



Empire State Library Network
Discover. Connect. Engage.

Libraries & “First Amendment Audits”

April 26, 2022, at 1:00 P.M.

Presentation for the Empire State Library Network

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Session Goals

This session will:

- Cover how libraries in New York can prepare their policies and staff for these types of interactions
- Provide tips for training staff for in-the-moment response
- Discuss public relations techniques to foster respect for all people involved, willfully or circumstantially, in these types of encounters



To do that, we'll:

- Briefly review the phenomenon called a “First Amendment Audit”
- Discuss alternate ways of viewing this type of activity
- Discuss the law in New York as it pertains to this type of activity
- Discuss how the law supports your libraries’ policies to address this type of activity
- Review in-the-moment and after-the-moment techniques
- Discuss the broader issue of this type of activity with respect to mission and service



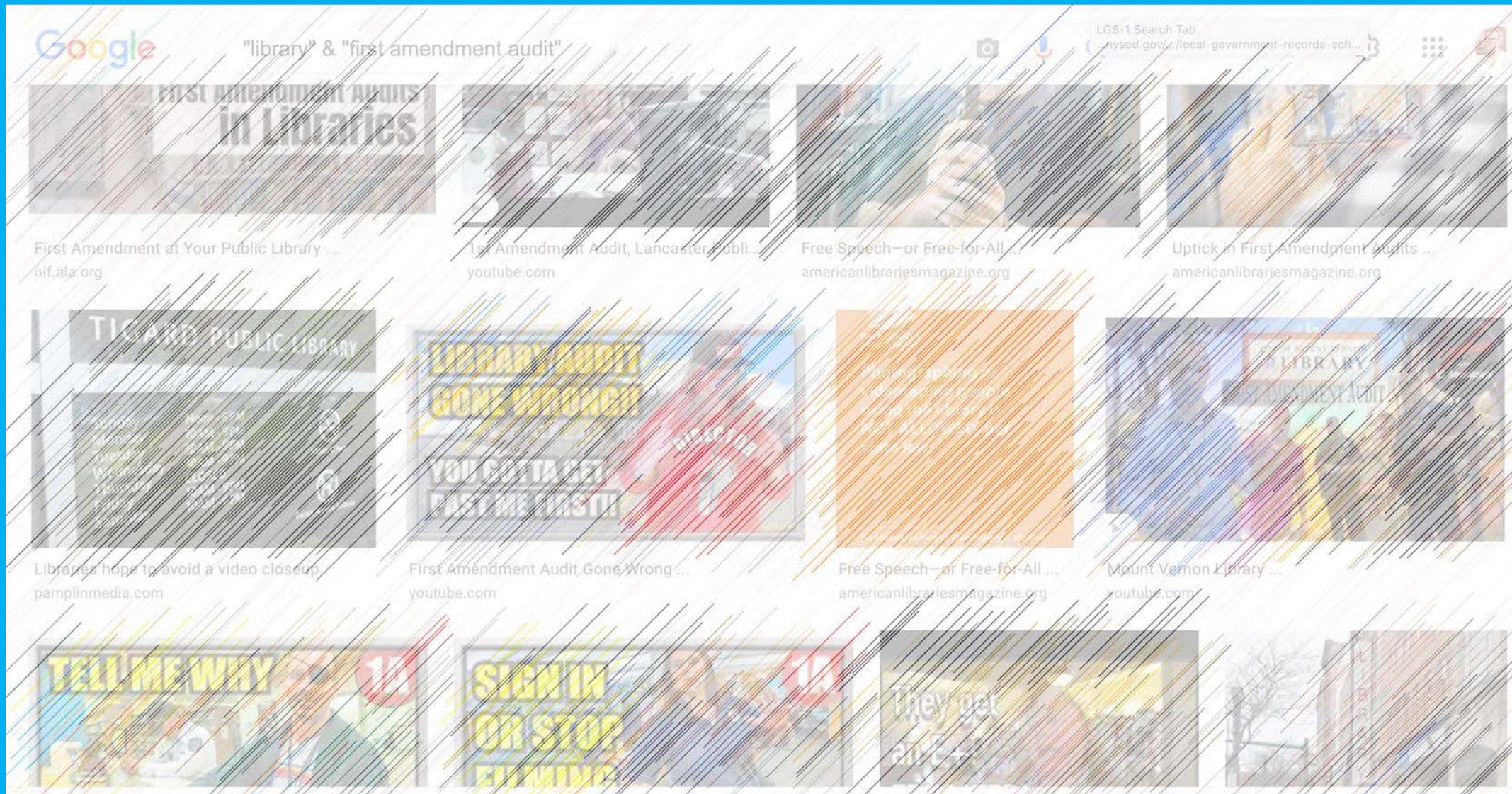
Ground rules

We have 60 minutes for information review, and 30 minutes for Q&A; questions can be put in the chat at any time.

