



Dealing With Problem Patrons: Patrons, Policies and the Police

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In General: Constitutional Standards

- o Nature of Activity
 - The nature of the government's activity will determine the extent the activity may be regulated.
 - The courts have stated that the First Amendment does not guarantee access to property simply because it is owned or controlled by the government. *United States Postal Service v City Council of Greenburg Civic Associates*, 450 US 414, 101 S Ct 2676, 69 L Ed 2d 517 (1981).

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First Amendment Issues

- What does the First Amendment guarantee?
 - First Amendment right regarding what a person is viewing (keep this in mind for internet policies).



First Amendment

- However, there is also a First Amendment “right to receive” information.
 - This right includes some level of access to the public library.
 - So, each time a patron is banned or denied access, it impacts a First Amendment Right.



Limited Public Forum

- A patrons says, "This is a public building. I pay for it with my taxes! You can't tell me what to do!"
- Is that patron correct? No.



Limited Public Forum:

- A Library is a limited public forum. A limited public forum need not be open to the public at large but may be open to a specific class of people or for the discussion of a certain subject matter.
- *Kreimer v Bureau of Police*. The library rules in *Kreimer* made it clear that the library was only open for reading, studying and using library materials: "The library has not opened its doors for the exercise of all First Amendment activities." *Id.* at 1260.



Limited Public Forum

- A Library may promulgate and enforce reasonable regulations governing the use of its facilities.
- For example, a rule that requires patrons be using the facility found reasonable: “The Library need not be used as a lounge or a shelter.”
- The Library can prohibit disruptive behavior: “Prohibiting disruptive behavior is perhaps the clearest and most direct way to achieve maximum Library use.”



Limited Public Forum

- Time, place and manner regulations are permitted if narrowly tailored to serve a significant governmental interest and leave ample channels for communication.
- In *Kreimer*, there was a written policy with an appeal procedure.



Limited Public Forum

- Contrast with *Armstrong v District of Columbia Public Library*.
 - Homeless man was barred from Library
 - Policy prohibited “objectionable” appearance
 - Court found too vague because it was too subjective
 - In contrast, the “nuisance” in *Kreimer* has a legal meaning



Limited Public Forum

- Also contrast with *Brinkmeier v City of Freeport*.
 - Library employee was approached outside the Library by a man who handed her a “harassing letter.”
 - Man removed from Library.
 - In this case, unwritten rule that the library prohibits harassing or intimidating patrons or employees.



Limited Public Forum

- *Brinkmeier*, cont'd
 - Court found that “harassing” was vague
 - No geographical limits
 - No procedure to appeal the suspension

- As a result, court did not uphold library suspension.



Constitutional Standards

- Libraries must keep these constitutional standards in mind when developing policy.
 - Clear, specific conduct identified.
 - Restrictions should be limited to time, place, and manner.
 - Availability of appeal.



Constitutional Standards

- *Neinast v Board of Trustees of the Columbus Metropolitan Library*
 - Dealing with patron who believes the rules do not apply to him or her.
 - Removed from the Library for failing to wear shoes – policy required shoes.
 - Patron argued going barefoot was symbolic speech entitled to First Amendment Protection, but the court disagreed.
 - The Library enacted the rule for health and safety reasons (library reports showed blood, feces, vomit, semen and broken glass at the library).
 - Court found the rule was reasonable. Protected the patron but also protected the Library from litigation expenses that may result from injuries to barefoot patrons.



Patron Behavior Policies



Patron Behavior Policies

- Critical policy to have when dealing with removing patrons for conduct.
- Remember to limit conduct to Library Building, Library Grounds, or both.
- Must clearly address specific conduct that will result in suspension of library privileges.



Patron Behavior Policies

- Examples of specific behavior that should be addressed.
 - Violations of Law. Committing or attempting to commit an activity in violation of federal, state, or local law, ordinance or regulation is prohibited.



Patron Behavior Policies

- Engaging in Proper Library Activities. Patrons shall be engaged in activities associated with the use of the Library while in the building. Patrons not engaged in reading, studying or using library materials or facilities shall be required to leave the building.
 - This rule was upheld by the *Kreimer* Court: "Requiring that its patrons make use of the Library in order to be permitted to remain there is a reasonable means to achieve that end."



Patron Behavior Policies

- Restrooms. Misuse of restrooms, including laundering, shaving, hair cutting or trimming, bathing, and sexual activity is prohibited.
- Harassment. Staring, photographing, following, stalking, harassing, or threatening library users or staff while in the Library or on Library property so that it interferes with the Library patrons' use of the Library or the ability of the staff person to do his or her job is prohibited.



Patron Behavior Policies

- Interference with Staff. Patrons may not interfere with the staff's performance of duties in the Library or on Library property. This includes engaging in conversation or behavior that monopolizes or forces the attention of staff for an inappropriate period of time, inappropriate personal comments, sexual advances, or physical and/or verbal harassment.



Patron Behavior Policies

- Staff Areas. Patrons shall not be permitted in any areas designated as "staff only" or in the basement unless otherwise permitted by the Library Director.
- Equipment. Library phones and staff computers are for staff use only.
 - Must sometimes state the obvious
 - This will address issues of patrons infringing on staff areas



Patron Behavior Policies

- Loud Noise. Producing or allowing any loud, unreasonable, or disturbing noises that interfere with other patrons use of the Library or which can be reasonably expected to disturb other persons, including those from electronic, entertainment, and communication devices, such as cell phones, headphones, and radio is prohibited.



