

MANAGING PATRON CONDUCT & APPEARANCE WITHOUT ABRIDGING LEGAL RIGHTS

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Introduction

Public libraries are open to all, and all are welcome. Patrons are the reason public libraries exist. Unfortunately, not all patrons are respectful of library employees and other members of the public. And some patrons are simply unaware of appropriate behavior in a library setting. Therefore, to promote an environment that is safe and inviting to all, a public library must develop a code of conduct to prohibit unacceptable conduct and conditions.

A set of well-published policies about how library visitors are expected to present themselves and behave while in the library is a useful tool for staff and patrons alike. In developing and enforcing these policies, library administrators must consider legal issues that stem from the special role public libraries play in American society.

First, library access is a constitutional right recognized by courts. Therefore, any disciplinary action that curtails an individual's right of access could be actionable in a lawsuit against a public library.

Second, public libraries, as governmental entities, are required to have procedural safeguards in place when a decision is made that limits an individual's right of access. In other words, not only must a public library consider the right of its patrons to access information, the procedure employed in decision-making about a patron's library privileges has legal implications as well.

An additional concern for librarians is the effect its policies will have on the poor and homeless. Often these patrons are ones who need library service desperately but are unable to meet the strictures of conduct, appearance, and hygiene policies. In the absence of a qualifying disability, there are no particular legal protections for these individuals, as opposed to any other library patron with respect to using a public library. Nevertheless, the library profession has recognized that these populations may be shortchanged of their rights to use the public library if care is not taken in how policies are created and implemented.

Codes of conduct and rules about appearance and hygiene are necessary in order to maintain public libraries as places for all members of the public. In crafting and enforcing these rules, library administrators and trustees must be cognizant of how their practical application will affect library users' legal rights. Additionally, promoting equitable use of the public library by all segments of the population, while not legally mandated, has evolved as a philosophical tenet of librarianship; therefore, balancing this goal of equity with the need for regulation is part of the process of policy making and implementation.

Constitutional Rights Implicated in Denying Access to a Public Library

Before considering how to draft and enforce patron conduct, appearance, and hygiene policies, directors and trustees must understand the legal rights individuals have to access a public library and the information within it. Furthermore, because public libraries are governmental entities, any action or inaction that results in depriving a person of a liberty or property interest must comply with due process requirements.

The First Amendment: Right to Receive Information

Since 1943, the United States Supreme Court has recognized that the “freedom of speech” component of the First Amendment to the United States Constitution includes the freedom to receive speech in addition to the freedom to speak.¹ In 1965, the Court interpreted the First Amendment even more broadly to encompass “the right to read. . . and freedom of inquiry.”² Four years later the Court reiterated that the First Amendment prohibits the government from denying individuals the right to receive information and ideas.³

In 1992, a Federal Court of Appeals held that under First Amendment jurisprudence, individuals have the right to some level of access to a public library,

¹ *Martin v. City of Struthers*, 319 U.S. 141 (1943).

² *Griswold v. Connecticut*, 381 U.S. 479 (1965).

³ *Stanley v. Georgia*, 394 U.S. 557 (1969).

which the court defined as “the quintessential locus of the receipt of information.”⁴ Therefore, any library rule, regulation, policy, or ad hoc decision that results in curtailing a person’s access to information within a public library implicates the First Amendment.

As with other First Amendment rights, the right to receive information is not absolute; there are circumstances in which the government may limit the right. The extent to which the right to receive information may be limited through denial of access to a public library depends on the nature of the public library as a forum.

In 1983, the Supreme Court adopted the “forum” analysis to determine whether a given curtailment of a First Amendment right is valid or whether it illegally infringes on the particular right.⁵ The forum with the highest level of protection is the “public forum;” it includes streets and parks and public sidewalks which “have immemorially been held in trust for the use of the public . . . for the purposes of assembly, communicating thoughts between citizens and discussing public questions.”⁶ On the other end of the spectrum is the nonpublic forum, which is government property that has not traditionally or by designation been used as a

⁴ *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242 (1992).

⁵ *Perry Education Association v. Perry Local Educators’ Association*, 460 U.S. 37 (1983).

