

WHO, WHAT, WHERE AND WHEN OF PUBLIC LIBRARY LAW

A WALK THROUGH A YEAR OR TWO OF LEGAL CASES
RELATING TO PUBLIC LIBRARIES

WESTCHESTER LIBRARY SYSTEM
TRUSTEE INSTITUTE

PLAIN SPEAKING ABOUT THE LAW THAT APPLIES TO PUBLIC
LIBRARIES

JOHN C. HART MEMORIAL LIBRARY
SHRUB OAK, NEW YORK
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JAMES K. RILEY, ESQ.
O'CONNELL & RILEY
144 East Central Avenue
Pearl River, New York 10965
(845) 735-5050
(845) 620-0722 (facsimile)
jriley@orlawpro.com

Presentation Materials

I

TORT AND PERSONAL INJURY MATTERS AND MISCELLANEOUS CLAIMS

A

L.C. - The Library Cat, Escondido, CA Case

A man seeking \$1.5 million in damages has filed a 40 page legal complaint against the Escondido, California Public Library asserting that his dog, a 50 pound Lab mix, was improperly attacked by the library's feline mascot, known as L.C. (Library Cat), most outrageous of claims/anecdotal only (certainly not a "plain vanilla" or "garden variety" suit).

B

Geraldine Beck v. Bethpage Union Free School District, Supreme Court, Appellate Division, Second Department, 3/22/2011, 82 A.D. 3D 1026 (2011)

The Plaintiff Ms. Beck claims to have been injured when she tripped and fell over the wheel of a book cart which had been placed perpendicular to a bookshelf at the end of an aisle in the media room of the Bethpage Public Library. Both the library and the school district were sued. Defense by library claimed that the cart was "open and notorious"; she should have seen it. Court on Summary Judgment Motion to Dismiss found that the library failed to

meet its burden to establish, as a matter of law, that it had maintained the library in a reasonably safe condition. The issue for jury determination was whether the condition was a "trap" or "traplike" or, in the alternative, whether Geraldine should have seen it as she walked down the aisle. Case will go to the trial on those issues.

C.

Valerese Smith v. Belleville Public Library

A woman has sued the Belleville, Wisconsin Public Library alleging that she tripped on computer wires during a visit to her local public library on January 10, 2012. Lawsuit claims negligence and carelessness on the part of the library personnel which allegedly created a dangerous condition by constructing an improperly designed computer station and allowing this dangerous condition to continue in place. The Madison-St. Clair Record.

D.

**BOOK DROP - BRUTAL ASSAULT OF PATRON WHO ATTEMPTED TO DROP OFF
BOOKS AFTER HOURS: BLOOMINGDALE REGIONAL PUBLIC LIBRARY
TAMPA, FLORIDA**

A young, 18 year old woman who was beaten and raped when she pulled up to a book drop at the Bloomingdale Regional Public

Library near Tampa, Florida. She suffered real, grievous permanent injuries; she cannot see, speak, walk or function on her own. The 20 year old male assailant was sentenced to 65 years jail time. She was on cell phone at the time of the incident and told her friend she was getting out to drop off books; friend heard the initial assault. Suit primarily against design architect and building contractor. Location of book drop was hidden from public view. BEWARE: Your book drop should not be aesthetically pleasing during daylight hours (book drop framed by bushes or portion of building, etc.) and a dangerous trap during non-daylight hours.

II

E-READERS AND ACCESSIBILITY FOR BLIND - NOOK, KINDLES, I-PADS AND SACRAMENTO PUBLIC LIBRARY

Issue: The United States Department of Justice and the National Federation of the Blind ("NFB") charged that the Sacramento Public Library Authority (28 branches) started a pilot program with private partner (Barnes and Noble) using Barnes and Noble's Nook. Each of the 28 branches received at least one Nook pre-loaded with 20 books in all genres. Nook is not an accessible device for a person who has blindness as a disability. Claim was that this pilot program violated the Americans with Disability Act

("ADA"). The Department of Justice and the NFB allege that the library violated the ADA by using the inaccessible (at least as to blind individuals) Barnes and Noble's Nook electronic reader ("E-Reader") devices in a patron lending program.

