

Session :	Janvier 2017
Année d'étude :	Troisième année de Licence Droit
Discipline :	<i>Anglais juridique</i>
Examen :	Premier semestre (UEC1 7296)
Durée :	1h30
Titulaires du cours :	M. Dino MELONI, Mme Emilie PERCHE

Les documents et les appareils électroniques ne sont pas autorisés.

I. Complete the following sentences, adding between 10 and 25 words. Do not start a new sentence. (20 points)

1. Although the Second Amendment prohibits...
2. Despite the protection against self-incrimination...
3. Pursuant to *Employment Division v. Smith*, whenever a law interferes...
4. Unlike a Grand Jury...
5. In order for the death penalty...

II. Choose one of the following topics and write an essay in approximately 250 words (+/- 10%). (50 points)

1. Would the protections guaranteed by the Bill of Rights be as effective without the ratification of the Fourteenth Amendment?
2. Too many exceptions have rendered the protections of the Fourth Amendment inoperative. Discuss.

III. Read the following document and answer each of the questions below (approximately ten lines/100 words for each question). Use your own words: DO NOT QUOTE DIRECTLY FROM THE TEXT. (30 points)

Does the First Amendment protect people who film the police?

Clay Calvert, *The Conversation*, March 20, 2016

This October, former police officer Michael Slager will stand trial for murder in the shooting death of Walter Scott following a daytime traffic stop last year in North Charleston, South Carolina. The critical evidence in the case is a smartphone video captured by a then 23-year-old barber named Feidin Santana as he was walking to work. The video shows Slager shooting the unarmed Scott several times in the back. Santana took the video despite another officer telling him to stop.

Santana's video is just one example of a citizen using a smartphone to capture alleged police misconduct. Ramsey Orta took the infamous "I can't breathe" video of Eric Garner being placed in a chokehold by a New York City police officer shortly before Garner's death. The twin incidents conjure up memories of the 1991 video captured by George Holliday of Los Angeles police officers beating Rodney King. (...)

Do citizens have a First Amendment right to record police doing their jobs in public places, such as streets, sidewalks and parks?

The U.S. Supreme Court has never answered this question. It has been left to lower courts nationwide to sort out for themselves if such a right to film police exists.

Last month, a federal court in Philadelphia took up the question. District Judge Mark Kearney determined the answer is no – there is no right to film cops, "absent any criticism or challenge to police conduct." Writing the opinion in *Fields v. City of Philadelphia*, Kearney reasoned that Pennsylvania "does not recognize a First Amendment right to observe and record without some form of expressive conduct" and that "photographing police is not, as a matter of law, expressive activity."

In other words, Kearney is arguing that the act of pushing a record button and then holding a phone up are merely conduct, not speech. This renders the First Amendment irrelevant.

To constitute speech, according to Kearney, the person recording must do so with the specific intent of criticizing or challenging the police conduct being recorded. That was not the case in *Fields*.

Kearney determined that one of the citizens involved only "wanted to observe" a public protest against hydraulic fracturing, not to criticize or challenge to the police monitoring it. The judge also found that the other citizen, a Temple University student who took a picture of about 20 police officers standing outside a home hosting a party, did so simply because it was "an 'interesting' and 'cool' scene."

In other words, why someone records cops is critical, in Kearney's view, in determining if the First Amendment is involved.

The decision in *Fields*, however, is somewhat of an outlier¹.

A 2015 nationwide study indicates that more courts – but certainly not all, as *Fields* indicates – are recognizing a limited First Amendment right to record police doing their jobs in public venues, regardless of the intent of the person recording.

For example, the U.S. Court of Appeals for the First Circuit, which includes the states of Maine, Massachusetts, New Hampshire and Rhode Island, concluded in 2014 in *Gericke v. Begin* that people have a First Amendment right to record officers conducting traffic stops, subject to "reasonable restrictions."

The problem, of course, is determining what constitutes a reasonable restriction. Reasonableness is a slippery concept. The First Circuit suggested that safety concerns might justify restricting the right to record. The court also was clear that a right to record is not a right to interfere. (...)

The First Circuit is not alone in recognizing such a qualified or limited First Amendment right to record images of police in public. The U.S. Court of Appeals for the Eleventh Circuit, which sweeps up Florida, Georgia and Alabama, also found that:

the First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.

Like the First Circuit, the Eleventh Circuit also considers this right to be "subject to reasonable time, manner and place restrictions." (...)

Viewed collectively, this growing case law confirms that Judge Kearney's decision in *Fields v. City of Philadelphia* is an outlier and, in my view, incorrect. Police officers are government officials and public employees. They work for the very people who want to record their actions. And when citizens record police in public places – locations where cops have no reasonable expectation of privacy, like streets and parks – those citizens are acting as watchdogs on possible government abuses of power.

Feidin Santana's video of officer Slager shooting Walter Scott in the back is all the proof needed of the importance of the watchdog role. A simple intent to monitor and observe, not to challenge or criticize, is all that should matter in determining if First Amendment rights are at stake. (...)

1. What issue does this article discuss? In what context is it being discussed? (10 pts)
2. What did federal District Judge Mark Kearney decide in *Fields v. City of Philadelphia* and on what grounds? How does this decision compare to other court decisions on this issue? (10 pts)
3. Comment on the underlined sentence. (10 pts)

1 An extreme case or exception