⁶ *Ibid.* at 45.

place for public communication.⁷ The non-public forum receives the least protection; courts reason that the government, just like any private property owner, has a right to control its property when that property is not a place where expressive activity traditionally occurs.⁸ Examples of non-public fora are military bases, jails, and public schools.

In between the public and nonpublic fora lies the “limited public forum,” which is property the government has opened for use by the public for the exercise of specific expressive activity. Courts have consistently placed public libraries in this category. A public library is governmental property that has been designated as a place for specific type of expressive activity. The Supreme Court has defined the specific use of a public library as “a place dedicated to quiet, to knowledge, and to beauty.”⁹ More recently, the Court explained, “Public libraries pursue the worthy missions of facilitating learning and cultural enrichment.”¹⁰

As a limited public forum, a public library is obligated to permit the public to exercise only rights that are consistent with the nature of the library and with the government’s intent in creating the library. Restrictions that do not limit the First

⁷ *Ibid.* at 46.

⁸ *Cornelius v. NAACP Legal Defense & Education Fund, Inc.*, 473 U.S. 788, 799–800 (1985).

⁹ *Brown v. Louisiana*, 383 U.S. 131, 142 (1966).

¹⁰ *United States v. American Library Association, Inc.*, 539 U.S. 194 (2003).

Amendment activities that have been specifically permitted in the forum need only be “reasonable and not an effort to suppress expression merely because public officials oppose the speakers view.”¹¹ In other words, a library rule that prohibits talking on a cell phone while in the library does not directly affect a patron’s right to receive information the library has been designated to provide; rather it is a rule curtailing the right to talk out loud to another person through the phone.

Therefore, to withstand constitutional scrutiny, the rule must be reasonable and viewpoint neutral. Unquestionably, a rule prohibiting patrons from carrying on phone conversations inside a library is a reasonable effort by library officials to protect the ability to engage in “quiet contemplation” that courts have recognized as a primary purpose of public libraries. Furthermore, the rule is viewpoint neutral in that it prohibits all personal phone conversations, not just those on a specific topic. Therefore, a challenge to the no-cell-phone-use rule would likely be unsuccessful.

On the other hand, a rule that directly limits the First Amendment activities for which the forum was established receives more scrutiny. The Supreme Court has held that time, place, or manner regulations that limit the permitted First Amendment activities within a designated public forum are legal only if they are “narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of information.”¹² In the context of

¹¹ *Perry*, 460 U.S. at 46.

¹² *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)

public libraries, courts generally place hygiene and appearance restrictions in this category. This is so because an individual peacefully engaged in the First Amendment activities for which the library was established may violate a hygiene or appearance rule and therefore be expelled from the premises, which prevents his or her continued exercise of those rights.

Application of the more stringent test to time, place, and manner restrictions first requires consideration of what “significant interest” of the government is to be achieved by the rule. In public library cases, courts readily recognize that library officials have a significant interest in ensuring that all patrons can use library facilities to the maximum extent possible during the time the library is open.¹³ Therefore, policies written and enforced in order to achieve this goal will easily meet the “significant government interest” portion of the test.

The second step in applying the higher level of scrutiny to a rule limiting an individual’s right to exercise First Amendment rights consistent with the purposes of a limited public forum is to determine whether the rule is “narrowly tailored.” The Supreme Court has explained that the “narrowly tailored” requirement does not call for the “least-restrictive or least-intrusive means” of furthering the government’s interest.¹⁴ Instead, narrow tailoring is achieved “so long as the . . .

¹³ See *Kreimer*, 958 F.2d 1242, 1264.

¹⁴ *Ward*, 491 U.S. at 798.

regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.”¹⁵

Finally, courts applying the third prong of the higher scrutiny test—that the rule in question leaves open alternative channels for communication—have determined that when a hygiene or appearance rule requires an individual to leave a limited public forum, the fact that he or she can be readmitted once in compliance with the rule is all that is required.¹⁶ In other words, if a public library requires a barefooted patron to leave the premises, that same patron is free to resume his First Amendment activities in the library once he dons a pair of shoes.¹⁷

An additional First Amendment attack that may be raised against a policy that in some way limits access to a public library is a vagueness argument. When a rule does not properly articulate what activity is prohibited, it may be struck down as vague. Generally, a successful vagueness challenge involves a restriction that imbues government officials with undue discretion to determine whether a given activity violates the rule. An example in the public library context is a policy stating that a patron can be denied access to the library if her or her appearance is

¹⁵ *Ibid.* at 799.

