FIRST AMENDMENT AUDITORS

AGENDA

01 Background

02 First Amendment Overview

03 Auditor Demonstrations

04 Case Law on Auditors

05 How To Respond?

01

BACKGROUND
WHAT IS A 1ST AMENDMENT AUDITOR AND WHAT DO THEY DO?

First Amendment Auditor Overview

Auditors film on public property to test constitutional parameters and government confrontation.
Auditors generally refuse to provide identification and refuse to leave.
Auditors engage in “poking and prodding” which serves as a pretext for testing government response.
Auditors are typically middle-aged, high school educated and may be unemployed, part-time employed, or retired.
Auditors may have had unpleasant experiences with law enforcement.

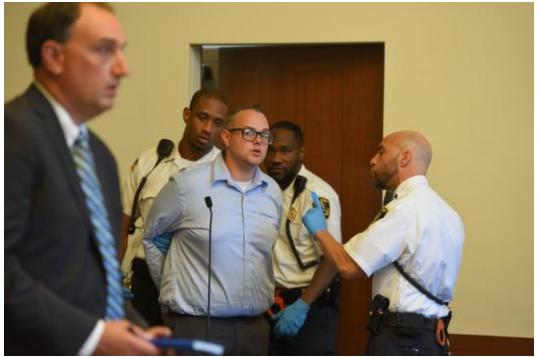
PROS:

- Promotes understanding or exercise of constitutional rights
- Promotes proper behavior from law enforcement and government workers
- Exposes governmental overreach

CONS:

- Negative stereotype surrounds auditing
- Draws law enforcement from more important duties
- Most responses cause a disturbance
- Exposes the auditor to misdemeanors such as trespassing or loitering – even when the charges are unfounded
- The auditor's purpose may be personal gain rather than promoting constitutional grounds

Famous First Amendment Auditors



Josh Abrams, Boston Mass.

Jason Gutterman, NY, Amagansett Press

Sean Paul Reyes, LongIslandAudit

02

FIRST AMENDMENT OVERVIEW

FIRST AMENDMENT

- "Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
- U.S. Const. amend. I

THE RIGHT TO RECORD POLICE – NOT REALLY A CIRCUIT SPLIT

The United States Supreme Court has declined certiorari on whether recording police is protected under the First Amendment.

The First, Third, Fourth, Fifth, Seventh, Ninth, Tenth, and Eleventh Circuits have held that it is permissible to record law enforcement while they are in public and performing their duties so long as there is no interference.

The Second, Sixth, Eighth, and D.C. Circuits have not ruled on this issue. Remember, ruling courts emphasize that the right to record police must be reasonable and may not interfere with police or government activity.

Forums of Speech

Traditionally Public Forums: Public Streets – Public Sidewalks – Public Parks
Restrictions: Must be reasonable, content-neutral time, place, and manner restrictions – narrowly tailored to serve significant government interest.

Designated Public Forums: Municipal Theaters – University Meeting Rooms – Bulletin Boards for Public Use – similar to limited public forum but DESIGNATED for speech.
Restrictions: Reasonable time, use, and manner restrictions, but cannot restrict the content of speech or discriminate based on viewpoint.

Limited Public Forum: School Facilities After Hours, City/County Hall Interiors, Public Library Meeting Rooms
Restrictions: Must be viewpoint neutral and reasonable in relation to the forum's purpose. Must be rationally connected to the forum's purpose.

Non-Public Forums: Government Offices, Military Bases, Airport Terminals, Jails, Public Hospitals, Polling Places
Restrictions: Must be reasonable in light of the forum's purpose – *purpose* cannot be to target specific viewpoints.

Restrictions on Speech

Table Two	
Forum Classification	Standard of Review
Traditionally or Designated Public forum	1. Viewpoint-based restrictions are prohibited 2. Content-based restrictions subject to strict scrutiny. 3. Time-place-manner restrictions must be content neutral, narrowly tailored to serve a significant government interest, and leave ample alternative channels of communication
Limited or Non-Public Forum	1. Viewpoint-based restrictions are prohibited 2. Restrictions on protected speech or expression are permissible as long as they are viewpoint neutral and reasonable in light of the purpose served by the forum.

STRICT SCRUTINY INTERMEDIATE SCRUTINY RATIONAL BASIS

02.5

STOP AND ID LAWS

WHY ARE STOP AND ID LAWS RELEVANT TO AUDITORS?

- Often, when First Amendment Auditors encounter LEO while recording police or government buildings, the officers typically request that the auditor identify themselves.
- Auditors often respond with, “What is your reasonable articulable suspicion?” or “What crime are you alleging has occurred?”
- Many officers respond, "I am conducting an investigation, you are required by law to show me your ID if I ask,” or “You’re suspicious,” or “You have to admit that in this day and age . . .” or “You are obstructing a police investigation,” or “I am investigating a trespass.”
- Auditors often respond with, “You can’t trespass my eyes,” or “I can record anything I can see,” or “I’ll only show my ID under threat of arrest.”

STOP AND ID LAWS

- Terry v. Ohio, 392 U.S. 1 (1968). established the concept that carefully limited searches are permissible upon reasonable suspicion.

The Supreme Court also ruled in Terry that police officers have reasonable suspicion when they believe that a person is about to commit a crime or has already committed one. In such cases, officers may conduct a frisk for their safety, but they cannot force anyone to talk to them.

Traffic stops are considered seizures under Tennessee Law. State v. Brotherton, 323 S.W.3d 866 (Tenn. 2010).

A mere inchoate and unparticularized suspicion or hunch is not enough to generate reasonable suspicion for an investigatory traffic stop. Id.

Terry accepts the risk that officers may stop innocent people to investigate further. Id.

