

OSC 3/21/16 Notes from “Know Your Rights Teach-In” (presented by the ACLU of Sonoma County)

We rely on the police to keep us safe and treat us all fairly, regardless of race, ethnicity, national origin or religion. This paper provides tips for interacting with police and understanding your rights.

This information is not intended as legal advice.

YOUR RIGHTS

- You have the right to remain silent. If you wish to exercise that right, say so out loud.
- You have the right to refuse to consent to a search of yourself, your car or your home.
- You have the right to calmly leave if you are not under arrest.
- You have the right to a lawyer if you are arrested. Ask for one immediately.
- You have constitutional rights regardless of your immigration or citizenship status,

YOUR RESPONSIBILITIES

- Do stay calm and be polite.
- Do not interfere with or obstruct the police.
- Do not lie or give false documents.
- Do prepare yourself and your family in case you are arrested.
- Do remember the details of the encounter.
- Do file a written complaint or call your local ACLU if you feel your rights have been violated.

IF YOU ARE STOPPED FOR QUESTIONING

- Stay calm. Don't run. Don't argue, resist or obstruct the police, even if you are innocent or police are violating your rights. Keep your hands where police can see them.
- Ask if you are free to leave. If the officer says yes, calmly and silently walk away. If you are under arrest, you have a right to know why.
- You have the right to remain silent and cannot be punished for refusing to answer questions. If you wish to remain silent, tell the officer out loud. In some states, you must give your name if asked to identify yourself.
- You do not have to consent to a search of yourself or your belongings, but police may “pat down” your clothing if they suspect a weapon. You should not physically resist, but you have the right to refuse consent for any further search. If you do consent, it can affect you later in court.

IF YOU ARE STOPPED IN YOUR CAR

- Stop the car in a safe place as quickly as possible. Turn off the car, turn on the internal light, open the window part way and place your hands on the wheel.
- Upon request, show police your driver's license, registration and proof of insurance.
- If an officer or immigration agent asks to look inside your car, you can refuse to consent to the search. But if police believe your car contains evidence of a crime, your car can be searched without your consent.
- Both drivers and passengers have the right to remain silent. If you are a passenger, you can ask if you are free to leave. If the officer says yes, sit silently or calmly leave. Even if the officer says no, you have the right to remain silent.

IF YOU ARE QUESTIONED ABOUT YOUR IMMIGRATION STATUS

- You have the right to remain silent and do not have to discuss your immigration or citizenship status with police, immigration agents or any other officials. You do not have to answer questions about where you were born, whether you are a U.S. citizen, or how you entered the country. Separate rules apply at international borders and airports, and for individuals on certain nonimmigrant visas.
- If you are not a U.S. citizen and an immigration agent requests your immigration papers, you must show them if you have them with you. If you are over 18, carry your immigration documents with you at all times. If you do not have immigration papers, say you want to remain silent.
- Do not lie about your citizenship status or provide fake documents.

IF THE POLICE OR IMMIGRATION AGENTS COME TO YOUR HOME

- If the police or immigration agents come to your home, you do not have to let them in unless they have certain kinds of warrants.
- Ask the officer to slip the warrant under the door or hold it up to the window so you can inspect it. A search warrant allows police to enter the address listed on the warrant, but officers can only search the areas and for the items listed. An arrest warrant allows police to enter the home of the person listed on the warrant if they believe the person is inside. A warrant of removal/deportation (ICE warrant) does not allow officers to enter a home without consent.
- Even if officers have a warrant, you have the right to remain silent. If you choose to speak to the officers, step outside and close the door.

IF YOU ARE ARRESTED

- Do not resist arrest, even if you believe the arrest is unfair.
- Say you wish to remain silent and ask for a lawyer immediately. If you can't pay for a lawyer, you have the right to a free one. Don't say anything, sign anything or make any decisions without a lawyer.
- You have the right to make a local phone call. The police cannot listen if you call a lawyer.
- Prepare yourself and your family in case you are arrested. Make emergency plans if you have children or take medication.
- Special considerations for non-citizens:
 - Ask your lawyer about the effect of a criminal conviction or plea on your immigration status.
 - Don't discuss your immigration status with anyone but your lawyer.
 - Read all papers fully. If you do not understand or cannot read the papers, tell the officer you need an interpreter.

