



LOS ANGELES SCHOOL POLICE DEPARTMENT TRAINING BULLETIN

How police should respond to a ‘First Amendment Audit.’

Individuals are filming police buildings and officers as part of a “First Amendment audit.” As law enforcement officers, we are obligated to enforce laws and statutes during the course of our duties. We must also realize that our own behavior and actions are governed by the same laws we are sworn to uphold. We are currently seeing a trend of people filming law enforcement – often referred to as a “[First Amendment audit](#)” – which is then posted online. During these “audits,” people film police buildings and officers. Once contacted, they can become aggressive, challenging and often seek to be detained by law enforcement while they are filming so they can post the video of the encounter online.

Discussion

First and foremost it is important to remain calm and professional when responding to a situation where someone is recording law enforcement.

The [First Amendment](#) of the Bill of Rights protects a person’s freedom of speech. Freedom of speech not only means words that are spoken, but also includes actions and expressions. Examples of this could be photographing, videotaping or protesting by holding up a sign.

Court rulings have defined a person's constitutional rights when it concerns videotaping and photographing police personnel. A summary of some of these rulings and laws are listed below

1. GLIK V. CUNIFFE, 655 F.3D (1ST CIR.2011)

Glik observed three Boston police officers making an arrest. Due to his concern they were using excessive force, he filmed the encounter on his cell phone.

Glik was approximately 10 feet away and not interfering with the arrest. One of the officers told him to cease recording. When the officer learned the video also included audio, he arrested Glick for a violation of a wiretapping law and his cellphone/computer flash drive was seized as evidence. A lawsuit was filed against Boston citing violations of Glik’s First and Fourth Amendment rights.



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The court held that video recording an arrest in a public place constituted an exercise of clearly established First Amendment rights. The court also held that the right to film the police has limitations such as it has to be done at a reasonable time, place and manner.

The court also ruled that the three Boston police officers were not immune from liability. The city was ordered to pay Glik \$170,000.

2. GERICKE V. BEGIN, 2014 WL 2142519, (1ST CIR. 2014)

Gericke was traveling with a friend in Weare, New Hampshire, when the police pulled over her friend's car. Gericke began filming the encounter with her camera and informed the officers she was doing so. Officers arrested her for "unlawful interception of oral communications" and seized her camera.

The 1st District Court of Appeals ruled that a First Amendment right extends to when police stop a vehicle to question the driver.

The Court ruled that Gericke "was exercising a clearly established First Amendment right when she attempted to film the traffic stop in the absence of a police order to stop filming or leave the area."

This is an important case as it suggests that police can restrict individuals filming law enforcement while performing law enforcement duties if a reasonable officer would believe safety is at risk.

CONTACTS WITH "FIRST AMENDMENT" AUDITORS

Persons conducting "First Amendment" audits appear to follow pre-determined responses when contacted by law enforcement. They are also inclined to make insulting comments that are intended to provoke a response from the officer(s).

It is important to remain calm and professional when responding to a situation where someone is recording law enforcement. It is equally important to have an appropriate response if questioned by these groups, with the knowledge that they are looking for an inappropriate response by law enforcement, or to be unlawfully detained.



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When contacting such groups, remember that your first words will often dictate the remainder of the contact, as with any other contact. A professional greeting such as, “How’s it going today?” will often work better than, “What are you doing out here?” or “Why are you recording our police building?” Remember that absent reasonable suspicion, this type of contact would be considered a consensual contact, and to avoid any coercive, demanding, or aggressive questioning.

These individuals frequently ask if they’re being detained, or what the basis is for their detention. Absent reasonable suspicion, an appropriate response would be to tell the person(s) that they are:

- Not being detained;
- They are free to leave at any time;
- They are free to continue with their activities.

Some groups also respond by saying they feel threatened or intimidated by the officer(s). If they do, it is acceptable to ask them:

- How your presence is threatening to them;
- Explain what are you doing to make them feel threatened;
- You can also reinforce that you’re simply asking them questions, and that they are not being detained.

Other law enforcement agencies have confronted such groups by saying that they received a call of suspicious behavior by these persons. These groups immediately respond by asking what is suspicious about their behavior. Be honest – if responding based on a call for service of suspicious persons, it is appropriate to say why you are there. Such a response might be similar to the following:

- “Someone called regarding your activity. I’d like to ask you a few questions about what you’re doing out here. You are not being detained, and are free to leave at any time.”
- “Some people find it suspicious that you’re recording our police station and officers. I’d simply like to find out what you’re doing out here.”

If there is nothing suspicious about their behavior, it is perfectly acceptable to respond as such. It is also acceptable to ask them what they are doing, why they are recording and what their purpose is for recording such activities.



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It is especially important to note that when a call taker is receiving and generating a call for service concerning a suspicious subject or of suspicious activity, that the call taker obtains specific facts from the reporting party that articulate what is suspicious. It is of equal importance that dispatchers relay these facts to officers.

If the event is generated by an officer's observations, it is important that the primary officer clearly communicate the circumstances to other responding officers. Doing so will help prevent a detention being unnecessarily imposed, in the event that reason for a detention did not exist.

Penal Code 148.

(a) (1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment

(g) The fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of subdivision (a), nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.