

## **Rights Lab– Episode 3: Can I Film Police?**

### **Overview**

This lesson is the 3rd in a series of four that accompany the documentary film series, [Rights Lab](#). They provide a vehicle for discussing how laws, government, and technology intersect around the Constitution. With a mix of compelling documentary video and motion graphic elements, the curriculum uses evidence-based learning by teaching students to analyze texts, graphs, and video content as well as participating in role-playing and other engaging activities designed to foster measurable growth in history and social studies courses.

Along with exploring the moral dilemmas raised within the core media, the curriculum also uses relevant historical context to trace the changes within civil liberties over time. Each lesson offers historical context, citing information from scholarly sources, and collaborative activities that include multiple forms of learning in order to engage a diverse class set. Throughout the curriculum, students are provided opportunities to reflect and assess mastery and understanding of current law, how these laws came to be, and how technology and social issues play a factor in moving forward. They are summatively and formatively evaluated and questioned to provide clear benchmarks of achievement and understanding.

### **Lesson Learning Outcomes**

Students will develop a fundamental understanding of the significance and evolution of civil liberties in history and how certain events and advancements led to change. This lesson introduces students to the ongoing issues around police surveillance.

### **Suggested Grade Level**

8-12 grades

### **Duration of Activity**

1 class period (90 minutes)

## Common Core Standards

| CCSS Reading  | CCSS writing  | CRS English   |
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| <p>Reading for Literacy in Social Studies</p> <p><b>CCSS.ELA-LITERACY.RH.11-12.7</b><br/>Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.</p> <p><b>CCSS.ELA-LITERACY.RH.11-12.9</b><br/>Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.</p> <p><b>CCSS.ELA-LITERACY.RH.11-12.2</b><br/>Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.</p> <p><b>CCSS.ELA-LITERACY.RH.11-12.1</b><br/>Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.</p> <p><b>CCSS.ELA-LITERACY.RH.11-12.3</b><br/>Evaluate various explanations for actions or events and determine which explanation best accords with textual</p> | <p>Writing Standards</p> <p><b>CCSS.ELA-Literacy.WHST.9-10.4</b><br/>Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.</p> <p><b>CCSS.ELA-Literacy.WHST.9-10.9</b><br/>Draw evidence from informational texts to support analysis, reflection, and research.</p> | <p>Band 13-15</p> <p><b>CLR 201.</b> Locate basic facts (e.g., names, dates, events) clearly stated in a passage</p> <p><b>REL 202.</b> Identify simple cause-effect relationships within a single sentence in a passage</p> <p>Band 16-19</p> <p><b>CLR 301.</b> Locate simple details at the sentence and paragraph level in somewhat challenging passages</p> <p><b>CLR 302.</b> Draw simple logical conclusions in somewhat challenging passages</p> <p><b>REL 302.</b> Identify simple cause-effect relationships within a single paragraph in somewhat challenging literary narratives</p> <p>Band 20-23</p> <p><b>REL 403.</b> Identify clear cause-effect relationships in somewhat challenging</p> <p><b>EXJ 302.</b> Generate reasons for a position that are vague or simplistic; show a little recognition of the complexity of the issue in the prompt by</p> <p><b>DEV 301.</b> Offer limited development in support of ideas; clarify ideas somewhat</p> |

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| <p>evidence, acknowledging where the text leaves matters uncertain.</p> <p><b>CCSS.ELA-LITERACY.RH.11-12.8</b><br/>Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.</p> |  | <p>with vague explanation and the use of general examples</p> <p><b>ORI 301.</b> Provide a simple organizational structure by logically grouping some ideas</p> |
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**Essential Questions**

1. What is the legal precedent regarding our right to videotape and photograph police and government officials?
2. When and where can people film the police?
3. When are people not allowed to film the police?
4. How do these rights differ in Illinois?

