



PUBLIC LIBRARIES:

A NEW FORUM FOR
EXTREMISTS

Questions and Answers



An Anti-Defamation League Handbook



Glen A. Tobias, *National Chair*
Abraham H. Foxman, *National Director*

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A CASE STUDY

On January 12, 2002 in York, PA, more than 60 supporters gathered inside the Martin Memorial Library, where Matt Hale, leader of the virulently anti-Semitic and racist World Church of the Creator, held a recruitment drive in a meeting room at the local public library.

The gathering of white supremacists spawned an outdoor protest that led to numerous arrests and clashes with police. A standoff between about 70 racists who had been unable to enter the library and anti-racist protestors lasted for nearly two hours, with riot police keeping the groups separated in an alleyway adjacent to the library building. Police reported 25 arrests, mostly for disorderly conduct. Several people were jailed and a news photographer was reportedly slightly injured when anti-racism demonstrators threw concrete at him as he photographed the violence.

Hale said he chose the small, central Pennsylvania community for a recruitment meeting because of its high profile in race relations. [Arrests were being made in connection with the city's 1969 race riots.] Library officials said they believed they could not refuse Hale and his hate group the right to assemble at the public facility, and that any attempt to block the meeting would not hold up in court.

Libraries have often been in the forefront of battles to protect free speech no matter what its content. It is this very openness that has encouraged extremists to target libraries as a useful forum to spread their message of hate. Hate-mongers, like Hale, recognize that libraries are at the heart of communities, places where they can cause the greatest disruption.

ADL has worked with libraries across the country to explore innovative ways to prevent the sort of events that occurred in York, Pennsylvania from being repeated, without compromising the First Amendment.

With that in mind, we present some of the legal questions regarding how a public library can legally and safely respond when

extremists attempt to use it as a venue to publicize their views. We also cover some of the positive responses that libraries and the communities they serve have developed to deal with extremists to prevent the outbreaks of violence that erupted in York. Finally, we address questions about the inclusion of extremist material in a library collection and the issue of Internet access to extremist sites through library terminals.

If your library has questions or concerns about these issues please contact ADL for assistance. Please be aware that First Amendment issues of this sort are often very complicated, and the best response for your library may hinge on your institutional practice or state and local law. This pamphlet is not legal advice, and it is not a substitute for consulting counsel.

Questions and Answers

Can a public library ban extremists from using library meeting rooms and facilities?

A library cannot decide whom to allow to use its meeting rooms and facilities on the basis of the content of the user's speech. The First Amendment to the United States Constitution guarantees the right of freedom of speech to all Americans, even groups whose opinions are reprehensible. To place an outright ban on the speech of certain groups would be unconstitutional and contrary to a fundamental tenet of American democracy.

However, libraries are not required to make themselves available as a public forum. Unlike traditional public forums, such as parks and sidewalks, where the government cannot restrict speech except for reasonable time, place and manner restrictions, public institutions such as libraries, which provide specific services, do not need to be made available for use by the general public.

A library can decide to make its meeting rooms and facilities available to the public, and it can determine how broadly it wants its meeting rooms and facilities to be available. It is worth sounding a note of caution, however. If a library opens its meeting rooms and facilities for most purposes, it may be found to have created a public forum, which would force it to make its space available to all groups. Access, of course, is at all times subject to reasonable time, place and manner restrictions.

Can a public library adopt a policy forbidding the use of library meeting rooms for any political or religious purposes?

Probably not. The government, like any property owner, has the power to use its property for whatever use it intends. And, as described above, the public's right to access government property depends on the nature of the use to which it is put. However, the government cannot ever limit access based on the content of speech. Therefore, library meeting rooms and facilities cannot be open to the public if there is a prohibition against meetings with religious or political content.

Libraries can, however, limit use of their facilities to educational programming, or community service groups. If a library narrowly defines the purposes for which its facilities may be used, it must strictly and narrowly enforce its policy. If a library establishes a narrow set of uses for its

meeting rooms and facilities, but does not enforce them, it could be determined to have opened its rooms for all purposes and be forced to make the space more broadly available.

Can a public library limit the use of library meeting rooms and facilities to library card holders or residents of their immediate communities?

Probably; while there is no case law directly on point on this issue, like any limited public forum a public library may impose reasonable time, place, and manner restrictions. Limiting the use of library meeting rooms and facilities to library card holders or residents of the immediate communities is likely to be considered a reasonable time, place and manner restriction.

However, a public library cannot discriminate when implementing such restrictions and must apply its standard equally. A public library must allow all library card holders or residents of its immediate community to make use of its library meeting rooms and facilities on the same terms and conditions. Library cards should be issued in a non-discriminatory manner and to all individuals who meet appropriate, pre-determined criteria.

Can a public library require extremists to sign a contract to use library meeting rooms and facilities?

