



# SMILE!

## FIRST AMENDMENT AUDITS AND PUBLIC LIBRARIES



# Disclaimer

**The research, resources and discussion that are part of this presentation are for informational purposes only and not for the purpose of providing legal advice. You should *contact your attorney to obtain advice with respect to any particular issue or problem.***



# Welcome

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# It all starts with...

## Amendment I

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.



# Right to Information

- “[The] First Amendment does not merely prohibit the government from enacting laws that censor information, but additionally encompasses the positive right of public access to information and ideas. .. the right to receive information is not unfettered and may give way to significant countervailing interests. At the threshold, however, this right... includes the right to some level of access to a public library, the quintessential locus of the receipt of information.”

Kreimer v. Bureau of Police for Town of Morristown, 958 F.2d 1242, 1255 (3d Cir. 1992)



# Public Forums



Public Forums



Limited or Designated Public Forums



Non-Public Forums



# Libraries are Limited Public Forums

 Can implement “Time, Place and Manner” Restrictions.

 Restrictions may not be based on content of speech.

 Rules can limit activity- including First Amendment expression- if activity disrupts use of the forum for its intended purpose. Can also be used to facilitate intended purpose.

 In other words, a library can limit first amendment activities that are not in keeping with the purpose of the library.





# What Are First Amendment Audits?

- A person or group of people arrive at the library, recording within and announce as “audit.” They will often be intimidating and knowledgeable about their right to access public buildings and record.
- They are not often knowledgeable about the status of libraries as limited public forums.
- They will record staff and other patrons.
- They are hoping for conflict and “good” content.



# Where does this come from?

Since the recording of the police beating of Rodney King in 1991, citizen recording and photographing of public spaces, facilities and public employees has spiraled.

Live recording is a powerful activism and protest tool, as well as an effective way to call attention to government activities and potential wrongdoing.

Citizen recording has also become an important journalism and news reporting tool.



# Audits are rooted in real rights

- People in the US **have** a right to:
  - Access to public buildings.
  - Observe and record public officials completing their duties.
  - Record and photograph public buildings



But

The advent of social media and the “business” of live filming has encouraged and enabled some to profit from this practice

An increase in “anti-government” groups and popularity of conspiracy theories involving the government have increased the attractiveness of audits for some.

Many “audits” are not rooted in any real interest in government transparency.



# In Reality

- Most “auditors” are social media personalities who make money based on how many views they get for their content. The more crazy and contentious the content, the better for them.



# Why is this a problem?

Intimidation and aggressive behavior can disrupt staff at their jobs and therefore library operations.

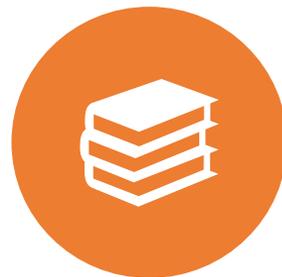
This event can intimidate and interfere with other patrons in their right to library services and information.

Unfettered recording within a library can violate other patrons' information privacy rights.

Situation has potential to escalate into larger more dangerous situation.



# What can a library do to prepare?



LIBRARIES MUST  
BALANCE THE RIGHTS  
AND/OR BENEFITS OF  
PUBLIC  
PHOTOGRAPHY  
AGAINST THE PRIVACY  
OF ALL PATRONS AND  
THE SAFETY OF  
PATRONS AND STAFF.



LIBRARY BOARDS AND  
DIRECTORS SHOULD  
CAREFULLY CONSIDER  
THE OPTIONS FOR  
DISCOURAGING  
AND/OR MANAGING  
“AUDITS,” AND  
CHOOSE THE LEAST  
RESTRICTIVE OPTION  
THAT WILL ACHIEVE  
INTENDED OUTCOME.



# What can a library do to prepare?

- Policies
  - Photography
  - Problem patron
  - Threat/Emergency
- Training
  - Conflict and difficult conversation.
  - Diversity
- Marketing
  - Notification of policies
  - Patron education



# Photography Policy

- Ban?
- Partial Ban?
  - Require notice and/or permission?
- Consider how policy will be enforced
- Consider the library's circumstances – is library one that has unusual or striking architecture or historical significance, or which holds unusual collections or art? Would patrons WANT to take pictures? Must configure policy to accommodate these.
- Consider Library Privacy Act
- Consider effect of policy on community
  - BIPOC communities view smartphone cameras as an essential tool for safety.
- Policy works both ways – no staff recording either.



# Inform and Train Staff

- Ignore auditors
- Remain calm and professional
- Defer to security personnel
- If behavior is harassing, implement procedures to handle problem patrons- address behavior – not speech.
- Call law enforcement for support



# Consult Experts

Your Attorney

Law Enforcement

Municipal Partners

Colleagues



# Resources

- <https://www.masc.sc/Pages/newsroom/uptown/January-2020/Keeping-Calm-With-First-Amendment-Audits.aspx>
- <https://firstamendmentwatch.org/deep-dive/controversial-first-amendment-auditors-test-the-right-to-film-in-public-spaces/#tab-analysis-opinion>
- <https://www.maine.gov/msl/libs/documents/FirstAmendmentAudits.pdf>
- <https://americanlibrariesmagazine.org/2020/01/02/free-speech-free-for-all-first-amendment-audits/>
- <http://www.dmlp.org/legal-guide/recording-police-officers-and-public-officials>



# Resources

- <https://www.oif.ala.org/oif/?p=18859>
- <https://www.libraryjournal.com/?detailStory=OIF-Examines-Legal-Issues-for-Library-Social-Media-and-First-Amendment-Audits-ALA-Midwinter-2020#:~:text=Libraries%20are%20beginning%20to%20be,as%20taxpayers%20and%20citizen%20journalists.>
- <https://www.masc.sc/Pages/newsroom/uptown/January-2020/Keeping-Calm-With-First-Amendment-Audits.aspx>
- <https://www.cirsa.org/news/first-amendment-audits-coming-to-your-town/>
- <https://www.railslibraries.info/sites/default/files/Sample%20Library%20Filming%20Policy%204837-0093-3772%20v.2.pdf>



Thanks!

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