Intellectual Freedom 101

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Objective: Participants will

Gain a greater understanding of the Roots, Meaning and Application of First Amendment liberties in American society and its libraries.
Two Simple Definitions

- **Censorship:**
  - *Someone else decides* what you can read, view, listen to or otherwise access.

- **Intellectual Freedom:**
  - *You decide* what you read, view, listen to or otherwise access.
Most Challenged Books, 2013

- *Captain Underpants* (series), by Dav Pilkey
- *The Bluest Eye*, by Toni Morrison
- *The Absolutely True Diary of a Part-Time Indian*, by Sherman Alexie
- *Fifty Shades of Grey*, by E.L. James
- *The Hunger Games*, by Suzanne Collins

From ALA OIF’s Ten Most Challenged List
[http://www.ala.org/bbooks/frequentlychallengedbooks/top10](http://www.ala.org/bbooks/frequentlychallengedbooks/top10)
Every and anywhere –
  - no geographical, social or economic limits

Anyone –
  - no age, political, educational, ethnic or religious limits

For Any Reason –
  - sexual content, inappropriate language, religious views, political views, social values, etc.

- from the left, right, middle and off the wall.
Censorship by government bodies is generally unconstitutional.

Public libraries are government bodies.

Private libraries are free to censor but generally don’t.

Calling for censorship isn’t censorship. It’s free speech!

Choosing not to stock, sell, broadcast, publish, etc. is still censorship in the broadest sense – but it is also a constitutional right.

Parents can and should guide the reading, viewing or listening of their children -- but only their children.
Religion: The Golden Rule

Culture: Fair play & practicality
- What’s good for the goose is good for the gander.
- I’ll scratch your back; you scratch mine.

The United States Constitution
- The “Bill of Rights” (Amendments 1-10)
The *Bill of Rights*

- Is the basis for intellectual freedom in the U. S.
- Affirms fundamental liberties.
- Is an integral part of the Constitution.
  - IS NOT extra or an after thought.
  - IS NOT legislation – in the ordinary sense.
  - IS NOT simply valued by the left OR right.
The Bill of Rights... 2

- **Cannot** be overridden by vote of
  - Congress,
  - State Legislatures,
  - City Councils, or
  - Library Boards

- **Can only** be changed by
  - Constitutional amendment
  - Supreme Court interpretation
  - Community pressure (sad but true)
Reflects the *personal experiences* of the Founders.

- *Living memory* of political persecution.
- *Living memory* religious persecution.
- *Experience of abuse* of the rights of English people by the British Crown
  
  - particularly of speech and the press during
  - a long, bloody *revolution*, and
  - a period of intense *insecurity*!
The Founders

**Optimists**
- Established a republic
- Established a representative democracy
- Established something *new*
  - no other operating representative democracies
- Trusted the body politic
- Deists and Free Thinkers (Jefferson & Franklin)

**Pessimists**
- Established a system of checks and balances
- Wrote rights into the Constitution
- Did not trust individuals
- Lots of Calvinists
Our form of government is

- A republic and a
- A representative democracy

Therefore we need

- informed citizens to elect informed representatives.
- a free marketplace of ideas in which to debate.
The 1st Amendment Liberties are:

- Religion (of, for and from)
  - The Press
  - Speech
  - Petition
  - Assembly

- These five freedoms = *intellectual freedom*
- The freedom to read, view, listen to or access
  - what you will
  - with whom you will and
  - to complain (petition) if you don’t like it.
Corollary 1st Amendment Rights

- **to receive information**
  - *Courts have held* that for the 1st Amendment to have meaning people have to be able to receive information.

- **to privacy**
  - Legislatures in 48 states have passed *library confidentiality laws* that recognize that people have to be able to read, view, listen to or access materials without fear of reprisal (i.e., suffering a *chilling* effect on the exercise of their fundamental rights).
SCOTUS has held that the only restrictions permitted are

- time
- place
- manner

Exceptions: Obscenity, libel, slander, fighting words, child porn, national security, etc.

