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The modern-day incarnation of Students for a Democratic Society protests on a college campus.

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_ The Students for a Democratic Society (SDS) were a nationwide student organization, representative of the New Left in the 1960s. The group pushed for, among other things, racial and sexual equality; an end to the police state, the draft, and war; democratized universities; labor rights; and poverty justice. SDS had hundreds of chapters across the United States, but they splintered over just how radical to be. The name was relaunched in 2006 as a new left-wing student group.

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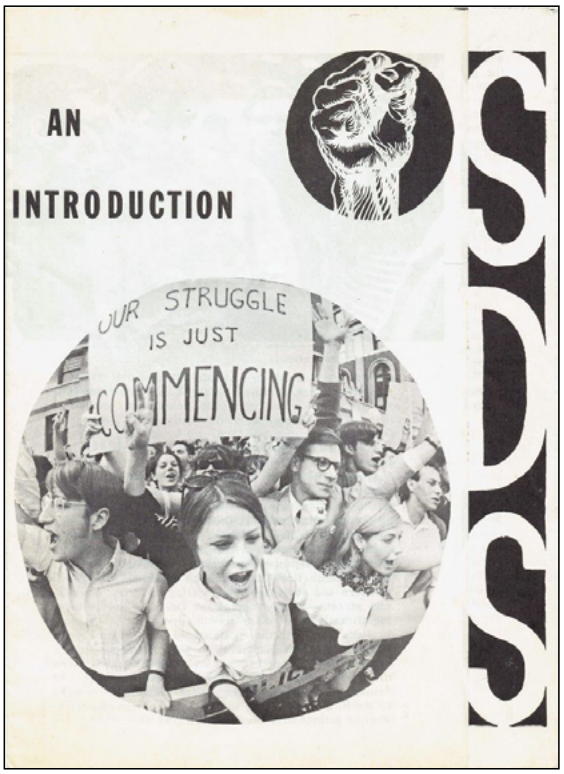

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COMMENTARY

Librarians' Experiences with Social Media and COVID-19 Misinformation

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This article explores our personal experiences with combating misinformation and disinformation about COVID-19 via social media platforms. Next, we describe how sharing our experiences with one another led to the motivation of the current study. Then, we describe the methodology of the present study and examine some of the preliminary results and analysis. Finally, we explore strategies and best practices to mitigate burnout associated with combating COVID-19 misinformation.

Personal Experiences

Kacy J. Lovelace

I use social media to connect with friends, family, and coworkers, and my use increased as I attempted to maintain the normal level of human contact that I was accustomed to as a teaching librarian. What I didn't realize, but probably should have, is that with so many people staying at home—many of them confused, unsure of what was happening in the world, and unsure of where to find credible information—the saturation of mis- and disinformation on my social media news feeds quickly reached an uncomfortable level. Attempting to explain the information creation process, how to analyze resource credibility, and how to find experts sharing trustworthy information began to feel like a second job with no reward. Occasionally, I felt like I was breaching the information divide, but more often than not, I felt that I was sending my knowledge, time, and resources out into the void with no way of knowing whether my efforts were successful.

Sabrina Thomas

During the lockdown I felt isolated while working from home and homeschooling my children at our dining room table. The only thing that stayed "normal" was my social media access. Staying connected was vital; however, friends and acquaintances started to share conspiracy videos. Often, I was able to easily dispel misinformation that appeared on my timeline. But there were frustrating examples where my feedback was ignored or looked on with hostility. Enough bad experiences left me feeling burned out and fueling a budding existential crisis. If people are manipulated by misinformation regardless of the high-quality evidence I presented, then what is the point of teaching information literacy? I reached out to colleagues, who experienced similar things. Were other teaching librarians feeling burned out with the tsunami of COVID-19 misinformation? How did they avoid burnout? What were their best practices for commenting and dispelling misinformation?

Lindsey M. Harper

The lockdown and work-from-home orders decreased my face-to-face interactions with people and increased my reliance on using virtual platforms to maintain connection with the world. Because of my increase in social media use, I realized just how much misinformation about COVID-19 was posted by my social media friends. At first, I worked tirelessly to combat this inaccurate information; doing this ultimately left me emotionally exhausted until I had to significantly reduce my exposure to these platforms.

Introduction

After learning from each of our own experiences as librarians during COVID-19, we realized we were not alone in our feelings of isolation, engaging with misinformation, and the subsequent burnout. Our definition of burnout comes from the Mayo Clinic (2018), "Job burnout is a special type of work-related stress—a state of physical or emotional exhaustion that also involves a sense of reduced accomplishment and loss of personal identity." We wanted to see whether a reduced sense of accomplishment and personal identity were prevalent themes among other librarian professionals, and if so, to what extent. A brief survey was created and distributed to assess librarians' experiences with misinformation and disinformation in their personal social media feeds during COVID-19, the impact of their professional life on their personal life and vice versa, and whether this leads to burnout among those surveyed.

After Marshall University's Institutional Review Board approved the developed survey, librarians were recruited via national library electronic discussion lists to gather a wide perspective from many different professional librarians. This survey was distributed online via Qualtrics between June 25 and July 24, 2020. The initial emails were sent to two discussion lists on June 24, with additional emails sent on July 8 and July 15 for one of the two discussion lists, respectively.

Librarians ($N = 94$) from primarily academic (75.53%) and health science (20.21%) libraries composed the majority of those surveyed in this study. Among those surveyed, librarians are responsible for teaching information literacy as part of their professional job duties (94.68%) and regularly participate in social media platforms (96.81%). Further, 75.54% of those librarians indicated they frequently or sometimes use social media to access news sources about COVID-19.

Initial Results

From our results, librarians were more likely to engage with social media posts containing misinformation or disinformation about COVID-19 when the poster was a family member or friend; they were less likely to engage with

posts when the person was an acquaintance or lesser-known social media friend. When asked whether they have a responsibility to combat misinformation about COVID-19 in their personal lives, 71.28% indicated they "definitely should" or "probably should" do something about it. One librarian commented,

> I don't try to completely change someone's opinion in a Facebook argument. I tend to focus on one aspect of their incorrect information and discuss reasonably and calmly and using noninflammatory language that connects with them to start dismantling their incorrect opinions.

Several librarians suggested speaking with the original poster one-on-one as a more effective way of combating misinformation and disinformation regarding COVID-19. One librarian said, "Since leaving comments on posts doesn't seem to help, real conversations with people would seem the best approach," and another stated they did this by "messaging people privately instead of a public comment to save face, so people tend to respond better."

Librarians were asked whether they were feeling burned out from combating misinformation and disinformation about COVID-19 on social media; 69.15% of our surveyed librarians indicated feelings of burnout "frequently" or "some of the time." One librarian stated,

> One of the primary reasons I do not participate in social media is the burnout from trying to educate people, which happened prior to COVID-19. So my solution was to stop engaging in social media and only engage in direct dialogue with family and friends—where I still do need to combat misinformation, but it's less overwhelming.

Discussion

The results and comments presented from this study indicate the need for a wide-ranging discussion on best practices for information professionals to combat misinformation and disinformation, particularly as these issues extend beyond our professional lives and move into our personal spaces. The strategies developed for professional and personal approaches will likely differ yet overlap. The professional approach requires us to stay abreast of current issues and provide factual and evidence-based resources to combat misinformation; it requires us to remove our emotions from the equation. One librarian stated their best practice was to "keep everything completely factual and tone neutral." This approach certainly works when dealing with library users or people you do not know well. On the other hand, the personal approach requires a similar yet slightly different strategy, especially when it concerns relationships with whom we are personally vested. Another librarian stated that their best practice was, "not necessarily going in 'hard,' but instead acquiescing to that person's fear or worry and then sharing another perspective."

Setting both professional and personal boundaries to prevent burnout in this context is challenging because if there is not an army of people to combat misinformation, false information spreads rapidly—that is if our words are heeded online. Although information professionals are known for working in a "helping profession" and we will do so appropriately during work hours, it is important we not exhaust ourselves to the point of burnout via fighting battles of mis- and disinformation regarding COVID-19 in our personal lives that we may never win. One librarian in our survey said their best practice advice was to "choose your battles" and, until we develop better strategies to engage with these issues, find ways to disengage and maintain an appropriate work-life balance. In the interim, perhaps we will feel a bit less alone knowing we are all in this together.

