Oregon Library Association Intellectual Freedom Committee
Tuesday Topic, May 2019

Welcome to Tuesday Topics, a monthly series covering topics with intellectual freedom implications for libraries of all types. Each message is prepared by a member of OLA's Intellectual Freedom Committee or a guest writer. Questions can be directed to the author of the topic or to the IFC committee.

School Libraries and State Obscenity Laws

The boundary between obscenity and culture has seen varied demarcations over our human history. As social mores expand and contract, these vague realms of art and licentiousness continue to exist in flux. In more recent history, the school-library world has experienced an ebbing of public opinion on what is considered age-appropriate material for minors.

Since the advent of the Miller Test, a three-point obscenity barometer enacted by the Supreme Court in 1973, the federal government has often been a point of reference for free speech. In fact, the Supreme Court once stepped in to compel Colorado to make clear their nebulous obscenity statutes. But states have since exerted their autonomy to reel-in free speech rights. A grass-roots group, Pornography is Not Education sued the Colorado Library Consortium and EBSCO for the alleged presence of pornography in their databases accessed by schoolchildren. And while voted down in committee, obscenity-related laws in Colorado and Maine reached a vote, reflecting the states' legislative priorities.

Mirroring these developments, and bolstered by State Representative Mike Hill, the Florida state legislature sought to enact HB 855, whose scope was limited to school instructional materials. This bill would have diluted the definition of obscenity and used child pornography as a touchstone for enforcing new policies. Lines 75-80 cite statute 847.012 which, if violated, would have issued the punishment of a third-degree felony. Teachers and school librarians had no exemptions under this bill, and would have been vulnerable to jail-time if they were found guilty of distributing books that contained "obscene content." The bill died in committee, as did its relative SB 1454.

Oregonians, on the other hand, enjoy a more liberal interpretation of free speech protected by our state constitution through a 1987 Oregon Supreme Court ruling in the

State v Henry case. At the time, the ACLU successfully argued that Oregon's existing free speech laws were much more inclusive than those at the federal level, and as a result established that material deemed obscene using the "Miller Test" was actually protected under Oregon's freedom of speech parameters. As the "first state in the nation to abolish the offense of obscenity," Oregon is well-placed to continue this unique accolade.

But like those objections occurring today, this precedent was met with protests. This section of the constitution was challenged in 1994 and 1996. Both lost, and the language hasn't been challenged since.

So given the tumultuous history of the matter at hand, it can be difficult to recognize librarians' opponents as a part of the community they serve. But this fact is undeniable, and can be built upon. In this spirit, hazard some outreach with some help from the ALA. Indeed, those litigating against libraries are stakeholders, and need to be brought to the table. We need not compromise our values as librarians, but we can begin a dialog whose value lies within itself.

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