

Writing a Library Behavior Code

Key Resources

Mary Minow, J.D., A.M.L.S.

LibraryLaw.com

December 10, 2009

Library policies and the law

- **F**irst Amendment (make sure speech restrictions are content-neutral)
- **E**qual enforcement
- **N**otice
- **D**ue Process (offer appeals)

Key Resources

The key case that is cited heavily by other cases is *Kreimer*. It is instructive to look at the evolution of the policy that was finally upheld by the 3d Appellate Circuit.

Kreimer v. Bureau of Police, 958 F.2d 1242 (3d Cir. N.J. 1992).

Homeless man was expelled from the library for violating patron conduct rules. He sued the library, claiming the library rules violated the First Amendment, Due Process and Equal Protection under the U.S. Constitution and similar provisions in the New Jersey Constitution. The lower court ruled against the library's policy, sending tremors throughout the library world. It 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 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. A "reasonable" standard gives great deference to the library to make its own rules, in keeping with the library's mission. The court applied a tougher "intermediate" standard to rule #9 on hygiene, but still found the rule to be within the library's discretion to make. The library used the objective legal "nuisance" standard in its rule. All of the challenged rules were upheld.

Joint Free Public Library of Morristown and Morris Township Rules (1992)

It is of more than passing interest to *compare the rules upheld by the court, with an earlier version that was amended in consultation with the ACLU*. Note the problematic portions are ~~crossed out~~ and newer portions are **added in bold print**.

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 [**added: with the intent to annoy that person**], by following another person through the building [**added: with the intent to annoy that person**], by playing ~~walkmans or other~~ audio equipment so that others can hear it, by singing or talking to [**added: others or in monologues,**] ~~oneself or by other behavior~~ [**added: behaving in a manner**] which ~~may reasonably~~ [**added: can be expected to disturb**] ~~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.~~

He [**added: 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, 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~~ [**added: shall**] be denied the privilege of access to the Library by the Library Board of Trustees, on recommendation of the Library Director. [**added: Any patron whose privileges have been denied, may have the decision reviewed by the Board of Trustees.**]

Other cases (reverse chronological order)

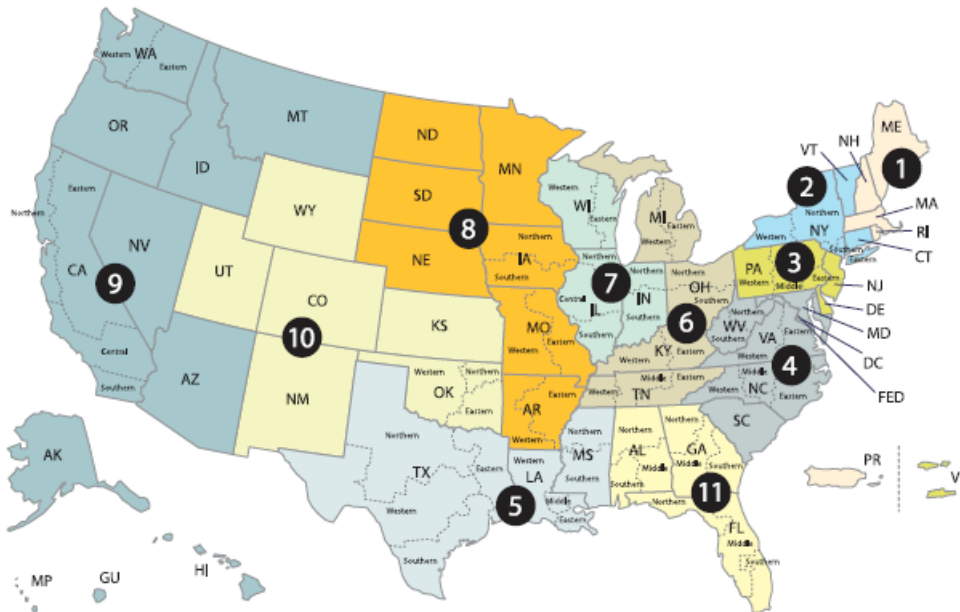
U.S. Supreme Court

City of Chicago v. Morales, 527 U.S. 41, 119 S. Ct. 1849, 1999 U.S. LEXIS 4005 (1999). Struck down as unconstitutional a Chicago "gang congregation" ordinance that prohibited loitering together in any public place by two or more people, of whom at least one was a "criminal street gang member." "Loitering" was defined as remaining in any one place with no apparent purpose, (1) a police officer who observed a person whom the officer reasonably believed to be a criminal street gang member loitering in a public place with one or more persons was required to order all of the persons to disperse, and (2) any person, regardless of whether the person was a gang member, who disobeyed such a dispersal order was guilty of violating the ordinance. The Court ruled that the ordinance violated the Due Process clause of the Fourteenth Amendment and did not provide adequate notice of the proscribed conduct.