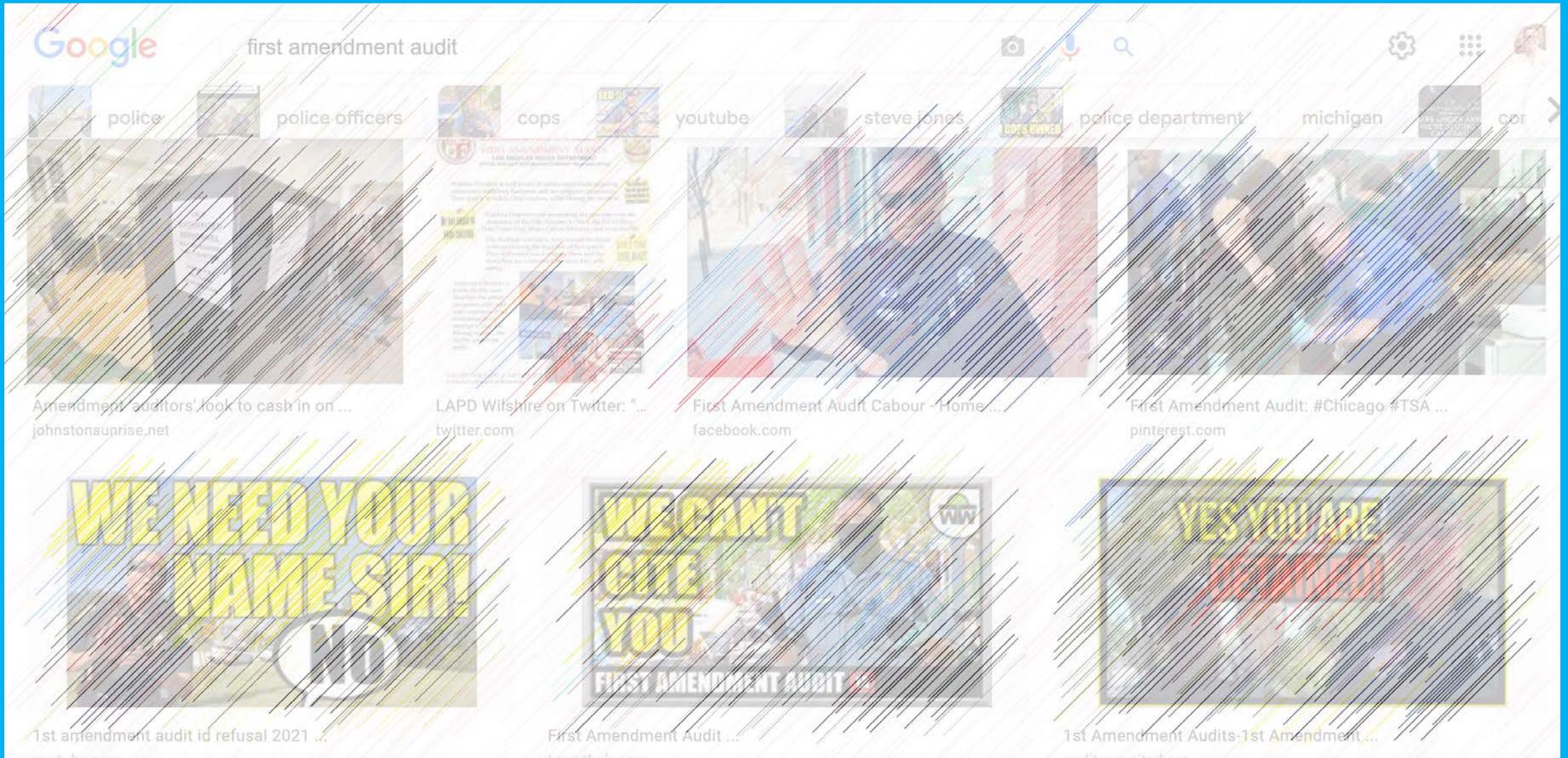
Please feel free to engage with each other through chat as we move through the materials.

