

Patron Behavior in Libraries: Reported Court Cases

Mary Minow <http://www.librarylaw.com>

Key case that is cited heavily by other cases:

Kreimer v. Bureau of Police, 958 F.2d 1242 (3d Cir. N.J. 1992) Homeless patron was expelled from the library on at least five occasions for violating its rules governing patron conduct. He sued the library claiming the library rules were unconstitutional under the First Amendment as well as under the Due Process and Equal Protection clauses of the U.S. Constitution's Fourteenth Amendment and similar provisions of the New Jersey Constitution. The trial court rules in patron's favor, (striking down the library rules) sending tremors throughout the library world. The trial court judge wrote: "If we wish to shield our eyes and noses from the homeless, we should revoke their status, not their library cards."

The appellate court reversed, holding that the library constituted a type of limited designated public forum. The stated purpose of the library rules was to "allow all patrons of the joint free public library of Morristown and Morris Township to use its facilities to the maximum extent possible during its regularly scheduled hours." The court applied a "reasonable" standard to rules #1, #5 and the unnumbered provisions. It applied an "intermediate" scrutiny to rule #9 on hygiene. All of the challenged rules were upheld:

1. Patrons shall be engaged in 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.
5. Patrons shall respect the rights of other patrons and shall not harass or annoy others through noisy or boisterous activities, by 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.

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.

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.

It is of more than passing interest to compare this version of the rules, upheld by the court, with an earlier version that was amended in an attempt to avoid the lawsuit. Note the problematic portions *italicized* in an earlier version of the rules. As noted, the revised rules listed above were upheld by the federal appellate court.

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.*

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.* [*does not offer appeals process*]

Other cases (in chronological order)

Grigsby v. City of Oakland, 2002 U.S. Dist. LEXIS 2587 (2002) Patron claimed he was seized and his public library privileges were temporarily suspended. He represented himself in court and lost. He was unable to establish that he was actually seized, and the court said that the library's interest in the safe and efficient operation of the library outweighed the minimal intrusion of a two-hour library privileges suspension. Further, the patron's due process claim failed because there was no right to violate the lawful regulations of the public library, regulations of which he had notice. Finally, the patron's equal protection claim failed because he could not show any intent by defendants to discriminate against him on the basis of his race, gender, or social class.

People v. Lawton, 48 Cal. App. 4th Supp (2002) Patron at Ventura County Library convicted for hacking: unauthorized access to a computer system, using public terminals, bypassing security and penetrate levels of software

not open to the public. Cal. Penal Code Sect.502(c)(7) forbids unauthorized access to "any computer, computer system, or computer network" Conviction upheld on appeal. <http://caselaw.lp.findlaw.com/cacodes/pen/484-502.9.html>

Minnesota v. Sihler, 2002 Minn. App. LEXIS 376 (2002) Children saw man in library children's room kneeling down and "wiggling his penis." The man could be seen between a gap in the books. Their father asked the librarian to call the police, who came and arrested patron. Found guilty of fifth-degree sexual conduct under Minnesota law, which outlaws masturbation or lewd exhibition of the genitals in the presence of a minor. Evidence included a library surveillance tape that showed defendant in the back of the library kneeling down and leaning forward behind bookshelves.

Tennessee v. Rickman 2002 Tenn. Crim. App. LEXIS 449 (2002) Suspicious green Plymouth Fury emitting a strong odor in library parking lot with "an extreme amount of flies on the trunk" turned out to have decomposing body inside. Defendants convicted of murder.

Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67 (2001) Homeless patron won lawsuit challenging library rule "A. Conduct or personal condition objectionable to other persons using the Library's facilities or which interfere with the orderly provision of library services... 3. Objectionable appearance (barefooted, bare-chested, body odor, filthy clothing, etc.) ..." Patron claimed the rule violated the District of Columbia Human Rights Act (DCHRA), that prohibits discrimination based on "personal appearance," defined as "the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards." Although the court dismissed the patron's DCHRA claim under procedural grounds, the patron won under his First Amendment and Due Process claims The court applied intermediate scrutiny, using a "narrowly tailored" standard of review. It found that the appearance regulation was vague and overbroad, and violated Due Process. The regulation failed to provide fair notice to its patrons or to meet constitutional standards prohibiting arbitrary enforcement of government regulations.