IF YOU ARE TAKEN INTO IMMIGRATION OR “ICE” CUSTODY

- You have the right to a lawyer, but the government does not have to provide one for you. If you do not have a lawyer, ask for a list of free or low-cost legal services.
- You have the right to contact your consulate or have an officer inform the consulate of your arrest.
- Tell the ICE agent you wish to remain silent. Do not discuss your immigration status with anyone but your lawyer.
- Do not sign anything, such as a voluntary departure or stipulated removal, without talking to a lawyer. If you sign, you may be giving up your opportunity to try to stay in the U.S.

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- Remember your immigration number (“A” number) and give it to your family. It will help family members locate you.
- Keep a copy of your immigration documents with someone you trust.

IF YOU FEEL YOUR RIGHTS HAVE BEEN VIOLATED

- Remember: police misconduct cannot be challenged on the street. Don’t physically resist officers or threaten to file a complaint.
- Write down everything you remember, including officer’s badge and patrol car numbers, which agency the officers were from, and other details. Get contact information for witnesses. If you are injured, take photographs of your injuries (but seek medical attention first).
- File a written complaint with the agency’s internal affairs division or civilian complaint board. In most cases, you can file a complaint anonymously if you wish.
- Call your local ACLU or visit www.aclu.org/profiling.

INTERACTING WITH POLICE IN SCHOOL

- Many schools have police that go by different names, such as School Resource Officer, Deputy, or School Safety Officer. Sometimes they also act as teachers and counselors. Remember: they are ALWAYS law enforcement agents. That means that if you tell them about criminal activity by you or someone you know, they could follow up or even make an arrest.
- When you interact with the police in school, be respectful. But don’t be afraid to assert your rights.

ALWAYS REMEMBER

- A police officer should never harass or bully you or make fun of a personal characteristic, like your race, ethnicity, or sexual orientation. Also, police officers should also never use more force than is reasonable. Tasing, use of pepper spray, handcuffing, or causing an injury can all qualify as excessive use of force.
- If you are allowed to use your phone at school, you are also allowed to take pictures of on-duty police in public areas at your school as long as you don’t interfere with what they’re doing. In some states you can also record them.
- If you think your rights have been violated in any way, call your local ACLU. www.ACLU.org/affiliates

IF YOU ARE STOPPED OR QUESTIONED

- Stay calm. Don’t argue, resist, run away, or interfere with the officer (even if you think s/he is wrong). You can ask calmly if you’re free to leave. If yes, calmly and silently walk away.
- If a police officer tells you that you are not free to go, in some states, s/he may require you to identify yourself.
- Know that you can assert your right to remain silent and can answer any question by saying “I want to remain silent.” You also have the right not to write or sign a statement. If you choose to speak or write about what happened, your words can be used against you.
- If you thing you want to make a statement, you can also ask to have lawyer, a parent, or another adult present before you are questioned. If you talk, your works can still be used against you, but it’s the best way to protect your rights.
- Let an adult you trust know what happened. If you’re hurt, see a doctor and take pictures of your injuries.
- Afterwards, write down everything you remember (like the officer’s badge number and name, who else

was there, and what happened).

SEARCHES

- A search is when an officer looks through your belongings, like your phone or your pockets, to find evidence of a crime. Please note, you don't have to consent to let police look at your cell phone and if you don't, police have to get a warrant before they can.
- If an officer asks to search you or your belongings, you can say “I do not consent to this search.” This may not stop the search, but this is the best way to protect your rights.
- An officer cannot search you based on a feeling, a rumor, the color of your skin, or the clothes you are wearing. You can't be searched just because an officer thinks that you “look like” a drug dealer.
- The search must be related to the crime that you are suspected of committing. For example, an officer cannot search you pockets if he or she thinks you stole a computer from school—you can't hike a computer in your pocket.
- Police and school employees are NEVER allowed to strip search you.

ARRESTS

- If you are arrested, ask for a lawyer immediately. Be smart: never resist an arrest or fight an officer.
- A police officer can only arrest you if s/he knows facts (not a rumor or guess) indicating that you probably committed a crime. For example, an officer can arrest you if she saw you steal a computer from school.

KNOW YOUR RIGHTS: SEARCHES OF STUDENTS

DO I HAVE THE RIGHT TO REFUSE TO BE SEARCHED?

- **YES.** You always have a right to refuse a search and you should make clear that a search is taking place over your objection. But you should not use physical resistance to stop a search.

CAN MY SCHOOL SEARCH ME WITHOUT MY CONSENT?

