Your Rights and Remedies When Stopped or Confronted for Photography

About this Guide
Confrontations that impair the constitutional right to make images are becoming more common. To fight the abuse of your right to free expression, you need to know your rights to take photographs and the remedies available if your rights are infringed.

The General Rule
The general rule in the United States is that anyone may take photographs of whatever they want when they are in public places. Basically, anyone can be photographed without their consent except when they have secluded themselves in places where they have a reasonable expectation of privacy such as dressing rooms, restrooms, medical facilities, and inside their homes.

Permissible Subjects
Despite misconceptions to the contrary, the following subjects can almost always be photographed lawfully from public places:

- Accident and fire scenes
- Children
- Celebrities
- Bridges and other infrastructure
- Residential and commercial buildings
- Industrial facilities and public utilities
- Transportation facilities (e.g., airports)
- Superfund sites
- Criminal activities and arrests
- Law enforcement officers

Who Is Likely to Violate Your Rights
Most confrontations are started by security guards and employees of organizations who fear photography. The most common reason given is security, but often such persons have no articulated reason. Security is rarely a legitimate reason for restricting photography. Taking a photograph is not a terrorist act nor can a business legitimately assert that taking a photograph of a subject in public view infringes on its trade secrets.

Some Exceptions to the Rule
There are some exceptions to the general rule. For example, commanders of military installations can prohibit photographs of specific areas when they deem it necessary to protect national security. The U.S. Department of Energy can also prohibit photography of designated nuclear facilities although the publicly visible areas of nuclear facilities are usually not designated as such.

Members of the public have a very limited scope of privacy rights when they are in public places. Basically, anyone can be photographed without their consent except when they have secluded themselves in places where they have a reasonable expectation of privacy such as dressing rooms, restrooms, medical facilities, and inside their homes.

They Have Limited Rights to Bother, Question, or Detain You
Although anyone has the right to approach a person in a public place and ask questions, persistent and unwanted conduct done without a legitimate purpose is a crime in many states if it causes serious annoyance. You are under no obligation to explain the purpose of your photography nor do you have to disclose your identity except in states that require it upon request by a law enforcement officer.

If the conduct goes beyond mere questioning, all states have laws that make coercion and harassment criminal offenses. The specific elements vary among the states but in general it is unlawful for anyone to instill a fear that they may injure you, damage or take your property, or falsely accuse you of a crime just because you are taking photographs.

Other Remedies If Harassed
If you are disinclined to take legal action, there are still things you can do that contribute to protecting the right to take photographs.

(1) Call the local newspaper and see if they are interested in running a story. Many newspapers feel that civil liberties are worthy of serious coverage.
(2) Write to or call the supervisor of the person involved, or the legal or public relations department of the entity, and complain about the event.
(3) Make the event publicly known on an Internet forum that deals with photography or civil rights issues.

How to Handle Confrontations
Most confrontations can be defused by being courteous and respectful. If the party becomes pushy, combative, or unreasonably hostile, consider calling the police. Above all, use good judgment and don't allow an event to escalate into violence.

In the event you are threatened with detention or asked to surrender your film, asking the following questions can help ensure that you will have the evidence to enforce your legal rights:

1. What is the person's name?
2. Who is their employer?
3. Are you free to leave? If not, how do they intend to stop you if you decide to leave?
4. What legal basis do they assert for the detention?

Your Legal Remedies If Harassed
If someone has threatened, intimidated, or detained you because you were taking photographs, they may be liable for crimes such as kidnapping, coercion, and theft. In such cases, you should report them to the police. You may also have civil remedies against such persons and their employers. The torts for which you may be entitled to compensation include assault, conversion, false imprisonment, and violation of your constitutional rights.

Disclaimer
This is a general education guide about the right to take photographs and is necessarily limited in scope. More information about the laws that affect photography can be found in my book, Legal Handbook for Photographers (Amherst Media). This guide is not intended to be legal advice nor does it create an attorney-client relationship.