Busch v. City of Anthon, 173 F. Supp. 2d 876, 2001 U.S. Dist. LEXIS 19054 (N.D. Iowa 2001)

Library board member and her husband filed suit after a series of incidents including shouting matches over a library computer that patrons had purchased for library and then were using after hours for personal business. The police arrested her for fifth degree theft for non-payment for library photocopies, interference with official acts, and assault. Those charges were ultimately dismissed. The city won on the assault and battery claims because the unjustifiable shove by a police officer and

door-slamming by another city employee did not amount to a severe invasion of the patron's personal security, but determined that there were genuine issues of fact as to whether the arresting officers had probable cause to arrest her. Note: board member also claimed a violation of the First Amendment when she was removed from the board.

Clark v. Town of Greenwich, 2001 Conn. Super. LEXIS 3322 (Conn. Super. Ct. Nov. 21, 2001) Patron sued library, Friends of the Library, seven library employees and others after he was arrested and charged with the offense of Creating a Public Disturbance. That charge was dismissed, and the patron claimed that each defendant knew the complaint was groundless and made in reckless disregard to his rights with the intention of causing him humiliation. The complaint alleges the following causes of action: false imprisonment, malicious prosecution, and violation of 42 U.S.C. § 1983. In addition, the Greenwich **Library** was sued for violation of state statutes. The court found a material fact at issue as to three employees and the library with regard to their intent in making their statements to the police. The complaint against the Friends was dismissed.

Davis v. City of Chicago, 2001 U.S. Dist. LEXIS 5399 (N.D. Ill. 2001) Patron sued city after library branch security guards at the library inspected a closed bag he was carrying and ordered him to remove a black beret from his head. Patron called the Security Chief and others "honorary jackasses." Patron was arrested by the police. The next day, plaintiff was released. Patron represented himself in court and made First Amendment and Due Process claims against the library but provided no details to clarify the events. The court ruled that the patron failed to allege an improper city policy or custom with particularity.

In the Matter of Gregory Doxy and City of Chicago Public Library, Commission on Human Relations CCHR No. 99-PA-31 (2001) Patron filed complaint with the Commission on Human Relations against City of Chicago Public Library, alleging that he was discriminated against based on his sexual orientation when he was asked to leave the Library. Patron represented himself before the Commission. The Commission found the library security guards established credible testimony that the patron had been told to leave the library because his genitals were visible through his purple tights and that the patron was never called a "faggot." The Commission noted that the library could be found liable under a city ordinance if one of its agents used the word "faggot" in requesting that Doxy leave the Library. Here, however, there was no evidence of discrimination; in fact the security guards testified that they would never use the word "faggot," as they each had close family members who were gay.

Ohio v. Davis, 2001 WL 877591 (Ohio. App. 12 Dist.) Police officer noticed patron with two-liter bottle enter restroom and then exit without the bottle. Patron later passed out at the computer terminal and was arrested. He

peaceably left the library, but assaulted policewoman in the jail. The patron was convicted for resisting arrest. Upheld on appeal.

Tyson v. Texas, 2000 Tex. App. LEXIS 6095 (2000) Child at a library computer saw patron exposing himself and masturbating. Child, age 11, left and went to book area, where she again saw same patron masturbating. The librarian wrote down his license plate number, and both the child and the librarian picked the defendant out of a photographic lineup, and later made in-court identifications. Patron convicted of indecency with a child under Texas law. Upheld on appeal.