¹⁶ *Kreimer*, 958 F.2d 1242, 1264.

¹⁷ *See Neinast v. Board of Trustees of Columbus Metropolitan Library*, 346 F.3d 585, 595 (6th Cir. 2003).

“objectionable.”¹⁸ This policy was struck down by a federal court because it contained neither a legal standard nor a specific definition for “objectionable.”¹⁹ The court was concerned about the inconsistency resulting from ad hoc decision-making by library guards, employees, and supervisors as well as the public’s inability to discern what was required to gain access to the library. Therefore, public library directors and trustees must strive to make all policies explicit with objective measures that will allow anyone to understand what is prohibited.

¹⁸ *Armstrong v. District of Columbia Public Library*, 154 F. Supp.2d 67 (D.C.D. 2001).

¹⁹ *Ibid.* at 78.

Fourteenth Amendment: Due Process of Law

Before the government may deprive an individual of a property or liberty interest, it must afford due process of law. Public libraries in Georgia are governmental entities and are thus required to provide due process when a patron's property or liberty interest is affected by library action. As set forth above, courts have recognized as a liberty interest an individual's First Amendment right of access to a public library. Therefore, due process must be provided before a library denies or interferes with a patron's access to the library or some form of information within (i.e., public access computers.)

The Supreme Court has held that at a minimum, due process requires notice of the infraction and a right to defend oneself.²⁰ An example of a public library case where due process was found to be lacking is a case from a federal court in North Carolina.²¹ In that case, a patron was permanently banned from using any library computer to access the internet after a librarian witnessed a pop-up containing nudity on the monitor being used by the patron. The ban was imposed immediately after the single incident was witnessed, and the patron was given no avenue to appeal or to even explain how the image appeared on the screen.

In another scenario where a library patron challenged the denial of access to the public library on due process grounds, a court found the library provided proper

²⁰ *Goss v. Lopez*, 419 U.S. 565, 581 (1975).

²¹ *Miller v. Northwest Region Library Board*, 348 F.Supp.2d 563 (M.D. N.C. 2004).

procedural safeguards.²² In this case, the patron sought to enter the Boston Public Library with a shopping cart that contained foul smelling items. Because the library has a written policy prohibiting wheeled carts and another policy prohibiting items of offensive odor, the library's security guard refused the patron entry. At the patron's request, the head of library security met with him outside of the library to explain the rule; the patron was told that he was welcome to come into the library without the cart. The security chief listened to the patron's explanation of why he could not abandon his possessions and alternatively, suggested that he transfer the possessions to a more enclosed container such as a suitcase, which he could bring into the library. The court rejected the patron's due process challenge, finding that the explanations of the policies offered by the security guard and the supervisor were sufficient notice and the fact that the patron was allowed to explain why he wished to bring the cart into the library was an exercise of the patron's right to be heard. It was important to the court in this case that the library was not instituting a permanent ban as did the North Carolina library. Rather, the patron was free to come into the library without the cart of foul-smelling items.

²² *Lu v. Hulme*, 133 F.Supp.3d 312 (D. Mass 2015).

Specific Policies

Behavior

A public library is free to enact and enforce codes of conduct for library patrons. Regardless of constitutional rights of access to a public library, individuals have no right to behave in an unlawful manner when visiting. A federal court once stated, “Prohibiting disruptive behavior is perhaps the clearest and most direct way to achieve maximum Library use.”²³

Through policy, public libraries may prohibit conduct that is otherwise legal; those policies are generally subject to the more lenient level of scrutiny—that is, such policy must be reasonable and viewpoint neutral. Courts have reasoned that because conduct rules allow for the removal of patrons who misuse library facilities, there is no direct impact on the First Amendment rights for which public libraries have been designated. Below are examples of conduct policies imposed by public libraries that have been upheld by courts under the reasonableness standard:

- Public library policy prohibited administering corporeal punishment on library premises. A patron was permanently banned from the library after he struck another patron. The banned patron sued the library, and the court found that the library policy was fundamentally reasonable as it was enacted

²³ *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1263 (3d Cir. 1992).