Brown v. Louisiana, 383 U.S. 131 (1966). Struck down breach of the peace law used to eject and convict "five young Negro males" who conducted a peaceful and orderly protest demonstration for civil rights in the Audubon Regional Library (LA). The branch assistant met the men "between the tables" and asked if she "could help." After checking the card catalog and telling Brown that the branch did not have the book and that she could request it be sent to the blue bookmobile, she asked the men to leave. The Supreme Court ruled that this was a violation of the First and Fourteenth Amendments guaranteed freedom of speech and assembly, and freedom to petition the Government for a redress of grievances. The Constitution of the State of Louisiana reiterated these guarantees.

"A State or its instrumentality may, of course, regulate the use of its libraries or other public facilities. But it must do so in a reasonable and nondiscriminatory manner, equally applicable to all and administered with equality to all. It may not do so as to some and not as to all . . . it may not invoke regulations as to use-whether they are ad hoc or general-as a pretext for pursuing those engaged in lawful, constitutionally protected exercise of their fundamental rights." *Brown v. State of La.*, 383 U.S. 131, 143 (1966).

Geographic Boundaries of United States Courts of Appeals and United States District Courts



<http://www.uscourts.gov/images/CircuitMap.pdf>

Federal and State Appellate Cases

Breytman v New York Pub. Library, 2008 U.S. App. LEXIS 22499 (Oct. 16, 2008). Court ruled against patron who made First Amendment and Equal Protection claims when the library did not allow him to plug his laptop into an electrical outlet. No evidence suggested patron was victim of discrimination on the basis of race or ethnic origin. Further, the New York Public Library is not a government agency, but a private organization.

Hill v. Derrick, 2007 U.S. App. LEXIS 17125 (3d Cir. Pa., July 17, 2007). Court ruled against patron who claimed First Amendment and Due Process violations by the library after it banished him for hitting a teenager. Hill admitted that he hit the teen, causing the teen to jerk backwards. The library's Rules of Conduct prohibited administering "corporal punishment or physically abusing anyone on library property." The Court ruled that this was reasonable and did not directly impact Hill's First Amendment rights.

Patron said he was singled out by biased librarians and banished from the library on the basis of an arbitrary decision grounded on unwritten rules. He admitted that the librarian told him of the library's zero-tolerance policy for corporal punishment. The Court found that the library gave sufficient due process by providing oral notice of the library's corporal

This material has been adapted for the Infopeople Project [infopeople.org], and has been supported in part by the U.S. Institute of Museum and Library Services under the provisions of the Library Services and Technology Act, administered in California by the State Librarian. This material is licensed under a Creative Commons 3.0 Share & Share-Alike license. Use of this material should credit the author and funding source.

punishment policy and an opportunity for the patron to be heard. "Hill's interest in using the Muncy Public Library is not so great as to warrant more process than the opportunity to be heard before being informed that he needed to leave the library after striking a minor patron in the face in violation of the library's corporal punishment and physical abuse policy." Hill's argument that he was not provided a warning, said the Court, was misplaced. The library rule that provides patrons with an initial warning is Rule # 1 addressing disruptive patrons. Although Hill's conduct in this incident would likely fall under this rule as well, he clearly was administering corporal punishment or physically abusing the minor when he hit him. This conduct fell under Rule # 16, which does not provide an initial warning.

The lower court noted that Hill could still use another area library. "Although that may not be as convenient for Hill, on July 21, 2003, he chose to hit a minor patron in the face and lost the right to use the Muncy Public Library. Unfortunately, Hill admitted after the fact that he would hit the minor harder if he had to do it again. Hopefully, he still does not feel that way today, but we remind him that it was his misconduct that led to his expulsion from the library and not the defendants' conduct."

Marchant v American Equity Insurance, 2006 U.S. App. LEXIS 22021 (5th Cir., August 28, 2006). Library patron claimed he was wrongfully arrested and suffered physical and emotional injuries after security guards falsely alerted the El Paso Police Department that he was carrying a gun at the public library. Although he made various federal constitutional claims, he filed his complaint more than two years after the incident, missing the statute of limitations.

Neinast v. Board of Trustees of the Columbus Metro. Library (2006), 165 Ohio App. 3d 211, *appeal denied*, 109 Ohio St. 3d 1506, 849 N.E.2d 1027. Library board's code of conduct prohibited bare feet in the library. The court found that the board had the authority to issue and enforce such rules that directly concerned the operation of the library that related to documented hazards within the library. *See also Neinast v. Board of Trustees of the Columbus Metro (OH). Library*, 346 F.3d 585 (6th Cir. 2003); *cert. den.* 541 U.S. 990 (2004). Library rule that patrons must wear shoes was reasonable because it provided a rational means to further the legitimate government interests of protecting public health and safety and protecting the library's economic well-being.

