

Censorship, 1st Amendment Audits, and Intellectual Freedom: Preparation for Library Trustees

NH Library Trustee Association
May 10, 2022



Agenda for today's session:

- First Amendment audits - common language (definitions)
- First Amendment audits – what they are, why they occur
- First Amendment audits – best practices to be prepared
- **First Amendment audit role play**
- Challenges – common language (definitions)
- Challenges – national/regional overview
- Challenges – best practices to be prepared
- **Challenge role play**
- Wrap-up/Q&A

DISCLAIMER!

I am not an attorney, and I do not play one on TV. None of this presentation should be construed as legal advice. This presentation contains legal information provided for educational purposes. If legal advice on 1st Amendment Audits and/or Book/Program Challenges is desired, please contact your municipal attorney or the attorney retained by the library's board of trustees who would represent the library in a court of law.

Definitions – 1st Amendment Audits

First Amendment Audit

- The practice of exercising one’s constitutional right to record video for the purpose of educating anyone who attempts to infringe upon that right and commending those who respect it (Firstamendmentauditing.com)
- A loosely organized social media campaign to “audit” government spaces and agencies for alleged First Amendment violations (ALA Intellectual Freedom blog, 10/2/2019)

Auditor

- A person who video records an encounter with public employees in their place of work.
- The individuals “...claim a right to film in any space accessible to the public, arguing that they’re entitled to do so as taxpayers and citizen journalists” (ALA Intellectual Freedom blog, 10/2/2019)
- “Many people also consider audits to be successful if security or law enforcement are called...” Firstamendmentauditing.com

More Definitions – 1st Amendment Audits

Traditional Public Forum

- Include public parks, sidewalks, and areas that have been traditionally open to political speech & debate
- In these forums, government may not discriminate against speakers based on the speaker's views.

[Legal Information Institute \(Cornell Law School\)](#)

Limited Public Forum

- A type of designated public forum where the government opens public property for public expression even though the public property is not a traditional public forum.
- The government is not obligated to keep the property as a designated public forum.
- Courts have held that public libraries are designated, limited public forums.

[Legal Information Institute \(Cornell Law School\)](#)

The First Amendment – US 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 to peaceably assemble, and to petition the government for redress of grievances.

Why are there First Amendment Audits?

- Auditors often believe it promotes transparency & open government
- Video recordings have been used, sometimes successfully, as the basis of a claim or lawsuit
- To post video recordings on social media:
 - To increase social media metrics of likes, follows, shares, subscribers
 - To make money (some auditors sell merchandise)

Court opinion re: public libraries & 1st Amendment

[Kreimer v Board of Police of Morristown, NJ \(1992\)](#)

- Addresses a library user's right to enter and use the library
- Court held that because public libraries are a limited public forum, constitutional protection is afforded only to those expressive activities that are consistent with the mission and purpose of the library
- Activities such as photography, filming, petition-gathering, assemblies, and public speeches may be regulated by the library using reasonable, viewpoint neutral time, place, and manner rules.

[ALA Intellectual Freedom Blog, 10/2/2019](#)

Best Practices: Policies & First Amendment Audits

- Revisit and review/revise your library's behavior policies, social media policies, and any rule/policies concerning photography & filming
- What policies are in place at the town/city level in these areas?
- Does your library need to develop a new policy or make improvements on an existing policy?
- Has the library shared these policies with others (On web site? In department head meetings? With the city council or board of selectmen?)

Best Practices: Helping prepare staff/facility

- Conduct a walk-through of your facility to ensure non-public spaces are clearly identified and secure
- Consider your relationship with local law enforcement ahead of time
- Go over key policies with public-facing staff
- Remind all staff that they need to treat everyone the same – it does not matter who the “auditor” is. The auditor is requesting information, and staff need to treat that request with as much respect and dignity as any other request for information.
- Practice! Consider doing some role play in a staff or trustee meeting

Additional Resources: First Amendment Audits

- [ALA Office of Intellectual Freedom blog post, 10/2/2019](#) (understand the legal grounds for interacting with auditors)
- [Video Surveillance in the Library Guidelines \(2020\)](#) by the ALA Intellectual Freedom Committee (useful for revising patron behavior policies or creating stand-alone policies regarding photography/film in the library)
- [ALA web pages on First Amendment and Censorship](#)
- Google search for First Amendment Audits in NH will provide some videos on YouTube so that you can see the interactions from the auditor perspective

ROLE PLAY:

First Amendment Auditor & Library Staff

Book/Program Challenges: National perspectives, who is leading censorship efforts, and why most of us feel like this:



Definitions – Book/Program Challenges

CENSORSHIP

- Not a legal term
- Defined as the suppression of ideas & information that some individuals, groups, or government officials find objectionable or dangerous.
- Censors pressure public institutions like libraries to suppress and remove information they judge inappropriate or dangerous from public access, so that no one else is able to read or view the material and make up their own minds about it.

