

Trustee Tip: Public Libraries are Public Forums

(A CALTAC Trustee Tip)

Introduction: Trustee Tips are intended to supplement CALTAC's Board Development materials. They may be used to stimulate a more-in-depth discussion of a topic included in Training sessions, or to cover topics pertinent to trustees beyond those included in the training curriculum. Also, as an option available to Board Presidents and Library Directors, a Trustee Tip may be used as a 10 minute topic for stimulation of discussion on a regular Board agenda, or they may be used as handouts at one meeting with an opportunity for comments and questions at the beginning of the next meeting.

This Trustee Tip was written by Mary Minow (May, 2002)

“A Funny Thing Happened on the Way to the Forum”

To Begin this Presentation, assign 5 Cast Members and read through it -- Trustees #1, #2, #3, #4, and a Librarian.

Trustee #1: A funny thing happened to me on the way to the library. I saw one of our patrons, Mad Max the Mouth, on the street corner, a block away from our library. He was on top of an old-fashioned soapbox, and telling passersby that the end of the world was near at hand.

Trustee #2: I'm sure glad he doesn't bring his soapbox into the library and bother patrons with that garbage!

Librarian: Actually, he recently formed a group, Mad Max and the Thunderdomes. Believe it or not, they signed up to use the community room next week.

Trustee #2: That's ridiculous. We don't have enough resources to give Mad Max the room. There's a waiting list a mile long for that room.

Trustee #3 (agreeing): The chess club from the local high school has been trying to get the community room for ages. Can't we stop Mad Max from tying up the space?

Librarian: The library's policy is first come, first served. We have some restrictions, such as [reads from policy]:

- *No more than one slot per week per group
- *No food or drinks (unless a deposit is paid)
- *A contact person must be listed, with either a working telephone or an email address

There are a few other rules. But there's nothing that says Mad Max can't use the room.

Trustee #4: That's right. I just went to a CALTAC training about the Public Library as a Public Forum. The library is a public forum, similar to the street corner. It cannot restrict what people say or read, without triggering First Amendment review.

Trustee #2: What do you mean?

Trustee #4: Here are copies of the chart that they gave us. [passes out charts that are on last page of this handout] What I learned at the training is that the public library is a **public forum**, similar to the street corner. When a patron walks through our door, the patron hangs onto his or her First Amendment protections. The library, as a government agency, cannot restrict what the patron says on the basis of its **content**. If the library has a policy of no loud talking in the reading room, that is a **content-neutral** restriction, and is acceptable, since the library has a significant interest in keeping the reading room quiet.

If you look at the chart, you'll see the traditional public forum, the streets and sidewalks where Mad Max spoke on his soapbox.

The next category, the designated/limited public forum, is when the government (such as the library) *deliberately* opens up a forum for expressive activity, such as a community center, a library community room, display area, literature rack etc. A designated/limited public forum is treated similar to a traditional public forum under the law, when it comes to restrictions on content.

A library's nonpublic spaces, are considered nonpublic forums. For example, the staff room is government space, but is not open to public expression. A library might have a display rack that is not open to public expression, if it uses it exclusively for library displays. Mad Max has no First Amendment right to express his views in these spaces.

Trustee #3: If Mad Max's group uses the library community room to tell patrons *how* to cause the end of the world, does he still have the right to speak?

Trustee #4: Yes. Vague threats are protected under the First Amendment. It is illegal only if he makes a credible threat of imminent lawless action, like "Library patrons! I have hidden weapons in the video section! Pick them up and we shall blow up the library right NOW!"

Trustee #1: He didn't say that on the street corner, or someone would have called the police. Glad he doesn't get any *additional* speech rights, just because he's in our library.

Public Libraries are Public Forums

	Examples	Restrictions*	Comments*
Traditional Public Forum	Soapbox, streets, sidewalks	Content restrictions trigger First Amendment analysis	Content-neutral restrictions are generally acceptable e.g. no noises over 70 decibels
Designated / Limited Public Forum	Library community rooms, display cases, exhibit racks Library reading room	Content restrictions trigger First Amendment analysis	Content-neutral restrictions are generally acceptable e.g. size of paper, size of group No loud speaking
Nonpublic Forum	Library offices	Content restrictions Generally acceptable	Restrictions okay e.g. No pin-ups of scantily clad women

***First Amendment analysis:** Government may not impose content-based restrictions on expressive activity unless it can demonstrate a compelling state interest that is narrowly drawn to achieve that end. Content neutral, time, place or manner restrictions are permissible if they are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. *Perry Educ. Ass'n v. Perry Local Educ. Ass'n*, 460 U.S. 37, 46 (1983).

Note: A number of libraries have been sued by religious groups who were excluded from library meeting rooms. In each case, the religious group has won, or a settlement agreement has been made that allows the religious group to use the room.

Many libraries restrict commercial use of the room. There is no case law on this; however a policy disallowing commercial use would probably stand up in court.

Public Forum Discussion Questions:

1. When was the last time you reviewed the library's policy for meeting rooms and display spaces?
2. What restrictions does it have?
3. Are there any problematic areas?

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