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Librarians Challenge “Harmful Matter Statute”

On May 5, 1972, library history was made by the filing in federal court of a class action suit-funded by the Freedom to Read Foundation—on behalf of all California librarians and library employees. This legal action marks the first time that librarians, themselves, have taken the offensive and have sought legal precedent for the Library Bill of Rights. The suit challenges the constitutionality of the state “Harmful Matter Statute” which makes librarians subject to prosecution for distributing to minors any publications deemed “harmful matter” under the definition set down in the statute.

Filed in the U.S. District Court for the Southern District of California, the civil action asks for an injunction restraining the California State Attorney General from prosecuting library employees under the Harmful Matter Statute. The suit also seeks a judgment declaring the statute to be unconstitutional because it acts as a prior restraint on the First Amendment rights of library employees and the public they serve, and is void for vagueness and overbreadth as applied to library employees.

The California Harmful Matter Statute became effective on Nov. 10, 1969. For a first offense, it provides for penalties of up to $2,000.00 in fines and/or up to a one-year prison term for the “distribution” to a minor of any matter deemed “harmful.” Subsequent offenses are felonies and carry more severe penalties.

That the statute applies to librarians was made clear in statements by Roger Arnebergh, Los Angeles City Attorney and Brian Crahan, Los Angeles Deputy City Attorney, and in an opinion rendered by the Office of the Attorney General on January 21, 1972. Based on these clearly articulated threats of prosecution, the Freedom to Read Foundation concluded that the statute imposes serious and irreparable injury for library employees.

The complaint declares that:

As librarians are not qualified either by training or experience to act as censors, and since the inevitable tendency is to err on the side of caution, the public’s access to the entire range of legal reading materials is unnecessarily curtailed. . . . The obligation that the statute seeks to impose on plaintiffs and members of the class constitutes an unconstitutional form of prior restraint. In order to comply with the statute, members of the plaintiff class are required to engage in a form of censorship and make an evaluation as to whether any given work constitutes “harmful matter” and, if so, prohibit a minor from borrowing...