The initial results and comments presented from this study will be explored more thoroughly in a future publication. Subsequent research will discuss burnout rates specifically and examine librarians' perceptions on the impact of their attempts to combat COVID-19 mis- and disinformation in their personal lives. Because of the nature and topic of the present study, we thought it was paramount to quickly explore a portion of these results with information professionals. This is especially true as it regards librarians' experiences combating COVID-19 content in what is truly the most unprecedented time for public health in more than a century.

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FEATURE

A History of Censorship in the United States

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Censorship is a centuries-old issue for the United States. The importance of intellectual freedom and the freedom of speech is particularly evident in libraries, organizations dedicated to the access and spread of information. Issues regarding censorship and intellectual freedom have even reached the US Supreme Court. The following essay serves as a history of censorship in the United States, particularly in its libraries, and how the same issues of censorship have now transitioned into the digital age.

Throughout the history of the United States, there are many examples of censorship and censorship attempts. Censorship is often viewed as a violation of the First Amendment and the right to free speech. Freedom of speech is particularly pertinent to libraries, as it "encompasses not only a right to express oneself, but also a right to access information" (Oltmann 2016a, 153). The First Amendment is a common argument made by advocates against the act of censorship (Lambe 2002). As Pinnell-Stephens (2012) writes, "The basis of intellectual freedom in libraries lies in the First Amendment" (xi). However, interpretation of the First Amendment is not concrete, and throughout US history, courts have attempted to decide what freedoms are actually protected under the First Amendment. At the highest level, the US Supreme Court has heard many cases dealing with the First Amendment and the freedom of speech, which can also be relevant to libraries since they attempt to provide an environment of free expression and accessibility.

Many definitions of censorship have been proposed over the years. The American Library Association (ALA) defines censorship as a "change in the access status of material, based on the content of the work and made by a governing authority or its representatives. Such changes include exclusion, restriction, removal, or age/grade level changes" (ALA 2016). According to Prebor and Gordon (2015), censorship is "an action utilized in order to prohibit access to books or information items because their content is considered dangerous or harmful to their

readers" (28). Knox (2014) describes censorship as "an amalgamation of practices, including the redaction of text in a document, cutting pages out of a book, or denying access to materials" (741). While many definitions of censorship have been used, according to Oppenheim and Smith (2004), "the general sentiment behind most definitions is that something is withheld from access by another" (160).

Nineteenth-Century Beginnings: Obscenity and the Censorship of the US Postal Service

One of the oldest, and most commonly cited, reasons behind many book challenges and censorship attempts in the United States is that the book or other material contains obscenity. As Wachsberger (2006) writes, "The history of books censored for depicting sexual acts—whether the chosen word was 'pornography,' 'erotica,' or 'obscenity'—is a fascinating ride through our country's court system" (vii). An early case dealing with the issue of obscenity is *Rosen v. United States* (1896), in which the defendant allegedly used the US Postal Service to send material that was deemed "obscene, lewd, and lascivious" (*Rosen v. United States* 1896, at 43). In their ruling, the Supreme Court adopted the same obscenity standard as had been articulated in the notable British case *Regina v. Hicklin* (1868). The *Hicklin* test defined material as obscene if it tended "'to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall'" (*Rosen v. United States* 1896, at 43). The Supreme Court upheld the conviction.

In 1873, the US Congress passed the Comstock Act (1873), which made it a crime to knowingly mail obscene materials or advertisements and information about obscene materials, abortion, or contraception (de Grazia 1992). It is notable that while it has roots dating back to 1775 and an original intention of supporting the concept of intellectual freedom, the Comstock Act (1873) is just one of many examples of the Postal Service enacting laws and acting as a censor throughout its history (Darling 1979; Paul and Schwartz 1961).[1]

One seminal example of censorship on the grounds of obscenity involves James Joyce's most famous work, *Ulysses* (1922). Prior to the novel's US publication, the work was serialized in the literary magazine *The Little Review.* Following this first publication of *Ulysses*, three issues of *The Little Review* were seized and burned by the US Postal Service on the grounds that its content was deemed "obscene." A complaint was made regarding a particular chapter that was published in the magazine, and after a trial the publishers were convicted and fined (Baggett 1995). Publication of *Ulysses* in the United States stopped for more than a decade (Gillers 2007). It was not until the federal district court case *United States v. One Book Called Ulysses* in 1933 that the novel could legally be published in the United States (Gillers 2007). In the ruling for the case, Judge John M. Woolsey established the important notion that an entire work, rather than just a portion of it, should be considered for the work to be declared obscene (*United States v. One Book Called Ulysses* 1933).

The Supreme Court ruled in the case *Roth v. United States* (1957) that obscenity was not protected under the First Amendment. It also developed what came to be known as the *Roth* test for obscenity, which was "whether to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to the prurient interest" (*Roth v. United States* 1957, at 489). However, the *Roth* test definition of obscenity proved difficult to apply. In the Supreme Court case *Jacobellis v. Ohio* (1964), which addressed whether states had the right to ban films they deemed obscene, Justice Potter Stewart famously stated that while he could not precisely define pornography, "I know it when I see it" (*Jacobellis v. Ohio* 1964, at 197).

The *Roth* test was eventually expanded with the case *Miller v. California* (1973). Under the *Miller* test, a work is obscene if

> "(a) . . . 'the average person, applying contemporary community standards' would find the work, as a whole, appeals to the prurient interest . . . (b) . . . the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) . . . the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." (*Miller v. California* 1973, at 39)

Many people confuse obscenity, which is not protected under the First Amendment, with pornography, which is

1. In 1945, the Postmaster General of the United States, Frank Comerford Walker, filed suit against the author and publisher of a pamphlet, called "Preparing for Marriage" (*Walker v. Popenoe* 1945), which he withheld from the mail on the grounds of the Comstock Act (1873). The pamphlet contained "detailed information and advice regarding the physical and emotional aspects of marriage" (*Walker v. Popenoe* 1945, at 512). However, the Court ruled that the order barring the pamphlet from the mail without a hearing was "a violation of due process" (*Walker v. Popenoe* 1945, at 513).

protected under the First Amendment (Pinnell-Stephens 1999). The exception to this would be child pornography. The First Amendment is a common argument for those against censorship, and many challenges and censorship attempts involve materials targeted toward children and young adults. However, the First Amendment argument is not as strong when the censorship pertains to young children (Magnuson 2011), as many laws are in place for the purpose of protecting children. The Supreme Court ruled in the cases *New York v. Ferber* (1982) and *Osborne v. Ohio* (1990) that child pornography is not subject to the *Miller* test and that the government's interest in protecting children from abuse was crucial.

Censorship in the United States began with both the Postal Service and public libraries, gaining traction throughout the nineteenth century.

Censorship in Public Libraries

In the history of public libraries, censorship is "as old as the public library movement itself" (Thompson 1975, 1). As Wiegand (2015) put it, "Censorship was never far from public library practices" (36). In his 1973 article "The Purpose of the American Public Library: A Revisionist Interpretation of History," Michael Harris gives a history of the American public library, with the Boston Public Library beginning the public library movement in the 1850s. Since their inception, American public libraries have faced censorship issues (Wiegand 2015).

Censorship and Race

Race and ethnic background have been factors in censorship since the beginning of the public library movement. For the earliest public libraries in the 1850s, librarians and library trustees were often white, upper class, educated males, who were often the public library's target demographic (Harris 1973). However, the 1890s saw a huge influx of immigrants into the United States (Harris 1973). Between 1893 and 1917, 7 million immigrants arrived from southern and eastern Europe (Wiegand 2015). This caused people to fear for the "American way of life." In response, public libraries began to offer programs and classes for immigrants with the purpose of "Americanizing" them (Harris 1973).

During the Carnegie era (1889–1917), Scottish-American businessman Andrew Carnegie gave $41 million to construct 1,679 public library buildings in 1,412 US communities (Bobinski 1968; Wiegand 2015). However, some communities rejected Carnegie grants, with varying justifications. Sometimes it was pride, sometimes it was class, and sometimes it was race (Wiegand 2015). This was particularly at issue in the segregated, Jim Crow-era South, where many Carnegie grants were rejected because community leaders believed a Carnegie Free Library would have to admit Black people (Wiegand 2015).[2]

One southern public library that did accept a Carnegie grant was the Colored Branches of the Louisville Public Library in Louisville, Kentucky, which opened its first branch for Black patrons in 1905 (Wiegand 2015). The branch then moved into a new Carnegie building in 1908, followed by a second Black neighborhood receiving a Carnegie library in 1914 (Wiegand 2015). Largely because they were among the few places in segregated Louisville that welcomed and allowed Black people to gather, the public library at this time took on the role of the neighborhood social center (Wiegand 2015).

