



Training Bulletin

SANTA BARBARA POLICE DEPARTMENT



Bernard Melekian, Chief of Police

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First Amendment Auditors and Agitators

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The purpose of this training bulletin is to provide information on First Amendment Auditors, applicable Department Policy, guidance on a response by SBPD personnel, and finally some points to consider if the actions of the auditor interfere with the ability of an Officer to do their job.

Auditors are categorized by its practitioners as activism and citizen journalism that tests constitutional rights, in particular, the right to photograph and video record in a public space. Auditor-initiated contact with police are often confrontational in nature designed to provoke a response.

When the actions of a First Amendment Auditor (or Agitator, YouTuber, etc.) violate the law as described in the subsequent sections, a custodial arrest should be considered a last resort when other options do not exist or fail. There is no shortage of First Amendment auditor videos on social media for examples on how these interactions tend to look. First Amendment Auditors will often go in or around the public spaces of government buildings and engage government employees in conversation, police departments being no exception.

Common Tactics of First Amendment Auditors:

- Video Live on Social Media
- Bait Officers to Act Unprofessionally or Engage in an Argument
- Condescending Demeanor and Words
- Question Laws/Policies

When does civilian behavior involving videotaping, observing, and verbally criticizing law enforcement activity cross the line from protected speech under the First Amendment to a violation of Penal Code section 148(a)(1)?

Civilians have a First Amendment right to photograph, audio/video record, and/or verbally criticize police officers engaged in their duties in a public space (collectively, “Protected Activities”). Typical public locations include streets, sidewalks, parks, public squares or lobbies of government buildings. However, when civilians engaged in Protected Activities go beyond mere recording or criticizing of police officers and **actually interfere** with the performance of a police officer’s duties, those civilians interfering can be arrested and prosecuted for violating Penal Code section 148(a)(1). Actual inference includes, without limitation, repeatedly interrupting a police officer’s interview of a witness/suspect to the point where the officer cannot perform their duties and refusing to cease said interruption after a police officer commands them to stop. It would be best practice for an Officer to exhaust all other options, which may include changing locations where the person interfering is no longer present.

When an agitator repeatedly interrupts an officer’s interview of a suspect or witness to the point that the officer cannot conduct the interview *and the agitator refused to stop said interruptions after being commanded to stop*, an officer is in all likelihood on solid ground to arrest the agitator for a violation of Penal Code section 148(a)(1). However, this will be an intensely fact bound inquiry. Likewise, where an agitator approaches a police vehicle and communicates with a detained suspect inside the vehicle *and the agitator refuses to stop said communication when ordered to do so*, there is likely probable cause to arrest the agitator for a violation of Penal Code section 148(a)(1).

The right to record an officer in public so long as they do not interfere with official police activity has been clearly established by case law. Therefore, qualified immunity no longer applies. While there is no case law regarding a situation when an agitator is within an officer’s immediate personal space (while recording or criticizing the officer), concerns for officer safety and the ability of the officer to conduct their duties in all likelihood supports arresting an agitator for a violation of Penal Code section 148(a)(1). This type of arrest is on even more solid footing where an agitator makes physical contact with an officer.

Considerations to Consider When Taking Enforcement Action

- Severity of the Crime Being Investigated (Infraction vs. Misdemeanor vs. Felony)
- Ability for the Officer to Change Location to Avoid Interference
- Ability for the Officer to Completely Disengage Activity that Is Being Interfered
- Clear Directions Been Provided to the Person (i.e., “You may film me and criticize me; however you need to stand no closer than that tree. I don’t know who you are and if you have any intention to harm me.)
- Clear Communication as to Person’s Interference (i.e., “Sir, you’re yelling and standing so close that I can’t conduct an interview that needs to be done right now. Your actions are interfering with the ability to do my job.)

Recommended Tactics

- Be Polite
- Be Helpful
- Be Friendly
- Be Professional
- Request a Supervisor
- Do not engage in a debate or argument - there is no “winning” an argument in this setting
- Deflect or defuse inflammatory statements
- Record Encounter

Public Recording of Law Enforcement Activity SBPD Policy 427.3 (Refresher)

427.3 RECORDING LAW ENFORCEMENT ACTIVITY

Members of the public who wish to record law enforcement activities are limited only in certain aspects.

(a) Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).

(b) Beyond the act of photographing or recording, individuals may not interfere with the law enforcement activity. Examples of interference include, but are not limited to:

1. Tampering with a witness or suspect.
2. Inciting others to violate the law.
3. Being so close to the activity as to present a clear safety hazard to the officers.
4. Being so close to the activity as to interfere with an officer’s effective communication with a suspect or witness.

(c) The individual may not present an undue safety risk to the officers, him/herself or others.

Sources

- Case Law: *Arias v. Amador* (2014) 61 F. Supp. 3d, *In re Muhammed C.* (2002) 95 Cal. App. 4th, *In re Chase C.* (2015) 243 Cal. App. 4th
- Gordan Graham, April 30, 2019 Tip of the Day
- SBPD Policy

Person(s) involved in creating the Training Bulletin:

Kenny Kushner, Lieutenant