Glotzbach v. Indiana, 783 N.E.2d 1121; 2003 Ind. App. LEXIS 302 (2003). Government did not have to prove that children under age 16 actually witnessed public indecency act in library. Such a requirement would bring be absurd in the aim to protect children.

Minnesota v. Sihler, 2002 Minn. App. LEXIS 376 (2002). Children saw a man in the 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 arrested the patron.

This material has been adapted for the Infopeople Project [infopeople.org], and has been supported in part by the U.S. Institute of Museum and Library Services under the provisions of the Library Services and Technology Act, administered in California by the State Librarian. This material is licensed under a Creative Commons 3.0 Share & Share-Alike license. Use of this material should credit the author and funding source.

The patron was 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 the 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 the library parking lot with "an extreme amount of flies on the trunk" turned out to have decomposing body inside. Defendants convicted of murder.

Tyson v. Texas, 2000 Tex. App. LEXIS 6095 (Tex. App. Dallas Sept. 6, 2000). Eleven year old girl at library computer saw patron exposing himself and masturbating. The girl left and went to book area, where she again saw same patron masturbating. The librarian wrote down his license plate number. 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.

People v. Lawton, 48 Cal. App. 4th Supp. 11, 56 Cal. Rptr. 2d 521, 1996 Cal. App. LEXIS 1130 (Cal. App. Dep't Super. Ct. 1996). Library patron convicted of violating state penal code which prohibited unauthorized access to a computer system (hacking). 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>

People v. Taylor, 164 Misc. 2d 868 (N.Y. App. Term 1995) New Rochelle Public Library staff called the police who arrested patron for trespass under New York law. The patron was convicted of "knowingly" entering or remaining unlawfully on the premises. The patron had violated the library's ban on games and refused to stop playing chess. The court cited the *Kreimer* decision that upheld a rule requiring library patrons not engaged in reading, Studying or using library materials to leave. In this case, the patron claimed that he was merely using 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's conviction was upheld on appeal.

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 prohibit lingering about schools and public places with the purpose of committing a

This material has been adapted for the Infopeople Project [infopeople.org], and has been supported in part by the U.S. Institute of Museum and Library Services under the provisions of the Library Services and Technology Act, administered in California by the State Librarian. This material is licensed under a Creative Commons 3.0 Share & Share-Alike license. Use of this material should credit the author and funding source.

criminal act. The court held that the boy was a nondisturbing trespasser who voluntarily left the premises and did not violate §653g.

Federal and State Lower Courts (for updates on federal cases, see <http://news.justia.com/cases/library>)

Mou v City of San Jose, 2009 U.S. Dist. LEXIS 91462. (N.D. Calif., Sept. 29, 2009). Library patron claimed municipal liability for discrimination and violation of First Amendment rights. The court found no evidence of municipal liability.

Hunt v. Wise, 2009 U.S. Dist. LEXIS 61586 (M.D. Fla., July 17, 2009). Law Library patron used a personal portable copy/fax machine and was told by staff to stop using it. Patron made public records request to the Library Director asking for written verification of policy, and was told there was no formal rule, but that the Library did not permit it because it relied on money received from copiers for its budget. The Law Library Board held a public meeting on personal photocopying policy and the Assistant County Attorney advised that patrons were permitted, by law, to use their own devices. The Library then permitted personal copiers.

In addition, the patron claimed that security told him to leave. He refused and was arrested for trespass. He claimed a violation of his First Amendment rights. The patron argued that the Library Board had an ad hoc policy to permanently ban him, but the Court found no violation, in that the patron was not ordered to stay away from the Library.

Tronsen v. Toledo-Lucas County Public Library, 2008 U.S. Dist. LEXIS 20359 (N.D. Ohio, June 30, 2008. Unpublished.) A library patron's suspension for six months from accessing the library was reasonable when plaintiff disrupted a female library patron's right to quiet enjoyment by handing her an offensive note. Note was not part of a "public forum" protecting free speech.

Tajalle v Seattle, 2008 U.S. Dist. LEXIS 17591 (W.D. Wash., March 7, 2008). Disabled patron claimed violation of First Amendment when he was allegedly ejected from library after voicing support for a homeless man who was being ejected. The Court allowed First Amendment claim to proceed. Fourth Amendment claim denied because although patron claimed that security guard made him go through revolving door (difficult for him due to his disability), the Court found no evidence that he was seized by force. Case dismissed August 7, 2008 after settlement.