See published announcement of settlement by Library as announced by Department of Justice: Under the Settlement, the Library will acquire at least 18 E-Readers that are accessible to blind persons or persons with disabilities (I-Pad or Kindle 3 only).

On this point, see also: Mainstream access to E-Books - - What Works, What Doesn't, and What is Still Unclear by Amy Mason, National Federation of the Blind, January, 2012.

III

**RECENT DECISIONS ON VARIOUS TYPES OF LIBRARY ENTITIES
THE COURTS MAY NOT KNOW WHICH TYPE OF LIBRARY YOU ARE - - SCHOOL
DISTRICT PUBLIC LIBRARY, SPECIAL DISTRICT LIBRARY, FREE
ASSOCIATION LIBRARY, MUNICIPAL LIBRARY, ETC.**

A.

Julie Grasso v. Schenectady County Public Library, 30 A.D. 3d 814 (2006), issue of who owns/operates library.

Sexual Harassment Claims against co-worker and supervisor;

Notice of Claim for municipalities - - did 90 day-notice to sue requirement apply to this library. Library was determined to be an arm or component of the County of Schenectady, a municipal entity and thus the 90-day notice requirement does apply.

B.

Prince E. Gilliard v. New York Public Library System, United States District Court, Southern District, 1984.

Issue whether New York Public Library is a governmental public library. In a parallel Public Employment Relations Board (P.E.R.B.) case, New York Court of Appeals NYPL determined is not a governmental or public employer. NYPL is not a governmental or municipal entity. **N.Y. Public Library v. P.E.R.B.**, 45 A.D. 2d 271 (1974); AFF'D 37 N.Y. 2d 752, also **C.F. La Marca v. Brooklyn Public Library**, 256 A.D. 954 (1939); **Brooklyn Public Library v. Craig**, 201 A.D. 722 (1922).

Based upon complete review and analysis, court determined that New York Public Library is not a municipal or governmental entity.

C.

Rodriguez v. Brooklyn Public Library ("BPL")

Issues of what are you - or more precisely what type of

library is the Brooklyn Public Library - not a municipal entity, Supreme Court, Kings County, 11/29/2011. Court determined that it is.

The decision contains what appears to be anti-library animus; not uncommon among certain members of public, but not normally put on paper by a sitting court judge.

Issue before Court: Is the Brooklyn Public Library a municipal corporation or a private entity? If so, a claimant would have to file a notice under General Municipal Law within 90 days of an injury/occurrence. This case involved a collision with a library van, a fairly common source of suits against a library. Extensive analysis by court about "status" of BPL. In this case the defendant library is claiming that the library is so closely aligned with the City of New York as to be a governmental entity.

The court ruled in the Brooklyn Public Library case that the "library is not a branch of the city government but a distinct and separate corporation receiving budgetary contribution from the City" and "employees of the City of New York are not employed of the City of New York for purposes of the Taylor Law". BPL is a 501 (c) (3) not for profit - not a form ordinary used by government entity.

The court in the Brooklyn Public Library case, however, goes

"off" on the fact that BPL is paying salaries to an Executive Director and others in excess of \$162,275 including a professional fund raiser (Director of Major and Capital Gifting).

The judge continues, "...why would 'a municipal corporation' have a professional fund raiser who receives more in compensation than every New York State Judge including a Chief Judge of [the Court of Appeals/highest court] of the State of New York? [Judge is now exorcized]. These salaries are not indicative of those usually paid by a 'municipal corporation'. To paraphrase Mel Brook's famous quote, 'It's good to be king!' when he played King Louis XVI prior to the French Revolution in the 1981 satire, History of the World; Fact, 'It's good to be operating a deficit running non-profit receiving 62% of its revenue from financially challenged City of New York'."