“to ensure the comfort and security of patrons and library staff” and that it was viewpoint neutral.²⁴

- Public library policy prohibited picketing or petitioning inside library buildings. A patron who was soliciting signatures in support of a local political issue was required to stop the activity inside the library. He sued, and the court held that in addition to being viewpoint neutral, the library’s rule was reasonable because it was enacted to make “sure the library branches are accessible and safe, that the atmosphere is not disruptive, and that such activities do not interfere with the general use of the library.”²⁵
- Public library policy prohibited disruptive behavior or behavior that constitutes a public nuisance; the court held that the library rightfully terminated a patron’s library privileges after he became belligerent and intimidating to a staff member who had refused to add a letter that he authored to the collection. The court held that the ban imposed on this patron was reasonable because it maintained the peaceful character of the library.²⁶
- Public library policy required patrons to “be engaged in activities associated with the use of a public library while in the building.” A patron who

²⁴ *Hill v. Derrick*, 2006 WL 1620226 (M.D. Penn. 2006).

²⁵ *Jaffe v. Baltimore County Board of Library Trustees*, 2009 WL 7083368 (D. Md. 2009).

²⁶ *Spreadbury v. Bitterroot Public Library*, 862 F.Supp.2d 1054 (D. Mont. 2012).

frequently engaged in loud talking to himself and others and staring at and following other patrons around the library was banned from the library. The court held the policy was viewpoint neutral and was reasonable. The reasonableness determination was based on the court's determination that the aim of the policy was to "foster a quiet and orderly atmosphere conducive to every patron's exercise of their constitutionally protected interest in receiving and reading written communications."²⁷

Conduct that Cannot be Prohibited by a Public Library

Breastfeeding

Under Georgia law, a mother has a right to breastfeed her baby in any location. O.C.G.A. 31-1-9. Therefore, a library policy prohibiting breastfeeding in the library would violate this law. Of course, library staff could request that breastfeeding occur in a designated area, but any harassment or negative reaction to the mother's choice to breastfeed in an open area would be a violation of law.

Protest or Petitioning Outside the Library Building

Solicitation is a recognized form of speech protected by the First Amendment.²⁸ And this form of expressive activity receives the highest level of protection when it occurs in a public forum. The sidewalks and parking lots surrounding government building are traditional public fora. Therefore, it is

²⁷ *Kreimer*, 958 F.2d 1242.

²⁸ *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 629 (1980); *Riley v. National Federation of Blind of N.C., Inc.*, 487 U.S. 781, 788–789 (1988).

unlikely that a public library could impose any regulation prohibiting protests or disallowing petitioners from soliciting signatures on its property outside the library building such as in the parking lot or on surrounding sidewalks. An exception would be if the protesters or petitioners are impeding access to the library by other patrons; in that circumstance library officials would be free to impose time, place, and manner restrictions on the activity to allow for library users' access. Moreover, if protesters or petitions become unruly or aggressive, library staff should call the police for assistance. The right to engage in protests or to solicit signatures contemplates that the actors remain peaceful and non-threatening.

Hygiene & Appearance

Public library policies that require a certain level of hygiene or appearance are subject to the heightened scrutiny test of being “narrowly tailored to achieve a significant government interest.” This is so because courts have recognized that a person utilizing a public library for precisely the First Amendment activities for which it has been designated, i.e., reading, studying, quiet contemplation, may be excluded based on odor or lack of shoes. Below are examples of how courts have addressed challenges to library appearance or hygiene policies.

- A public library policy requiring that all patrons wear shoes was upheld; the court concluded that even under the heightened level of scrutiny, the rule would pass muster because it left open alternative channels of communication and was narrowly tailored to protect a significant

governmental interest: maintaining public health and safety and the library's economic well-being by seeking to prevent tort claims brought by library patrons who were injured because they were barefoot.²⁹

- A public library policy requiring that any patron “whose bodily hygiene is offensive so as to constitute a nuisance to other persons” to leave the building was found to be narrowly tailored to protect the library’s interest in maintaining its facilities in a sanitary and attractive condition. The court further held that alternative channels of communication remained open in the sense that the patron could return to use the library once he complied with the hygiene policy.³⁰
- A public library policy under which a person was denied access because of “objectionable appearance” was struck down because “objectionable appearance” was too vague to give patrons notice of what was allowed and what was not. The court noted that without the legal term “nuisance” which was utilized in the policy discussed above, the policy allowed for subjective judgments by library employees.³¹

²⁹ *Neinast v. Bd. of Trustees of Columbus Metro. Library*, 346 F.3d 585, 592 (6th Cir. 2003).

