Trustees and the Bill of Rights: Library Lawsuits and Legislation

Attendees will survey the ALA Library Bill of Rights and explore the Trustees’ and Directors’ role in enforcement of its principles. We will consider several lawsuits and legislation promoted in recent years and consider whether and how they violate the Library Bill of Rights.

Presentation Learning Goals

1. Learn the principles of the ALA Library Bill of Rights; how and why trustees and library directors should enforce them and how a challenge to them arise in practice, in lawsuits and in legislation.

2. Evaluate situations that may give rise to opposition to the principles stated in the Library Bill of Rights and anticipate how challenges or violations may occur.

3. Apply knowledge to adopt policies and procedures that avoid lawsuits and challenges to the principles established in the Bill of Rights and to advocate for libraries in their communities.
I. **INTRODUCTION**: The true nature of libraries.

A. Libraries have always been locations to store, retrieve and disseminate ideas and information. That information and those ideas are vital in a free society.

“The way to get good ideas is to get lots of ideas, and throw the bad ones away.”  
_Linus Pauling_

“A pile of rocks ceases to be rock when somebody contemplates it with the idea of a cathedral in mind.”  
_Antoine de Saint-Exupery_

“An original idea. That can’t be too hard. The library must be full of them.”  
_Stephen Fry_

“The ideas I stand for are not mine. I borrowed them from Socrates. I swiped them from Chesterfield. I stole them from Jesus. And I put them in a book. If you don’t like their rules, whose would you use?”  
_Dale Carnegie_

“One withstands the invasion of armies; one does not withstand the invasion of ideas.”  
_Victor Hugo (the History of Crime 1852)_

“Go on then in doing with your pen what in other times was done with the sword: show that reformation is more practicable by operating on the mind than on the body of man, and be assured that it has not a more sincere votary nor you a more ardent well-wisher than Y[our]s.”  
_Thomas Jefferson to Thomas Paine_  
_June 19, 1792._

“You have enemies? Why, it is the story of every man who has done a great deed or created a new idea.”  
_Victor Hugo (Villemain)_

B. Freedom to speak ideas, freedom to see or hear speech, and freedom to disagree with speech and ideas are essential for a free and democratic society to survive. Certain rules apply, if speech and the dissemination of ideas are curtailed by governmental action.

1. Amendment No. I to the United States Constitution:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble and to petition the government for a redress of grievances.

2. Constitution of the State of Colorado: Article II, Sec. 10
No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty ....

3. The courts have determined that “the right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech, press, and political freedom.” Board of Education v. Pico, 457 U.S. 853 (1982); John Doe v. City of Albuquerque, 667 F.3d 1111 (10th Cir. 2012).

C. The American Library Association Bill of Rights

1. The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services:

   a. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.

   b. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed because of partisan or doctrinal disapproval.

   c. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.

   d. Libraries should cooperate with all persons and groups concerned with resisting abridgement of free expression and free access to ideas.

   e. A person’s right to use a library should not be denied or abridged because of origin, age, background, or views.

   f. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.

**DISCUSSION TOPIC I:** Have you encountered any attempts/requests for your libraries that run contrary to these provisions? Are you familiar with any recent court cases or legislation that implicated the provisions of the ALA Bill of Rights?
II. Case No. 1.

1. Pornography is Not Education v. Colorado Library Consortium
   a. Challenge requesting the removal of the EBSCO database;
   b. Plaintiffs alleged violations of Colorado Consumer Protection Act through
      CLiC’s distribution of the EBSCO database to the libraries it serves.
      i. All claims were tortious or could sound in tort.
         1. According to Black’s Law Dictionary, a tort is defined as “A
            civil wrong, other than a breach of contract, for which a
            remedy may be obtained, usually in the form of damages; a
            breach of duty that the law imposes on persons who stand in
            particular relation to one another.”
      i. “The state and its political subdivisions provide essential public
         services and functions…unlimited liability could disrupt or make
         prohibitively expensive the provision of such essential public services
         and functions…the taxpayers would ultimately bear the fiscal burdens
         of unlimited liability and limitations on the liability of public entities
         and public employees are necessary in order to protect the taxpayer
         against excessive fiscal burdens. C.R.S. § 24-90-102.
      ii. Colorado governmental immunity protects against all actions “which
          lie in tort or could lie in tort” regardless of whether that may be the
          type of action or the form of relief chosen by the claimant.
         1. Of course, there are always exceptions to every rule….
            a. The Governmental Immunity Act also places caps on
               the amount of money a public entity will be required to
               pay, in the case of waiver, exception, etc.
      iii. Legal counsel argued that CLiC was a public entity and that the claims
           brought against CLiC were all tort claims. In light of this argument,
           the Plaintiffs agreed to dismiss the case against CLiC.
   2. The Legislation.
a. After the unsuccessful litigation in District Court, members of the
Pornography is Not Education group subsequently lobbied for a bill to change
the current filtering requirements for library databases.

b. The proposed bill had very little support and did not pass committee.

**DISCUSSION TOPIC II**: How does this case implicate the American Library Association
Library Bill of Rights? Do you think government immunity is a good policy?

### III. Case No. 2


   a. The 10th Circuit Federal Court upheld a District court ruling striking down a ban
   of all registered sex offenders from the Albuquerque public library stating:

   ... although the court emphasized that it was not recognizing an independent
   fundamental right of access to a public library, it concluded that the ban, “as
currently written and in its present form,” was unconstitutional as a matter of
law... because it violated the “fundamental right to receive information under the
First Amendment.”

**DISCUSSION TOPIC III**: How does this case implicate the American Library Association
Library Bill of Rights? Is it as clear as Case No. 1?

### IV. Case No. 3


   a. Challenge based on the First Amendment to the Children’s Internet Protection
   Act, which mandates that a public library may not receive federal assistance (E-
   Rate/LSTA programs) to provide internet access unless it installs software to
   block images that constitute obscenity or child pornography.

   b. Filters from blocked sites may be removed upon patron request (this was likely
   the deciding factor for some of the Justices).

   c. The Children’s Internet Protection Act was upheld by the U.S Supreme Court
   because “Congress has wide latitude to attach conditions to the receipt of federal
   assistance in order to further its policy objectives.”

   d. Although no violation of the First Amendment was found, the Supreme Court
   acknowledged that:
“To fulfill their traditional missions, public libraries must have broad discretion to decide what material to provide their patrons. Although they seek to provide a wide array of information, their goal has never been to provide “universal coverage. Instead they seek to provide materials that would be of the greatest direct benefit or interest to the Community. To this end, libraries collect only those materials deemed to have “requisite and appropriate quality.”

**DISCUSSION TOPIC IV:** How does the case implicate the American Library Association Library Bill of Rights? Do you agree with the U.S. Supreme Court’s discussion regarding selection of materials?

**CAVEAT**

Information provided herein is for discussion purposes only. It is not intended to be legal advice on any specific topic.

Please contact our office if you would like to have further discussions of issues affecting libraries. We would be grateful for the opportunity to talk with you or make presentations to your staff or governing boards on these or other topics.

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