Another example of censorship in public libraries with racial influences came in 1901, when the H. W. Wilson Company began publishing its *Readers' Guide to Periodical Literature*. The *Readers' Guide* was an index of periodicals public libraries would often use as suggestions for their collections. However, periodicals issued by marginalized groups such as African or Hispanic Americans could not be indexed in the *Readers' Guide*. This put them at a distinct disadvantage, as then public libraries tended to not subscribe to them (Wiegand 2015).

An important point in the history of public libraries is their integration. After World War II, efforts began to integrate public libraries in the American South (Wiegand 2015). In response to these efforts to integrate, "librarians across the country were mostly silent, and largely absent" (Wiegand 2015, 172). In 1954, the Supreme Court ruled in *Brown v. Board of Education* that "separate but equal" was no longer legal. During this time, public libraries in the South were frequent sites of racial protests. Examples include a 1960 sit-in at the Greenville Public Library in South Carolina led by a teenage Jesse Jackson, and, in 1961, a peaceful protest led by members of the National Association for the Advancement of Colored People (NAACP) at the public library in Jackson, Mississippi (Wiegand 2015). While these protests were predominant in the South, they occurred at public libraries all across the country, including the North (Wiegand 2015), making

2. While the segregation of libraries might not be considered censorship by all definitions, it does involve the exclusion of information from people of particular races. Under the American Library Association's definition of censorship (ALA 2016), exclusion is considered to be a form of censorship.

desegregation a pivotal point in the history of American public libraries.

Racial and ethnic background continues to be an influencer on censorship in libraries, with multiple researchers exploring public views regarding the inclusion of racially charged materials in a library's collection. From 1976 to 2006, the General Social Survey asked randomly selected national samples of US adults age eighteen and older whether they would support removing a book spouting racist beliefs targeted at African Americans from the public library, with multiple researchers using statistical tests to analyze the data collected from the survey (Burke 2011; Bussert 2012).

In their analysis of the survey results, researchers found an overwhelming majority of the survey's participants did not support removing the racist book from the library (Burke 2011), and the most influential predictors of support for book removal from the public library were found to be education level, religious affiliation, and race (Bussert 2012). Regarding education level, Bussert (2012) found that "the lower one's education level, the higher their support for removal of the racist book from the public library" (117). Regarding religious affiliation, Protestants showed the highest level of support for removal, followed by Catholics, Jews, and respondents unaffiliated with religion (Bussert 2012). Regarding race, Bussert (2012) found that "while half of African American respondents supported removing a racist book, only one-third of white respondents did" (117).

Throughout the history of public libraries, censorship stemming from racial or ethnic background has been present. This censorship has come in various forms, including segregated library branches in the first part of the twentieth century, or the suppression of books or other materials spouting racist beliefs that occurs even to this day. When faced with a censorship challenge of this nature, it is important for librarians to remember the *Library Bill of Rights* and other ethical codes that guide them as a profession and encourage them to refrain from censoring such materials and ideas from their library.

Censorship and Religion

Censorship can also stem from religious beliefs (Wiegand 2015). According to Prebor and Gordon (2015), "Religiously motivated censorship is one of the most prevalent forms of censorship and has existed since antiquity" (28). Religious texts such as the Bible, the Talmud, and the Quran have all been censored at some time (Prebor and Gordon 2015). Even popular releases such as J. K. Rowling's Harry Potter series have been censored on religious grounds due to the books' portrayal of witchcraft (Bald 2011).

In the history of public libraries, censorship due to religious reasons can be predominantly seen at the turn of the twentieth century with the tension between public libraries and the Roman Catholic Church. In 1895, Catholics in Portland, Oregon, complained that their public library subscribed to no Catholic magazines (Wiegand 2015). In addition, of the 1,400 books at that time that the Dewey Decimal System classified as religion, none were by a Catholic author. This eventually led to a priest in Fort Wayne, Indiana, to say that because Catholics paid taxes to support the library, they should be represented on the library board and that any books attacking the church should be removed (Wiegand 2015).

In 1938, a Catholic organization known as the National Organization for Decent Literature (NODL) was established to combat the publication and sale of lewd magazines and brochure literature (Wiegand 2015). In fact, the Roman Catholic Church has a long history with censorship. In 1559 the first index of forbidden books was published by Pope Paul IV. The index was used for hundreds of years, with the final edition being published in 1948 and officially being abolished in 1966 (Prebor and Gordon 2015).

Another example of censorship challenges grounded in religious beliefs involves the book *The Last Temptation of Christ* by Nikos Kazantzakis, a novel many people consider to be sacrilegious. The book was first published in English in 1960 and regularly appears on banned book lists (Bald 2006). In Santa Ana, California, a patron checked out the book and then renewed it. As soon as the book was returned, it was promptly checked out and then renewed by a friend of the original patron. The librarian soon discovered they were members of a group determined to keep the book out of circulation (Wiegand 2015). Protests of the book also occurred in Long Beach, Pasadena, Fullerton, and Newport Beach. In San Diego, several citizens claimed that the book was pornographic, defamed Christ, and was part of a Communist conspiracy (Wiegand 2015).

Libraries will often serve a patron base with differing religious views. This is something for librarians to be mindful of when making selection decisions. While the ALA's values would support having materials in the collection from a variety of differing religious viewpoints, it is important to note that there are Christian libraries and other faith-based library institutions with unique user needs that the collection development policy should address (Gehring 2016; Hippenhammer 1993; Hippenhammer 1994). It is important for the collection

development policy of any library to support the representation of differing religious viewpoints as well as the needs of the community it serves.

Censorship of Fiction

Public libraries began with the purpose of serving an aristocratic class as elitist centers for scholarly research (Harris 1973). However, this changed toward the end of the nineteenth century, when public libraries began to cater to the "common man." Libraries began to strive to assist the poor with educating themselves and pulling themselves up to a higher socioeconomic class (Harries 1973). While public libraries have historically encouraged "self-improvement reading" (Wiegand 2015, 38), this did not always align with the desires of the public. Since the beginning of the public library movement, trends have shown the public's taste for the current, popular fiction of the time (Wiegand 2015).

One example of fiction dominating a library's circulation happened at the Boston Public Library. In 1859, the Boston Public Library found out firsthand that if the library did not provide the popular stories the public valued, whether or not they were deemed valuable by librarians or other cultural authorities, then circulation would decrease (Wiegand 2015). In 1875, *The Literary World* reported on the circulation of the different Boston Public Library branches. According to *The World*, fiction accounted for 79% of the East Boston branch circulation, 78% for South Boston, and 81% for Roxbury (Wiegand 2015).

While late-nineteenth-century American public libraries carried popular fiction in their collections to keep people coming back, this did not stop censorship attacks against it (Wiegand 2015). One tactic used by librarians around the turn of the century to limit access to fiction was through the use of closed versus open stacks. In the beginning of the public library movement, library stacks were closed and a patron would have to go to the desk to ask the librarian or other staff member to retrieve the book for which they were looking. After 1893, libraries began to open their stacks to the public. However, librarians would regularly put nonfiction out in the open stacks but keep fiction in the closed stacks as a way to get the public to read more nonfiction and less fiction (Wiegand 2015).

Another tactic libraries used to encourage the reading of nonfiction as opposed to fiction was moving from a one-book-per-visit rule to a two-book-per-visit rule that allowed patrons to check out only one fiction book as one of their two books (Wiegand 2015). This tactic continued even after World War I. Prior to the war, the Los Angeles Public Library permitted patrons to check out three books at a time, and all could be fiction. After the war, the library extended the limit to five books, but only two of the books could be fiction (Wiegand 2015). However, this rule had little effect. While nonfiction circulation did increase by 7%, fiction still accounted for 74% of the library's total circulation (Wiegand 2015).

While some libraries used tactics such as placing fiction in closed stacks or enforcing limits on the number of fiction books a patron could borrow at a time, other public libraries would outright ban fiction from their collections (Wiegand 2015). The public library in Germantown, Pennsylvania, refused to stock any fiction (Wiegand 2015). The Groton (Connecticut) Public Library moved into new quarters in 1867, and the librarian declared "there would be no fiction at all in the Library" (Wiegand 2015, 41). Whether libraries utilized closed versus open stacks to limit the public's access to fiction, placed limits on how many fiction books a patron could borrow from the library at one time, or outright banned fiction from their collections altogether, the war against fiction is a pivotal example of censorship in the history of public libraries.