Please keep engagement respectful.





Blurred image of search results for “library first amendment audits”



Blurred image of search results for "first amendment audits"

Common threads

Not affiliated with formal or professional media, but monetized	Often seeks confrontation
Often uses adrenalizing tactics	Knows/exploits that they may appear odd or unusual
Staunchly affirms right to film/record/stream	



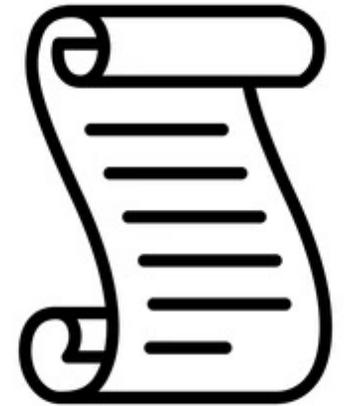
Re-brand!

“Person Recording in the Library”



First Amendment of the U.S. Constitution

“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.”



New York Constitution, Art. 1, Section 8

“Every citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.”



Case law in NY holds that a library is a **limited public forum.**

See, e.g., [Kreimer v. Bureau of Police for the Town of Morristown](#), 958 F.2d 1242, 1259 (3d Cir. 1992); [Armstrong v. District of Columbia Public Library](#), 154 F.Supp.2d 67, 75 (D.D.C. 2001); [The Gay v. O'Hoopee](#), 235 F.Supp.2d 1362, 1368 (S.D.Ga. 2002); see also [Brown v. Louisiana](#), 383 U.S. 131, 86 S. Ct. 719, 15 L. Ed. 2d 637 (1966)

"A State or its instrumentality may, of course, regulate the use of its libraries or other public facilities. But it must do so in a reasonable and nondiscriminatory manner, equally applicable to all and administered with equality to all."



A “**limited public forum**” is created when the government designates “a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects.”

Bronx Household of Faith v. Bd. of Educ., 492 F.3d 89, 96 (2d Cir. 2007) (quoting *Cornelius v. NAACP Legal Def & Educ. Fund*, 473 U.S. 788, 802, 105 S. Ct. 3439, 87 L. Ed. 2d 567 (1985)).



In the case of a **limited public forum**, constitutional protection is afforded only to expressive activity of a genre similar to those that government has admitted to the limited forum.

[Travis v. Owego-Apalachin School Dist., 927 F.2d 688 \(2d Cir. 1991\).](#)



Unlike the designated **public forum**, the **limited public forum** does not require a “strict scrutiny” analysis.

Instead, in this type of forum, "governmental restrictions on expressive conduct or speech are constitutional so long as they are reasonable in light of the use to which the forum is dedicated" and "are not an effort to suppress expression merely because public officials oppose the speaker's view."

[Huminski v. Corsones, 386 F.3d 116, 153 \(2d Cir. 2004\)](#) (quoting *Cornelius*, 473, U.S. at 800).



So...

What is “reasonable in light of the use to which the forum [the library] is dedicated?”



NYLA and ALA Code of Ethics

“III. We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted.”



§ 4509. Library records. **Library records**, which contain **names or other personally identifying details** regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to records related to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audio-visual materials, films or records, shall be **confidential** and **shall not be disclosed** except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court order or where otherwise required by statute.



However, nothing is simple...

There is First Amendment protection for creating audio and visual recordings of *law enforcement officers* in public places.

That said, this First Amendment right is not absolute and is subject to reasonable time, place, and manner restrictions.



What can your library do via policy?

Operate as and consider itself a “limited public forum”.

Assess what legitimate operational concerns the library has about recording on-site.

Assess policies and signage to ensure they support areas where recording is barred due to operational needs.

Build alternatives to calling law enforcement for policy violations related to recording in the library.



Typical “legitimate operational concerns”

User and library records privacy

Ensuring stable work environment for employees

Security

No disruption to other patrons’ use of the library



Sample Policy Summaries

“To ensure patron privacy, recording or streaming is only allowed in areas with no other library users. Groups planning to record and/or stream should alert staff to ensure recording is consensual.”

“This library is a “limited public forum”, so recording and/or streaming are allowed and welcome in [AREAS]. Please limit recording to this zone so patron privacy is respected and routine library operations are not disturbed.”

“To ensure patron privacy and respect for routine library operations, there is no recording or streaming allowed in the library except in the following areas: [INSERT] [Include map].”