STOP AND ID LAWS

Most states require a reasonable suspicion for a law enforcement officer (LEO) to request or demand identification. OR TO DETAIN!!!

A significant number of states grant LEOs the right to demand identification within the context of loitering. Vagrancy and loitering laws are often attacked as targeting the poor and as being vague, and overbroad.

No state has a statute which explicitly gives LEOs the right to request ID without reasonable suspicion.

03

WHAT DOES AUDITING LOOK LIKE?

EXAMPLE VIDEO OF AUDITOR'S AT WORK

FIRST AMENDMENT AUDITOR'S SHORT CLIP

Filming private property/business from public area.

1. Surveillance!!!
2. Fishing Show!!!

Filming Government Building From Public Area

Man outside city hall filming the building

04

CASE LAWSUITS/STATUTES ON AUDITORS

Loitering: General loitering in Tennessee was repealed, old provision existed under TCA § 39-3-1201

Trespassing: Entering or remaining on property . . . without the consent of the owner . . . TCA § 39-14-405

Resisting Arrest: [I]ntentionally prevent or obstruct . . . a law enforcement officer . . . from effecting a stop, frisk, halt, arrest or search of any person, including the defendant, by using force against the law enforcement officer or another. TCA § 39-16-602

Disorderly Conduct: In a public place with intent to cause public annoyance or alarm: (a)(1) engages in fighting or violent/threatening behavior; (2) Refuses to obey an official order to disperse . . . [for] . . . emergency; or (3) Creates a hazard or physically offensive condition . . . [for] . . . legitimate purpose. (b) makes unreasonable noise that prevents others from carrying on lawful activities. TCA § 39-17-305

Aggressive Panhandling: TCA § 39-17-313 Obstrucing Highway or Passageway: TCA § 39-17-307

TERRELL CLAYTON AND COLORADO SPRINGS POLICE DEPARTMENT

In 2015, the Colorado Legislature passed HB-15-1290, which granted a private cause of action for instances where law enforcement officers confiscate or destroy cameras and recordings.

In 2017, Terrell Clayton was video recording outside a police station in Colorado Springs.

When officers approached him, they found him suspicious and took his camera, detaining him. Clayton sued and the City of Colorado Springs settled out of court for $41,000.

TERRELL CLAYTON CONTINUED

- After the city settled out of court, Colorado Springs Police Department released a general order on their website that read:

.04 Policy

All department members will allow the recording of their activity while on duty. The only exception to this policy is when the person recording is interfering with a peace officer in the performance of his or her duties. Additionally, department members shall not seize or obtain a

recording or a recording device without consent, without a search warrant or subpoena, or without a lawful exception to the warrant requirement. Taking photographs or recording from a public place in and of itself does not constitute suspicious activity. This policy only applies to recordings of police activity.

KENNON DUNN V. CITY OF FORT VALLEY, 464 F. SUPP. 3D. 1347

Kennon Dunn, owner of Youtube channel Central Civilian Auditor was arrested after filming in a local city hall in Marshaville, Georgia.

Dunn sued and Marshaville and Macon County settled for the case for $95,000.

Like in Colorado, the conduct of the officers led to special training and a public affirmation of the right to record

LEONARD FILIPOWSKI V. BRIAN STACK, ET AL

- Filipowski, a self-assertive investigative journalist, claims his freedom of speech has been violated multiple times at local churches and council meetings.
- He filed a complaint in the New Jersey Federal District Court on March 5, 2025.

WRONGFUL ARREST OF ATTORNEY

- In November 2024, an Arkansas attorney Jennifer Waymack was arrested at the Hot Springs Convention Center during a meeting of the Arkansas Bar Association. She was quietly carrying and handing out petition materials, making them available to anyone who wanted to sign them.
- Her goal was to put a pair of Freedom of Information measures on the November 2024 ballot.
- The police treated the act as "soliciting," even though it was peaceful, non-disruptive, and took place on public property.
- The parties (City of Hot Springs, Hot Springs Advertising and Promotion Commission, and the Arkansas Bar Association) reached a $200,000 settlement for violating the attorney's First Amendment rights. This incident highlights that not all arrests stem from agitation or filming. Sometimes, lawful conduct can be misidentified as criminal.
- Lawyer Wrongfully Arrested at Arkansas Bar Association Meeting

05

HOW TO DEAL WITH AUDITORS?

HOW TO ACT WITH AN AUDITOR?

- Ignore them. But if you insist on interacting with them . . .
- STAY CALM – be flippant.
- You may point out if they are breaking any law. If you have standing politely ask them to stop.
- If the auditor acts unreasonable just walk away and call the police.
- Don't get into a right-of-way, easement, or property line dispute.
- Remember, you may be recorded in public – no consent necessary.

HOW NOT TO ACT WITH AN AUDITOR.

- Do **NOT** threaten an auditor with arrest or legal action unless you are a police officer acting upon REAL reasonable suspicion or probable cause.
- Do **NOT** tell an auditor that they are overstepping their legal boundaries if they are not.
- Do **NOT** try to intimidate an auditor if they are not breaking any laws or ordinances.
- If an auditor is filming in a public place, simply let them record – walk away if you do not want to be part of the recording.
- Sometimes auditors or their fans research individuals in auditor videos and put a 'victim's' information on the dark web (home address, phone number, place of employment, names of family members, and even SSN).

Approach

- Approach, do not accost

Inquire

- Inquire instead of interrogating

Deescalate

- Deescalate instead of escalating

AMENDMENT AUDITORS

- REMAIN CALM & PLEASANT
- RESPECTFULLY DISENGAGE WITH THEM
- REPORT ILLEGAL OR SUSPICIOUS ACTIVITY

QUESTIONS?

THANK YOU

David Pool
(901) 340-0376
david.pool@shelbycountytn.gov