- **YES,** but only under certain circumstances. First, your school must have a “reasonable suspicion” that searching you will turn up evidence that you violated a school rule or law. Second, the way your school does its search should be “reasonable” based on what is being searched for and your age.

WHAT IS “REASONABLE SUSPICION”?

- Unfortunately, there is no exact definition. But a reasonable suspicion should be based on facts specific to you or your situation. It cannot be based on a rumor, hunch, or curiosity. For example, a teacher cannot ask to search a bag that looks weird and bulgy for drugs based only on the look of the bag.

CAN MY SCHOOL CONDUCT A RANDOM SEARCH OF STUDENTS IN MY SCHOOL?

- **YES.** But these random searches must be based on special, school-wide needs such as ensuring school safety and should be truly random. A random search cannot be used to target any individual student.

CAN MY SCHOOL STRIP SEARCH ME?

- **NO.**¹

CAN MY SCHOOL USE DRUG-SNIFFING DOGS IN MY SCHOOL?

- **YES,** but there are limits. Your school may use dogs to search for drugs on school campus, including unattended belongings like backpacks. But it must have a “reasonable suspicion” to search those

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belongings. If someone at your school tells you to leave the classroom while drug-sniffing dogs conduct a search, you should try to bring your things with you.

CAN MY SCHOOL CONDUCT GENERAL METAL DETECTOR SEARCHES?

- **YES**, so long as the students searched are picked randomly. For example, your school may put a metal detector at the front door to make all students pass through. But if your school wants to single you out for a metal detector search, it must have a “reasonable suspicion” that it will find something against the law or school rules.

CAN MY SCHOOL MAKE ME TAKE A RANDOM DRUG TEST?

- **USUALLY NOT.** Your school may only conduct random drug testing of students who participate in extracurricular activities. Your school cannot force you to take a drug test under other circumstances.

DO I HAVE THE RIGHT TO REFUSE A SEARCH CONDUCTED BY A POLICE OFFICER IN MY SCHOOL?

- **YES**, you have the right to refuse a search just as you have that right with school officials.

DO REGULAR POLICE OFFICERS HAVE TO FOLLOW THE SAME RULES AS SCHOOL OFFICIALS?

- At a minimum, police officers must have “reasonable suspicion” to search you. And, under some circumstances, they need even more than that.

CAN MY SCHOOL USE EVIDENCE IT FINDS IN AN ILLEGAL SEARCH AGAINST ME IN COURT?

- **NO.** If school officials or police officers illegally search you, they cannot use what they find against you in court. But your school can use evidence from an illegal search in school disciplinary proceedings.

Endnote:

i California Education Code § 49050

PHOTOGRAPHERS

Taking photographs and video of things that are plainly visible in public spaces is a constitutional right—and that includes transportation facilities, the outside of federal buildings, and police and other government officials carrying out their duties.

Unfortunately, law enforcement officers have been known to ask people to stop taking photographs of public places. Those who fail to comply have sometimes been harassed, detained, and arrested. Other people have ended up in FBI databases for taking innocuous photographs of public places.

The right of citizens to record the police is a critical check and balance. It creates an independent record of what took place in a particular incident, one that is free from accusations of bias, lying, or faulty memory. It is no accident that some of the most high-profile cases of police misconduct have involved video and audio records.

Relatedly, artistic expression should never be chilled out of fear of unwarranted police scrutiny. No one should ever find an FBI agent on their doorstep just because they photographed public art.

Through litigation, public education, and other forms of advocacy, the ACLU has defended the rights of photographers and all camera-wielding individuals to document freely.

YOUR RIGHTS AS A PHOTOGRAPHER

- **When in public spaces where you are lawfully present you have the right to photograph anything that is in plain view.** That includes pictures of federal buildings, transportation facilities and police. Such photography is a form of public oversight of the government and is important in a free society.
- **When you are on private property, the property owner may set rules about the taking of photographs.** If you disobey the property owner’s rules, they can order you off their property-and have

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you arrested for trespassing if you do not comply.

- **Police officers may not generally confiscate or demand to view your photographs or video without a warrant.** If you are arrested, the contents of your phone may be scrutinized by the police, although their constitutional power to do so remains unsettled. In addition, it is possible that courts may approve the seizure of a camera in some circumstances if police have a reasonable, good-faith believe that it contains evidence of a crime by someone other than the police themselves. It is unsettled whether they still need a warrant to view them.
- **Police may not delete your photographs or video under any circumstances.** Officers have faced felony charges of evidence tampering as well as obstruction and theft for taking a photographer's memory card.
- **Police officers may legitimately order citizens to cease activities that are truly interfering with legitimate law enforcement operations.** Professional officers, however, realize that such operations are subject to public scrutiny, including by citizens photographing them.
- **Note that the right to photograph does not give you a right to break any other laws.** For example, if you are trespassing to take photographs, you may still be charged with trespassing.

