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## From Shelves to Statutes: An Overview of Library Laws and Policies

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A black silhouette of a pair of scales of justice is centered in the background. The scales are balanced, with two pans hanging from a central beam. The top of the scales is a decorative finial. The text is overlaid on the scales in light blue rounded rectangular boxes.

# From Statutes to Shelves: An Overview of Library Laws and Policies

Mississippi Library Association Conference  
October 11th, 2024

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# LEGAL DISCLAIMER

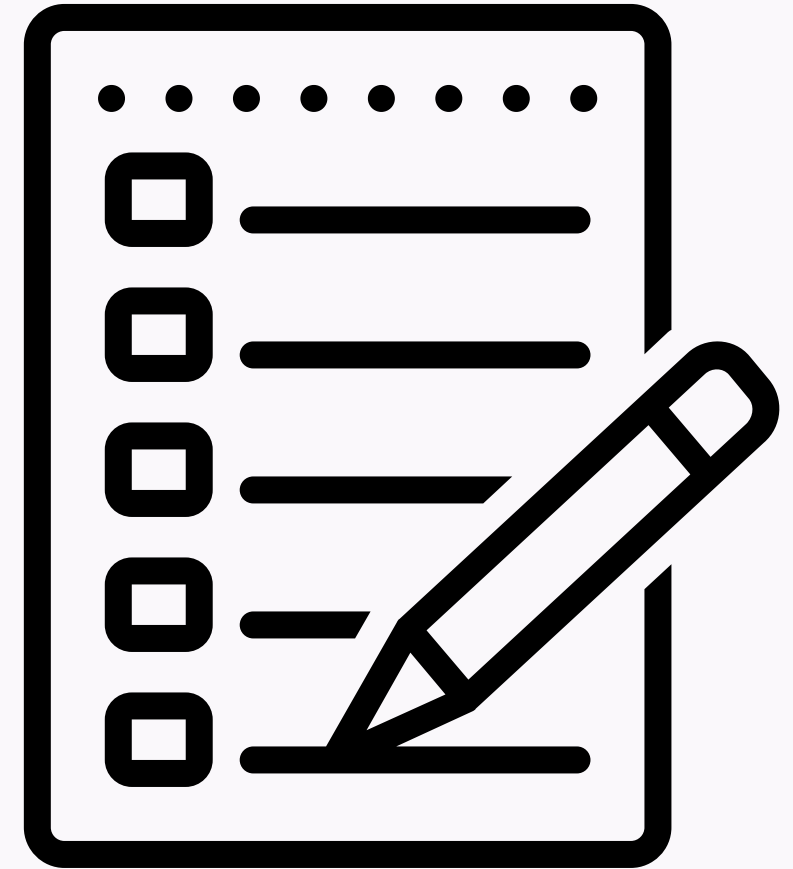
While this session will be discussing basic legal concepts, the content of this session is not legal advice and should not be used in place of legal representation or a legal opinion.

Make sure to consult your institution's lawyer if you need legal advice!



# AGENDA

- 1 First Amendment
- 2 Reasonable Restrictions in Policies
- 3 Internet & Social Media
- 4 Privacy & Confidentiality



## Why Does This Topic Matter?

To ensure that libraries remain diverse and inclusive spaces where individuals can exercise their rights provided by law (and to prevent libraries from facing legal action due to infringing on rights)



# THE FIRST AMENDMENT

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.

- 1 In order to speak, publish, and read people need to have free access to diverse information and ideas
- 2 Applies to States through the 14th Amendment
- 3 Applies to adults, minors, and government entities (not private entities)
- 4 Applies to all speech except for unprotect categories as defined by the Supreme Court (eg. obscenity, defamation, fraud, incitement, threats, child pornography)



# SUPREME COURT RULINGS

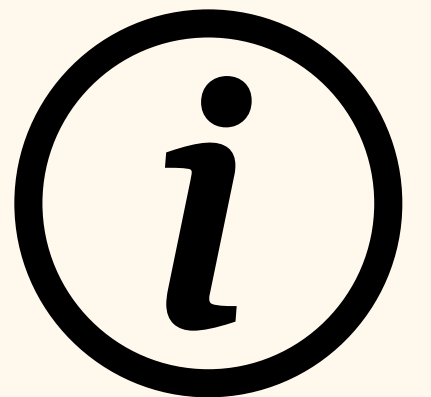
Lamont v. Postmaster  
General, 381 U.S. 301 (1965)

“The protection of the Bill of Rights goes beyond the specific guarantees to protect from Congressional abridgment those equally fundamental personal rights necessary to make the express guarantees fully meaningful.

I think the **right to receive publications is such a fundamental right**. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.”

Board of Education v. Pico,  
457 U.S. 853 (1982)

“the right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech, press, and political freedom.”