Censorship of Paperbacks

After World War II, to maximize sales, book publishers began to issue more paperbacks with alluring covers (Wiegand 2015). Merchants would then place these paperbacks on newsstands with their often suggestive covers out to attract customers (Wiegand 2015). Some people at this time claimed that the suggestive covers affected the moral standards of the country and led to increased juvenile delinquency. Some even argued it was a Communist conspiracy to take over the country (Wiegand 2015).

Several groups got involved in the issue, including the NODL. In the early 1950s, the NODL targeted paperbacks and comic books, even publishing lists it disapproved of in its monthly publication, *The Priest* (Wiegand 2015). NODL committees would even monitor newsstands and pressure the owners to stop selling these popular paperbacks (Wiegand 2015). Many librarians at the time either agreed with or were intimidated by the NODL and often refused to carry paperbacks in their collections (Wiegand 2015).

Wiegand (2015) says of this refusal by libraries in the 1950s to carry paperback books, which were significantly cheaper than hardbacks, "The library profession identified with that part of the publishing industry that favored hardbounds over the softcovers that newsstands and drugstores sold largely to working-class readers" (169). This

period marks an important point in the history of public libraries and the profession of librarianship in regards to censorship, particularly as it is an example of a large portion of the librarianship profession acting as censors themselves.

Censorship of Communist Materials

Public libraries in the 1950s faced pressure to censor materials believed to be spreading Communist ideas and beliefs (Wiegand 2015). Wisconsin senator Joseph McCarthy capitalized on America's Cold War fears about the Soviet Union and the Communist movement. He accused multiple civic agencies and institutions, including libraries, of spreading Communist ideas. He specifically targeted libraries that the recently established US Information Agency had opened at US embassies abroad. He claimed that these libraries had 30,000 Communist books, and the effects of his claims were felt throughout the American library community (Wiegand 2015).

Many librarians at this time proceeded to withdraw controversial materials from their libraries whether it was because they believed in McCarthy's message, or they simply wanted to save their jobs. However, some librarians did resist McCarthy and his message (Wiegand 2015). When the *Boston Herald* attacked the Boston Public Library for stocking books it claimed promoted Communism, a local Catholic newspaper in Boston as well as numerous citizens joined the librarians in a successful protest (Wiegand 2015). While some librarians adhered to the principles set forth in the *Library Bill of Rights* and some succumbed to pressure, the fear of Communism in America in the 1950s greatly impacted the entire American library community.

While censorship has always been a part of the history of American public libraries, it also has a long history of being present within the schools educating the nation's children.

Censorship in Schools

The Supreme Court has heard many cases regarding the First Amendment rights of students. In *West Virginia Board of Education v. Barnette* (1943), two students whose religion, Jehovah's Witnesses, forbade them from saluting or pledging to symbols, were expelled from school for refusing to salute the American flag and say the Pledge of Allegiance. In a 6-3 vote, the Court ruled in favor of the students (*West Virginia Board of Education v. Barnette* 1943).

In *Tinker v. Des Moines Independent Community School District* (1969), three students, including siblings John F. Tinker and Mary Beth Tinker, as well as their friend Christopher Eckhardt, were expelled after they wore black armbands to school as a symbolic protest of the Vietnam War (ALA 2006). The Supreme Court held that students "do not shed their constitutional rights at the schoolhouse gate" (*Tinker v. Des Moines Independent Community School District* 1969, at 506) and that "the First Amendment protects public school students' rights to express political and social views" (ALA 2006, para. 25).

A pivotal Supreme Court ruling regarding First Amendment rights and censorship in school libraries was *Board of Education, Island Trees Union Free School Dsitrict No. 26 v. Pico* (1982). In 1975, members of the school board from the Island Trees School District ordered that certain books be removed from high school and junior high school libraries on the grounds that the books were "anti-American, anti-Christian, anti-Semitic, and just plain filthy" (*Board of Education, Island Trees Union Free School District No. 26 v. Pico* 1982, at 857). Some of the books to be removed were *Slaughterhouse Five*, *Best Short Stories of Negro Writers*, *Go Ask Alice*, and *Down These Mean Streets* (Molz 1990). A high school student named Steven Pico led a group of students who sued the board, claiming a denial of their First Amendment rights. The case made its way to the Supreme Court, where a closely divided Court ruled 5–4 in favor of the students (ALA 2006).

In the ruling for the case, Justice William Brennan cited both *Tinker v. Des Moines School District* (1969) as well as *West Virginia Board of Education v. Barnette* (1943) and stated that "local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion'" (*Board of Education, Island Trees Union Free School District No. 26 v. Pico* 1982, at 872).

In the case *Counts v. Cedarville School District* (2003), the school board of the Cedarville, Arkansas, school district voted to restrict students' access to the popular Harry Potter book series on the grounds that the books promoted "disobedience and disrespect for authority" (*Counts v. Cedarville School District* 2003, at 1002) and dealt with "witchcraft" (at 1002) and "the occult" (at 1002). After the vote, students in the Cedarville school district were required to obtain a signed permission slip from a parent or guardian before they would be allowed to borrow any of the Harry Potter books from school libraries (ALA 2006). The district court overturned the board's decision and ordered the books returned to unrestricted circulation on the grounds that "the restrictions violated students'

First Amendment right to read and receive information" (ALA 2006, para. 23).

Twentieth-Century Changes: Movies, Music, and More

Throughout the twentieth century, technological advances changed the way Americans enjoyed their entertainment, whether through films, music recordings, or even the rise of new literary genres such as comic books. As each new form of entertainment rose in popularity, the censorship attempts became more prevalent.

Censorship of the Motion Picture Industry

Censorship of the motion picture industry became prevalent with the Motion Picture Production Code in the 1930s. The Motion Picture Production Code was the set of moral guidelines for the industry that was applied to most motion pictures released by major studios in the United States from 1930 to 1968. It was also known as the Hays Code, after Will H. Hays, who was the president of the Motion Picture Producers and Distributors of America (MPPDA) from 1922 to 1945 (Miller, 1994). Hays was the Chairman of the Republican National Committee from 1918 to 1921, and served as the US Postmaster General from 1921 to 1922, under President Warren G. Harding (Allen 1959). Several studios in Hollywood recruited Hays in 1922 to help rehabilitate Hollywood's image after several risqué films and a series of off-camera scandals involving Hollywood stars tarnished the motion picture industry image (Miller 1994). Hays resigned as Postmaster General on January 14, 1922, to become president of the newly formed MPPDA (AP 1922).

The MPPDA, which later became known as the Motion Picture Association of America (MPAA), adopted the Production Code in 1930 and began strictly enforcing it in 1934 (Miller 1994). The Production Code clearly spelled out what content was acceptable and what content was not acceptable for motion pictures produced in the United States. Content restricted by the Production Code included "scenes of passion" unless essential to a film's plot, "sex perversion," adultery, "indecent" dancing, and white slavery (AP 1930, 3). The Production Code was adhered to well into the 1950s, and then with the emergence of television, influence of foreign films, and directors who would push the envelope,[3] the Code began to weaken. In 1968, the Production Code was replaced with the MPAA film rating system (Miller 1994).

Censorship of the Comic Book Industry

Controversy regarding comic books and their content surfaced shortly after their debut in the 1930s. The first group to object to comics was educators, who saw comics as a "bad influence on students' reading abilities and literary tastes" (Nyberg n.d., para. 3). Church and civic groups objected to "immoral" content such as scantily clad women and the glorification of villains. The NODL added comics to the materials it evaluated (Nyberg n.d., para. 4).

After World War II, there was a rise in the popularity of horror comics, bringing a third group into the comic book debate: mental health experts. With a focus on juvenile delinquency, noted New York City psychiatrist Dr. Fredric Wertham campaigned to ban the sales of comics to children, arguing that "children imitated the actions of comic book characters" and that "the content desensitized children to violence" (Nyberg n.d., para. 5).

Figure 1. The Comics Code Seal. Courtesy of the Comic Code Authority.

In September 1954, the Comics Magazine Association of America (CMAA) was formed in response to a widespread public concern over the gory and horrific content that was common in comic books of the time ("Horror" 1954). This led to the Comics Code Authority (CCA) and regulations on content published in comic books. Comic book publishers that were members would submit their comics to the CCA, which would screen them for adherence to its Code. If the book was found to be in compliance, then they would authorize the use of their seal on the book's cover (Hajdu 2008). Pressure from the CCA and the use of its seal led to the censorship of comic books across the country.