Laws authorizing exceptions must address

- a “compelling government interest” and
- must be “narrowly tailored”

Only a court can determine if “speech” is obscene or not otherwise constitutionally protected.
1\textsuperscript{st} Amendment Development

- 1735 – John Peter Zenger – Newspapers, political expression
- 1919 – Schenck v. United States -- "clear and present danger"
- 1933 – U.S. v. ... Ulysses – obscenity, creative expression
- 1969 – Brandenburgh v. Ohio – "imminent lawless action"
- 1971 – NYT. v. United States – prior restraint, Pentagon Papers
- 1980s + – Media, indecency, Internet filtering, etc.
Courts have applied the Bill of Rights to public libraries via the concept of a public forum.

Traditional public forums

- Parks, sidewalks, etc.
- Any one may engage in constitutionally protected speech

Limited or designated public forums

- Fairground grand stands
- School auditoriums – after hours
- Public libraries
Public Libraries

- are designated, limited public forums for the receipt of information.
- may ban or regulate behavior that interferes with their purpose as a limited designated public forum.
- may designate and define space (e.g. meeting rooms, exhibit space and literature distribution space) for the exchange of information, etc.

- Once space is made available only time, place and manner restriction should be used – not content or purpose.
ALA Library Bill of Rights (LBOR)

- a professional policy document.
- provides guidance for libraries and librarians.
- is based on the Bill of Rights.
- is *not* a legal document
- is not enforceable.
- has no sanctions for failure to live up to it.

Other ALA Doc’s
- [http://www.ala.org/ala/aboutala/offices/oif/index.cfm](http://www.ala.org/ala/aboutala/offices/oif/index.cfm)
  - Interpretations of the LBOR
  - Freedom to Read Statement
  - Code of Professional Ethics
  - *Intellectual Freedom Manual*
I. Books, etc. should:
   - be provided for . . . all people of the community.
   - not be excluded because of who created them.

II. Books, etc. should:
   - present all points of view . . . issues.
   - not be excluded for partisan or doctrinal reasons.

V. A person’s right to use a library
   - should not be denied or abridged...

http://www.ala.org/advocacy/intfreedom/librarybill
Balance

- *Balance* means having a mix of resources representing all viewpoints on an issue of interest to a community within the library’s fiscal restraints.

- *Balance* does not mean having an equal number of resources for two sides of an issue. There are always many, multiple viewpoints.
Formats change

- Print on paper, microfilm, tapes, CDs, DVD, online, etc.

With every new media comes the argument that things are now really different and that censorship is OK.

But:
- Principles remain the same
- Only the practicalities differ
Digital Revolution

• Greater impact than the Print Revolution
  • Expanded, nearly universal access
  • Expanded opportunities for good or evil
  • Accuracy & integrity of the historical record challenged
    ▪ From fixed (printed on paper)
    ▪ To ephemeral (think of the “cloud“)
Who controls information?

- Libraries and individuals *no longer own content*
- Libraries and individuals *license access to content*
- Content is controlled by the rights holder
  - From First Amendment / Constitutional rights
  - To contract law (licenses)
Digital Implications

- Potential threats to unfettered access and uncompromised content is increasing.
- Campaign websites
- “Revised” journal articles
- Amazon and 1984
A good library has something of interest to everyone in its community and something to offend them too.
Resources & Support


- ALA’s Office for Intellectual Freedom [http://www.ala.org/offices//oif](http://www.ala.org/offices//oif)

- Freedom to Read Foundation
  - [http://www.ala.org/groups/affiliates/relatedgroups/freedomtoreadfoundation](http://www.ala.org/groups/affiliates/relatedgroups/freedomtoreadfoundation)

- American Civil Liberties [https://www.aclu.org/](https://www.aclu.org/)
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