# PUBLIC FORUMS

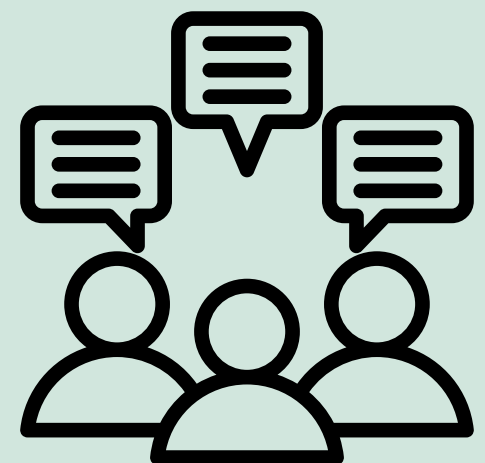
**A library is a designated or limited public forum**

A “**designated public forum**” is an area that the government has specifically declared as a space open for part or all of the public to use for “expressive activity.”

A limited public form is a subcategory that is only open to certain types of speech.

**Kreimer v. Bureau of Police, 958 F.2d 1242, 1255 (3d Cir. 1992)** held that the right to receive information includes “the right to some level of access to a public library, the quintessential locus of the receipt of information.”

Public libraries (and other types) are meant to give access to information, but not for engaging in other types of expressive activities like speeches or distributing pamphlets (unless specifically authorized by the library).





# REASONABLE RESTRICTIONS



**A library has the right to establish reasonable rules governing library use.**

A library's power to regulate patron behavior is not limited to cases of "actual disruption," but may be tied to safety, use of resources, and other reasonable concerns related to fulfilling the library's mission.

- Content-based restrictions:
  - (1) is there a compelling government interest;
  - (2) is the restriction narrowly tailored to achieve the compelling interest; and
  - (3) is there a less restrictive alternatives.
- Viewpoint-based restrictions: not permitted in any forum.
- Time, place, and manner restrictions: must be content neutral and reasonable in light of the nature of the forum.

# KREIMER V. BUREAU OF POLICE MAY 1989 PATRON CONDUCT RULES FOR THE LIBRARY

- 1. Patrons shall be engaged in normal activities associated with the use of a public library while in the building. Patrons not engaged in reading, studying, or using library materials may be asked to leave the building. Loitering will not be tolerated.

....

- 5. Patrons shall respect the rights of other patrons and shall not annoy others through noisy or boisterous activities, by unnecessary staring, by following another person through the building, by playing walkmans or other audio equipment so that others can hear it, by singing or talking to oneself or by other behavior which may reasonably result in the disturbance of other persons.

....

- 9. Patron dress and personal hygiene shall conform to the standard of the community for public places. This shall include the repair or cleanliness of garments.

KREIMER V. BUREAU OF POLICE  
MAY 1989 PATRON CONDUCT RULES FOR  
THE LIBRARY CONT.

- Any patron not abiding by these or other rules and regulations of the Library, may be asked to leave the Library premises. Library employees shall contact the Morristown Police if deemed advisable.
- Any patron who violates the Library rules and regulations may be denied the privilege of access to the Library by the Library Board of Trustees, on recommendation of the Library Director.

Kreimer consulted with the American Civil Liberties Union of New Jersey, who explained to the library that their policies were unconstitutional; stemming mostly from the vagueness of the rules.

## KREIMER V. BUREAU OF POLICE - JULY 1989 PATRON CONDUCT RULES

- 1. Patrons shall be engaged in ~~normal~~ activities associated with the use of a public library while in the building. Patrons not engaged in reading, studying, or using library materials **shall** be required to leave the building. ~~Loitering will not be tolerated.~~

....

- 5. Patrons shall respect the rights of other patrons and shall not **harass** or annoy others through noisy or boisterous activities, by ~~unnecessary~~ staring at another person with the **intent to annoy that person**, by following another person about the building **with the intent to annoy that person**, by playing audio equipment so that others can hear it, by singing or talking **to others or in monologues**, or by behaving in a manner which reasonably can be expected to disturb other persons.
- **6. Patrons shall not interfere with the use of the Library by other patrons, or interfere with Library employees' performance of their duties.**

...

- **9. Patrons shall not be permitted to enter the building without a shirt or other covering of their upper bodies or without shoes or other footwear. Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.**

KREIMER V. BUREAU OF POLICE  
JULY 1989 PATRON CONDUCT RULES FOR  
THE LIBRARY CONT.