Even before the adoption of the CCA, some cities had organized public burnings and bans on comic books (Costello 2009). The city councils of both Oklahoma City

3. An example of a director pushing the envelope and working around Production Code guidelines was Alfred Hitchcock with his 1946 film *Notorious*. In the film, he worked around a three-second-kissing-only rule by having the actors break off every three seconds, while the entire sequence actually lasts two and a half minutes (McGilligan 2004, 376).

and Houston passed city ordinances banning crime and horror comics ("Horror" 1954). The movement against comics even infiltrated public libraries, with the Charlotte (North Carolina) Public Library system refusing to carry them in its collections in 1951 (Wiegand 2015).

These regulations were devastating for the comic book industry. According to Hajdu (2008), work for comic book cartoonists dried up, with more than 800 creators losing their jobs. The number of comic book titles published dropped from 650 titles in 1954 to 250 in 1956 (Hajdu 2008). Over time, the industry was able to recover as publishers left the CCA one by one. In January 2011, Archie Comics, the last remaining publisher still participating, announced they were leaving the CCA, rendering the CCA and its Code defunct (Rogers 2011).

Censorship of the Recording Industry

The music recording industry has faced censorship stemming from the use of Parental Advisory labels. The labels are placed on music and other audio recordings if the recording uses excessive profanities or inappropriate references. The intention of the labels is to alert parents of material that is potentially unsuitable for younger children (Cole 2010).

The idea for the labels was first outlined by Tipper Gore, wife of Al Gore and eventual Second Lady of the United States, and her advocacy group the Parents Music Resource Center (PMRC) in a 1984 letter to the Recording Industry Association of America (RIAA) and sixty-two record labels (Schonfeld 2015). The PMRC initially proposed a rating code: "Violent lyrics would be marked with a 'V,' Satanic or anti-Christian occult content with an 'O,' and lyrics referencing drugs or alcohol with a 'D/A'" (Schonfeld 2015). With little response, the PMRC then proposed a generic label warning of lyric content. The RIAA eventually gave in and agreed to put warning stickers on albums, with early versions of Parental Advisory labels first used in 1985 (Schonfeld 2015). In 1990, "Banned in the USA" by the rap group 2 Live Crew became the first album to bear the "black and white" Parental Advisory label (Schonfeld 2015, para. 10).

Parental Advisory labels were originally affixed on physical cassettes and then compact discs. Now, with the rise of digital music through online music stores and music streaming, the label is usually embedded in the digital artwork of albums that are purchased online (Cole 2010). While the evolution of digital music has reduced the Parental Advisory label system's efficacy, use of the labels has nevertheless impacted the recording industry, in some cases leading to censorship of the recordings. Many major retailers that distribute music, including Walmart, have enacted policies that do not allow the selling of any recordings containing the label in their stores (Cole 2010).

Figure 2. Parental Advisory Label. Courtesy of Recording Industry Association of America, Inc.

Censorship of LGBTQ Materials

Censorship of lesbian, gay, bisexual, transgender, queer and/or questioning (LGBTQ) materials has occurred throughout the twentieth century and continues to face censorship today. The American Library Association has seen an increase in organized, coordinated challenges to LGBTQ materials and services in libraries (ALA 2020), and homosexuality was cited as a reason for censorship in many analyses of censorship trends over the last several decades (Woods 1979; Harer and Harris 1994; Sova 1998; Doyle 2000; Foerstel 2002; Karolides, Bald, and Sova 2005). In addition, some state legislatures even limit state funding for libraries that do not agree to restrictions on certain controversial LGBTQ materials (Barack 2005; Oder 2006).

Censorship of LGBTQ materials in libraries has been a common area of research, both for school libraries (Coley 2002; Garry 2015; Hughes-Hassell, Overberg, and Harris 2013; Maycock 2011; Oltmann 2016b; Sanelli and Perreault 2001) and public libraries (Burke 2008; Cook 2004; Curry 2005; Stringer-Stanback 2011). Research has shown that while gay-themed materials are often the subject of censorship, the country as a whole is becoming less conservative and is more open to finding such materials in their libraries (Burke 2008). Furthermore, a supportive community and administration is of utmost importance when building a quality, inclusive library collection (Garry 2015).

Despite these findings, LGBTQ individuals do often face harassment, discrimination, and even violence in society as a whole. Many LGBTQ young adults have learned to be secretive about their sexual identity for fear of rejection from their peers or even their families (Rauch 2011). This is particularly true for young adults who attend schools in small, less diverse, rural communities and communities with limited financial resources (Kosciw, Greytak, and Diaz 2009). Those limited resources can be a particular drawback for public libraries, as they prevent them from circulating relevant, up-to-date materials

(Van Buskirk 2005) that might increase awareness and tolerance of LGBTQ individuals and issues. While "partisan or doctrinal disapproval" (ALA 2010, 49) plays a large role in these materials not being available where they are most needed, the fact remains that many librarians and information professionals in these areas simply do not have the funds to provide these materials, either to LGBTQ students or to those who surround them.

Much of the controversy over LGBTQ-themed literature and materials deals with their dissemination to children (Naidoo 2012). Kidd (2009) writes how the "censorship of children's books has accelerated in the twentieth century, as the censorship of adult materials became less acceptable and as childhood was imagined more and more as a time of great innocence and vulnerability" (199). DePalma and Atkinson (2006) write that oftentimes children are considered to be innocent asexual beings, and therefore many believe they must be "protected from the dangerous knowledge of homosexuality" (DePalma and Atkinson 2006, 339). Parents frequently challenge books with LGBTQ themes, claiming they are not suitable for the child's age group. This makes it difficult for families with LGBTQ members to access these materials. According to Wolf (1989), "Homophobia . . . still keeps most gay families hidden and accounts for the absence of information about them. It also keeps what information there is out of the library, especially the children's room, and makes it difficult to locate through conventional research strategies," (52).

One example of this occurred in Wichita Falls, Texas, and led to the federal case *Sund v. City of Wichita Falls, Texas* (2000). Residents of Wichita Falls, Texas, who were members of a church sought removal of the two books *Heather Has Two Mommies* and *Daddy's Roommate*. The residents sought removal of the books because they disapproved of the books' depictions of homosexuality. The City of Wichita Falls City Council then passed a resolution to restrict access to the books if a petition was able to get three hundred signatures asking for the restriction. A different group of citizens then filed suit after copies of the two books were removed from the children's section of the library and placed on a locked shelf in the adult area (*Sund v. City of Wichita Falls, Texas* 2000). The District Court ruled that the city's resolution permitting the removal of the two books improperly delegated governmental authority regarding selection decisions of books carried in the library and prohibited the city from enforcing the resolution (ALA 2006; Steele 2017; Steele 2019b).

As school libraries are often not safe spaces for LGBTQ teens, they will often seek out public libraries for resources related to their issues and identity questions (Curry 2005). However, as Curry's study showed, not all reference librarians were even aware of relevant terminology—for example, "gay-straight alliance"—and were therefore unable to address the questions posed to them by the researchers regarding their LGBTQ collections. Some also seemed nervous or uncomfortable with the questions being posed to them (Curry 2005, 70). This not only hindered the search, but also raised the question of whether the librarians were maintaining objectivity about the nature of the materials (Curry 2005, 72).

Alvin M. Schrader's 2009 article, "Challenging Silence, Challenging Censorship, Building Resilience: LGBTQ Services and Collections in Public, School and Post-Secondary Libraries," discusses the importance of including LGBTQ materials in libraries so that young people can turn to these materials for support. Schrader explains that librarians are avoiding building these collections and are claiming that their libraries do not serve people who need, or want, LGBTQ materials or that the library cannot afford to purchase those materials (107). Schrader challenges librarians to "foster diversity and resilience. They can create safe places. They can turn pain into opportunity, tolerance into celebration, despair into hope" (109). This message should empower librarians to resist the pressure to censor these materials in their libraries.

While some adults may feel that censoring certain materials from young people is a way of protecting them, it is in direct opposition of the ALA's *Freedom to Read Statement*. Section 4 of the *Freedom to Read Statement* states, "There is no place in our society for efforts to coerce the taste of others, to confine adults to the reading matter deemed suitable for adolescents, or to inhibit the efforts of writers to achieve artistic expression" (ALA 2010, 203). Parents, teachers, and librarians all have a responsibility to prepare young people for the diversity of experiences that they will be exposed to in life. Through both the *Library Bill of Rights* and the *Freedom to Read Statement*, the ALA places the professional responsibility on librarians to provide the population with information that meets their needs, including the LGBTQ community.