IV

COMMUNITY ROOM USE - REQUEST TO USE FOR EDUCATIONAL PROGRAM

ON RELIGIOUS CONTENT

Seaside Public Library near Oregon

A lawsuit was filed by the Florida based Liberty Counsel against Seaside Public Library, a tiny public library near Portland, Oregon. The suit was settled after a federal court judge ruled that the library had violated both Federal and State law by prohibiting the use of the library's meeting room for religious meetings. The library's meeting room policy stated, "Meeting rooms shall not be used... for religious services or proselytizing." The library in effect settled after the Federal District Court Judge

ruled the religious prohibition constitutionally improper or a first amendment violation. The judge also ordered the library to pay legal fees of \$10,500 to the not for profit Liberty Counsel Group.

The original application for use of the library's "meeting room" or "community room" (actually an "area" of Seaside) described the meeting room as an "educational meeting" that included religious content.

V

INTERNET ACCESS - ISSUES OF FILTERING - PORNOGRAPHY

A

Bradburn v. North Central Regional Library District, Supreme Court, State of Washington, 231 P. 3d 166 (2010); Bradburn v. North Central Regional Library District, U.S. District Court, E.D. Washington, April 10, 2012 (federal court dismissed challenge to public library internet filtering based upon grounds previously set forth in the 2010 decision of highest court (Supreme Court) in State of Washington as cited above.

Recent issues have emerged and continue to present on the extent to which a public library may utilize filtering software. This remains a source of great controversy and disputation. To

some considerable extent, positions which the American Library System have historically taken that the internet is an open forum in a public library setting is being challenged.

The Supreme Court of the State of Washington (highest court in the state), has ruled that filtering of internet access is legally proper and appropriate and not violative of the Washington State Constitution. This decision was supported in part by decisions of the United State Supreme Court and individual Federal Constitutional analysis.

In affirming the right of a public library to implement or utilize an internet filtering system (they were using the "Fortiguard WEB Filtering System), the court emphasized the following:

- Public forum analysis is inappropriate in determining whether a public library can constitutionally filter patron access to certain Internet content.
- The Internet access process for public library patrons is a limited public forum only.
- This library had excellent written policies and procedures which supported its actions. [Those policies and procedures deserve study. JR].
- Public libraries may legally exercise judgment and broad

discretion in making accession or collection decisions [isn't this a central, crucial role of a professional librarian? JR]

- A public library has limited resources, whether financial or as to facilities, computer terminals, personnel, etc. (concerning opinion).

The Supreme Court of the State of Washington granted summary judgment in favor of the North Central Regional Library determining that its decision to implement internet filtering was legally proper and not volatile of either the federal or that state's constitution.

The Federal Court of the United States District Court for the Eastern District of Washington State accepted the decision of the Supreme Court of the State of Washington and dismissed the suit brought by certain free speech legal advocacy including the Second Amendment Foundation and the American Civil Liberties Union. [as an aside, it is noteworthy that attorneys from the New York Office of the ACLU participated in this litigation JR]

B.

Hunter V. Salem Public Library Board of Trustees

A Salem Public Library resident, with the assistance of the American Civil Liberties Union, has filed a complaint against the

Salem Public Library because she was unable to access websites pertaining to either North American religions or the Wiccan faith. The local library director, Glenda Wofford, unblocked portions of these sites but much of the information remained inaccessible. Apparently the library director resisted further efforts of the patron to obtain access to these sites. The library was using Netsweeper software which apparently filters the "official" webpage of the Wiccan Church. The Wikipedia entry pertaining to Wicca, astrology.com and the Encyclopedia of Death and Dying (which work is quite neutral on concepts on death and death rituals). This case would appear to be moving in an opposite direction to the Bradburn case, above. American Civil Liberties Union Press Releases, January 3, 2012.