

## East Coast appeals court rules for citizen in police wiretapping case

BY CHALKEY HORENSTEIN  
STREET NEWS SERVICE

Boston, Mass. —

In the Land of the Free filming the police may not seem the most intuitive course of action when they are in the process of arresting a criminal but it is definitely legal, according to a decision in the appellate courts. The case of Simon Glik sets a new



Simon Glik

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precedent for First Amendment rights.

Simon Glik was charged by Boston police for "illegal wiretapping" while recording police officers aggressively arresting a young man in Boston Common. With the dust settling around the First Circuit Court of Appeal's Aug. 26 ruling, advocate groups such as the American Civil Liberties Union and Common Cause believe this will provide a strong precedent for those defending First Amendment rights.

In response to Glik's incident in 2007, the First Circuit Court of Appeals ruled that citizens have the right to videotape police officers while they are on duty, as long as the videotaping is not secretive.

"This decision was an important win for the First Amendment right to openly record police officers carrying out their duties in a public place," said Christopher Ott, communications director of the American Civil Liberties Union's Massachusetts branch. "Simon Glik did what we hope any engaged citizen would do in this situation, which was documenting what he thought looked like an improper use of force, and his action in no

way interfered with the police. He should never have been arrested for this."

This court decision sprouted from the ACLU filing a lawsuit against the Boston Police Department on behalf of Glik. Glik, while watching officers punching a citizen, took out his phone and started recording the officers.

"I was walking down the Boston Common in order to meet my wife. Midway through, I noticed a commotion by one of the benches. I turned around, and I saw a young man being arrested by three police officers," Glik told the ACLU via its YouTube channel. "What was happening was out of the ordinary. Without really giving it much thought, I took out my cell phone and started recording. ... I was asked if my cell phone recorded video, and when I answered yes, I was immediately arrested."

Boston police arrested Glik, charging him with a wiretapping statute that prohibits secretive recording. However, Glik explicitly told them he was recording, and the police even admitted that Glik was not being secretive. When taken to court, Glik was ultimately charged with illegal wiretapping, disturbing the peace and aiding the escape of a prisoner. After the court dismissed all charges against Glik in February of 2008, he later approached the ACLU for their help in filing the lawsuit.

The First Circuit Court of Appeals hearing took place on June 8 of his year, finally reaching its decision this past August. The court ruled not only that the police violated Glik's First Amendment right to film public officials, but that the police also violated his Fourth Amendment right by arresting him without probable cause. In addition, the court stated that police should have known this all along, and that the right to film public officials is not limited to the press.

"We respect the court's decision," said Elaine Driscoll, director of communications at the Boston Police Department. Driscoll also

told Spare Change News that, "since the original incident, all of our officers have been trained on wiretap statute."

Other advocacy groups, such as Common Cause, are also rejoicing. "We're very happy about the ruling," said Pam Wilmot, executive director of Common Cause's Massachusetts branch. "Technology has provided new opportunity to citizens for holding government officials accountable. And the allegations from the police that it was a

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CHRISTOPHER OTT

AMERICAN CIVIL LIBERTIES UNION'S MASSACHUSETTS BRANCH.

wiretapping were outrageous to begin with and clearly a violation of our right to free speech. The court affirmed that conclusion."

Although Glik's work remains a strong driving force behind the ruling, he was not alone in being arrested for filming police. Other examples include Khaliah Fitchette, from New Jersey, who filmed police improperly handling a drunken man on the bus. Fitchette also was cleared of all charges, and she also filed a lawsuit with the help of the ACLU.

"It is actually a sad testament to a certain extent that the police would even try to stop somebody from exercising their rights under the Constitution, but obviously that happens," said Wilmot. "It's good to see the court siding so strongly with our rights."

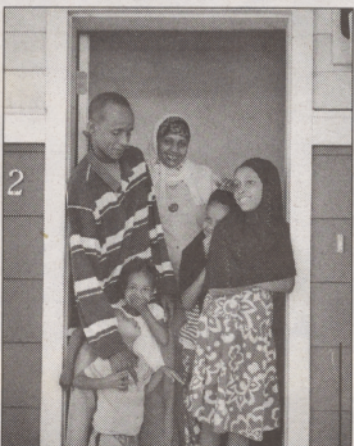
Chalkey Horenstein is a writer and editor at Street Roots sister paper, Spare Change News, Boston, Mass.

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