A library can insist that anyone who requests use of its meeting rooms and facilities sign a statement agreeing to the terms and conditions that the library has set for using the rooms, but it cannot require only extremists to sign the statement. It can specify conditions such as the amount of time any group can use a room, and the purposes for which the room can be used. For example, it can state that no amplification equipment may be used in the room, or that the room must be left in the condition in which it was found. However, it is unclear whether the library could include broad exculpatory clauses, which would protect it from liability.

Can a public library charge a fee for use of library meeting rooms or facilities?

When a public library opens its meeting rooms and facilities to the public, the standards and analysis that apply to traditional public forums apply to public libraries as well. The Supreme Court recognized that permit and fee requirements may be imposed by the government in public forums “in order to regulate competing uses of public forums.” Therefore, a public library may impose a fee system that has “narrowly drawn, reasonable and definite standards,” which charges nominal and non-excessive fees.

However, a permit and fee scheme may only regulate the time, place and manner of the speech and cannot be based in any way on the content of the speech. For instance, a library may base fees upon the anticipated size of the audience in order to cover the maintenance and administrative costs associated with the use of its meeting rooms or facilities. However, the fees must not be left purely to the discretion of library officials.

In addition, a library cannot impose extra fees in order to cover the cost of special security or policing of events. Inevitably, a special fee would be based on the content of the speech event and upon the audience's anticipated reaction to the speech.

Can a public library require demonstrators to obtain insurance or post a bond before they are allowed to use library meeting rooms or facilities?

The question of whether insurance requirements for the use of public facilities are constitutional remains unsettled. Where insurance costs are seen as a bar to access to a traditional public forum, or unrelated to the nature and extent of the speaker's use of the facilities, courts likely will rule that the requirement is invalid. However, the government has been allowed to maintain insurance requirements that are designed to accomplish a "significant governmental interest" and do not discriminate based on the content of the speaker's message. For instance, a recent case held an insurance requirement to be constitutional where "the required amount and the cost of the insurance depend[ed] only on the size of the event and the nature of the facilities involved in it (a bandstand, stage, tents, and so forth)." In addition, a court upheld a regulation that required protestors to post an insurance bond when using an expensive sound system provided by a public park.

Nevertheless, courts may also be suspicious that such requirements, if not *de minimis*, are an attempt to bar unpopular speakers who may have more difficulty obtaining insurance. Finally, an insurance requirement may not be imposed in order to cover the potentially damaging activity of third parties.

What other types of restrictions, such as noise and location restrictions, can a public library place on extremist speakers?

A public library may impose reasonable regulations on the manner of a proposed extremist speech. Maintaining proper decorum in a library justifies noise and location restrictions. For instance, the library may limit the level of noise in its facilities and meeting rooms by prohibiting the use of sound amplification systems.

Public libraries may also impose reasonable restrictions on the location, size and duration of the meetings. For instance, public libraries may confine speakers to the actual meeting rooms and designated facilities so as not to disturb regular library activity. A time limit on the duration of the meeting is a reasonable restriction as well.

However, public libraries must equally apply any restriction to all speakers. If a library fails to impose its restrictions generally then it may not be allowed to later impose the restrictions on extremist speakers.

What actions may a public library take if it believes that violence or property damage will occur if an extremist uses its meeting rooms or facilities?

There are a number of actions a public library may take if it believes that violence or property damage will occur if an extremist uses its meeting rooms or facilities. A public library may require all speakers to reserve its rooms a reasonable time in advance of the speech so that proper security measures may be prepared. It may also deny a permit if it can prove that speakers specifically intend to engage in criminal activity.

What steps can a public library take to maintain security, peace and order at the library if an extremist uses its meeting rooms or facilities?

A public library may use reasonable safety and crowd-control measures to maintain security, peace and order when an extremist uses its meeting rooms or facilities. It can decide, if administrators believe it is appropriate, to have a strong police presence while an extremist uses a public library's meeting rooms or facilities. In addition, the library may refuse to allow weapons, or personal items that may be used as weapons, into the public library and require searches of patrons' bags.

Must a public library allow extremists to hand out literature in the library?

No, while dissemination of written materials is a protected form of speech and is one of the purposes that a public library serves, a library is not required to provide a forum for pamphleteering inside the library. The creation of a limited public forum does not mean all library facilities have been opened for all purposes.

However, a library cannot pick and choose among groups if it permits literature to be handed out in the public areas of the public library. If the library sets up a literature table, it must allow all individuals and groups,

including extremists, to display and hand out literature on an equal basis. In addition, the library cannot restrict material distribution during a meeting.

May a public library regulate solicitation in its meeting rooms and facilities?

While door-to-door solicitation is a protected form of speech, it is not an activity that needs to be allowed in a library. The library has a legitimate interest in regulating solicitation on library premises because it would be disruptive to the operation of the library. Even a library that makes meeting rooms generally available may forbid fundraising and sales on its premises so long as the rule is applied to all groups using library facilities.

May a public library ban the display of offensive symbols by extremists using its meeting rooms or facilities?

