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Libraries and the First Amendment

By Melora Norman

Those of us who shout the loudest about Americanism in making character assassinations are all too frequently those who, by our own words and acts, ignore some of the basic principles of Americanism—

The right to criticize.

The right to hold unpopular beliefs.

The right to protest.

The right of independent thought.

—Senator Margaret Chase Smith, June 1, 1950

The senator from Maine's speech denouncing McCarthyism is representative of the nation's evolving perspective on the First Amendment—a development that has had a significant impact on librarianship. As with the U.S. Postal Service and Customs, libraries and the courts before World War II accepted that censorship was a natural part of regulating communications, along with other matters affecting the public. However, oppressive authoritarianism demonstrated by the likes of Hitler and Stalin gave people reason to fear government intrusion into their lives, and the courts gradually became more protective of the rights of minorities to express differing views, particularly in the instance of political speech and newspapers. Mayors and city officials who wanted to ban peaceful gatherings in public spaces also found themselves increasingly unable to do so as the courts upheld peoples' rights to meet and communicate with one another (Schiller 2000). This fear that the United States could develop a repressive government, expressed so well by Margaret Chase Smith, was increasingly

common. During this period, intellectuals and others also successfully challenged customs bans and other restrictions on artistic works, especially written ones; even film, previously seen as something frivolous and negative, began to be seen as a form of communication worthy of protection (Schiller 2000).

This political environment and emerging interpretation of the First Amendment led the American Library Association (ALA) to develop its "Library Bill of Rights," published first in 1939. The current version of this policy document begins: "Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation" (www.ala.org/advocacy/intfreedom/librarybill). Libraries have also responded to this context by creating and maintaining collections that appeal to a wide variety of people with differing points of view—activities consistent with the ideal of providing equal access to all people so that they can learn and participate in a free society.

Libraries have always been important repositories of print materials that provide information to diverse communities representing a variety of perspectives. This ideal is embodied in the freedom to read, without fear of censorship. Libraries, however, sometimes find themselves facing challenges from members of the public who object to particular books and want them removed from circulation. While school libraries are most often the targets of such book challenges, public libraries have their fair share also. The ALA encourages libraries to adopt policies and processes whereby book challenges can be received, considered, and addressed. It is generally considered preferable for libraries to keep the books in their collections that some people in their communities find useful or interesting, even if others find them distasteful, since the First Amendment guarantees both the right to give and the right to receive speech (Ault 1990).

To highlight the importance of having freely accessible materials, the ALA developed Banned Books Week (www.bannedbooksweek.org), an annual celebration that provides libraries nationwide with an opportunity to note some of the books that have been banned frequently through the years. Among the

often-challenged books have been classics such as *Catcher in the Rye*, the *Harry Potter* series, the *Bible*, and *It's Perfectly Normal*, a book that is loved by some parents for its frank and clear information about sexuality and loathed by others for the same reason.



The increasingly digital information environment is causing significant change in libraries' abilities to advocate for users' First Amendment rights.

Privacy is another First Amendment concern that is important to libraries. If people believe that their reading habits may be exposed to others, this may have a “chilling” effect—in other words, it may keep them from exercising their right to receive speech (Ault 1990). Always concerned with keeping information about their users confidential, libraries became even more aware of the need to protect patron privacy in the early 1980s. At that time, some Maine public librarians received Freedom of Information Act requests for patron records; because the records were technically public, librarians had difficulty resisting those requests. According to the January 5, 1982, issue of the *Bangor Daily News*, the Maine Library Association's executive board had recently passed a resolution declaring its commitment to patron privacy, but that resolution was in conflict with the state's sunshine laws. Subsequently, in 1983, Maine joined several other states in passing a law to protect patron privacy—the 1983 Maine statute Title 27, §121, “Confidentiality of Library Records,” which states:

Records maintained by any public municipal library, the Maine State Library, the Law and Legislative Reference Library and libraries of the University of Maine System, Maine Community College System and the Maine Maritime Academy that contain information

relating to the identity of a library patron relative to the patron's use of books or other materials at the library are confidential. Those records may only be released with the express written permission of the patron involved or as the result of a court order. [2007, c. 67, §5 (AMD).]

Toward the end of the 1980s, the library community discovered that the FBI had created a “Library Awareness Program,” which sent agents into libraries to collect information about library users including “their names, reading habits, and nationalities” in a purported effort to uncover potential Soviet spy activities (Ault 1990). The ALA and librarians across the country spoke out against the effects of this program, which they said comprised an unwarranted intrusion into the lives of innocent people. This objection was echoed decades later, when the post-9/11 USA Patriot Act once again resulted in law enforcement demands for large amounts of personally identifiable information about the activities of library users. The Maine Library Association joined the ALA and other library organizations across the country when its executive board passed a resolution in 2009 asserting that the MLA: “Opposes initiatives on the part of the United States government to constrain the free expression of ideas, access to information, or to inhibit the use of libraries,” urging Congress to repeal the portion of the act that permitted “the FBI to demand information about people who are not targets of an investigation and to reinstate standards limiting the use of these authorities to obtain information only about terrorism suspects and agents of foreign powers.”

The increasingly digital information environment is causing significant change in libraries' abilities to advocate for users' First Amendment rights. Looking back to the time when the more literal First Amendment interpretations were gaining ground, it is noteworthy that even while political speech, newspapers, and artistic works were first being protected by courts from censorship, broadcast and radio were not. The original justification for allowing the FCC to regulate broadcast and radio was that they were “scarce” resources of so scientific and technical a nature that they required the intervention of experts (Schiller 2000). While Internet sites are hardly scarce, it is

possible to find such extremes of expression on the web that it is relatively easy to find a fair number of sites that people find offensive. The existence of such controversial material led to a successful effort on the part of would-be censors and software manufacturers. In 2001, the Supreme Court upheld a law tying federal aid for connectivity in schools and public libraries to their use of blocking software on computers that minimize sexual content. As this software is increasingly used across the world by oppressive governments to suppress political speech, it remains to be seen how free speech and democracy are affected by the Internet. 🌐

ENDNOTE

1. From: www.senate.gov/artandhistory/history/resources/pdf/SmithDeclaration.pdf

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