It seems that there are photographers everywhere you look. There are real cameras in the form of big, long distance “SLR” type equipment; mini-cameras with 10-mega pixel capacities; and the ever-present cell phone cam. In fact, there are video cameras the size of cigarette packs. What do you do when the cameras are focused on a bridge, public buildings, stadium, university science lab, or the local nuclear power plant? What do you do when the cameras are focused on you?

A 2009 Joint Regional Intelligence Center (JRIC) bulletin reports on photographers’ rights in the light of suspicious criminal activity. Suspicious photography is one of the most frequently reported tips to JRIC. An important part of the JRIC report is the understanding of the search and seizure law as it applies to consensual contacts when approaching photographers. The rule of law must be applied when making contact with a photographer exhibiting possible suspicious behavior. The report highlighted “Consensual Encounters” from the California Peace Officers Legal Sourcebook, states:

“A police officer may approach an individual in a public place, identify himself as a law enforcement officer, and,
in a non-coercive manner, ask the individual a few questions, without reasonable suspicion. Because the officer is on duty and is likely to be in uniform, display a badge, and carry a weapon, those factors are generally irrelevant to determining the nature of a contact. As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer.”

Law enforcement officers must be aware of the law and rights of photographers. If peace officers act poorly in an encounter, there is a strong probability that many cameras will be upon them. Later, they could find themselves on YouTube, social Web sites, and an assortment of Internet blogs. Worse yet, the officer from a policing agency could receive a letter from a lawyer alleging a violation of First Amendment Rights.

Even after September 11, 2001, no law has been enacted that grants any additional rights to restrict visual news-gathering, photojournalism, or photography in general. Professional photographers know this and many carry a written product from law firms that outline the rights of photojournalists to make pictures in public places. With the exception of public safety, such as a forest fire, military installation involved with national security, or designated area of a nuclear facility, permissible subjects for photos (the Kodak moment) are:

- Accident and fire scenes (not deemed a public safety hazard)
- Children
- Celebrities
- Bridges and other infrastructure
- Residential and commercial buildings
- Industrial facilities and public utilities
- Transport facilities
- Superfund sites
- Criminal activities
- Law enforcement officers

Those who are most likely to violate the rights of the photographer are security officers and employees of organizations. They fear photographers and will act to prevent them from taking pictures. These individuals will use security as the reason for their actions when security is rarely the issue. Legitimate reasons for law enforcement to limit photography include when photographers’ activities are actually impeding police work, such as within a crime scene and/or endanger the safety of others.

The following are guidelines for photographers that all police agencies should know:

With the knowledge that anyone can approach a person in a public place and ask questions, it is the persistent and unwanted conduct without a legitimate purpose that is a crime in many states.

A photographer is not obliged to explain the purpose or disclose their identity, except in states where it is okay to request identification by a law enforcement officer.

Coercion and harassment of photographers are criminal offenses. Use of fear of injury, damage to equipment, or accusing the photographer of a crime because they are taking photographs is unlawful. If a civilian participates in this behavior, they expose themselves to litigation.

In some incidents, owners of shopping malls or industrial plants think they can ask for your film or memory card. Without a court order, there is no reason to compel the photographer to hand over the film or card. To threaten use of force or calling law enforcement can constitute a criminal offense, such as theft or coercion, and result in a civil tort. If law enforcement officers are making an arrest, they have the authority to seize the film/card, but depending on the nature of the arrest, you still might not be able to legally view the film. But if law enforcement is not making an arrest, they cannot seize film/card without a court order.

Harassment by threat, intimidation, or detaining someone who is taking pictures, may be liable for crimes such as kidnapping, coercion, and theft. The civil remedies for this sort of behavior are torts for assault, conversion, false imprisonment, and violation of your civil rights.

Other kinds of actions for harassment can be worse than a tort because of the potential for wide media coverage. Think about photographers calling local newspapers. Also, consider the problem when a photographer calls your supervisor. Or even worse, the photographer may place an article or blog on the Internet, with a video attachment.

Photographers know that they should be civil in conflict situations. Good judgment is always the best policy, and hopefully, they will exercise this judgment. If photographers feel harassed when they feel they are within their rights, they will want to note the officer’s name and employer. They will ask, “Am I free to leave the area?” If someone demands the film or memory card, they can ask, “What legal basis do you have for this confiscation?” The photographers want this information when they feel their civil rights are being challenged. Therefore, the officer must know the rights of photographers to properly enforce the law and to not violate people’s civil rights.
As law enforcement officers, we need to know how to handle the ever-present photographer in public places. In secured areas and where public safety is a concern, the law enforcement officer must take measures for protecting the public, including photographers. By being aware of the civil rights issues in encounters in public, we will remain within the law, as we maintain the safety of others.

This does not mean that you do not pay attention to “suspicious photographers.” Remember, you can engage photographers in public, consentual encounters, and ask questions. If you are a photographer, you can ask typical photography questions, such as, “Do you have good light for your photos? I am thinking of buying a new camera, how do you like yours? I am thinking about purchasing a digital camera. Do you like yours? Have you considered using faster film?”

In the mean time, you are gathering your thoughts and perception of the photographer and his or her intentions. Be careful not to raise suspicion when taking mental notes, license plate numbers, and noting what is in their vehicle if it is in the area.

The Joint Regional Intelligence Center encourages reporting of suspicious photography. But one must keep in mind the rights of the photographers through consensual encounter in a public place. A 2008 JRIC bulletin entitled Identifying Suspicious Photography helps law enforcement personnel determine what is legitimate photography versus potential criminal behavior. Report suspicious behavior to your supervisor and notify the JRIC. If your station or Department has a Terrorism Liaison Officer (TLO), report the encounter to that person as soon as possible.

Dr. Jeff Heller is a Reserve Deputy Sheriff with the Los Angeles County Sheriff's Department (LASD). Dr. Heller has served for 28 years working on special projects in the Reserve Administrative Company and was an editor of the LASD Reserve News. He is currently serving on the Open Source Intelligence Team (OSINT). As a civilian, Heller worked as a psychologist, administrator, and safe schools consultant with the Los Angeles County Office of Education. He has published in professional journals as well, making presentations regarding safe schools and threat assessment. www.lasd.org

Photographers’ Rights to Take Photos in Public Places

The Photographer’s Right: Your Right and Remedies When Stopped or Confronted for Photography (a law firm’s perspective) www.krages.com/ThePhotographersRight.pdf

Legal Rights of Photographers (a photographer’s perspective) www.andrewkantor.com/useful/Legal-Rights-of-Photographers.pdf

Photo by Mary Heller

Photo by Mary Heller