The Internet and Twenty-First-Century Censorship

The question of what forms of communication are or are not protected under the First Amendment becomes even more complicated with the move into the digital age. The arrival of the internet brought a wave of new concerns, particularly about the safety of children. The

Communications Decency Act (CDA) was passed by Congress on February 1, 1996, and signed by President Bill Clinton on February 8, 1996. The CDA imposed criminal sanctions on anyone who knowingly

> (A) uses an interactive computer service to send to a specific person or persons under 18 years of age, or (B) uses any interactive computer service to display in a manner available to a person under 18 years of age, any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs. (CDA 1996)

The CDA marked Congress's first attempt to regulate pornography on the internet. Parts of the law were eventually struck down by the landmark case *Reno v. American Civil Liberties Union* (1997). In the case, the American Civil Liberties Union (ACLU) filed suit against Janet Reno in her capacity as attorney general of the United States, claiming that parts of the CDA were unconstitutional. In the ruling on the case, a unanimous Supreme Court specifically extended the First Amendment to written, visual, and spoken expression posted on the internet (*Reno v. ACLU* 1997). This case was significant as it was the first to bring the First Amendment into the digital age.

Another prominent case dealing with censorship and the internet was *Mainstream Loudoun v. Board of Trustees of the Loudoun County Library* (1998). In this case, a group of adult library patrons and individuals in Loudoun County, Virginia, brought a suit against library trustees, board members, and the director of the county's public library, claiming that the library's use of internet blocking software to block child pornography and obscene material was an infringement on their First Amendment rights (*Mainstream Loudoun v. Board of Trustees of the Loudoun County Library* 1998). The library's internet policy was highly restrictive in that it treated adults the same as children. The court ruled that, because the library decided to provide internet access, the First Amendment limited the library board's discretion in placing content-based restrictions on access to the internet, therefore declaring the Loudoun County internet policy invalid (ALA 2006; Steele 2017; Steele 2019a).

In 1998, Congress passed its second attempt to regulate internet pornography, the Child Online Protection Act (COPA), which restricted access by minors to any material defined as harmful to such minors on the internet (COPA 1998). On June 29, 2004, in *Ashcroft v. American Civil Liberties Union*, the Supreme Court ruled that the law was likely to be unconstitutional. The Court wrote, "filtering software may well be more effective than COPA is confirmed by the findings of the Commission on Child Online Protection, a blue-ribbon commission created by Congress in COPA itself. Congress directed the Commission to evaluate the relative merits of different means of restricting minors' ability to gain access to harmful materials on the Internet" (*Ashcroft v. ACLU* 2004, at 668).

On December 21, 2000, Congress passed into law the Children's Internet Protection Act (CIPA). The law requires K-12 schools and libraries in the United States to use internet filters to be eligible to receive e-rate federal funding (CIPA 2000). The law was later challenged by the ALA as unconstitutional, but the Supreme Court ruled that public libraries' use of internet filtering software does not violate their patrons' First Amendment free speech rights and that CIPA is constitutional (*United States v. ALA* 2003).

Also related to censorship and the internet is the censorship of social media content. Companies like Facebook and Twitter rely on a growing team of employees to remove offensive material—a practice known as "content moderation"—from their sites (Chen 2014). While the content being removed, such as pornography and gore, can be disturbing, it is censorship nonetheless. In addition, with the public becoming increasingly reliant on social media for their access to news, some social media sites have come under fire for censoring their trending news stories. Facebook has been accused of censoring its trending news sidebar and purposely omitting stories from conservative news sites, though research contradicts these claims (Bowles and Thielman 2016). With the rise of social media, the censoring of social media content is an issue that is becoming increasingly relevant to today's world.

As stated in the eighth edition of ALA's *Intellectual Freedom Manual* (2010), "Freedom to express oneself through a chosen mode of communication, including the Internet, becomes virtually meaningless if access to that information is not protected" (xvii). For some librarians, it made them question the very ideals and core values that the profession stands for. Bosseller and Budd (2015) write, "The Internet's entrance into the library changed (and challenged) many librarians' commitment to intellectual freedom" (34). Regardless, the internet and its ability to more quickly and easily provide access to information like never before has ushered in a new era for librarianship.

Whether dealing with the issue of obscenity, the evolution of technology and the internet, or other free speech controversies, the question of what is protected under an individual's First Amendment rights is an issue that is

highly debated. First Amendment rights and the right to free speech is also of particular concern for libraries when dealing with issues of censorship.

Conclusion

Foucault writes in *The History of Sexuality* (1978) how "instances of muteness which, by dint of saying nothing, imposed silence. Censorship" (17). Censorship has been, is, and will continue to be one of the single most important issues for librarians. This silencing has kept society from talking about many issues, particularly issues that some find controversial or uncomfortable to discuss. While some people may find it hard to allow these controversial materials to continue to take up residency in their libraries, it is not up to them to decide how people should live their lives or what they should read.

Many librarians are not always in a position to take a proactive stance in enacting the *Library Bill of Rights*. This is sometimes caused by an inability to affect change, whether because of legislation, political and social norms, or financial shortcomings. However, in some cases, this is due to a lack of awareness of the extent, exact nature, and possible solutions to problems. By upholding professional guidelines set in the ALA's *Library Bill of Rights*, *Code of Ethics*, and *Freedom to Read Statement*, librarians and information professionals can refrain from censorship and assist library users with their information needs to the best of their abilities.

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FEATURE

Meaning in the Use of Freedom

The *Free Press Underground*, the University of Missouri, and Students for a Democratic Society

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On the morning of February 19, 1969, four students set up shop at the Student Union on the Columbia campus of the University of Missouri (MU). They were selling their newspaper, the *Free Press Underground*, and other assorted papers from the leftist small press industry that was burgeoning in the late 60s (Allain, Castagna, and DeHart 1970, 695). These publications, specifically that day's edition of the *Free Press Underground*, contained what Dean of Students Jack Matthews (1969c) would later refer to as obscene, vulgar, indecent, and pornographic words and images.

Matthews confronted the students early and had them removed with the assistance of campus police. The students continued to sell their publications on the public sidewalk off campus. They were soon arrested there by Boone County Sheriff's deputies and charged with having "unlawfully, intentionally and knowingly offered for sale and had in their possession with intent to sell or circulate an obscene, lewd, licentious, indecent and lascivious paper, to-wit: Underground Free Press" (Miller 1969, 1). The title of the newspaper, again, was the *Free Press Underground*.

As an act of speech, this newspaper's publication and distribution represented the key document and action over which a protracted First Amendment legal battle began that would make its way to the Supreme Court. It also represents a material example of the cultural wars of the era and the escalation of confrontation between student activists and university administrators. Understanding the events surrounding the arrest of these students means understanding the loose organization that published the offending paper, the administrators who attempted to ban it, and the dynamics of their relationship. It also means understanding the broader history, the national social climate of the late 60s, and the worldviews that came to a head that day. The value of this understanding is a fully contextualized picture of a seminal event in information freedom that might inform our understanding of contests over the freedom of expression and censorship today. In particular, this perspective may exemplify the deeper historical motives and contexts of a speech act starkly remembered for its obscenity and legal precedent but largely divorced from real life and what it meant to its publishers and audience at the time.

A study of the documentation of the events surrounding the arrests as they appeared in daily news, MU communications, and the alternative press presents not just a timeline, but the meaning of the speech act to those involved and the intersection of some of the powers and actors that moved all involved parties toward the conclusion.

Case

The *Free Press Underground* was a derivative of an earlier paper titled the *Columbia Free Press*, published by some of the same students. That paper appeared in 1966, alongside the university's chapter of the Students for a Democratic Society (SDS)—a local branch of one of the largest American socialist organizations of the era (Smith and Smith 2018, 207). The staff of the *Free Press Underground* was largely composed of MU SDS members and affiliates who covered and commented on local news and advocated for socialist and otherwise radical positions and perspectives. Topics in the publication included democratized student control of the university, an end to the war in Vietnam, and inroads in fights against perceived sexist and racist discrimination. It also published local and outsourced feature articles, art, and poetry.

SDS members at the university regularly printed and distributed the *Free Press Underground* under various titles in the late 1960s. They also distributed SDS national publications like *The New Left Notes* and radical publications from other cities like the Bay Area newspaper *The Movement* ("SDS Ousted From Union" 1969, 1). The two most incendiary pieces in that February 19 copy of the *Free Press Underground* were, in fact, reprinted from these two publications, with citations.

