Objective: Participants will

Gain a greater understanding

Of

Intellectual Freedom

In

American society.
Academic & Intellectual Freedoms

- Intellectual Freedom
  - Context: Society in general
  - Focus: The individual reader, viewer, etc.
  - Threat: Inability to access ideas, etc.

- Academic Freedom
  - Context: Academe
  - Focus: The individual scholar, teacher, etc.
  - Threat: Loss of job, suppression of ideas, etc.
Two Simple Definitions

- Intellectual Freedom exists when:
  - You decide what you read, view, listen to or otherwise access.

- Censorship occurs when:
  - Someone else decides what you can read, view, listen to or otherwise access.
The Impulse to Censor

- Seems Simple!
- Who wants to be censored? No one.
- What’s the Problem?
  - Some people want to control what other people can read or otherwise access.
  - Just everyone has something that offends them.
  - The difference is what people want to do about it.
Most Challenged Books, 2014

- *The Absolutely True Diary of a Part-Time Indian*, by Sherman Alexie
- *Persepolis*, by Marjane Satrapi
- *And Tango Makes Three*, Justin Richardson and Peter Parnell
- *The Bluest Eye*, by Toni Morrison
- *It’s Perfectly Normal*, by Robie Harris

From ALA OIF’s Ten Most Challenged List [http://www.ala.org/bbooks/frequentlychallengedbooks]
What Is Challenged?

- Books
  - Leisure Reading
  - Serious Lit
  - Popular Lit
  - Scientific Works
  - Graphic Novels

- Journal Articles
- Magazine Articles
- News Articles

- Scientific Articles
- Movies, DVDs, etc.
- Music CDs
- Pictures,
- Paintings
- Websites
- Displays
- Meetings
- Cartoons
- Comics
Why Are Materials Challenged?

- Anti-ethnic
- Cultural Sensitivity
- Racism
- Sexism
- Anti-family
- Nudity
- Offensive Language
- Other offensive item
- Abortion
- Drugs/Smoking
- Gambling
- Gangs

- Violence
- Suicide
- Homosexuality
- Sexually explicit
- Political viewpoint
- Religious viewpoint
- Occult/Satanism
- Unsuitable to Age Group
- Inaccurate
- Technical error
Where Do Challenges Come From?

- **Anywhere and Everywhere**
  - no geographical, social or economic limits

- **Anyone** –
  - no age, political, educational, ethnic, gender or religious limits
  - from the left, right, middle and off the wall.
Some Assumptions (in the U.S.)

- 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.
Foundations of Intellectual Freedom in the U.S.

- 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.
- 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 or action of

- Congress
- State Legislatures
- City Councils
- Federal Executive Branch
- State Executive Branch
- Mayors
- Library Boards
The Bill of Rights... 3

- *Can only* be changed by
  - Constitutional amendment
  - Supreme Court interpretation

- *Can be* affected by
  - Local community pressure
Reflects the **personal experiences** of the Founders.

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

- **Optimistic**
  - Established a republic
  - Established a representative democracy
  - Trusted the body politic
  - Many Deists & Free Thinkers (Jefferson & Franklin)

- **Pessimistic**
  - Established checks & balances
  - Wrote rights into the Constitution
  - Did not trust individuals
  - Many Calvinists
The 1\textsuperscript{st} Amendment Liberties are:

- \textit{Religion} (of, for and from)
  - \textit{Press}
  - \textit{Speech}
  - \textit{Petition}
  - \textit{Assembly}

- Five freedoms = \textit{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.
Our form of government is

- A republic and a representative democracy
- Not a monarchy, dictatorship, oligarchy or plutocracy where someone decides for us

Therefore we need

- informed citizens to elect informed representatives.
- a free marketplace of ideas in which to debate.
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**
  - 48 states & DC have *library confidentiality laws*.
  - 2 states have AG opinions protecting library records.
  - Access library materials without fear of *reprisal*.
    - a *chilling effect* on the exercise of fundamental rights
1st Amendment Limits, 1

- SCOTUS restrictions
  - time
  - place
  - manner

- Exceptions Include:
  - obscenity
  - libel
  - slander
  - fighting words
  - child porn
  - national security
  - & a very few more
Laws authorizing exceptions *must address*
- a “*compelling* government interest” and
- must be “*narrowly* tailored”

*Only a court* can determine if “speech” is not protected.
1st 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.
Connecting Public Libraries and the 1st Amendment

- 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 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.
Challenges: Formats Change

- 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
Challenges: 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”)

Challenges: Ownership

- 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)
Challenges: Digital Permanence

- Potential threats to unfettered access and uncompromised content are increasing.
- Campaign websites
- “Revised” journal articles
- Amazon and 1984
To Serve Everyone

A good library has something to offend everyone!
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/)
Contact

- J. Douglas (Doug) Archer
- Peace Studies, Global Affairs & Political Science Librarian
- 114 Hesburgh Library
- University of Notre Dame
- Notre Dame, IN 46556
- 574-631-6656 voice
- archer.1@nd.edu
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- Chair, ALA Intellectual Freedom Committee
- Past Chair, IFL Intellectual Freedom Committee
- Member, Freedom to Read Foundation, Board of Directors