**Essential Knowledge**

1. The Fourth Amendment to the Constitution prohibits unreasonable searches and seizures and requires law enforcement or government bodies to obtain a warrant before a search.
2. The First Amendment protecting freedom of speech has changed throughout the history of America. Currently, you have the ability to record people on public property, including government officials, so long as you do not interfere with their ability to perform their duty. People waive their right to privacy on public property, which is why anyone has the ability to record them.
3. You have a right to film the police in all 50 states
4. People have a right to film and photograph police in public settings so long as they do not interfere with their ability to perform their duty, and the reason for filming or photographing is to challenge the conduct of the officer.
5. You are not permitted to film the police if you are interfering with their ability to uphold their duty
6. If you are on private property, you must have the approval of the property owner to film or photograph ANYONE, including police.
7. Illinois specific law:
  - a. You can film any public conversation, including filming the police
  - b. It is illegal to record anyone's private conversation without everyone's consent

## Historical Context

The **Fourth Amendment to the Constitution** prohibits unreasonable searches and seizures and requires law enforcement or government bodies to obtain a warrant before a search. The amendment is part of the Bill of Rights, and was adopted in 1792 because the government in colonial America was misusing the writ of assistance, a legal order from a court, to allow customs officers to search an individual's property.

A key legal test for how the privacy protections of the Fourth Amendment are applied is the **expectation of privacy**. The expectation of privacy can be divided into two types - **subjective and objective**. The subjective expectation is an individual's opinion that a certain place or event is private, while the objective is when privacy is generally recognized by society. A hotel room is an example of where a person has a reasonable expectation of privacy, while there are also spaces inside public places that have been deemed private, such as public bathrooms and phone booths. The range of public places that a person can't expect to have a reasonable expectation of privacy are broader - the street, the library, conversations with others in public.

The concept can be used far and wide - garbage, for example, can be left out for collection in a public place and therefore you can't expect privacy for what you throw away in publicly accessible garbage. Cars are an example of where a person may have a subjective expectation of privacy, but not an objective one. Until 1949, this only applied to cases at the federal level, but a case called **Wolf v. Colorado** expanded the protection of the Fourth Amendment to the state level.

One key way the amendment is enforced is called the **exclusionary rule**. Created by **Weeks v. United States** in 1914, the rule says that any information obtained through a violation of the Fourth Amendment can't be used in criminal trials. In court parlance, evidence obtained illegally is called "fruit of the poisonous tree."

Determining more broadly where and when a person can be photographed for commercial reasons was also important, and the turn of the 20th century saw the Supreme Court grappling with how to approach the new medium. In the 1911 case **Munden v. Harris**, a young boy sued (through his parents) a group of men who had used his picture to advertise their jewelry. This helped establish limits on how photographs of private individuals could be used commercially. Another key case was that of **Nussenzweig v. diCorcia**, a 2005 case in which a Hasidic Jewish man argued that his photo was taken and profited from without his knowledge, and against his religious codes, by a photographer in Times Square. The court sided with the photographer, a ruling that kept public space free for photography.

However, in general, it's not entirely clear where the boundary between "freedom of the press" and privacy of individuals should lay, and the U.S. Court of Appeals for the Ninth Circuit has said in 1971's **Dietman v Time Inc.**, in which journalists for Life magazine went into doctor's

offices pretending to be patients, that journalists aren't absolutely shielded from facing a lawsuit under invasion of privacy.

Few Supreme Court cases consider the rights of photographers specifically, but they are included in areas of speech. In **Texas v. Johnson**, 1989, acknowledged that other technologies "may be sufficiently imbued with elements of communication" to be protected.

**Glik v. Cunniffe** in 2011 is the current bedrock of recording law - it held that a private citizen can video and audio record public officials in public settings. The case began when Simon Glik filmed police officers making an arrest in Boston - he was subsequently arrested and charged with wiretapping and aiding the escape of a prisoner. The court did also rule that the rights of filming could be restricted within reasonable time, place and manner.

On the ground, whether a police officer arrests you for filming them can depend on multiple factors, even when it's done in contravention of First or Fourth Amendment rights. That's why many of the most significant decisions about filming police are happening at the local level. In 2016 the decision in **Fields v. City of Philadelphia** further refined when police can be filmed - ruling that they can only be filmed if they're being criticized. The [decision was contentious](#), and detractors have argued that gathering information should be protected, even if it doesn't directly result in speech.

## Vocabulary

### ***Expectation of Privacy:***

A subjective expectation is an individual's opinion that a certain place or event is private. An objective expectation is when privacy is generally recognized by society.

### ***The Exclusionary Rule:***

Any information obtained through a violation of the Fourth Amendment CANNOT be used in criminal trials.