The most divisive piece, a cartoon depicting the rape of Ladies Liberty and Justice by police officers, came from *The Movement*. It was recontextualized in the *Free Press Underground*, as in its initial run it was printed as a "poster" beside an editorial in *The Movement* following the indictment of the Oakland Seven. The Seven had been arrested for interfering with the business of an Oakland draft office. The author of the editorial noted "surely it's illegal to block an induction center, so it must be illegal to

conspire to do so . . . but they don't belong in jail, so the law must be wrong" (Cieciorka and Garson 1969, 3). In the *Free Press Underground* the image ran on the front page beneath the headline "Banned in the M.U. Union."

The other contentious content was an article on the acquittal of assault and battery of Ben Morea, member of the anarchist artist collective "Up Against the Wall Motherfucker." It was taken word for word from *The New Left Notes*, including the headline "Motherfucker Acquitted" (*Free Press Underground* February 13, 1969, 2).

This evocative use of image and language, regardless of its source, and regardless of whether it had been circulated before, would be the last straw in an ongoing conflict. The legacy of that conflict compounded the tensions surrounding this particular paper on this particular day. The paper and its distributors had already been banned once, just a week earlier. The "obscene" art beneath the headline "Banned in the M.U. Union" on February 19 was a direct reference to this incident on the February 12.

On February 12, *Free Press Underground* and SDS students had been asked to leave the MU Student Union for distributing the original publications containing the "obscene" content that they would later reprint. They returned the next day. Dean Matthews, with whom they were familiar, approached and delivered a prepared statement before having them removed again (Steele 1969, 5). Arrangements were made by Matthews for the leadership of SDS to appear before the Faculty Committee on Student Organizations, Government and Activities to discuss potential violations to university bylaws (Matthews 1969b). Less than a week later, before that meeting could take place, SDS premiered their February 19 issue in a clear statement to Dean Matthews and the university.

As Smith and Smith (2018) detail in their account of this event, that morning as "the publishers of the *Free Press Underground* had almost certainly anticipated, if not hoped, the campus and city authorities responded by confiscating copies of the paper and arresting some of the people handing it out on charges of distributing obscene material" (208).

The ensuing fallout saw the university struggle to decided on an appropriate reaction, facing public criticism on one side from lawmakers, Board of Curator members, and an avalanche of alumni letters hoping for swift retribution; and on the other side from the MU chapter of the American Association of University Professors, the Student Senate, the MU newspaper *The Maneater*, and the Committee of Concerned Students supporting the SDS.

In an initial slap on the wrist by the Faculty Committee on Student Organizations, Government and Activities, the SDS was not tangibly punished. The committee stated they believed university rules allowed for divisive content in all forms:

> It is only by the collision of adverse opinions that an approximation of the truth is likely. As evidence of the University's adherence to this posture, our speaker's policy permits an unlimited latitude to student organizations to hear even the most unpopular of views. We can maintain no less a posture with respect to distribution of literature.
>
> We must possess the same confidence in the ability of our students to reject noxious literature as we have in their capacity to sort out the true from the false in presentations by outside speakers. (Faculty, 1969)

Dean Matthews (1969c) immediately petitioned Chancellor John Schwada to review this decision. He cited the distribution of *New Left Notes* and *The Movement* and previous grievances, such as the time the chapter planned to change its registered name to the "Richard Ichord Chapter" (a mockery of Missouri Eighth District Representative Richard Ichord, at the time leading a House Committee in investigating the SDS nationally). Matthews also cited excerpts from the "By-Laws of the Board of Curators" and "regulations for student organizations in the 68-69 M-Book," referencing the standards of morality and indecent conduct, and pointed to the SDS members' admission that they did distribute the publications as charged. He went on to criticize the Faculty Committee for refusing to determine whether the objectionable content was indecent, vulgar, obscene, and whether it reflected unfavorably on the university.

In response to this petition Chancellor Schwada chose to reverse the Faculty Committee's decision and withdrew recognition of the MU chapter of SDS, bringing two of the four students who had been arrested before a Student Conduct Committee on March 27, 1969. One of those students, Herb Markham, a freshman, was placed on probation for the rest of his academic career. The other, a graduate student named Barbara Papish, was expelled from the university ("Miss Papish is Expelled" 1969, 15).

An additional review by the university reinstated the SDS's official recognition on campus, and the Boone County Court issued a stern warning as a result of the original arrests, but Papish faced a legal battle, routed through the United States District Court for the Western District of Missouri and then eventually to the Supreme Court via appeal in 1973. The Supreme Court ruled in her favor and overturned the university's perceived right to expel her based on this incident.

The case was a part of a wave of First Amendment trials in the late 60s and early 70s, coming to court just a few years after *Tinker v. Des Moines Independent Community School District*, the famous case that won students the right to wear black arm bands in silent protest of the war in Vietnam. The Papish case reflected the same sensibilities regarding the disruption of and the right to "pure" speech. The Papish ruling also explicitly references a case the Court had decided just one year prior, in 1972: *Healy v. James*. Therein the court had ruled in favor of an SDS chapter at Central Connecticut State that had been refused recognition on campus and"reaffirmed that 'state colleges and universities are not enclaves immune from the sweep of the First Amendment.' . . . no matter how offensive to good taste" ("Supreme Court" 1973).

The court found the content of SDS's newspapers at MU and their peaceful distribution to be constitutionally protected, and the official reason for Papish's expulsion was specifically based on the indecency of the content. Therefore the expulsion as punishment violated her First Amendment rights. The university could not prove any other motive for the expulsion. The dissenting judges emphasized the school's right to govern itself and delved into Papish's history of run-ins with the university, her grades, and her leisurely pace toward graduation; but these were deemed insufficient arguments ("Supreme Court" 1973).

The case would add a brick to the wall of precedent being set regarding the First Amendment on college campuses. It was notable in that it specifically focused on the motive of the university's response. They began to escalate, along with the SDS and *Free Press Underground*, at a turning point during a broader shift in consciousness following 1968. A year of assassinations, international protests, the Chicago DNC riot, Vietnam escalation, Richard Nixon's election, and J. Edgar Hoover's intense attacks on left-wing organizations would mark the end of much of the productive radical energy of the 60s, already carried over from the civil rights movement of the 50s (Heiderman 2018).

The goals and ambitions of the university and the students were brought to a head in an ideological battle over the First Amendment. In some ways the elevation of a speech act—in this case the publishing of a cartoon and foul language—to such a high trial diminishes the evidence of those motives and obfuscates the speech act itself behind an argument of offense or taste. Not simply about the right to speech, this incident evolved from an active struggle between MU and its chapter of SDS. It was rooted in ongoing confrontations over broader issues of student rights and governance of student space, and it was bolstered by university anxieties driven by national incidents like the student takeover of Columbia University. It was further fueled by public animosity from powerful figures. The conflict is representative of the struggles on campuses across the country, and in ways it is uniquely representative of the state of the nation, and perhaps Missouri and the University of Missouri.

The Cartoon

As a companion to the historical context of the event, it is first worth discussing the historical context of the central piece of "obscenity." In records of the time, and now in the MU Archive topical guide on the subject, the piece of art central to the dispute is referred to as a cartoon. In its original form, as published in *The Movement*, it was referred to as a poster. This small change of verbiage has significant implications, as each description carries different connotations. This is reflected in the manifestations of the artwork and in our memory of it.

The poster was designed to respond to criminal action brought against the Oakland Seven activists trying to stop the draft as a means to stop the war in Vietnam. This art was drawn for a specific purpose.

In the context of the draft, the war, and the battle over criminal justice in terms of jail time and court rulings, this detailed and graphic artwork is meant to be taken seriously. It is reasonable to consider it a diminution to refer to this image as a cartoon. While the staff of the *Free Press Underground* did not refer to it as such, their attempt at recontextualization positioned it to be viewed that way. The fact that the historical memory of this art has been dominated by its place in this free-speech incident tends to erase its earlier existence, which was in fact relevant to the Columbia free speech incident and the history of the radical anti-war movement of the era. At the same time, this recontextualization of the original art allowed it to have a new life, gave it cause to be remembered, and reflects the unique and disparate experiences of the late-60s Left as represented by the metropolitan west coast and the rural midwest. It is also worth noting that when the art first appeared in a publication circulated by the SDS students, they would have expected at least some others to understand their reference. The reference to the art as a "cartoon" is therefore reminiscent of the part any image might play as a meme, which may be defined academically as "units of culture—ideas, symbols, and practices that spread in a variety of forms through imitation and appropriation" (Silvestri 2018).

