



# CML's 94<sup>th</sup> Annual Conference

## June 21 - 24, 2016

### Vail, Colorado

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# Codes of Conduct for Use of Public Facilities

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# Introduction

- **Outcomes:**
  - To guide municipal policy development, through familiarization with:
    - The landscape of the law(s) governing public facilities
    - Practical considerations from Libraries and Park and Recreation Facilities

# North Carolina Law

- HB2 An Act to Provide for Single-sex Multiple Occupancy Bathroom and Changing Facilities in Schools and Public Agencies and to Create Statewide Consistency in Regulation of Employment and Public Accommodations (March 2016).
  - Eliminates anti-discrimination protections for trans people and legislates that in government buildings, individuals may only use restrooms and changing facilities that correspond to the sex on their birth certificates.
  - Includes local government preemption because Charlotte passed antidiscrimination ordinance in Feb.

# Litigation Arising out of North Carolina HB2

- DOJ sued Gov, Dept of Public Safety, and the University system stating that House Bill 2 violates Title VII of the Civil Rights Act, Title IX of the Education Amendments of 1972, and the Violence Against Women Act (May 2016).
- On the same day, North Carolina's governor and legislative leaders filed two separate lawsuits against the Department of Justice to defend the law. Two private lawsuits are also underway, one challenging and the other defending the law.

# Similar Law Introduced in Colorado

- HB15-1081 Concerning the Protection of Physical Privacy on Sex-segregated Locker Rooms.
  - Postponed indefinitely in first Committee

# Colorado Anti-Discrimination Act (CADA)

- Amended in 2007 & 2008 to add proscription against sexual orientation discrimination in places of public accommodation.
- Gender identity and expression, including transgender status, is a protected classification in Colorado, and places of public accommodation are prohibited from discriminating against any individual based on that person's gender identity, expression, or another individual's perception thereof.

C.R.S. § 24-34-301(7) and § 24-34-601(2)(a).

Rules implementing statute 3 CCR 708-1, *et seq.*

# Colorado Cole of Regulations

“All covered entities shall allow individuals the use of gender-segregated facilities that are consistent with their gender identity. Gender-segregated facilities include, but are not limited to, restrooms, locker rooms, dressing rooms, and dormitories. In gender-segregated facilities where undressing in the presence of others occurs, covered entities shall make reasonable accommodations to allow access consistent with an individual's gender identity.”

3 CCR 708-1, Rule 81.9(B)-(C).



# Federal Law: Title VII

- No federal law protects against discrimination based on gender identity or expression.
- Title VII protects against discrimination based on sex.
- Sex stereotyping *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) and *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75 (1998).

# 10<sup>th</sup> Circuit Title VII Claims

- Holding: “[D]iscrimination against a transsexual based on the person’s status as a transsexual is not discrimination because of sex under Title VII.” *Etsitty*, 502 F.3d at 1221.
  - “However far *Price Waterhouse* reaches, this court cannot conclude it requires employers to allow biological males to use women’s restrooms.” *Id.*
- See also *Larson v. United Air Lines*, 482 F. App’x 344, 348 n.1 (10th Cir. 2012) (unpublished) (“Title VII discrimination is only cognizable on the basis of sex, not sexual orientation.”).

# Federal Agency Interpretations

- Department of Justice (December 2014):  
Transgender discrimination is sex discrimination *per se* under Title VII.
- Sexual Orientation and Gender Identity Discrimination Is EEOC Priority

# No Title IX Claim for Governmental Entities

Title IX covers students and employees of educational institutions receiving public funding.

# *Mathis case (2013)*

- The Colorado Civil Rights Division found in favor of a family alleging a claim against the child's school district requiring her to use the boys restroom or a special bathroom facility.
  - School argues birth certificate & sex is determined by reproductive organs
  - CCRD found discrimination by not allowing the charging party to use the bathroom with which she identifies as other students may gave rise to unlawful discrimination in a place of public accommodation. C.R.S. § 24-34-601(2).

# Americans with Disabilities Act

- Does the ADA offer any protection for medical needs during transition based on recognition of gender dysphoria?
  - No. “For purposes of the definition of ‘disability’ in section 12102(2) of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter. . . . Under this chapter, the term “disability” shall not include--(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.” 42 U.S.C.A. § 12211.

# Genetic Information Nondiscrimination Act

- Could a transgender person bring a GINA claim if her chromosomal sex does not match her gender expression?
  - Likely no. Section 201(4)(C) states, “The term ‘genetic information’ shall not include information about **the sex** or age of any individual.”