POLICE ENCOUNTERS

- If you are stopped or detained by police for taking photographs, always remain polite and never physically resist a police officer.
- If stopped for photography, the right question to ask is, “am I free to go?”
If the officer says no, then you are being detained, something that under the law an officer cannot do without reasonable suspicion that you have committed a crime, are committing a crime, or are about to do so. Until you ask to leave, your being stopped is considered voluntary under the law and is legal.
- If you are detained, politely ask what crime you are suspected of committing, and remind the officer that taking photographs is your right under the First Amendment and does not constitute reasonable suspicion of criminal activity.

SPECIAL CONSIDERATIONS WHEN VIDEOTAPING:

With regards to videotaping, there is an important legal distinction between a visual photographic record (fully protected) and the *audio* portion of a videotape, which some states have tried to regulate under state wiretapping laws.

- Such laws are generally intended to accomplish the important privacy-protecting goal of prohibiting audio “bugging” of private conversations. However, in nearly all cases audio recording the police is legal.
- In states that allow recording with the consent of just one party to the conversation, you can tape your own interactions with officers without violating wiretap statutes (since you are one of the parties).
- In situations where you are an observer but not a part of the conversation, or in states where all parties to a conversation must consent to taping, the legality of taping will depend on whether the state's prohibition on taping applies only when there is a reasonable expectation of privacy. But no state court has held that police officers performing their job in public have a reasonable expectation.
- The ACLU believes that laws that ban the taping of public officials' public statements without their consent violate the First Amendment. A summary of state wiretapping laws can be found [here](#).

PHOTOGRAPHY AT AN AIRPORT

- Photography has also served as an important check on government power in the airline security context.
- The Transportation Security Agency (TSA) acknowledges that photography is permitted in and around airline security checkpoints as long as it does not interfere with the screening process.
- The agency does ask that its security monitors not be photographed, though it is not clear whether they

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- have any legal basis for such a restriction when the monitors are plainly viewable by the traveling public.
- The TSA also warns that local or airport regulations may impose restrictions that the TSA does not. It is difficult to determine if any localities or airport authorities actually have such rules. If you are told you cannot take photographs in an airport you may want to ask what the legal authority for that rule is.
- The ACLU does not believe that restrictions on photography in the public areas of publicly operated airports are constitutional.

You Have Every Right to Photograph that Cop

Jay Stanley, Senior Policy Analyst, Speech, Privacy and Technology Project

Taking photographs and video of things that are plainly visible in public spaces is a constitutional right — and that includes the outside of [federal buildings](#), as well as transportation facilities, and police and other government officials carrying out their duties.

However, there is a widespread, continuing pattern of law enforcement officers ordering people to stop taking photographs or video in public places, and harassing, detaining and arresting those who fail to comply. The ACLU, photographer's groups, and others have been complaining about such incidents for years — and consistently winning in court. Yet, a continuing stream of incidents of illegal harassment of photographers and videographers makes it clear that the problem is not going away. In the spring of 2011 alone, the list of incidents included these cases:

- A woman in Rochester New York was unlawfully arrested in May 2011 for [videotaping](#) a traffic stop in front of her house — while standing [in her own front yard](#).
- A man was [unlawfully detained](#) in March 2011 for taking photographs of Baltimore's light rail train system — despite the fact that the Maryland Transit Administration had previously [pledged](#) to cease harassment of photographers, in response to [complaints](#) by the ACLU of Maryland starting in 2006.
- That same month a photographer taking [video of police using a taser](#) on a participant in a New Orleans parade had his phone violently knocked out of his hands by a police officer. In response to this and other repeated incidents, the [ACLU of Louisiana](#) has filed an [open records request](#) for documents pertaining to the First Amendment training of New Orleans police officers.
- In February 2011, uniformed [Secret Service officers](#) on patrol in front of the White House detained a man for taking photographs of them in a public plaza swarming with tourists, journalists and cameras of all kinds. They demanded his identification, and told him, "Since you took a picture of us we're going to take a picture of you for our records," taking down his identification and photographing him. It is unclear what was done with that information.
- Two journalists were arrested at a June 2011 public meeting of the Washington, DC Taxi Commission. According to [reports and a partial video](#) of the incident, one man was arrested for taking a still photograph of the meeting, while another was arrested for filming the arrest of the first journalist.
- A high school honors student in Newark, New Jersey was arrested in March 2011 for taking cell phone video of officers responding to an incident on a New Jersey Transit bus. We would link to the student's video but cannot do so because officers also carried out an illegal search and seizure of her phone and erased the video she took. The [ACLU of New Jersey filed suit](#) in the case.