## Materials

1. Episode 3 Powerpoint Slides
2. Printed article from the Washington Post: [Challenging law challenging police](#)
3. Lesson 3 Student Notes
4. Independent Activity (assessment at the end of class)

## Lesson

### **10 min–Opening Question:** Can I film the police?

Teacher decides whether or not to have students write their responses silently, work in groups or partners, or engage in an open whole-class discussion.

Teacher should facilitate discussion and prompt students to think about the following:

- How does filming police, or not, affect law?
- What can a video like this lead to?
- Is it right to film police in action? Do they/should they have a right to privacy?
- When should filming a public official not be allowed?
- How does the misuse of power play out in this scenario?
- What are steps people have been taking? Have they been effective?
- When did police brutality and surveillance become an issue?
- What can you do when you get stopped by a police officer?
- What are some events in history driven by police injustice?

### **25 min–Powerpoint Instruction:**

Teacher guides students through the powerpoint slides, prompting students to take notes accordingly. Additional instructions, further thinking, and discussion questions are associated with each slide in the comments.

### **20 min–Rights Lab Episode:**

After instruction, students watch the first episode of Rights Lab and engage in a teacher led discussion centering on the content of the episode.

### **25 min–Independent/Collaborative Assignment:**

#### Option 1: Writing Prompt

#### [Refining Law Article](#)

Read the Washington Post article to yourself, and in your notes write a brief synopsis on how the law regarding filming the police was refined.

Describe what the original law stated regarding filming public officials, and how that law was

refined after the case of *Fields v. City of Philadelphia*.

Student's synopsis should be something like this:

*Prior to *Fields v City of Philadelphia*, the First Amendment protected a right to record and photograph in public places. So you had a right to record public officials at anytime. After the case, however, it was ruled that you cannot record public officials unless you are challenging or criticizing their conduct. Detractors have argued that gathering information should be protected, even if it doesn't directly result in speech.*

### Option 2: Ending Police Injustice

Divide students into groups. Each group has to come up with a solution to the following prompt: How can we end police injustice in America.

Your team has 10 minutes to find a solution. And you can demonstrate your solution any way that you like – through writing, music, art, speech, drama. You must incorporate the content in your notes when creating this solution. If new laws are required to end police injustice, your team should draft them and incorporate them into your presentation.

### **Further thinking:**

- How can we monitor police activity?
- What are some steps to end police brutality?
- What are steps activists have been taking? Have they been effective?
- What rights should police have in terms of their interactions with the public?
- When did police brutality/surveillance become an issue?
- What can you do when you get stopped by a police officer now? How would this be different with your solution?
- What are some events in history driven by police injustice?

Give students time to come up with as many solutions to the problem in as many ways as they can together. Next, have the groups present their best solution to the class

### **10 min–Assessment:**

See attached worksheet for end-of-class assessment

### **Extended Assignment/Homework**

Have students describe a time when they have witnessed or experienced an issue with police. It could be a past memory, or have to do with their family, or something that they have seen in the media.

# Rights Lab Episode 3



Can I film the police?

# Opening Activity

## FILMING THE POLICE

What is the importance of having this video caught on camera? How does it play an effect on what the cops report allegedly happened? Can this be used in court?

# Questions for the day

1. What is the legal precedent regarding our right to videotape and photograph police and government officials?
2. When and where can people film the police?
3. When are people not allowed to film the police?
4. How do these rights differ in Illinois?

# Agenda

1. The First Amendment
2. Privacy and the Fourth Amendment
3. Reasonable expectation of privacy

# The First Amendment

The **First Amendment**, ratified on December 15th, 1791, reads:  
“Congress shall make no law respecting an establishment of religion,  
or prohibiting the free exercise thereof; or abridging the freedom of  
speech, or of the press; or the right of the people peaceably to  
assemble, and to petition the Government for a redress of  
grievances.”

How does the First Amendment relate to the ability to film police performing their duty? Should they have the freedom to carry out their duty without the hassle of people filming them? Can filming the police affect their ability to perform their jobs?

# The Fourth Amendment

The **Fourth Amendment to the Constitution** prohibits unreasonable searches and seizures and requires law enforcement or government bodies to obtain a warrant before a search. The reasonable expectation of privacy concept comes from the Fourth Amendment.

## Constitutional Vocabulary

### **Expectation of Privacy:**

- Used in deciding whether an area of privacy is covered by the Fourth Amendment. There are subjective and objective metrics for deciding whether an individual's expectation of privacy is considered reasonable.