# Law in Colorado for Public Facilities



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# Religious Accommodation for Swimming Attire

- *Lubna Hussein v. City of Omaha* (2004)  
ACLU filed suit when Muslim woman was not allowed to enter a public pool because she was wearing modest clothing, not a bathing suit.
  - Alleged discrimination on basis of race, national origin, gender and religion.
  - City allows a variance based on religious or medical needs <http://parks.cityofomaha.org/pools/rules-a-regulations>

# Religious Accommodation for Swimming Attire

- Washtenaw County Parks & Rec Commission changed their swimsuit only policy to allow for religious accommodation in 2006 in response to ACLU representing a 7<sup>th</sup> grade Muslim student.



*Englewood Recreation Center  
Malley Senior Recreation Center  
Public Library  
Pirates Cove Water Park  
Broken Tee Golf Course  
12 Parks, Trails and Open Space*

# Transit Hub / Light Rail and Bus



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# Challenges

- Excessive Personal Possessions
- Sleeping
- Bathroom Use
- Criminal Activity
- Service Animals

## **SECURITY NOTICE**

**Attention Guest!!!  
As a safety concern:**

**Bikes, Scooters, Large Backpacks, Multiple  
Backpacks, Suitcases, Duffel Bags, Camping  
Gear, Shopping Carts, or Trash Bags...**

