MB of RAM (roughly 288,000 KB) and can hold more data on a thin “Micro SD” card the size of my pinky nail than 204 of my old clunky Macintosh computers!

The point is that technology has gotten better and extremely small at an amazing rate. Audio and video recorders now are standard features on a lot of cell phones and chances are that a lot of the people you come into contact with will not only have access to one or both, but will be able to operate it in most cases without you knowing about it. There are cell phones now with the ability not only to record video, but to instantly stream it to the internet, so even if you took the phone and smashed it into a million tiny bits, the video would remain for the entire world to see.

BEASLEY’S PRACTICAL TIPS: WHAT TO DO WHEN SOMEONE IS FILMING YOU

1. Ignore them, if possible. If they aren’t bothering you, let them video away. A lot of these amateur videographers are simply looking to get a reaction from you. Without that reaction, most of the footage that they capture is going to be pretty boring.

2. Request, don’t order. Perhaps you are having a bad hair day or there is some other reason you would rather not be on video at that particular moment. You are certainly within your rights to politely request that the citizen not film you. If he refuses to stop and he otherwise is behaving legally, you are stuck with #1 above.

3. Give several warnings, if possible. In those situations where the cameraman starts obstructing or delaying you in your official duties, or follows you into a place (such as a crime scene) where he is not allowed to be, you should try to give several calm warnings about what is getting ready to happen before arresting him. Obviously, if the urgency of the particular situation calls for immediate action, you should take it.

4. Don’t damage the equipment. When you do have to take the person into custody, you may of course seize the recording device incident to that arrest. But be careful with it. This is not only for courtesy’s sake, and to avoid having to pay for any damage, but also to avoid the suspicion that you damaged it to avoid rebroadcast of the captured footage for some reason.

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13 Data was actually stored on a cassette tape and the cassette recorder was attached to the computer by a very thick cord.
14 And I cannot think of any circumstance where that action would be appropriate.
15 I try not to joke about bad hair, for obvious reasons.
So, try to be professional and always look your best for the cameras. And remember that character is how you act when you think no one is watching.\textsuperscript{16}

\textbf{Brian T. Beasley}
Police Attorney
High Point Police Department

\textsuperscript{16} I did not make this quote up, but was unable to determine who originally said it. If it was you, I apologize.