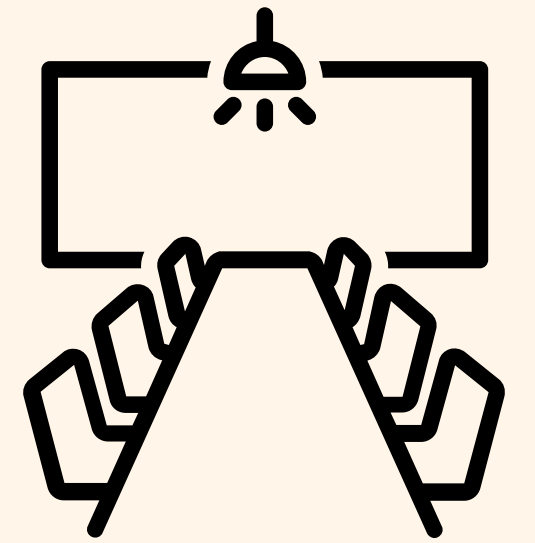
- Any patron not abiding by these or other rules and regulations of the library **shall** be asked to leave the library premises. Library employees shall contact the Morristown Police if deemed advisable.
- Any patron who violates the Library rules and regulations **shall** be denied the privilege of access to the Library by the Library Board of Trustees, on recommendation of the Library Director. **Any patron whose privileges have been denied, may have the decision reviewed by the Board of Trustees.**

## FURTHER COURT CASE EXAMPLES



- Brinkmeier v. City of Freeport, 1993 U.S. Dist. Lexis 9255, \*10 (N.D. Ill. July 2, 1993) (restriction for harassment unconstitutional).
- People v. Taylor, 630 N.Y.S.2d 625, 164 Misc.2d 868 (N.Y. Sup.Ct. 1995) (restriction for playing games upheld).
- Neinast v. Board of Trustees, 190 F. Supp. 2d 1040 (S.D. Ohio 2002), aff'd, 346 F.3d 585 (6th Cir. 2003) (restriction on bare feet upheld).
- Armstrong v. D.C. Public Library, 154 F. Supp. 2d 67, 79 (D.D.C. 2001) (restriction for objectionable appearance unconstitutional).

# MEETING ROOM RULES



**Designated public forum example:** A meeting room open to the public for use by outside groups.

**Non-public forum example:** A room within library used for library purposes, such as staff meetings or for use by the Friends of the Library group.

Meeting rooms and display cases can be closed to public use.

If made available, then it creates a designated public forum, which means:

- Library cannot restrict use based on viewpoint.
- Restriction based on content, must meet strict scrutiny test (serve a compelling interest, is narrowly tailored, and no less restrictive alternative).
- Library may have reasonable, content-neutral time, place and manner restrictions on use of either meeting rooms or display cases.



Concerned Women for America, Inc. v. Lafayette County, 883 F.2d 32, 34 (5th Cir. 1989).

The public library refused access a religious prayer group of using their auditorium. The legal question was on whether the library had created a public forum or a limited public forum.

**The U.S. Court of Appeals found that the exclusion was unconstitutional** because other various groups were allowed to use the space and “there is no evidence that CWA’s meeting would disrupt or interfere with the general use of the library” but if “the contrary prove to be true, library officials may respond by imposing reasonable time, place or manner restrictions on access to the auditorium provided any regulations are justified without reference to the content of the regulated speech.”

“The Auditorium of the Oxford branch of the First Regional Library is open for use of groups or organizations of a civic, cultural or educational character, but not for social gatherings, entertaining, dramatic productions, money-raising, or commercial purposes. It is also not available for meetings for social, political, partisan or religious purposes, or when in the judgment of the Director or Branch Librarian any disorder is likely to occur.”



Faith Center Church Evangelistic Ministries, et al. v. Glover, et al., 462 F.3d 1194 (9th Cir. 2006)

A patron group was excluded from the library meeting room on the ground that it was conducting a “religious service,” which the district court found to be unconstitutional. It was appealed to the **Ninth Circuit, which found the exclusion constitutional because the group advertised the event as a “religious service.”**

However, the court stated that a library cannot prohibit religious groups from using meeting rooms for the following activities: reading, Bible discussions, Bible instruction, praying, singing hymns, sharing testimony and discussing political or social issues.

Citizens for Community Values, Inc. v. Upper Arlington Public Library, 2008 W.L. 3843579 (S.D. Ohio).

A group was excluded from the library on the ground that it was conducting a “religious service” because some portion of its program included praying and singing. **Court determined that it was unconstitutional and viewpoint based as the library didn’t have a compelling interest to exclude certain portions of the event.**

# OTHER AREAS OF EXCLUSION

## 1 “Commercial Purposes” Exclusion

Board of Trustees of State University of New York v. Fox, 492 U.S. 469 (1989).  
(restrictions cannot be no more broad than necessary to meet substantial interest)

## 2 “Controversy” Exclusions

Hopper v. City of Pasco, 241 F.3d 1067 (9th Cir.), cert. denied, 534 U.S. 951 (2001).  
 (“controversial art” is too broad and susceptible to viewpoint discrimination)