Patron Behavior Policies

- Body Odor. Offensive body odor due to poor personal hygiene, overpowering perfume, or cologne that causes a nuisance is prohibited.



Patron Behavior Policies

- Food and Beverages
- Unauthorized use (closing time; while on suspension)
- Alcohol; drugs
- Smoking
- Shirt; shoes
- Panhandling; soliciting
- Campaigning
- Distribution of literature – may impact bulletin board policy
- Sales
- Minors – Library may have separate policy on the issue.



Violations, Enforcement and Appeal



Library Enforcement and Appeal

- Enforcement without Police involvement.
 - Provisions of policy are violated that do not rise to police level.
 - May have to conduct investigation.
 - Be careful of medical issues; may have Americans with Disabilities Act issues.
 - Follow through with Patron and Staff.



Library Enforcement and Appeal

- Internal Enforcement and Appeal Procedure
 - Appeal to Library Board – should **not** have the person appeal to the director or other person who makes the initial suspension decision.
 - Specific reporting and suspension provisions.
 - Be careful of privacy issues during the appeal. For example, the Library may wish to label it Patron Appeal 2011-1 for example.
 - Maintaining confidentiality will likely lessen the risk of a defamation claim.
 - Approve minutes of meeting



Library Enforcement and Appeal

- Know when to call the Police.
 - When there is a crime being committed or you think there is a crime being committed at the Library.
 - The Library is not required to evaluate whether the police will have sufficient evidence to prosecute the particular offense.
 - Confusion regarding enforcement of policies and a patron's right to privacy.



Library Privacy Act

- When the request by police for information involves a "library record."
 - "Library record" means a document, record, or other method of storing information retained by a library that contains information that personally identifies a library patron, including the patron's name, address, or telephone number, or that identifies a person as having requested or obtained specific materials from a library. Library record does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general.



Library Privacy Act

- Privacy Act Requirements.

- When the request does not involve a "library record."
 - Personal Observations of other Patrons.
 - Personal Observations of Staff.



Library Privacy Act

- The Library should know the Procedure for Obtaining Library Records before an Incident occurs.
 - Must obtain a court order in order to obtain "library records."
 - Unless ordered by a court after giving the affected library notice of the request and an opportunity to be heard on the request, a library or an employee or agent of a library shall not release or disclose a library record or portion of a library record to a person without the written consent of the person liable for payment for or return of the materials identified in that library record. MCL 397.603.



Library Privacy Act

- What is a proper Court order?



Library Privacy Act

- Opportunity for Hearing.
 - Tell judge Library's concerns.
 - Address issues such as scope of request and return of records.



Library Privacy Act

- Written waiver.
 - Exception if a person responsible for the payment or return of the materials signs a written consent.
 - Mainly developed to assist parents in locating and returning child's materials.



Library Privacy Act

- Penalty.
 - A library or an agent or employee of a library which improperly releases information shall be liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or \$250.00, whichever is greater; reasonable attorney fees; and the costs of bringing the action.



Police Involvement: Enforcement and Appeal



Police Involvement: Enforcement and Appeal

- Library should establish a written procedure to follow when documents are requested by law enforcement.
 - Determine who will respond to a subpoena or other request.
 - Who is in charge at Library? Develop a chain of command.



Police Involvement: Enforcement and Appeal

- Who should be contacted? Attorney?
Computer Consultants?
- Contact information should be available to any person who is designated as "in charge."
 - Library Director
 - Library Board Member



Police Involvement: Enforcement and Appeal

- Understand How Your Records are Kept.
 - The person in charge should understand how to access records.
 - Are the records kept at the Library?
 - Are the records kept with an outside vendor?
 - Do you need computer specialists to access information?



Police Involvement: Enforcement and Appeal

- Anticipating the Search Warrant --Procedure for Preservation of Evidence.
 - Library should understand how the records are preserved.
 - If the check out records are deleted after a book is returned, the Library needs to know how to preserve that evidence.
 - Any evidence that is the subject matter of a search warrant or subpoena or any evidence that the Library has reason to believe will be subject to a search warrant or other request.



Police Involvement: Enforcement and Appeal

- The Police Have Just Arrived.
 - Ask for identification and contact information if you are not familiar with the officers or agents.
 - What if it is a verbal request?



Police Involvement: Enforcement and Appeal

- What if the officer gives us a court order?
 - Immediately request that the Library be allowed to send a copy to the Library's attorney prior to the execution of the order (but, the Library may not have the opportunity).
 - If the officers insist on executing the subpoena without attorney review, review to the best of your ability. Make sure they do not take any materials not identified in the court order.



Police Involvement: Enforcement and Appeal

- Observe what the officer is seizing or reviewing to make sure that only information set forth in the search warrant is covered.
 - Keep notes on what documents or items were seized.
 - Keep track of all costs.
 - Request copies or itemized list of everything taken.



Police Involvement: Enforcement and Appeal

- The Library may be contacted by the media; therefore, the Library should review or adopt a media policy.
- The Library should review or consider a FOIA policy.



Enforcement and Appeal

- Staff Training
 - It is important that all Staff understand the Policies.
 - Staff Training is essential.
 - Equal enforcement of the policy is important in keeping the Library out of court.



Questions?

- Thank you!