More Sample Policy Summaries

“To respect patron privacy, filming, recording, and streaming in our small library is not allowed except by pre-arrangement. This is to ensure only consenting library users are included in the recording, and routine operations are not disturbed.”

”When taking pictures, recording, filming, or streaming from our small library, please take care to not feature other library users, who are entitled to privacy when they use the library.”

“We love to talk about our library! If you want to record information about the library and its services, kindly alert the staff, so we can provide information without disrupting normal operations and while respecting patron privacy.”



Critical element to maintaining a “limited public forum”:

**UNIFORM
APPLICATION OF POLICY
TO
ALL**



Before, During, and After

Every library should know what “brand” it will take in responding to a Person Recording in the Library.

Any of these is acceptable:

1. Courteous Informer
2. Warm Engager
3. Strict Reciter

...so long as you are ready to use your approach to meet your goals.



Suggested Goals

Your library's unique way of being a "limited public forum" is reinforced.

Patron privacy and library ethics are emphasized.

Library operations are not disrupted.

Escalation does not create an "interesting" recording.

The Library's mission is showcased.



Before:

- Identify who on shift will address those recording in the library.
- Identify who on staff are not comfortable being filmed and if/how they can work in a private area if someone is recording on site.
- Be ready to use your library's "**policy summary**" and response personality as a guide. Practice!
- Review your policy on "Recording in the Library" (or, if applicable, relevant section of "Patron Privacy" or other such policy) and the "Code of Conduct" and when to use security/law enforcement.
- **Train to inform, not enforce, in the moment.**



During: Information, not escalation

“Here is a copy of our policy on recording in the library. Please observe this policy if you are recording or streaming.”

“We have a policy of protecting patron privacy, which is an ethical and legal obligation of our library. For that reason, there is no recording allowed in the library.”



“We would be happy to tell you whatever you need to know about the library on the record, let’s find a place to talk where we don’t risk distracting others.”

DO NOT ARGUE.



Script for person responding:

“We are pleased when anyone is interested in our library.

Our plan of service, policies, budget, and board minutes are on our website.

Regarding recording, our policy is [insert summary]. Please respect our policy.”

[Provide copy of policy; Inform, not enforce;
If policy violated despite information, create consequences after the fact, not an incident in the moment]



Script for employee being recorded without permission:

[calmly, even nicely, if possible]

“You do not have my permission to record me or to use my image for any commercial purpose.”



After: Consequences and hot-wash

If a Person Recording in the Library violated a policy, address it just like any other policy violation.

If a Person Recording in the Library made a worker or user uncomfortable or apprehensive, formulate a plan to address the impact on that affected person.

Conduct a team “hot-wash” to discuss how things went, what could have gone better, and what could help reach a better result going forward; then, to the extent you can, implement what you’ve identified.



Sample Code of Conduct Charge

“On [DATE], you were at the library and engaged in conduct in violation of our Code of Conduct; specifically, you recorded several library users without permission, risking a compromise of their privacy as library patrons, as protected by law and library ethics.

When notified of the library’s policy, you did not cease recording, and on [DATE], you posted a video of those patrons at [LINK]. We request the video, or at least the portions showing library users in violation of our policy, be removed. Until then, because of the violation of our Code of Conduct, [INSERT CONSEQUENCES].

If you believe this finding is in error, please direct your appeal to [INSERT], per the attached Code of Conduct and appeal procedure.”



Big Take-aways

- Your library’s policies and signage set the terms of it being a **“limited public forum.”**
- In New York, the law allows for public library policies that limit recording so long as they are rationally related to the library’s purpose.
 1. **Patron privacy;**
 2. **Safety;** and
 3. **Supporting routine operations;**are all valid reasons to limit and restrict recording, so long as these reasons are rationally related to the library’s objectives, and the policy is **uniformly** applied.



Big Take-aways, continued...

- Clear signage and a posted/easily recited policy summary will support and help enforce your policy.
- Practice, and **train for information, not enforcement, in the moment.**
- Consider the implications of involving law enforcement or private security.



Big Take-aways, continued...

- Remember that people identifying as “First Amendment Auditors” are part of a larger movement of non-traditional media recording law enforcement, government agencies, and other public servants in the field.
- The Open Meetings Law means that your library (association or public) cannot bar the recording of open board meetings, but that should not be confused with the ability to impose restrictions on recording regular library operations.



Q&A

