



Judge rules citizens can't video cops. What?

Lucy Schouten

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A federal judge potentially limited First Amendment free-speech rights to take video of police activity in public places.

The case involved the rights of citizens in a non-journalistic capacity to take video of police activity, Cheri Gregg reported for CBS News. Most courts, including those in Boston, Atlanta, and Chicago, have given citizens an almost unfettered right to photograph or take video from public property, provided their doing so does not interfere with actual police work.

District Judge Mark Kearney wrote that videographers must establish a more credible reason for filming, according to the Philly Law Blog:

We find no basis to craft a new First Amendment right based solely on "observing and recording" without expressive conduct and, consistent with the teachings of the Supreme Court and our Court of Appeals, decline to do so today.... We have not found, and the experienced counsel have not cited, any case in the Supreme Court or this Circuit finding citizens have a First Amendment right to record police conduct without any stated purpose of being critical of the government.

The judge's ruling responded to two similar cases in which citizen videography was challenged by police. One, Richard Fields, told police he simply wanted a good photo when he saw a crowd of police in front of a house party. The other case featured Amanda Geraci, a trained police observer who was filming a protest over fracking. Police physically restrained both for their actions, which they argued violated their First Amendment rights.

Under this ruling, many of the citizen-journalism videos used as evidence in police abuse cases of late would not receive First Amendment protection, wrote Radley Balko for The Washington Post. The videographer or photographer would have needed to inform police of their political intent.

The circumstances that would limit a citizen's videotaping rights under this case are complex and unusual, and free-speech advocates are expressing concerns.

"According to Kearney's logic, standing silently and recording the police is not sufficiently expressive to warrant First Amendment protection," wrote Adam Bates for Cato Institute via Newsweek. "The reasoning behind this distinction is bizarre and is out of step with rulings in several federal circuits that recording police in public is constitutionally protected without regard for whether the recorder is attempting to make a statement or issue a challenge to law enforcement."

The American Civil Liberties Union (ACLU) has already announced its plan to appeal to the 3rd US Circuit Court of Appeals. The ACLU has reservations about ubiquitous cameras and their possible impact on everyday life, but the organization has supported use of police body cameras, provided checks protect the privacy of officer downtime and civilian life.

"The freedom to monitor the police without fearing arrest or retaliation is one of the ways we distinguish a free society from a police state," Reggie Shuford, director of the ACLU in Pennsylvania, said in a press statement. "Every court that has addressed this issue has ruled that the right to record the police performing their duties in public is at the core of what the First Amendment protects."

The understanding of the First Amendment has previously included a general right to take photos in any public place where citizens can legally be, wrote Bert Krages, an attorney in Oregon, in a 2003 guide to "The Photographer's Right."

"Absent a specific legal prohibition such as a statute or ordinance, you are legally entitled to take photographs," Mr. Krages wrote.

This ruling appears to challenge this idea, pending an appeal.