³⁰ *Kreimer*, 958 F.2d 1242.

³¹ *Armstrong v. District of Columbia Public Library*, 154 F. Supp.2d 67 (D.C.D. 2001).

Possessions

Public library policies about what items may be brought into the establishment receive the higher level of scrutiny. Just as with hygiene and appearance policies, rules prohibiting an individual from entering with certain possessions could result in the exclusion of a person who is otherwise utilizing the library for the precise First Amendment activities for which it has been designated. Below are two examples from the Boston Public Library.

- A public library’s prohibition on bringing in “articles with a foul odor which . . . impede use of the library by others” withstood a challenge. The court held that the rule was narrowly tailored to serve the library’s substantial interest in ensuring that all patrons could use the library for its designated purposes. More specifically, the court concluded that the library’s goal was served by excluding such foul-smelling articles “as this rule prohibits one patron from unreasonably interfering with other patrons’ use and enjoyment of the library; it further promoted the library’s interest in maintaining its facilities in a sanitary and attractive condition.”³²
- A public library’s policy disallowing wheeled carts in the library was questioned by a court because it was not narrowly tailored to serve the governmental interest in keeping passageways and browsing areas clear.

First the court noted that the policy excluded the use of all shopping carts for

³² *Lu v. Hulme*, 133 F. Supp. 3d 312, 329 (D. Mass. 2015).

any purpose in the library, regardless of their size, use, or potential for disrupting the library. Second, the court pointed out notable exceptions to the rule such as strollers, which might take more space and were less easily stowed than a shopping cart. The court suggested other less restrictive means of accomplishing the government's interest: allowing for wheeled devices "in designated areas," or allowing people to store their carts in a designated area.³³

A particular possession that libraries are eager to exclude is a weapon. Prior to 2014, most public libraries in Georgia had policies disallowing weapons of any kind being brought into a library building. To the extent that possessing a weapon is expressive activity, which some courts have found, a library policy prohibiting weapons inside a library building would pass muster under either the reasonableness test or the heightened scrutiny test discussed above. There is no question that safety and security of library staff and patrons is a significant government interest. However, in 2014, the Georgia General Assembly enacted a law widening the scope of where permit holders may bring their guns. The statute gives licensed gun owners the right to bring their firearms into "a government building when the government building is open for business and where ingress into such building is not restricted or screened by security personnel."³⁴ Because most

³³ *Ibid.* at 331.

³⁴ O.C.G.A. § 16-11-127(e)(1).

public libraries in Georgia do not have security screening, a public library falls squarely within the statute's definition of government building. Therefore, any policy that prohibits guns in a public library would be in direct contravention to this law. Accordingly, a rule disallowing guns in a Georgia public library would not be especially vulnerable to a First Amendment challenge, but it would likely be struck down under Georgia law.

Status

Policies that prohibit entry into a public library based on status are subject to the heightened scrutiny analysis. Courts have long taken a dim view of criminal statutes that target status rather than behavior.³⁵ For example, specific behavior such as drug possession or use may be criminalized, but status such as drug addiction may not. Of course, library policies are not criminal laws. Nevertheless, the analogy between prohibiting access to a public library based on status and criminal statutes making certain statuses illegal offers guidance in policy development.

An example of status being used as basis of exclusion from a public library occurred in Albuquerque, New Mexico. The city enacted a regulation prohibiting registered sex offenders from entering its public libraries. When challenged through a lawsuit, the ban received the heightened level of scrutiny, and the court held that the government did have a significant interest in maintaining safety in its public libraries. However, the court concluded that the regulation was not narrowly tailored to achieve this interest because “the wholesale ban on any and all access to public libraries burden[s] substantially more speech than is necessary to further the government's legitimate interests.”³⁶ The court went on to suggest other, less restrictive means to achieve the goal of making the libraries safe for patrons: establishing designated hours during which sex offenders are permitted to use the

³⁵ *See Robinson v. California*, 370 U.S. 660 (1962).

