

RISK MANAGEMENT BULLETIN

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First Amendment Audits – Part 2

Best Practices in the Event You Encounter an Auditor

The First Amendment to the U.S. Constitution protects our right to free speech. The free speech protections afforded by the First Amendment are broad and, with very few exceptions, include the ability to create video recordings of public employees or private citizens on public property.

First Amendment auditors are individuals that make videos of their encounters with public employees and officials. Auditors will typically enter public property, camera in hand, and start filming and asking questions without identifying themselves or explaining why they are there. In most instances, the auditor is essentially testing to see whether the employees will respect his or her First Amendment rights to enter and film a public space. Auditors typically engage in behavior or make statements that are designed to provoke a reaction that could be viewed as a violation of the auditor's First Amendment rights.

While it certainly may be uncomfortable for public employees and officials to be recorded without their permission, it is important that they act with diplomacy and show respect to the auditor. Most First Amendment auditors are trying to provoke an altercation. The video of the altercation will then be posted on YouTube and may serve as the basis of an eventual lawsuit. If the auditor cannot provoke a confrontation, he or she will eventually leave. Below are some suggested best practices in the event that you encounter a First Amendment auditor.

1. Stay calm – do not overact.
2. Be patient and polite – do not be rude or dismissive.
3. Do not attempt to take the auditor's recording device or otherwise initiate physical contact with the auditor.
4. Do not detain the auditor in any way.
5. Let the auditor peacefully record as long as he or she is not committing a crime or disrupting the workplace or use of the property.
6. To the extent possible, simply go about your regular duties – do not do anything to intimidate the auditor.
7. If the auditor attempts to access a non-public part of the building, firmly and politely ask him or her to stop.
8. If the auditor becomes threatening, abusive, creates a safety or security risk, or disrupts ordinary business operations contact law enforcement.
9. Contact your immediate supervisor, director, or the head of your department at your earliest opportunity.

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