Lieber v. Village of Spring Valley, 40 F. Supp. 2d 525, (S.D.N.Y. 1999) Patron claimed that a library employee made disparaging remarks about patron's obsessive compulsive fear of dirtying his hands with newspaper print. Patron claimed he was removed from the library by security, but was not told why. Patron said he returned to the library to watch a chess tournament and was again directed to leave without explanation. The patron was then arrested for trespass. The next day, the Library Director sent a letter banning the patron from the Library for six months, claiming that he had behaved in a harassing and threatening manner to library patrons and staff, and had interrupted a children's program. The letter said: "Should another incident occur after the banning period is complete, and you have been permitted to return to the Library, you will be barred for good." The trespass charges were dismissed when no witnesses appeared. Patron sued library, library employees and others for intentional infliction of emotional distress, assault, and battery (tort claims), as well as violation of his rights under the First, and Fourth Amendments, the Due Process Clause, the Americans with Disabilities Act, and §504 of the Rehabilitation Act of 1973. The court dismissed the tort claims and allowed the other claims to go forward, despite arguments by the village that the statute of limitations had run out.

People v. Taylor, 164 Misc. 2d 868 (N.Y. App. Term 1995) New Rochelle Public Library patron tried to get Library to lift ban on games and refused to stop playing chess. The library called the police who arrested the patron for trespass under New York law. The patron was convicted of "knowingly" entering or remaining unlawfully in the premises. The patron did not claim that the library's ban on games was unreasonable. (The court noted the *Kreimer* decision that upheld as reasonable a rule requiring library patrons not engaged in reading, studying or using library materials to leave.) Instead, patron claimed that his intent was merely to use the chess board in connection with his study of a chess book. The court discredited this claim, as evidence was shown that the defendant was a chess "fanatic" he did not like "being asked to cooperate ...by laying down quietly." The patron was convicted and the conviction was upheld on appeal.

Brinkmeier v. Freeport, 1993 U.S. Dist. LEXIS 9255 (N.D. Ill. July 2, 1993)

Library patron won lawsuit when a public library tried to enforce an unwritten library policy on harassment. The court said there is a First Amendment right to access the public library, and a reasonableness standard would apply. Even though it could be reasonable to have a nonharassment policy, in this case, the unwritten policy was broadly stated and lacked reasonable limitations as to the conduct it sought to prevent. The policy failed to place geographical limitations on where such harassment or intimidation could have occurred, and did not place reasonable guidelines on the proscribed behavior.

In re Christopher S., 80 Cal. App. 3d 903 (Cal. App. 1st Dist. 1978) Teacher assigned to the library at Pacific Grove High School observed sixteen year old boy who was not a student at the school at that time, talking with some of his friends at a table in the library. He was arrested for loitering. The court found that the purpose of California Penal Code § 653g was to proscribe lingering about schools and public places for the purpose or with the intent of effectuating some criminal act. The court held that the boy was a nondisturbing trespasser who voluntarily left the premises and did not violate §653g.

Brown v. Louisiana, 383 U.S. 131 (1966) Important U.S. Supreme Court ruling that a peaceful and orderly protest demonstration for civil rights was not a breach of the peace. "Five young Negro males" went into the adult reading room of the Audubon Regional Library. The branch assistant met the men "between the tables" and asked if she "could help." Brown requested a book, "The Story of the Negro" by Arna Bontemps. Mrs. Reeves checked the card catalogue, ascertained that the Branch did not have the book, and told patron that she would request the book from the State Library and that "his point of service was a bookmobile or it could be mailed to him." She asked the men to leave. They did not. The patrons sat down without noise or boisterous talking. The men were convicted of disturbing the peace. The Supreme Court overturned their convictions, stating that the First and Fourteenth Amendments guarantee freedom of speech and of assembly, and freedom to petition the Government for a redress of grievances. The Constitution of the State of Louisiana reiterated these guaranties.

Cobb v. Montgomery Library Board, 207 F. Supp. 880, 1962 U.S. Dist. LEXIS 3720 (M.D. Ala. 1962) Patron sued library for segregation policy when told, "We do not serve Negroes in this library." The court held that such deprivation denied to the plaintiff and other members of his race similarly situated, rights guaranteed by the Fourteenth Amendment.

Return to LibraryLaw.com