³⁶ *Doe v. City of Albuquerque*, 667 F.3d 1111, 1115 (10th Cir. 2012).

libraries, requiring sex offenders to check into the libraries, or designating certain areas of the libraries for use by registered sex offenders.³⁷

Many of the behavioral as well as hygiene and appearance policies discussed above directly result from an increase in public library use by homeless patrons. Often homeless patrons utilize the public library facilities for much more than the expressive activity for which libraries have been designated, such as sleeping, bathing, and clothes laundering. These activities are likely to impede the use of a public library by other patrons for the expressive activities that are the designated purpose of a public library. Likewise, the lack of access to bathing and clothes' cleaning facilities by homeless persons results in hygiene and appearance that library staff and other patrons find offensive and seek to avoid. Furthermore, it is well documented that a significant portion of the homeless population in the United States suffers from mental illness. As a result, disruptive behavior may occur regularly in public libraries, which not only is a misuse of the library, but it is a distraction to those who are utilizing the library for its traditional purposes. Accordingly, public library policies aimed at making the library and its information available to the public at large often disproportionately affect patrons of a particular status: the homeless.

³⁷ *Ibid.* at 1134.

Many of the lawsuits discussed herein were brought against public libraries by homeless individuals. For the most part, these suits have been unsuccessful. In a broader context, homeless plaintiffs have sometimes prevailed in suits that tangentially include a public library. In the early 1990s, the City of Miami enacted an ordinance that prohibited lying down, sleeping, standing, sitting in any public place including public libraries. A United States district court concluded that the government may not enact laws and regulations that punish the involuntary status of homelessness.³⁸ What mattered to the court was the fact that homeless individuals had no place to go because the ordinance covered all public areas of the city. Because anti-sleeping policies of public libraries pertain to individual public buildings and do not include all public property within a geographic region, there is no reason to believe that a library policy would be successfully challenged on the same grounds that doomed the Miami ordinance. Nevertheless, it is important for library administrators and trustees to realize that there are judicial decisions that strike down laws aimed at the status of homelessness.

Another common library policy that has a disproportionate effect on homeless individuals is disallowance of panhandling or soliciting. Two cases from New York City illustrate the distinction between prohibiting certain conduct associated with the homeless from a specific area versus a regulation pertaining to all public spaces within a municipality. In 1990, a federal appellate court for the Second Circuit

³⁸ *Pottinger v. City of Miami*, 810 F.Supp. 1551 (S.D. Fla. 1992).

found that the Metropolitan Transit Authority (MTA) could lawfully prohibit panhandling on New York City subway trains since it disturbed riders and the MTA designed the subway solely for transportation purposes.³⁹ But two years later, the same court ruled that a New York City ordinance that outlawed panhandling in all public places was unconstitutional because panhandling amounted to expressive activity and therefore fell within the ambit of the First Amendment's protection.⁴⁰ While never addressed by courts, a policy by a public library prohibiting panhandling on its property would likely be analyzed in accord with the New York City subway case. This is because the library has been designated for specific expressive activities (panhandling is not one of them), and the activity would disturb patrons who are using the library for those traditional purposes (receiving information, reading, quiet contemplation.)

Beyond the legal implications of promulgating policies that disproportionately affect people whose status is homeless, there are ethical and philosophical concerns for public library decision makers. A primary tenet of librarianship is that public libraries play a crucial role in the American democracy.⁴¹ The profession has long adhered to a commitment to put information into the hands of the citizenry for the purpose of allowing those individuals to meaningfully participate in this country's

³⁹ *Young v. New York City Transit Authority*, 903 F.2d 146 (2d Cir. 1990).

⁴⁰ *Loper v. New York City Police Department*, 999 F.2d 699 (2d Cir. 1993).

⁴¹American Library Association, Democracy Statement, available at <http://www.ala.org/aboutala/governance/officers/past/kranich/demo/statement>.

democratic society. Yet, many common policies of public libraries constructively exclude a specific segment of society resulting in the loss of the ability to participate in public discourse and receipt of information—what librarianship refers to as the cornerstones of democracy.

It is obvious that public libraries must have codes of conduct; a library where any behavior is tolerated could not serve any valid function. And, for the most part, policies that prohibit behavior or physical attributes that disrupt the activities for which the library has been established will withstand legal challenge. However, public librarians are struggling to address troubling societal issues resulting from an increase in homeless and mentally ill populations while they maintain their institutions as places open to all members of the public.

