



FIRST AMENDMENT AUDITS

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Police departments across the country are being “baited” to improperly detain individuals, and instances have occurred within the Commonwealth of Kentucky in the past week. The individuals performing these acts call themselves First Amendment Auditors and the subculture has begun to flourish online on YouTube. A Google search is a wonderful teaching tool to learn the playbooks of these people. Individuals show up at public city properties and begin recording with a smartphone camera or another video device. At some point, they wish to act provocatively enough to cause a city employee or citizen to contact the local police. Once police arrive, the individual filming encourages a verbal confrontation where the individual baits an officer to improperly search, arrest, or seize video equipment (generally a phone or small recorder). These individuals are looking to be arrested or searched to file civil litigation against the city and/or drive viewers to their web content.

Remember city-owned buildings are open to the public. There is nothing illegal about walking around recording in any area the person or others are permitted to occupy. This action doesn’t constitute “public alarm” even though a clerk or others might be concerned about the person’s actions.

When assessing the situation, remove the fact that they have a video recording device. If the person did not have a video recording device, would you respond in the same manner? Is

the person on public property? Is the person blocking access to the facility? Would you treat another member of the public differently?

No person is required to present identification to an officer unless he or she is the operator of a motor vehicle. KRS 186.510.

Refer to KLCIS BLUE Paper “Seizing Video Recordings.”

Videos are available on YouTube by searching “first amendment audits.”

Best Response:

- ◆ Record interaction. Utilize body cameras as available.
- ◆ Remain calm and professional. Don’t let this person agitate you into actions not permissible.
- ◆ As permissible stay at location and observe. These individuals will generally leave after a short period of time when they note no improper encounter is occurring. If at all possible do not feed oxygen to a fire by having a confrontation.
- ◆ Document the encounter.
- Make notifications of incident through departmental chain of command.
- Consult with your local prosecuting attorney when time allows.



Questions? KLC is here to help!

Please contact John Clark (jclark@klc.org) or Brian Nunn (bnunn@klc.org) with KLC Loss Control Law Enforcement at 800.876.4552 or visit klc.org for more information.



John Clark



Brian Nunn