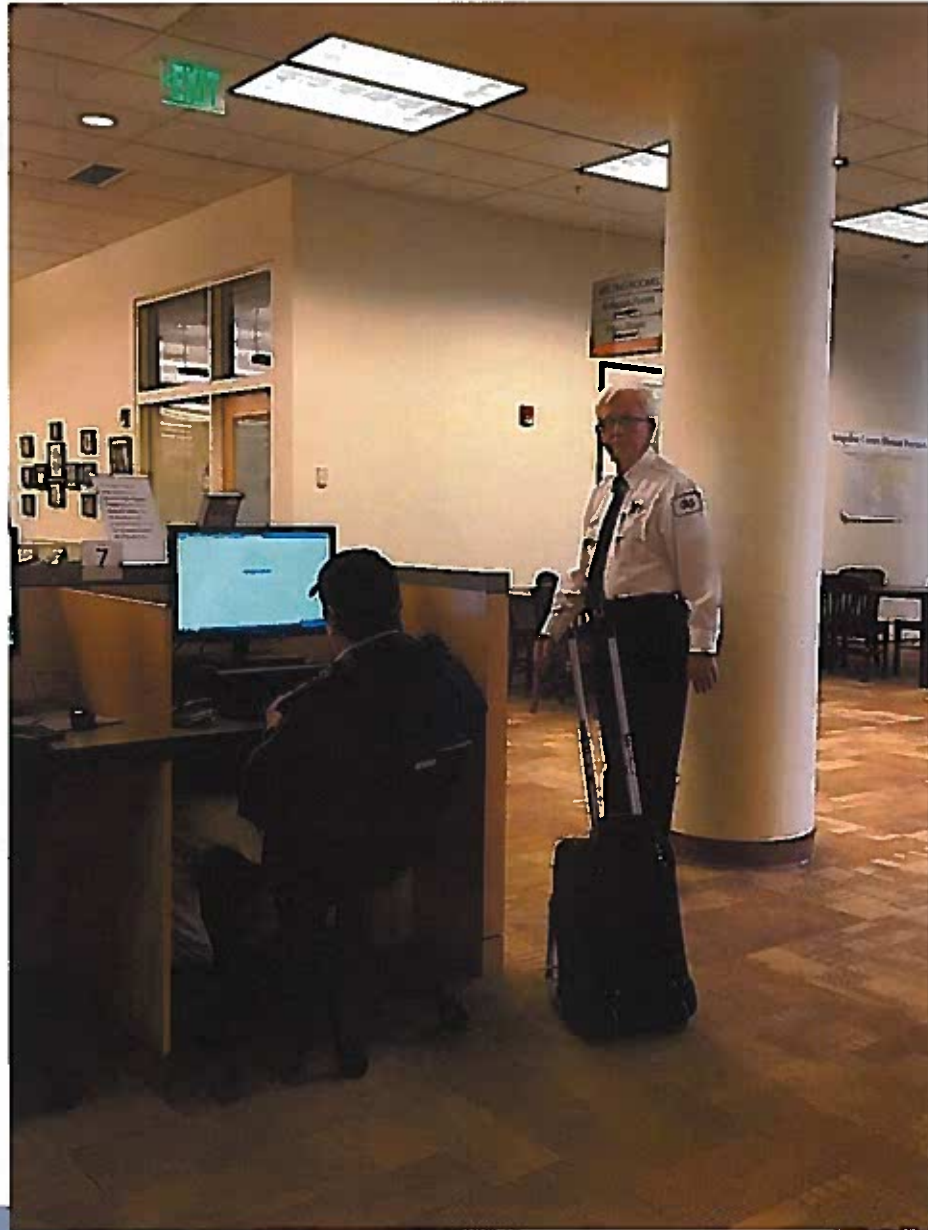
**Are NOT ALLOWED in the Library.**

**Please do not leave any items unattended  
inside or outside of the Library.**

**Any items left unattended will be Searched  
and Removed for Disposal.**



## Security Guards / Police Presence



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**FAMILY  
LOCKER  
ROOM**



**Family Locker Rooms  
Are For Families with  
Children of the  
Opposite Sex or  
Disabled Patrons  
Requiring Assistance**

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This is your space

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...but not *only* your space

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People are likely to do  
anything in a library...

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Thursday May 26, 2:23 pm

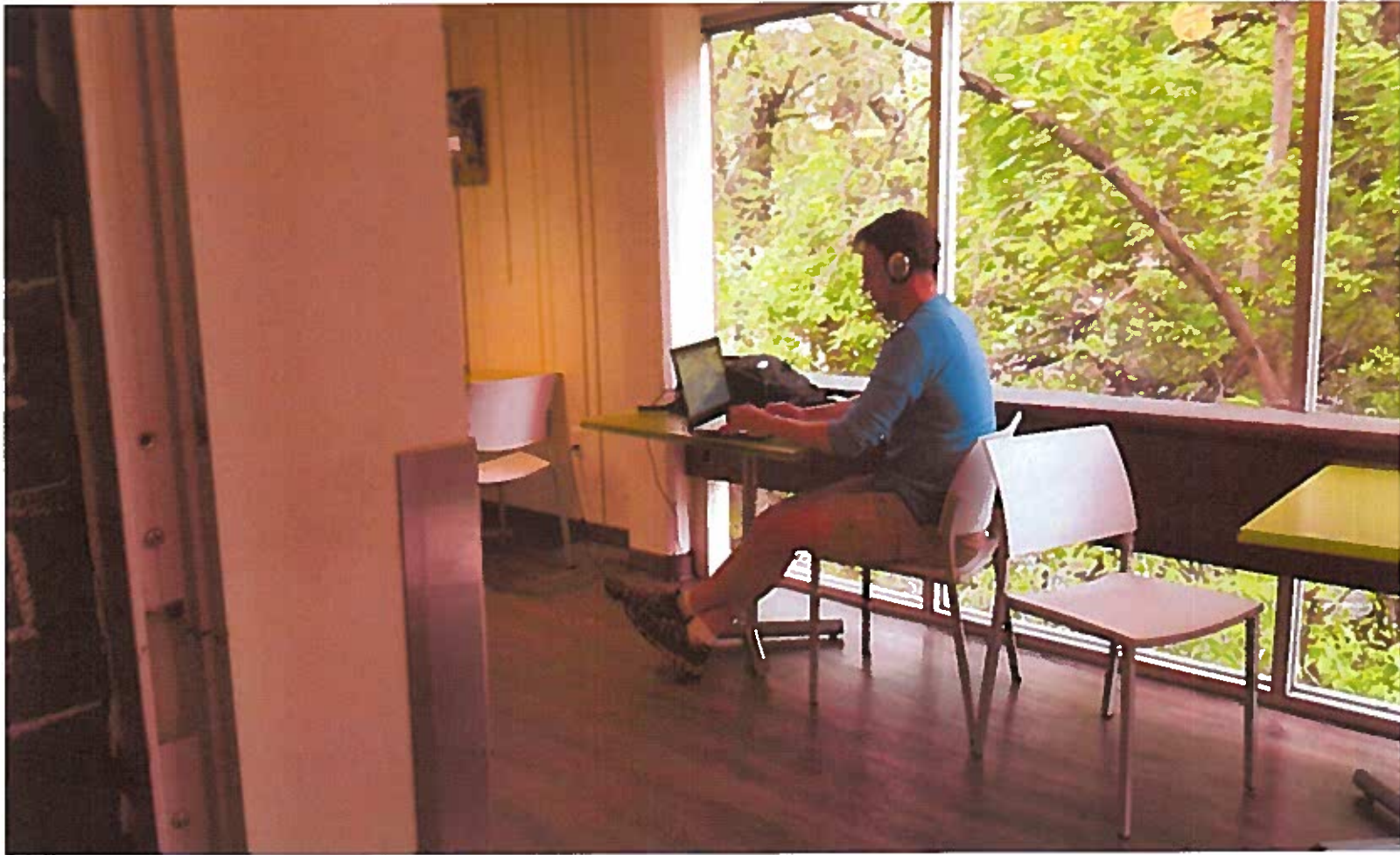
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...and then there is this guy

