



Written by [Jack Kenny](#) on November 3, 2011

N.H. Judge Upholds Right to Record Police in Public

The recording was made via cellphone when Alleman called Porcupine 911, an answering service for libertarian activists, as the officer approached Alleman's car. Though the charge was not filed until the following February, Alleman's attorney, Seth Hipple, told *The New American* on Thursday that the officer was aware at the time he was being recorded and told Alleman that it was illegal to record him without his permission. Alleman insisted he had a right to do so, and Judge Tenney agreed, citing the First Circuit's ruling in the *Glik* case.



"*Glik* leaves no doubt that engaging in an audio recording of a police officer in the course of his official duties in a public place is protected speech under the First Amendment," Tenney wrote. The judge also found that Alleman had in no way interfered with the officer in the performance of his duties.

"The fact that Officer Montplaisir may have been unwilling or unhappy being recorded does not make a lawful exercise of the defendant's First Amendment rights a crime," Tenney wrote.

Simon Glik, a Boston attorney, was arrested for making both an audio and video recording of police officers making an arrest on the Boston Common. According to the *New Hampshire Union Leader*, Alleman was stopped in Weare after he left a gathering in support of a local tavern owner who had been arrested for allegedly interfering with an assault investigation. Alleman was charged with nothing other than a violation of the state's wiretap law, which forbids recording anyone without his or her consent. The New Hampshire law makes unauthorized recording a Class B felony, punishable by up to seven years in prison. But its application to Alleman, as with the Massachusetts law in the *Glik* case, was an unconstitutional abridgment of the defendants' First Amendment liberties, Hipple said.

"The right here is freedom of the press," the Concord attorney said. "This is the right to gather information about how the government operates." Alleman regularly reports on government activities on his blog, frequently attending and taping public hearings at the State House in Concord, for example, and posting the video on the Internet for the benefit of interested persons who were not able to attend the hearings. Anyone, not just reporters, has the constitutional right to do the same, said Hipple, noting that a police officer carrying out official duties in public has no expectation of privacy.

"It's not a new proposition," said Hipple. And as both the *Glik* and *Alleman* rulings have affirmed, "This right doesn't apply just to reporters, it applies to all citizens."

The *Alleman* case was one of three in the past 18 months in which Weare police have charged citizens with unlawfully recording police officers in public. Charges were dropped against the other two, but one of them, who is also a Hipple client, is now suing the town and its police department over her arrest. The plaintiff is seeking compensation for time spent in jail following the arrest, time lost in court, lawyer fees, and the emotional stress of facing a possible seven-year prison sentence, Hipple said. He said he did not yet know whether Alleman will file a civil suit over his arrest. But the attorney hopes the dismissal of the criminal charge, "along with various laws suits that have been filed" will



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persuade Weare Police to “respect people's First Amendment rights to document what their government is doing.”



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