There are two schools of thought within library literature on the issue of homeless and mentally ill patrons' rights to access a public library as opposed to the rights of "legitimate" library patrons. Arguments in favor of reduced access for the homeless and mentally ill patrons include the goal of maintaining a pleasant atmosphere conducive to reading and studying, concern for public safety, and the stress to library workers who must work with and stay in the vicinity of those with offensive hygiene. On the other hand, many authors argue for equal access by homeless and mentally ill patrons contending that that the public library offers a place for the mentally ill to interact with normal society, the library provides a community service by identifying and connecting homeless people with the proper

social service agencies, and those with mental illness must be accorded rights under the Americans with Disabilities Act.

There are a number of solutions that a public library can employ stemming from these two points of view. More conservative, reactive solutions can include training workers to deal with homeless and mentally ill patrons and defining clear codes of conduct that help both library workers and patrons understand appropriate behavior while in the library. Positive, proactive solutions include ensuring collection development in information areas important to homeless patrons, creating space for the homeless within and outside the library, and educating the public on their lives. Ultimately, how to address the issue of homeless and mentally ill patron use of a public library is up to the library director and the governing board. Their goal in enacting policies should be attaining the maximum library use and access by all members of the community.

Practical Considerations in Implementing Patron Policies

In addition to the broad legal and philosophical concerns that library administrators must consider in creating and revising patron policies, the day-to-day implementation of these policies deserves significant deliberation. Regardless of how carefully policies are drafted, without proper enforcement these policies have no value to a public library.

First, a library must inform its users of its policies. This can be done by physically posting the policies inside the library or electronically on the library's Website. Library staff should be prepared to provide a printed copy of the library's policies to patrons upon request. And when a library user is approached about violating a library policy, giving this patron a copy of the written policy at issue is a good idea.

Second, library staff members should be well versed in the details of library patron policies, including the underlying objectives of specific policies. Often library patrons will comply with rules and regulations when they understand the reason behind them. Having library workers confer with patrons about why certain behavior and presentation is inappropriate in the library setting is often a better route to obtaining compliance than simply citing and disciplining infractions with an attitude of "rules are rules."

Third, consistent enforcement of library policies is absolutely necessary. In other words, the policy must be applicable to all patrons at all times. Failure to

apply a policy in a consistent and fair manner would be tantamount to discrimination.⁴²

Finally, imposing reasonable penalties for rule infractions is crucial to effective enforcement. For the most part, what punishment will result from violations of patron policies is discretionary on the part of library decision makers. The hallmark of a reasonable penalty is a proportional response. Factors to consider in determining an appropriate penalty for violation of patron rules include: seriousness of the wrongdoing, past infractions or pattern of misbehavior, and the value of progressive discipline in a given situation.

Agreeing on and drafting patron policies are many times the simpler tasks in managing patron behavior in a public library. Library administrators must then actually implement and uphold the policies on a daily basis. To be effective, policies must be clearly communicated to both patrons and library workers, and evenhandedness in enforcement and imposition of reasonable penalties add legitimacy to the process of managing conduct. Employing these measures will not necessarily ensure that every difficult situation is resolved smoothly; however, attention to these details will go a long way in achieving the goals that underlie a public library's patron policies.

⁴² Lee Ann Torrns, *Law and Libraries* (Westport, CT: Libraries Unlimited, 2004), 240.

Conclusion

Policies governing patron conduct and presentation are necessary to ensure the effective delivery of service and full access to facilities. In drafting and reviewing patron policies, library governing bodies must be mindful of legal constraints, particularly the First and Fourteenth Amendments. In daily implementation of such policies library workers must strive to attain openness and fairness through communication, deliberation, and response.

There is a significant government interest in maintaining a library environment that is conducive to all users' exercise of their constitutionally protected right to receive information. Thus, public libraries are free to enact policies sufficient to maintain a safe and healthy environment such as prohibitions of inappropriate behavior and offensive appearance or hygiene. In doing so, librarians should utilize the expertise of local social service agencies, advocacy groups, mental health professionals, law enforcement officials, and other community resources to develop community strategies for addressing the needs of a diverse population.