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## What Gets Libraries Sued: Measuring Librarian Fears Against Statistical Realities

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## What Gets Libraries Sued: Measuring Librarian Fears Against Statistical Realities

### Abstract

"We can't do that, we'll get sued." How do libraries balance the benefits of a course of action with legal risks? Our project attempts to explore this by obtaining librarian feedback via a survey, evaluating existing literature, and compiling legal cases.

### Keywords

lawsuits, liability

## Summary

We do not live in a risk-free world, and one risk all libraries face is that of possibly being sued. Whether a lawsuit is successful or not, the time and cost of dealing with the legal system is best avoided. On the other hand, some attempts to avoid being sued may lead a library to spin its wheels in useless efforts, scale back services, or shrink from its mission. How do library decisionmakers balance the benefits of a possible course of action with its legal risks? Potential benefits usually relate to well-studied library values of equality, privacy, and more. But potential legal downsides are less well-understood in the library world. In order to provide empirical grounding for library decision making, we ask: What gets libraries sued?

## Literature Review

The literature review found numerous related research, but there is nothing in the current literature on our study. Tangential studies include those discussing or analyzing specific cases and lawsuits, such as St. Lifer and Rogers' (1994) article on harassment in a library workplace and Balcom's (2010) summary detailing a number of lawsuits brought against libraries in regards to existing policies. Discussions of various types of library liability issues include Healey's (2010) examination of the difficulty law librarians face when dealing with liability and 'pro se' library patrons, while Kikukawa-Neal (1996) examines the difficulties of public librarians in answering legal questions. Shupala (2006) and Tilson (1990) investigate the knowledge and need of policies and legal knowledge concerning purchasing decisions by public school librarians, while Hicks (2012) compiles information pertaining to copyright and fair use litigation within academic libraries. Other research recommends that libraries or librarians should be more involved in access to justice initiatives, advocating for copyright freedom, or other law-related endeavors. This includes Albitz's (2012) argument that the copyright office should be within the library, and the copyright officer should have a Juris Doctorate and preferably a Master's in Library Science.

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### **Methods and Results**

At our poster presentation in October 2019, we were still soliciting responses to our survey of South Carolina librarians, to find out what knowledge and beliefs they held about libraries being sued. At that time, we did not release the results of our legal research which we gathered using available public records to determine what has gotten libraries sued.

#### *Survey Method*

Forty-six librarians responded to a 10-question survey that was distributed in two ways: through the South Carolina Library Association (SCLA) listserv, and at our poster at the SCLA conference located in Columbia, SC. Public librarians made up 29 respondents (63%), academic librarians were 15 respondents (33%), and two respondents did not fall into either category. Respondents were fairly evenly split across urban (28%), suburban (34%), and rural (37%).

#### *Survey Findings*

Nine respondents (20%) indicated that fear of lawsuits has kept their “library from implementing a change, stopping a service, or creating a new service.” Interestingly, only one of these nine stated that a lawsuit had occurred at their library. Six total respondents (13%) have had a lawsuit at their library. Five of these six answered “no” when asked if fear of lawsuits has kept their “library from implementing a change, stopping a service, or creating a new service.” Additionally, five of these six indicated either that they did not know the details or that the lawsuit “was resolved in less than a year and without significant disruption to the library budget.”

The concerns librarians reported as possible reasons for lawsuits within a library were personal injury (8 respondents); accessibility (7 respondents); employment and censorship (6 respondents each); discrimination and copyright violations (4 respondents each); and privacy, library policies, and providing medical advice (1 respondent each).

*Legal Research Method and Findings*

We researched state trial court documents using Bloomberg Law (2005 to 2019 for Charleston County, and 2016 to 2019 for Greenville County) and the Public Index for all 46 counties (erratic, in some cases 1990s to 2019), with the query “librar” (truncated to include library or libraries). We researched state appeals court documents and federal trial court documents using Westlaw (2000 to 2019) with the same truncated “librar” query but also excluding the term corrections because prison libraries have different concerns.

	# Cases	Legal Category	Colloquial Category	Library Type
<b>State Trial</b>	2	Premises Liability	Slip and Fall	Public Library
	1	Public Finance	Library Bonds	Public Library
<b>State Appeals</b>	1	Workers Compensation	Injury on the Job	Public Library
	1	APA - Substantial Evidence	Student Discipline	School Library
	1	Public Finance	Library Bonds	Public Library
<b>Federal Trial</b>	1	Title VII / Employment	Racial Discrimination	Public Library
	1	Bankruptcy / Estate	Rightful Owner of Donated Documents	Academic Library
	1	Criminal / Competence	Patron Mental Health	Public Library

Note that the public finance case at the state trial level and the public finance case at the state appeals level are not the same case.

**Conclusion**

There is some correlation between the types of documented lawsuits and the librarians’ stated concerns about lawsuits. The most frequently referenced concern by librarians (8 respondents) was that accidents and injuries could lead to lawsuits. This is reflected as the most frequent type of lawsuit in the legal record (3 total lawsuits), divided into premises liability for patrons (2 lawsuits) and workers’ compensation for library workers (1 lawsuit). Similarly, 10 total responses expressed concerns about HR/employment issues (6 responses) or discrimination (4 responses), and there is a Title VII case against a library in which discrimination in employment was alleged.

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Some types of lawsuits were not mentioned by any librarian as a concern. Alleged problems with library bonds were the cause of two lawsuits. School discipline in a school library and the interaction between patron mental health and the criminal justice system in a public library were behind two other lawsuits. Finally, an academic librarian's evidence was involved in a lawsuit where the rightful owner of donated documents was in dispute.

Some stated concerns did not appear in the legal record: censorship, accessibility, copyright violations, privacy, library policies, and providing medical advice. Comparing the evidence of lawsuit risk to the stated concerns could reassure librarians that they are making the right efforts to mitigate risks, but it is difficult to state with any certainty that concern is not warranted. It may be that maintaining a certain level of awareness of these issues is continuing to cause libraries to take active steps to prevent lawsuits, and libraries should not stop doing something that is effective. Likewise, there are many possible negative consequences short of a lawsuit that is filed and appears in the public record. For example, a lawsuit could be threatened, issues could be settled out of court, or the "court of public opinion" may hold sway without the legal system's involvement.

There are many unknowns that warrant further research. A national level survey would be welcome. Additional insight could be gained by using newspapers or other alternative methods to find evidence of potential negative consequences short of lawsuits.

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