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Moraga School District office experiences a '1st amendment audit'

By Sora O'Doherty

Moraga School District staff were working on June 28 during the summer break when a tall man, wearing a black mask, dark glasses and a hat came into the district office. The woman at the desk inquired if he needed anything, but he said he was "just going to take some pictures, grab a couple of forms." Identifying himself only as "Jay" he proceeded to engage with the staff, saying that he did not have children in the district but was just "driving through and decided to stop" at the district office. Later in his video, which appears on YouTube, he suggests that someone who had had a bad experience with the district has requested him to come.

This was the start of a "first amendment audit," a phenomenon that has been sweeping the country over the past few years. During such encounters, someone visits a public location, often the public lobby of a governmental agency, to see if their first amendment right to videotape will be respected or abridged. The Moraga staff were concerned about the presence of this man, and telephoned for assistance from the Moraga Police Department. Two officers came to the office and asked the man to step outside to talk, but he declined, citing his first amendment right to be in the public office and to take videos. During the interaction, the police tried to explain the concerns of the district staff, and the visitor explained to the police that he has a right under the first amendment of the U.S. constitution to take photographs and videos in the lobbies of public buildings.

After some time, the visitor noticed that Moraga Police Chief Jon King was standing outside the office and he then left the office to talk to King, who was there to meet with Moraga School District Superintendent Julie Parks on an unrelated matter. After some minutes of discussing the situation with King and Parks, the visitor returned to the district office, announcing that he would continue filming for up to an hour. Parks came and assured him that his first amendment rights would not be violated, and that he was free to film, provided that he did not go beyond the public lobby.

When he finished videoing the district office, he went to the Moraga Police Department, where he reported that he had "a very good conversation with the Chief of Police of Moraga." However he had harsh things to say about some of the MSD staff members present during his visit, including his opinion that at least one should be fired.

King, who spoke to the Lamorinda Weekly, agreed that he and the visitor had had "a fantastic conversation" and toured the city hall, where the police department is located. "We've turned this into an incredible learning opportunity," King said.

Discussing the incident at the school district, King said that the staff were shaken up and felt threatened when the visitor shut the door. King clarified that the officers who responded to the call asked the visitor to step outside to talk in order to hear both parties' stories outside the presence of each other.

King, who was responsible for getting police body-worn cameras deployed in Moraga, also clarified that police officers are required by state law to either wear their names on their uniforms or their officer number of their badge. Both officers had both forms of identification and they were not required to verbally respond to questions about their names, although both did so. Nevertheless, King admitted that the interaction had not been perfect, adding that in his 40 years of police experience, he has yet to see a perfect interaction. In the aftermath of the incident, King said that there would be more training for police officers and for town staff.

"This is the people's building," King said of the city hall, but we need to balance the rights of the public with security needs. He referred to a publication of the League of California Cities published this May, "What to do When First Amendment Auditors Come to Town," as an excellent training manual for employees of cities and towns. The publication was presented to the 2023 City Attorneys Spring Conference in Monterey. Parks responded to questions about the incident, saying, "the First Amendment Audit was a new experience for the Moraga School District." She added, "As a small district office, it is not typical for us to have outside visitors or visitors without specific business," but noted that the district has "learned a lot from this experience and have put steps into place to ensure that staff are appropriately trained and that our public space is clearly defined for visitors."

"We will not be closing our office," Parks said, "but instead ensuring that we are prepared to greet any member of the public and define public space from private offices utilized for confidential business. Overall, this has been a growth opportunity for us."

Similar incidents at the Monterey County Office of Education, Salinas City Hall and other government agencies in Monterey County have prompted the Salinas City Elementary School District to enact new policies regarding visitors to the District Office. According to Mary Duan, SCESED's Director of Communications and Community Outreach, visitors will no longer be allowed past the office lobby without an appointment, and they must be escorted while in the building. Photography and voice and video recording will be prohibited beyond the front desk as well, because staff members often have confidential information regarding staff and students on their computer screens.

According to the League of Cities publication, first amendment audits can trace their origin back to the Rodney King incident in Los Angeles in 1991, when a citizen filmed four police officers beating King. "Today First Amendment auditing can be described as a form of citizen journalism or citizen activism that seeks to test and thereby protect certain constitutional rights, including the right to be physically present in a public space and the right to photograph or video record government officials on government property in action (or

inaction)," the publication states.

Orinda City Clerk Sheri Smith told Lamorinda Weekly that there have been a couple of attempted audits of Orinda City Hall, but there was no difficulty. When first amendment auditors believe that a subject has "failed" the audit, the video is posted to social media. The long videos include numerous advertisements. Auditors seek subscribers and contributions and some sell merchandise. According to the League of Cities, "that auditors frequently seek to incite confrontation or aggression through harassing or argumentative behavior stems from another motivation besides the asserted protection of individual liberties: namely, to obtain popularity and money flowing from social media views."

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