Williams v. Grand Rapids Public Library, 2006 U.S. Dist. LEXIS 82800 (W.D. Mich., Nov. 9, 2007.) Patron claimed he was viewing a partially nude woman on his own laptop when a

This material has been adapted for the Infopeople Project [infopeople.org], and has been supported in part by the U.S. Institute of Museum and Library Services under the provisions of the Library Services and Technology Act, administered in California by the State Librarian. This material is licensed under a Creative Commons 3.0 Share & Share-Alike license. Use of this material should credit the author and funding source.

librarian told him he'd have to stop. Library won because there was no evidence that librarian was following library policy, which merely prohibited obscenity, not nudity.

Doyle v Clark County Public Library, 2007 U.S. Dist. LEXIS 73490 (S.D. Ohio, Oct. 2, 2007.) Patron barred for two years for harassing a female patron. Patron told he had thirty days to appeal to Director. Ohio law permits a court appeal after a determination by a library director or board of trustees. [Filing 65](#) gives lengthy explanation of due process, stating that the patron was not entitled to a pre-deprivation hearing because the public interest in immediate intervention to prevent criminal behavior toward another patron (harassment) outweighed the patron's interest in a hearing. Post-deprivation, the patron was given immediate notice of the charge against him, an opportunity to see all the evidence, an opportunity for a hearing with the ultimate decision maker and the right to be represented by counsel at that hearing. Finally, he had the right to appeal to the Common Pleas Court from an adverse decision. Patron claimed he was not given right to confront his accusers or a right to a jury. This was not a criminal prosecution, and although Ohio law does provide a right to a jury, it does not apply to every situation where a person is denied a public benefit.

Grigsby v. City of Oakland, 2002 U.S. Dist. LEXIS 10621 (N.D. Cal. June 10, 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 had been given notice of the libraries rules, which made his Due Process claim untenable. 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.

Armstrong v. District of Columbia Public Library, 154 F. Supp. 2d 67 (D.D.C. 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 state law, 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

This material has been adapted for the Infopeople Project [infopeople.org], and has been supported in part by the U.S. Institute of Museum and Library Services under the provisions of the Library Services and Technology Act, administered in California by the State Librarian. This material is licensed under a Creative Commons 3.0 Share & Share-Alike license. Use of this material should credit the author and funding source.

patrons or to meet constitutional standards prohibiting arbitrary enforcement of government regulations. The library's rules were too vague for the patron to understand library policy.

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.

Wayfield v. Town of Tisbury, 925 F. Supp. 880, 1996 U.S. Dist. LEXIS 7146 (D. Mass. 1996). <http://www.ahcuah.com/lawsuit/federal/wayfield1.htm> Patron claimed that the Vineyard Haven (MA) Public Library deprived him of Due Process when his library privileges were suspended without a hearing. In 1990, Wayfield asked the library to add several books and periodicals on historical revisionism. Historical revisionism claims that most reports of the Holocaust are false or exaggerated. Patron claimed that later that day the director questioned him about a missing menorah and asked to inspect his shoulder bag. He refused. He claimed that she screamed at him, assaulted him and tried to grab his shoulder bag. He left the library and a few days later received a certified letter from the library "as a result of the disruptive incident that occurred on Saturday, December 15, 1990, in the Vineyard Haven Public Library and the disappearance of the menorah, your presence on the property or in the building will no longer be permitted." A few days later he got another letter from the library trustees, saying that because of the "disruptive incident which occurred on Saturday afternoon, December 15, 1990," his library privileges were suspended until April 2, 1991. Wayfield returned to the library in January 1991, and was charged with trespass. These charges were eventually dropped. The library did not have a written or policy for suspension of library privileges for circumstances like those presented in this case. The

This material has been adapted for the Infopeople Project [infopeople.org], and has been supported in part by the U.S. Institute of Museum and Library Services under the provisions of the Library Services and Technology Act, administered in California by the State Librarian. This material is licensed under a Creative Commons 3.0 Share & Share-Alike license. Use of this material should credit the author and funding source.

Court said the library should have provided a “predeprivation process (whether in the form of a warning letter and an opportunity to respond, or a hearing before the trustees, or in some other manner).” The Court did not accept the library’s argument that the "emergency" nature of the situation required such rapid action, and that only postdeprivation process was required. It would not be “particularly onerous” to enact prophylactic measures that would protect the due process rights of its patrons. The library could send a letter to patrons who were threatened with potential suspensions, notifying them of the action pending against them and inviting them to argue their cases. The court ruled in favor of the patron.

Brinkmeier v. Freeport, 1993 U.S. Dist. LEXIS 9255 (N.D. Ill. July 2, 1993). Patron won lawsuit when a public library tried to enforce an unwritten library policy on harassment. There is a First Amendment right to access the public library. A reasonableness standard applies to behavior policies. Even though it could be reasonable to have a nonharassment policy, 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 or reasonable guidelines on the proscribed behavior.