

Legal Q and A:

Problem Patrons in the Public Library: Can Anything Be Done?

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By Kim Hallquist

Libraries differ from many other public buildings in that one goes there not because they must but because they want to. When citizens go to various other public buildings to register a car, pay property taxes, vote or attend a public meeting, the activities conducted in those buildings are highly regulated. In contrast, people in libraries are free to read books, magazines and newspapers, conduct research on just about any topic, check their personal email and search the Web-as they see fit. Because the activities are so varied, library patrons must be given a fair amount of latitude to allow them to decide how best to utilize library resources; it's not as easy as setting up chairs and calling a meeting to order at a set time. While flexibility is essential if libraries are to be useful to the diverse population that they serve, some patrons will likely engage in behavior that creates headaches for the staff and infringes on the ability of other patrons to use the library.

What follows is a brief discussion of the steps libraries, through policies adopted by the library trustees and enforced by the librarian, may take to ensure that the library is a welcoming place for all citizens, where the actions of one individual do not unduly interfere with use of the library by others.

Q. Who is in charge of what goes on at the library?

A. The library trustees, as the governing board of the public library, have "the entire custody and management of the public library." RSA 202-A:6. The library trustees "adopt by-laws, rules and regulations for its own transaction of business and for the government of the library." RSA 202-A:11, I. The library trustees appoint a librarian who serves as the administrative officer of the public library. RSA 202-A:11, V; RSA 202-A:16, I. Thus, the library trustees adopt the rules and regulations for the library, and the librarian administers them.

Q. What is meant by "problem patrons"?

A. Problem patrons are those visitors to the library who behave in such a way as to unreasonably interfere with the use of the library by others or who interfere with the work of the library staff. In our society, we must all put up with a certain amount of inconvenience from our fellow citizens. However, here we are referring to those patrons whose behavior seriously impacts the ability of other library patrons to enjoy and use the library. Examples include the angry patron who is shouting because she is upset at the overdue book fine she must pay; the table of boisterous, giggling teenagers; and unattended children running through the stacks. Increasingly, some patrons are seen as a problem not because of any inappropriate behaviors, as previously described, but by their very presence in the library. For example, the homeless who use the library as a safe and warm place to spend the day, its public restrooms to bathe in and couches and floors to sleep on, with all of their possessions piled next to them. People who are homeless often look dirty and smell bad because they do not have access to showers or the ability to regularly wash their clothes. To even the most caring and

well-meaning of library patrons and staff, sharing an area of the library with a person who hasn't bathed or washed his clothes in weeks or months can be a challenge.

Q. Can't the police be called to make problem patrons leave?

A. Remember that public libraries are just that-public places open to the public. Much of what irritates or annoys other patrons usually does not rise to the level of criminal activity. Imagine the reaction of the parent when the police are called on their noisy teenager or disruptive child. That is not to say that the police should never be called, and maybe sooner rather than later, depending on the situation. However, calling the police may not be the most practical response-or even the best response-given that police departments, like all public services, are stretched pretty thin already.

Moreover, library staff who summarily require patrons to leave the library because of complaints or for what staff members believe to be inappropriate run the risk that the ejected patron will sue the library for a violation of civil rights. In *Wayfield v. Town of Tisbury*, 925 F.Supp. 880 (D. Mass. 1996), Mr. Wayfield, a library patron, sued the Vineyard Haven Public Library, claiming that his constitutionally-protected due process rights were violated when his library privileges were suspended without a hearing. The library claimed that Mr. Wayfield caused a "disruptive incident" with the librarian and also that he stole a menorah from the library. The library suspended Mr. Wayfield's library privileges for nearly four months. He was offered no appeal process for the suspension. The library had no established policy for suspension of library privileges in the sorts of circumstances that were at issue in this case. As a result, the Court found that the library did not afford the patron adequate due process; in fact, it found that "they afforded him no due process at all." *Id.* at 889.