Pfeifer v. City of West Allis, 91 F. Supp. 2d 1253 (E.D. Wis. 2000). (avoiding of controversy is not a valid reason for restricting speech)

# INTERNET & SOCIAL MEDIA

## Library's Use of Internet

Will be governed by board-approved policies that address:

- Procurement
- Communications
- Security
- Safety
- Risk management

vs

## Public's Use of Internet

Will be governed by board-approved policies that address:

- Who has access
- Confidentiality of library services
- Safety and security
- Code of Conduct/User Behavior
- Due process prior to loss of access
- Legal obligations specific to the user or source (e.g. minors)

# INTERNET & SOCIAL MEDIA

## Legal Obligations

**First Amendment:** Social media controlled by public libraries may be governed by the First Amendment. Public access to view and post on a library's social media resources should only be restricted per a policy reviewed by the library's lawyer.

**Fourth Amendment:** Access to Internet and social media controlled by public libraries may be governed by the Fourth Amendment. Public library privileges, including Internet access, cannot be removed without due process. Library privileges should only be restricted per a policy reviewed by the library's lawyer.

**Americans with Disabilities Act (ADA):** The ADA may apply to a public library as a place of "public accommodation". A library that uses its own website and social media to convey information relevant to library services should have a policy to ensure such information meets current standards for accessibility.

# PRIVACY & CONFIDENTIALITY



## Privacy & Intellectual Freedom

If someone fears that their reading or search history may be subject to review, criticism, or punishment, the individual may not be able to fully access the information they require and are entitled to.

A person needs privacy to fully exercise their right to information.

## Privacy Rights Have Been Found In:

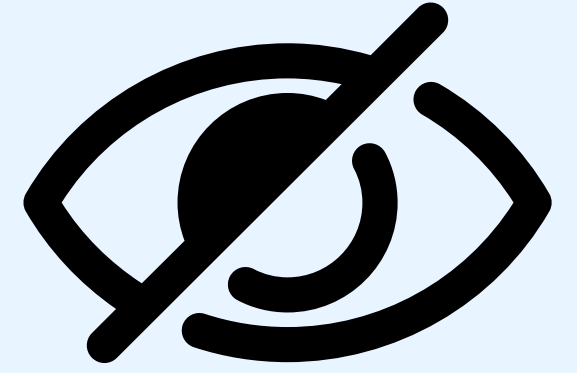
- First Amendment
- Third Amendment
- Fourth Amendment
- Fifth Amendment
- Ninth Amendment
- And the Freedom of Information Act (FOIA)

# PRIVACY & CONFIDENTIALITY

**The confidentiality of library records is not an absolute privilege.**

- The law shields people against the unreasonable or unjustified disclosure of a library user's records.
- It also gives law enforcement, prosecutors, and third parties the means to assemble production of records if circumstances of an investigation or lawsuit justify such disclosure.
- Only keep records of what you need and then properly dispose of records once able.

# KEY PRIVACY TAKEAWAYS



- Libraries have no affirmative duty to collect or retain information about library users on behalf of law enforcement.
- Most law enforcement officers understand that the library has a right to consult with counsel before responding to requests for user information.
- Make sure proper procedures have been followed (warrant or subpoena) and that the request does not violate privacy statutes.
- Do not destroy records that have been requested by law enforcement or subject to a subpoena.
- Law enforcement officers have access to judges even after normal business hours.
- If officers believe there is an imminent threat to safety and that they have probable cause, they may simply take custody of the records over the library's objection. The officers will bear any legal risks associated with the decision to proceed without a warrant.



# FURTHER COURT CASE EXAMPLES

- Griswold v. Connecticut, 381 U.S. 479 (Supreme Court held that the right to privacy exists within the Constitution, despite not be explicitly protected in the Bill of Rights)
- Stanley v. Georgia, 394 U.S. 557 (individuals have the right to privacy regarding their personal book collections)
- McIntyre v. Ohio Elections Commission, 514 U.S. 334 (anonymity protects individuals from retaliation)
- Tattered Cover, Inc. v. City of Thornton 44 P.3d 1044 (2002) (denied search of bookstore's records)



## IN SUMMARY:

- Individuals have the right to access information, due process, and privacy.
- Libraries can create limitations on the right to information when there is a substantial compelling interest and the restriction is narrowly tailored for that interest.
- Opening a space up as a public forum limits what restrictions a library can place over that space (This applies to meeting rooms and displays)
- Consult your lawyer before implementing internet restrictions for your users so you don't violate their First or Fourth Amendment rights
- Privacy is critical to the pursuit of information (which is crucial to pursue the rights given through the First Amendment)
- Personal information that is kept in libraries are subject to subpoenas or leaks, so only keep what is necessary.

Questions? Contact me!

hrogers@olemiss.edu

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