The library cannot ban temporary displays of hate symbols during the course of a meeting within the actual meeting rooms. It has no obligation to allow such displays elsewhere in the library, unless it generally allows groups meeting at the library to post advertising in the library. The library is also allowed to impose size and place limitations on any advertising material it does allow.

Can a public library refuse to include extremist material from its collection?

A public library is free to adopt collection development criteria that reflect its evaluation of the material's quality and usefulness. The library has discretion to consider public demand and budgetary constraints in determining the materials to be acquired.

Material may also be removed from the collection based on collection development criteria such as shelf space, quality and usefulness. However, material, including extremist material, already in the library's collection may not be removed based solely on its content. Such material may in some circumstances be kept separately from the collection if there is concern that it will be damaged or stolen. One good solution is to maintain extremist material in a specially marked area. In this way, it is available for research and at the same time patrons are alerted to the nature of the material.

Can a public library block extremist Web sites from its computers?

Although this issue is not yet fully resolved, blocking such sites is probably not constitutional. A lower court ruled recently that the government requiring the use of filtering software by public libraries as a condition of the receipt of federal funding violates the First Amendment. The court distinguished the Internet from print material, stating that “when a public library provides Internet access, even filtered Internet access, it has created a forum open to any member of the public.”

Public libraries are public forums with respect to Internet access and therefore the highest level of scrutiny applies to the library’s “selective exclusions of particular speech whose content the library disfavors.” The court said that even if there is a compelling reason to justify blocking or filtering out certain types of materials, the filtering mechanisms at issue are not sufficiently accurate and block out constitutionally protected speech.

Can privately funded “public” libraries exclude extremist speakers from their meeting rooms and facilities?

A privately funded “public” library has more discretion than a publicly funded library to exclude extremist speakers from its meeting rooms and facilities. Nevertheless, a privately funded “public” library may be classified as a place of public accommodation and therefore may be subject to state and federal public accommodation laws.

Regardless of whether the institution is a public accommodation, it retains its First Amendment right to use discretion in choosing the types of messages that it will promote. Therefore, a privately funded “public” library may have more leeway in excluding extremists from its facilities and meeting rooms.

Anti-Defamation League of B'nai B'rith

NATIONAL OFFICE (webmaster@adl.org)	
823 United Nations Plaza, New York, NY 10017	(212) 885-7700
WASHINGTON OFFICE	
1100 Connecticut Avenue, NW (Suite 1020), Washington, DC 20036 (natlgov@adl.org)	(202) 452-8320
REGIONAL OFFICES	
ALBUQUERQUE	
P.O. Box 21639, Albuquerque, NM 87154 (new-mexico@adl.org)	(505) 823-2712
ARIZONA	
One E. Camelback #670, Phoenix, AZ 85012 (arizona@adl.org)	(602) 274-0991
ATLANTA (Southeast)	
One Securities Centre, 3490 Piedmont Road NE (Suite 610), Atlanta, GA 30305 (atlanta@adl.org)	(404) 262-3470
BOSTON (New England)	
126 High Street, 4th Floor, Boston, MA 02110 (boston@adl.org)	(617) 457-8800
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309 West Washington (Suite 750), Chicago, IL 60606 (chicago@adl.org)	(312) 782-5080
CLEVELAND (Ohio/Kentucky/Allegheny)	
505 Terminal Tower, Cleveland, OH 44113 (cleveland@adl.org)	(216) 579-9600
CONNECTICUT	
345 Whitney Avenue, New Haven, CT 06511 (connecticut@adl.org)	(203) 772-1300
DALLAS (North Texas/Oklahoma)	
12800 Hillcrest Road (Suite 219), Dallas, TX 75230 (dallas@adl.org)	(972) 960-0342
DC (District of Columbia/Maryland/Virginia/North Carolina)	
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1120 Lincoln Street (Suite 1301), Denver, CO 80203-2136 (denver@adl.org)	(303) 830-7177
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6735 Telegraph Road (Suite 300), Bloomfield Hills, MI 48301 (detroit@adl.org)	(248) 646-2440
HOUSTON (Southwest)	
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6800 Jericho Turnpike, Suite 112W, Syosset, NY 11791 (long-island@adl.org)	(516) 496-0328
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OMAHA (Plains States)	
333 South 132nd Street, Omaha, NE 68154 (omaha@adl.org)	(402) 333-1303
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720 Market Street (Suite 800), San Francisco, CA 94102-2501 (san-francisco@adl.org)	(415) 981-3500
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OFFICES OUTSIDE THE U.S.	
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21 Jabotinsky Street, Jerusalem, Israel 92141 (israel@adl.org)	011-972-2-566-7741
MOSCOW	
36 Noviy Arbat (Office 710), 121205 Moscow, Russia (moscow@adl.org)	011-70-95-207-1794
CANADA	
Cooperative Association with the League for Human Rights of Canadian B'nai Brith	
15 Hove Street (Suite 210), Downsview, Ontario, Canada, M3H 4Y8 (league@bnaibrith.ca)	(416) 633-6224