When a decision is made that a patron must leave the library, either by request of staff or by involving the police, that decision should be based on well crafted library policies that address the circumstances that will lead to suspension of one's library privileges.

Q. Have there been any court cases challenging library policies by people claiming they have the right to be in the library, regardless of any policies?

A. Yes. The most well known case addressing the exclusion of people from a library is from the U.S. Court of Appeals for the Third Circuit, *Kreimer v. Bureau of Police for Morristown*, 958 F.2d 1242 (3d Cir. 1992). The Third Circuit covers New Jersey and Pennsylvania and, as such, its decisions are not binding on New Hampshire federal courts. (To date, no federal or state court cases in New Hampshire have considered the issue of the constitutionality of library policies.)

Mr. Kreimer was a homeless man who was forced to leave the library because he violated established library policies on acceptable behaviors (his unacceptable behaviors included staring at and following patrons, and talking loudly to himself and others) and because his odor was often so offensive that it prevented the library patrons from using certain areas of the library and prevented library employees from performing their jobs. *Id.* at 1247.

Mr. Kreimer filed suit in federal court claiming his First Amendment right "to receive information and ideas" was violated as a result of the library's rules. While the Court agreed that receiving information is a First Amendment right, it found the library's hygiene and appearance and loitering policies constitutional because public libraries have a significant interest in ensuring that all patrons can use facilities to the maximum extent possible during its regularly scheduled hours. *Id.* at 1264. Moreover, the Court found that the rules promoted the library's interest in maintaining its facilities in a sanitary and attractive condition. *Id.*

Q. What features should a problem patron library policy include to survive a court challenge?

A. The library policies upheld in *Kreimer* contained all of the features that follow and, as such, provide guidance on what library policies should look like. Library policies must be in writing and posted so that all library patrons and staff know what is expected and what behavior will lead to expulsion from the library.

The policies must be clear and unambiguous, again, so that all who are subject to their terms understand the rules. The policies must be equally applied and enforced, and not subject to interpretation and arbitrary enforcement by the staff. Finally, policies should include a process for appeal (due process) of decisions that result in the deprivation of a patron's privileges to use the library.

Q. Can policies include a total prohibition against guns?

A. This is a complicated question because it must be considered under the facts of the specific situation. Generally speaking, if the patron is in lawful possession of the gun and is not using it in an unlawful manner, then the patron should be allowed to remain in the library with the gun.

While the library trustees do have "the entire custody and management of the public library" and can "adopt by-laws, rules and regulations for its own transaction of business and for the government of the library," this authority is subject to state laws. With regard to guns, RSA 159:26 provides that "[e]xcept as otherwise specifically provided by statute, no ordinance or regulation of a political subdivision may regulate the sale, purchase, ownership, use, possession ... or other matter pertaining to firearms," The public library, as established by a vote of the town in which it is located, is an agency of the political subdivision and thus cannot regulate the possession of firearms within the library. However, this is not to say that a patron who is using a gun to intimidate or threaten other patrons or staff must be ignored. Such a patron will likely be in violation of the criminal code as well as a library policy.

It is possible that other patrons may be disturbed at the mere sight of a weapon and, on those grounds alone, demand that the person be ejected. Caution should be used when ejecting a patron solely on the request of others when the patron in question is not breaking any library policies or state laws regarding gun possession. Of course, library staff who reasonably believe that a patron in possession of a gun is behaving in a threatening or erratic manner should contact their local police for assistance.

Librarians are dedicated public servants with a strong desire to make libraries open and available to all citizens. They are often called upon to act as social workers, assisting: latch-key kids who have been told to stay at the library until Mom or Dad can come to get them; people with disabilities who have no one to assist them; or homeless patrons in need of various services. These efforts will be greatly enhanced by adopting written library policies that inform patrons and library staff alike of what the rules for use of the library will be. Such policies will ensure that, when patrons do behave in manners that make it difficult or impossible for others to enjoy the library, the offending patron can be asked to leave and the action will be upheld if challenged.