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There is a difference  
between bad behavior

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...and illegal behavior

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well trained staff is your best asset

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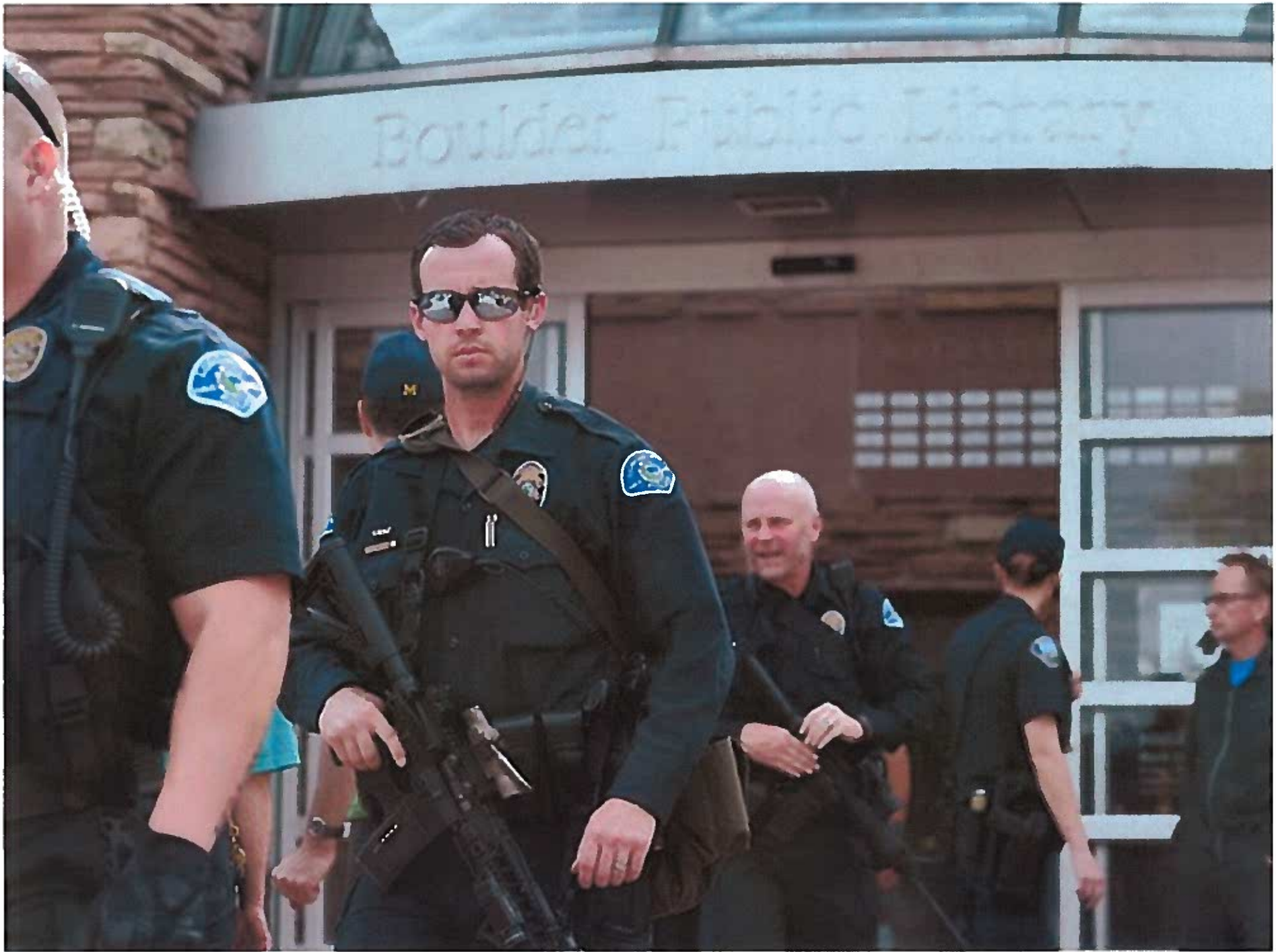
law enforcement is your friend

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Boulder Public Library







...and you need a simple  
policy in place.

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Our policy is pretty simple: it states:

1. all are welcome.
2. acceptable uses of the library.
3. zero tolerance for any disruptive behavior.

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# Scenarios / Q&A



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# Contact Info

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