

The Economist

Technology and civil liberties

## Don't shoot

Police may not like being filmed, but they had better get used to it

Dec 10th 2011



WHAT is the most striking image to emerge from this autumn's Occupy protests? Was it the campus police officer in Davis, California, casually pepper-spraying a line of seated protesters? Or the white-shirted cop in New York, doing the same to a pair of unarmed, penned-in women? Perhaps it was a street in Oakland, deserted except for protesters and a line of black-helmeted riot police, the silence broken when one of the cops fires a rubber bullet at a protester filming him. Protesters have complained, as ever, about police infiltration, but as these videos make clear, protesters and other citizens are keeping their eyes on police, too.

More than two-thirds of Americans own digital cameras. Around one-third of adults own a smartphone. Most of these devices can record and easily transmit audio and video. Recording police has never been easier, and thanks to social-media and activist networks such as Copwatch, which monitors police activity and posts videos to the web, neither has publicising these recordings.

That does not always go over well. People peaceably filming police have been handcuffed, beaten, had their cameras seized, and been arrested for obstructing governmental administration, obstructing an investigation, interference, disturbing the peace, or for illegal wiretapping. In taking such action the police are on shaky legal ground. The right to photograph people, including police officers, in public places, is relatively clear.

Adding audio, however, raises a new set of legal issues. Most states have single-party consent laws concerning audio recording, meaning that as long as one party consents to being recorded, the taping is legal. In most of the 12 states in which all parties must consent to be recorded, a violation occurs only if the subjects being recorded have a reasonable expectation of privacy. Arguing that police officers carrying out their duties in public have such a right is a challenge. The attorney-general in Maryland, an all-party-consent state, wrote in 2010 that few interactions with police could be considered private.

And challenges are mounting in two of the states – Illinois and Massachusetts –without expectation-of-privacy clauses. In Massachusetts last August, a federal appeals court upheld a lower court's ruling that a citizen's right to film police in public is protected by the first and fourth amendments.

During oral arguments, one of the judges hearing the challenges to the Illinois Eavesdropping Act worried that allowing recording might hinder the ability of the police to do their jobs. He gave the example of a policeman talking to a confidential informant. Police have also expressed concern about recording, and hence exposing, undercover officers. But of course police can still speak in private. Given the actions of some police officers when confronted with a camera, filming cops may not be prudent. But neither should it be illegal.