

First and Second Amendment Auditors

How Your Organization Can Emerge From an Encounter Like a Shining Star



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First Amendment auditors.

Their goals?

- Protect the Constitution.
- Discredit government and government employees.
- Make money with video views.
- Become Independent “Journalists.”



1A. You know it by heart.

- *CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR 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.*
- The Supreme Court has never directly held that the First Amendment creates a standalone right to record police officers in public, but **nearly every federal circuit to address the issue – including the Fifth Circuit in *Turner v. Driver* – has recognized such a right grounded in broader First Amendment protections involving information gathering, criticism of government, and newsgathering activity.**



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1A. Filming government building allowed.

- *Turner v. Lieutenant Driver*, 848 F.3d 678, 683 (5th Cir. 2017).
- At the time in question, neither the Supreme Court nor the Fifth Circuit had determined whether First Amendment protection extends to the recording or filming of police.
- “We conclude that First Amendment principles, controlling authority, and persuasive precedent demonstrate that **a First Amendment right to record the police does exist**, subject only to reasonable time, place, and manner restrictions.” Even though the Court concluded these officers had qualified immunity because the aforementioned right did not exist at the time of Turner’s arre applies going forward.



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1A. Filming in government building depends.

- *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983); *Cornelius v. NAACP Legal Defense Fund*, 473 U.S. 788 (1985).
- Under the First Amendment, the extent to which a “First Amendment auditor” may record inside city hall depends largely on the type of forum involved. Government property is generally classified as a traditional public forum, designated/limited public forum, or nonpublic forum. Restrictions on speech and recording become more permissible as the forum becomes less public.
- Inside city hall, **a public lobby is generally treated as at least partially open to the public, meaning a city ordinarily may not impose a blanket prohibition on peaceful recording.**
- “We have recognized that the **“First Amendment does not guarantee access** to property simply because it is owned or controlled by the government.”



1A. Ways to Protect Yourself and the Public

- Put up blinds, curtains, tint windows.
- Bring uninvolved persons into controlled areas to conduct business.
- Obscure documents.
- Lock doors to restricted areas.
- Fence restricted parking areas.

1A. Do's

- Know that photography is allowed in public areas.
- Practice good customer relations/be polite and remain calm and professional.
- Beware of voice tone and volume and watch your body language.
- Provide your name if asked.
- Limit interaction.
- Position computer screen so it can't be seen by the public.
- Call the police if you are concerned for your safety.
- Train your staff!



Don'ts

- Tell them they can't film.
- Touch them = assault claim.
- Take the phone = theft.
- Video activist with your own phone = Public information request.
- Argue or use profanity.
- Have personal items in plain view.
- Have sensitive information in plain view.
- Try to compel them to ID themselves.



Second Amendment Auditors You Know this One, Too

- *A WELL REGULATED MILITIA, BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS, SHALL NOT BE INFRINGED.*
- The state has no licensing scheme for long guns. Because state law does not prohibit the carrying of a rifle or shotgun in a public place, a person is generally allowed to carry those weapons in “public” in Texas. Of course, Penal Code Section 46.03 prohibits carry of any firearm in the places listed therein.
- The “Firearm Carry Act of 2021” authorizes most Texans over 21 years of age to carry a handgun in a concealed manner or openly in a holster, without the requirement to first obtain a license. The handgun license law allows a licensee to carry openly or in a holster.



2A. Places (Civilian) Carry Prohibited

- Courts
- Open meeting room (new licensee interpretation?)
- Polling place during election
- Secured area of airport
- School/school activity
- Professional sporting event
- Secure area of police department (with notice for licensee)
- Employer can ban or allow employee carry



“Going about one’s business” and reasonable suspicion.

- *Alexander v. City of Round Rock*, 854 F.3d 298, 301 (5th Cir. 2017).
- Distinguished between “headlong flight...the consummate act of evasion” and the right of the individual to “ignore the police and go about his business.” Nervous, evasive behavior was a pertinent factor in determining reasonable suspicion, but “continuing to go about one’s business” was not.





2A. Verbal Taunts, without more, are protected.

- *City of Houston, Tex. v. Hill*, 482 U.S. 451, 107 S. Ct. 2502, 96 L. Ed. 2d 398 (1987).
- “Speech is **often provocative and challenging**.... [But it] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.”
- **PC 42.01 (a)(1) Disorderly Conduct (Language):** Abusive, indecent, profane or vulgar language in a public place AND By its very utterance tends to incite an IMMEDIATE breach of the peace. Fighting Words – don’t ordinarily apply to words aimed only at police.
- **PC 38.02 Failure to Identify:** Intentionally refuses to give name, address, or DOB when requested by a peace officer IF UNDER ARREST; Intentionally gives a false or fictitious address, or DOB when requested by a peace officer WHEN LAWFULLY ARRESTED, DETAINED, or a witness to a criminal offense.





Get your city officials trained!!

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