CHALLENGE

- An attempt to remove or restrict materials from a library, based upon the objections of a person or group

BANNING

- The removal of materials so access is restricted or prohibited

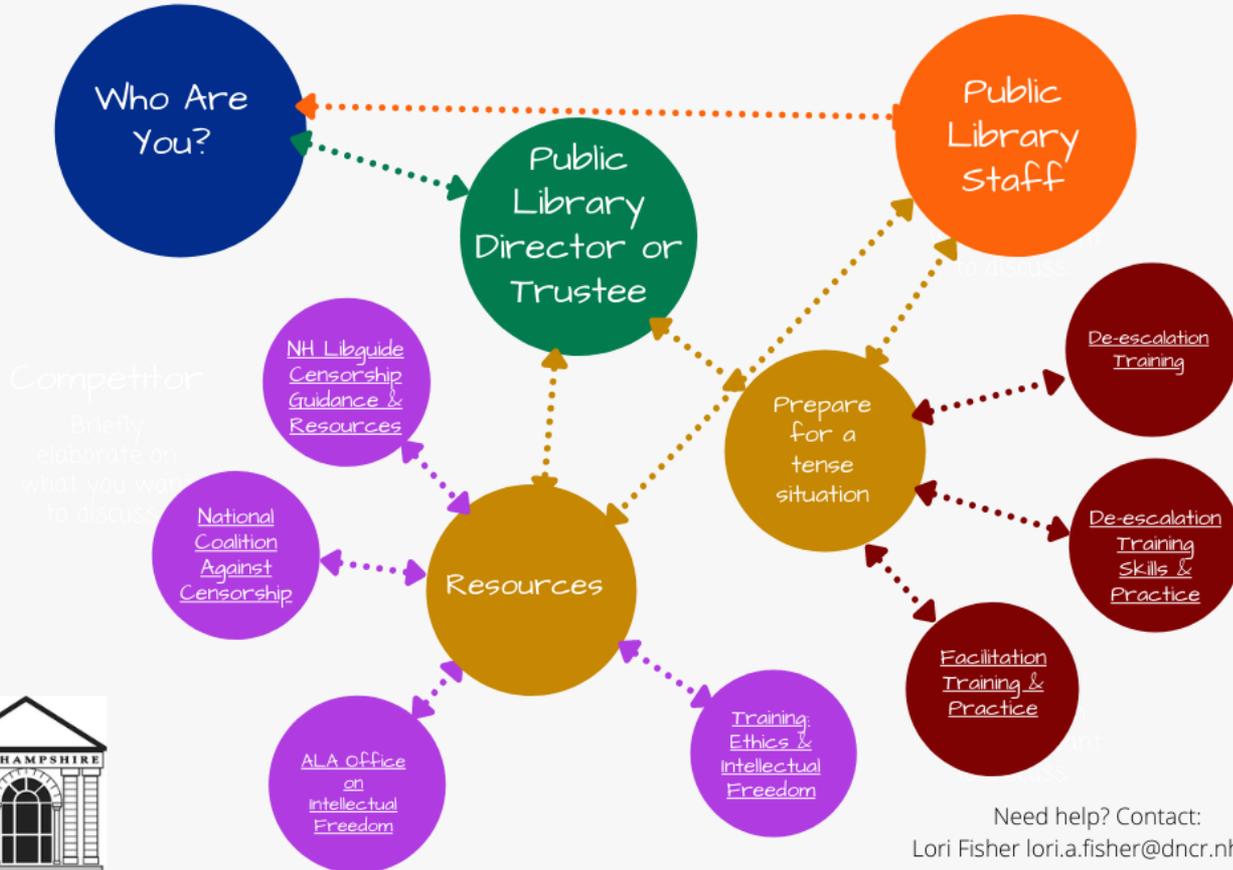
HATE SPEECH

- Not a legal term
- Per US Supreme Court in 2017, there is effectively no “hate speech” exception to the free speech rights protected by the First Amendment (US government may not discriminate against speech on the basis of the speaker’s viewpoint)

Top Ten Most Challenged Books List 2021 released by ALA on 4/4/2022...

