Intellectual Freedom 101

J. Douglas Archer
Peace Studies, Global Affairs & Political Science Librarian
Hesburgh Libraries of Notre Dame
Objective: Participants will gain a greater understanding of Intellectual Freedom as a Core Value of American society in general and of the American Library Association in particular.
Academic & Intellectual Freedoms

- **Academic Freedom**
  - Context: The Academy
  - Focus: The individual scholar, teacher, etc.
  - Threat: Loss of job, suppression of ideas, etc.

- **Intellectual Freedom**
  - Context: Society in general
  - Focus: The individual reader, viewer, etc.
  - Threat: Inability to access 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](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 *per se*. 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
  - What’s good for the goose is good for the gander.
  - I’ll scratch your back; you scratch mine.

- Culture: Fair play & practicality

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

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

- *Living memory* of political persecution.
- *Living memory* religious persecution.
Remember the Context

- Suppression of free speech and the press during a long, bloody *revolution*,
- a period of intense *insecurity!"*
The Founders were idealistic:

- Optimistic
  - Established a republic
  - Established a representative democracy
  - Trusted the body politic
  - Many Deists & Free Thinkers (Jefferson & Franklin)
The Founders were also realists:

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

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

- 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.
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 1\textsuperscript{st} Amendment Rights

- **to receive information**
  - *Courts have held* that for the 1\textsuperscript{st} 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.
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)
http://www.ala.org/advocacy/intfreedom/librarybill

- A professional policy document.
- Provides guidance for libraries & librarians.
- Is based on the Bill of Rights.
- Is not a legal document (no sanctions).
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
Other ALA Documents

- 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*
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” & “Retracted” journal articles
- Amazon and 1984
Privacy is a Prerequisite to full enjoyment of Intellectual Freedom – *the “chilling effect”*

- No one’s business but yours
  - Self-evident
- No fear of misunderstanding
  - Kittens and Biscuits
- No fear of untimely public exposure
  - Child abuse, sexual abuse, anything intensely personal
- No fear of government retaliation
  - Unpopular opinions
3 or 8 Principles Directly Relevant

2. We uphold the principles of *intellectual freedom* and resist all efforts to censor library resources.

3. We protect each library user's right to *privacy and confidentiality* with respect to information sought or received and resources consulted, borrowed, acquired or transmitted.
We distinguish between our personal convictions and professional duties and do not allow our personal beliefs to interfere with fair representation of the aims of our institutions or the provision of access to their information resources.
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 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
- www.nd.edu/~jarcher

- Chair, ALA Intellectual Freedom Committee
- Past Chair, IFL Intellectual Freedom Committee
- Member, Freedom to Read Foundation, Board of Directors
- ALA Councilor at Large