# Where Can We Have an Expectation of Privacy?

In your notes, please check the box for the place where you can have an expectation of privacy. Circle as many as you deem necessary:

- A Hotel Room
- A Public Bathroom
- On the Street
- In the Library
- Your Garbage

# Where We Have an Expectation of Privacy

- ✓ A Hotel Room
- ✓ A Public Bathroom
- ✗ On the Street
- ✗ In the Library
- ✗ Your Garbage- depends on where the garbage is.  
Once you put it on the street or in city garbage cans,  
it is no longer private

# Weeks v. United States (1914)

**Facts:** Police officers in Kansas City, Missouri went to the house of Mr. Weeks and used his hidden key to enter and search his home. While there, they took papers, letters, books, and other items. They did not have a search warrant. These items were used in court to find Mr. Weeks guilty of sending lottery tickets through the U.S. mail.

**Issue:** If probable cause is not used to get a search warrant, is the resulting warrantless search a violation of the 4th Amendment?

# Weeks v. United States (1914)

**Holding:** The evidence collected during the illegal search was in violation of the 4th Amendment and was thus inadmissible.

**Reasoning:** In a criminal investigation, in order for a search to be legal, there must be probable cause. The probable cause must be used to gain a search warrant. If not, the search will be illegal and evidence collected as a result of the search can't be used in court.

# The Exclusionary Rule

A new legal doctrine was created after this case. Under the Exclusionary Rule, any information obtained through a violation of the Fourth Amendment CANNOT be used in criminal trials.

**Can someone take a picture of you without you knowing and profit off of it?**

**The answer depends on where you are photographed. If you are in a public space, then that space is free for photography, and your picture can be used for profit without your consent.**

# Glik v. Cunniffe 2011

**Facts:** Simon Glik filmed police officers making an arrest in Boston. Simon was arrested and charged with wiretapping and aiding the escape of a prisoner.

**Issue:** Do people have the right to record video and audio of public officials in a public place under the First Amendment?

**Holding:** People have a right to video and audio record government officials in public places, given certain restrictions of reasonable time, place, and manner.

**Reasoning:** Arresting Glik for video and audio recording an officer on duty in a public place was in violation of his rights protected by the First Amendment.

This is the current bedrock of recording law. In *Glik v. Cunniffe* (2011), it was held precedent that a private citizen can video and audio record public officials in public settings.

# Create the scenario

With a partner, create a scenario in which police conduct could be questioned:

What was questionable about the conduct? Would video footage or photographs of the event and action hold up in court? Why or why not?

# Rights Lab Episode 3

Can I film the police?

Name \_\_\_\_\_ Date \_\_\_\_\_ Class \_\_\_\_\_

**Questions for the Day:**

1. **What is the legal precedent regarding our right to videotape and photograph police and government officials?**
2. **When and where can people film the police?**
3. **When are people not allowed to film the police?**
4. **How do these rights differ in Illinois?**

| <b>The First Amendment</b> | <b>The Fourth Amendment</b> |
|----------------------------|-----------------------------|
|                            |                             |

| <b>Where can we have a reasonable expectation of privacy?</b>  |
|--|
| <ul style="list-style-type: none"><li><input type="radio"/> A Hotel Room</li><li><input type="radio"/> A Public Bathroom</li><li><input type="radio"/> On the Street</li><li><input type="radio"/> In the Library</li><li><input type="radio"/> Your Garbage</li></ul> |

| <b>Weeks v United States (1914)</b> |
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|                                     |

Name \_\_\_\_\_ Date \_\_\_\_\_ Class \_\_\_\_\_

| Glik v Cunniffe (2011) |
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|                        |

| What I Know | What I want to Know | What I Learned |
|-------------|---------------------|----------------|
|             |                     |                |

Name \_\_\_\_\_ Date \_\_\_\_\_ Class \_\_\_\_\_

Independent Assessment: **Where can I protest?**

| <b>What rights do you have based on the First and Fourth Amendments?</b> | <b>What is the significance of a reasonable expectation of privacy?</b> |
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| <b>What is the legal precedent regarding our right to videotape and photograph police and government officials?</b> | <b>When and where can people film the police? And when are people not allowed to film the police?</b> |
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| <b>Create a scenario in which the right to film police was in question. What would the result of the court case be and why?</b> | <b>What issues can arise from the regulations of filming police?</b> |
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|   |  |