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Who says we can't film the cops? A federal judge, that's who.

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A federal judge in Pennsylvania last week ruled that two people who were recording police activity with their mobile phones had no First Amendment right to do so because they weren't explicitly protesting the police. According to U.S. District Judge Mark Kearney, you're protected if you're recording police activity as an act of protest, but you're not protected if you're recording them just because you want to do so.

As Brentin Mock, a writer with CityLab poignantly put it, unless the ruling is appealed, "it looks like there will be no Instagramming the police?unless you intend to add an N.W.A.-approved caption to it."

Two people sued the Philadelphia police because, they say, police took their mobile phones they were using to record the police. One of the plaintiffs, Amanda Geraci, had been trained by Cop Watch Berkeley, but she doesn't suggest that she was actively protesting the Philadelphia police on the day in question. The other plaintiff, Richard Fields, just thought the twenty or so police outside a home where a party was being held "was an interesting scene."

But the police apparently did not take kindly to two people standing in a public place recording what they were doing.

Kearney writes: "The question today is whether citizens also enjoy a First Amendment right to photograph police absent any criticism or challenge to police conduct. The citizens urge us to find, for the first time in this Circuit, photographing police without any challenge or criticism is expressive conduct protected by the First Amendment. While we instinctively understand the citizens' argument, particularly with rapidly developing instant image sharing technology, 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."

Kearney's logic -- or lack thereof -- hasn't gone over well. PINAC, Photography Is Not a Crime, blasts the ruling from the "rookie federal judge," calling it "an embarrassing Constitutional setback for the American judicial system." The Cato Institute, a libertarian-leaning think tank, calls the ruling "confounding." Cato says Kearney's reasoning 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." Eugene Volokh, who focuses on the First Amendment at UCLA School of Law, says in his blog for the Washington Post that he expects Kearney's ruling to be overturned.

And it ought to be. What kind of country would we be if conditions were placed on our First Amendment right to free speech and expression: a la, you've got a right to do something if you're upset but don't have the right if you're not?

Read the Cato Institute's take here: Federal Judge Curtails Right to Record Police.

Photography Is Not a Crime: Rookie Federal Judge in Pennsylvania Rules Citizens Do Not Have First Amendment Right to Record Police.

CityLab: The Right to Film Cops Comes Into Question