- 729 challenges tracked in 2021 (usual annual amount is in the 300s)
- *Gender Queer* (Maia Kobabe), *Lawn Boy* (Jonathan Evison) and *All Boys Aren't Blue* (George M. Johnson) are the top three, all being challenged for LGBTQIA+ and sexually explicit content/images
- For more info, read [State of America's Libraries Special Report: Pandemic Year Two](#) (pdf) by the American Library Association, published 4/4/2022

Material Challenge Flow Chart



[PDF Link](#)

Origin of current challenges

- Many of the reported challenges since 2020 are by parents – up 50% since 2018, while other categories of challengers such as patrons, boards, or officials have stayed the same or dropped
- However, the majority of these parent challenges are not independent groups of concerned parents, but members of national organizations trying to fracture efforts of inclusion & equity in our schools and libraries
- These national groups are well-funded, well-organized, and are targeting all states. Examples: Moms for Liberty; Parents Defending Education; Purple for Parents (affiliated with the Facebook groups “Mary in the Library”)

But don't think all of the challenges come from “the alt-right”...

There is also an uptick in challenges coming in from people who do not want materials related to anti-vaccine, anti-climate change, and anything critical of the current US government executive administration in our libraries



And last but not least, let's not forget about personal bias

- While many challenges come from outside of our library walls, librarians still face the daily challenge of addressing personal bias as they select materials for our library's collections
- What is personal bias? It's an individual's predisposition, either favorable or prejudicial, to the subject matter at hand
- [ALA's Interpretation of the Library Bill of Rights for Diverse Collections](#) asserts that materials should NOT be excluded from a collection solely because the content or its creator may be considered offensive or controversial

What policies should be in place BEFORE a challenge?

- Collection development policy
- Material/Program reconsideration policy & process (can be part of collection development policy, or can be separate)
- Circulation policy
- Patron behavior policy

These policies should be reviewed at least once per year by staff and library trustees. Revisions should take place at that review point if needed, but records should be kept of staff review (staff meeting minutes?) and trustee review (public meeting minutes). Think about setting up an annual policy review matrix.

Other policies to consider putting in place:

- Crisis communications plan

Example from ALA: [Crisis Communication Planning.pdf \(ala.org\)](#)

This may also be a part of your library's Emergency Plan.

- Displays and/or Exhibits policy

[User-Initiated Exhibits, Displays, and Bulletin Boards: An Interpretation of the Library Bill of Rights \(ALA\)](#)

- Unattended children policy

Important policy that states a library cannot act “in loco parentis”

Resources specific to collection development and reconsideration policies

[ALA Fight Censorship web page](#)

[VT Dept of Libraries – Library Policies web page](#)

[ME State Library Sample Library Policies web page](#)

[NHSL LibGuide – Censorship Guidance & Resources](#)

- ALA Selection & Reconsideration Policy Toolkit
- United for Libraries terms & definitions; key policies to review
- Sample policies from NH libraries

Things to consider as you review/create a reconsideration policy:

- What is the process that can allow a community member to feel they are heard? Usually this means at least a two-level process.
- Make sure to put in specific time/deadlines – for example, reconsideration requests will be reviewed by the Board at their next regular monthly meeting (eliminates the question of calling an emergency board meeting)
- AN ATTORNEY SHOULD REVIEW REVISED OR NEW POLICIES **BEFORE** THE LIBRARY TRUSTEES VOTE TO APPROVE THEM AND HAVE STAFF PUT THEM INTO PRACTICE.

It's not enough to have a policy – need to **COMMUNICATE** about the policy!

Who needs to know about your policy? How will you communicate with each of these groups (no “one-size fits all”). If you have a policy and no one knows it exists, is it really useful? How can you strengthen long-term relationships?

Library trustees

Library staff

Library volunteers

Friends group

Foundation

Board of Selectmen/City Council

School teachers/administration/board

Best Practices for Dealing with a Challenge:

- Inform staff, trustees, stakeholders, and city/town attorney **AS SOON AS POSSIBLE**
- Make sure that the policies in place are being followed to the letter
- Create written talking points for all staff and trustees
- Advise key staff to lock down any personal social media accounts
- Check in regularly with staff; over-communication is better than too little
- Learn where the touchpoints are – where are staff/Trustees/Friends hearing about the challenge and getting questions or being “confronted”
- Determine who your other supporters are and bring them into the communication loop
- Don’t take anything about the situation personally

ROLE PLAY:

Book Challenger & Library Trustee

Wrap-Up and Q&A

This is your time to ask the
burning questions!

Lori Fisher

Assistant State Librarian

NH State Library

lori.a.fisher@dncr.nh.gov