Examples of these kinds of abuses, which continue to be reported weekly, are chronicled on web pages such as [Photography is Not a Crime](#). And for more information on the ways in which law enforcement is spying on Americans today, visit our report on ["Spying on First Amendment Activity."](#)

A Crucial Check on Power

The right of citizens to record the police is a critical check and balance. It creates an independent record of what took place in a particular incident, free from accusations of bias, lying or faulty memory. It is no accident that some of the most high-profile cases of police misconduct have involved video and audio records.

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Of course, photography is not necessarily "objective" and it is always possible in a particular case that there can be circumstances at work outside a photographic record. Overall, however, the incidents above make it abundantly clear that respect for the right to photograph and record is not well-established within the law enforcement profession.

Many of those involved in these incidents appear to be activists who know their rights and are willing to stand up for them. But not everyone is able to stand up to police officers when harassed; we don't know how many other Americans comply with baseless orders to stop photographing or recording because they are uncertain of their rights or too afraid to stand up for them.

Photography as a Precursor to Terrorism

A big part of the problem here is "suspicious activity reporting" — the construction of a national system for the collection and distribution of information. Under this system (as we discuss on this [page](#) and in this [report](#)), law enforcement leaders at the federal, state and local level push officers on the ground to investigate and report a broad spectrum of legitimate, everyday activity as potentially "suspicious" — including photography. In fact, many such programs actually suggest that photography is a "precursor behavior" to terrorism, and direct the police to react accordingly. This notion has been dismissed as "[nonsense](#)" by security experts — but appears to be disturbingly robust.

A serious question for photographers and videographers who are harassed is whether they are being entered in government suspicious activity databases or watch lists, and whether and how such a listing might come back to haunt them. An investigation of Suspicious Activity Reports by NPR and the Center for Investigative Reporting, for example, found [numerous individuals were reported to the FBI](#) for taking photographs or video in the Mall of America.

A Problem From the Top

Another disturbing trend is police officers and prosecutors using wiretapping statutes in certain states (such as [Florida](#), [Illinois](#), [Maryland](#), [Massachusetts](#), New Jersey and [Pennsylvania](#)) to arrest and prosecute those who attempt to record police activities using videocameras that include audio. (Unlike photography and silent video, there is no general right to record audio; many state wiretap laws prohibit recording conversations if the parties have a reasonable expectation of privacy — which is never true for a police officer carrying out his or her duties in public.)

Word appears to have circulated within law enforcement circles somehow that using wiretapping statutes is a strategy for preventing public oversight, with some taking the concept to [ridiculous extremes](#).

In contrast, it appears to be stubbornly difficult to spread word within those same circles of the fact that photography and videotaping in public places is a constitutional right. And earlier this year, [following a lawsuit](#) by the New York branch of the ACLU, DHS agreed to issued a directive to members of the Federal Protective Service making it clear that photographing federal buildings is permitted. Yet arrests by Federal Protective Service officers [appear to be continuing](#). You would think that [police chiefs](#) and other supervisors could easily instruct and enforce an understanding of photographers' rights among their officers. Still, for some reason, all too often that is not happening. In New Orleans, for example, in response to its public records request, the local ACLU found the police department's policy which clearly instructs officers that people have the right to photograph. Yet officers there [routinely violate](#) the stated policy.

Know Your Rights

Everyone should be clear on what their rights are when engaging in photography in public spaces. The ACLU has prepared a "Know Your Rights" resource for photographers confronted by police. [Learn more >>](#)

What to Do If Questioned About Your Immigration Status

- You have the right to remain silent. You do not have to answer questions about where you were born, whether you're a U.S. citizen, or how you entered the country (Separate rules apply at international borders and airports, and for individuals on certain nonimmigrant visas, including tourists and business travelers.)
- If you're not a U.S. citizen and an immigration agent requests your immigration papers, you must show them. If you're over 18, carry your immigration documents with you at all times. If you don't have immigration papers, say you want to remain silent.
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