In describing memes and their potential for a complex reading, Silvestri writes "layered meanings enable certain groups to dog-whistle one another by making in-group jokes and references. By drawing on particular cultural moments and shared reference points, memes become a form of 'vernacular criticism'" (4002). In this case it may certainly be observed that this art was used as a form of "vernacular criticism." It represented an original publication the group was reprimanded for distributing and the new publication they *would be* reprimanded for distributing. It also represented the perceived injustices surrounding the draft and war, and their correlation with perceived lack of freedom, democracy, and tacit support for the war that extended to frustrations with university administration. This deeper historical reading becomes impossible when the reader is removed too far from the original material. The potential referential irony of the art as it appeared in the *Free Press Underground* becomes difficult to appreciate.

The problems of reducing the speech act central to this incident to its most shallow interpretation is akin to the problem of reducing the incident's lessons to the conditions under which one has the right to or to not speak. In an era, as now, where divergent opinions are expressed in layers of irony and rhetoric wound with varying degrees of sincerity, it is more useful to attempt a deep reading of what is being communicated in a controversial speech act than to simply rule on its right to exist or not. This can tell us much more about the parties involved, and their goals, than the broad stroke of whether they appreciate the freedom of speech.

Historical Context

This incident did not have to happen. It is not likely that the distribution of this particular edition of the paper would have had a considerably different effect on the student population from the SDS papers distributed on campus since 1966. The fact that it did, and the conditions under which it did, now invite some scrutiny and provide a window into how we have processed moments of protest—in particular, issues of free speech and the First Amendment. This event has been covered to a degree in "Chronicles of Discontent, Tribunes for Change Columbia and Its Underground Press in the Vietnam Era" by Smith and Smith in the *Missouri Historical Review* (2018), but only then as part of a larger discussion and without focus on the specifics and surrounding history. The SDS and the political Left of the era has been covered thoroughly in the past, for example by Sale in *SDS: The Rise And Development Of The Students For A Democratic Society* (1973) and more recently in *Jacobin* by Heideman in "Half the Way with Mau Zedong" (2018). The broader cultural shift of this era is well-represented in print, including in relatively recent popular history such as Kurlansky's *1968* (2003) and Perlstein's *Nixonland: The Rise of a President and the Fracturing of America* (2008). However, there is space within this conversation to consider the convergence of historical events on campus on February 19, 1969.

SDS and University Administration

Cited in the Supreme Court Case as a blow to Barbara Papish is her involvement in what would be known as the "University Day Incident" ("Supreme Court" 1973). It was one of the first incidents to raise the MU chapter of SDS to infamy in the eyes of the university. In 1967 Papish participated, with several SDS members, in setting up a table and distributing literature during an event on campus for high school students and parents. Prior to this, the chapter had been told repeatedly by campus administration that they could not table the event. They were removed, reprimanded, and threatened with suspension as an on-campus organization ("18 Professors" 1967, 1). This was part of a developing pattern. Later that year SDS members organized a "chalk-in" to protest the arrest of two students for chalking inflammatory things on campus. During the protest SDS members chalked the sidewalks of campus and were verbally reprimanded for using the phrase "In the first place god made idiots. this was for practice. Then he made college administrators" ("Chalk-in" 1967, 1). This caused Congressman Ichord to write to MU Director of Public Information Tom Richter requesting the group be disciplined (Ichord 1967). It also prompted a public dispute in local papers over the right to chalk.

In 1968, SDS members challenged university procedures and policies, further frustrating staff. They planned to stage the play "Macbird," a satire of the Johnson administration, and hoped to charge admission as a fundraiser to purportedly afford bringing Allen Ginsberg to campus. They were denied the ability to charge admission by the university. On May 3, 1968, they were scheduled to go before a student-faculty committee to discuss the issue, but refused to continue after a reporter they arrived with from MU paper *The Maneater* was asked to leave. In late May an application for use of McAleaster Park for a different program on campus was sent with an attached memo to Chancellor Schwada. The memo emphasized that when questioned by staff receiving the application, SDS members "insisted upon debating" a policy requiring public events to be approved by the chancellor (Department Correspondence 1968).

Students Walter Grossman and Gerald Waggoner (1969) released a "White Paper" on these events, written "strictly as individuals," analyzing the group's motives and voicing frustrations with the SDS. They connected local SDS tactics directly to a piece they refer to from the national paper *New Left Notes*, "Toward Student Syndicalism," written by the national vice president of SDS at that time, Carl Davidson. Grossman and Waggoner surmised that "actions of MU SDS seem often more related to this nationally proposed blueprint than to the real issues on this campus," and elaborated, "Davidson advises that SDS should not deal with issues which 'can be accommodated by the administration.'" One tactic described is to "confuse things so that administration could not act effectively, and then blame the administration." This was something the authors saw in the disputes over "Macbird," and the admission price at public events on campus, which became a dispute about the freedom of press at their student-faculty committee hearing. The authors go on to accuse the MU SDS of manufacturing issues and exploiting them for "other than stated reasons," in an act of bad faith.

This strategy, while dubious to some, was no doubt effective in raising the profile of an otherwise disorganized and small organization. In an October 1968 interview with the *Columbia Tribune*, former SDS president and future Missouri State Representative Rory Ellinger echoed some of the conclusions of the "White Paper," stating, "I don't think in the past that we organized around the problems of students on campus as much as we could have. . . . We're really noted for our disorganization (and) credited with far more than we are, really" ("What Are the Plans" 1968). Ellinger goes on in that interview to pitch his new organization, the Committee of Concerned Students, and to admonish the then-SDS leader Paul Showalter, who was interviewed alongside Ellinger, saying "Paul, you made it sound like S.D.S. would be all radical theatre," in response to Showalter's descriptions of the organization's goals and tactics.

This was indicative of the national state of SDS. In 1965 its members organized a massive "March Against the Vietnam War," which drew 25,000 people to Washington, DC. Potentially misguided attempts at a decentralized organization left it with weak infrastructure and an unclear strategy following this very public success. The organization bloomed to more than 100,000 members, but became highly fractionated and failed to make ground. By 1969 it was dominated by more strict and conflicting ideological Maoist and Maxist-Lenist sects at the national level, leaving local organizations largely on their own with little meaningful direction, divided into conflicting ideological camps (Heideman 2018).

This was reflected in a description of the MU chapter from 1968 as divided into three camps: "liberals," "kamikazes" (ultra-leftists), and "old-timers" whose organizing efforts regularly devolved into "debates . . . heard countless times before" (Sale 1973, 293).

These students were only able to challenge the university by drawing controversy and aggressive pushback—in other words, by being a gadfly. Despite their disorganization, SDS was able to draw the attention of the university over and over again, prompting major public figures to write directly to the university and to newspapers across the state. This news coverage exploded after the February incidents. Coverage in the *Missourian* from the time includes regular comments directed at board members from Representative Ichord and State Senator Richard Southern, as well as numerous letters to the editor from alumni and citizens. The archival record contains a deluge of personal letters received by Chancellor Schwada.

This public response no doubt influenced Matthews's focused interest in the SDS. The major themes of this relationship are exemplified in an edition of the *Free Press Underground* published earlier in February of 1969. That February 3 edition carried a letter from Dean Matthews to SDS member Paul Showalter, originally dated December 19, 1968, wherein Matthews describes absolute amazement after reading that Showalter suggested the university be burnt to the ground in a 1968 interview given to *The Maneater.* Matthews writes,

> Paul, I thought I knew you pretty well, I have talked with you on several occasions this fall, and you just didn't appear to me to be the kind of individual that, when certain conditions were not met, would advocate "burning the University." You know, it was about a week ago when a building, a very large building, was burned on the Kansas State Campus. (1969a)

Showalter responds a few pages later in the same *Free Press Underground* issue:

> I, too, am shocked . . . I think we have forgotten what a tremendous privilege it is to attend the University. The student protests over constitutional rights, the "destructive" attempts to make the University democratic, and the over-concern with the University's role in racism and war, overlooks the advantages of a college education. We lose sight of the fact that any one of us, with diligent preparation, can be a prosperous, sensitive human being, even a Dean of Students. (1969, 3).

This back-and-forth provides an excellent microcosm for understanding the rhetorical climate that inspired and allowed for the Papish free speech incident. Showalter's "burn it down" rhetoric was provocative and over-the-top, and in many ways it belied more detailed objections he went on to make in this case, and which his organization and newspaper advocated for consistently. Matthews's response is paternalistic and in the context of real possibility of threat. His statement regarding Kansas State's campus refers to an arson event that caused K-State's Nichol's Hall to burn to the ground in December 1968 (Collegian, 2013).

In an era of student revolt, shortly after a total student takeover on the campus of Columbia University and one of the largest riots in Missouri history in Kansas City following the assassination of Martin Luther King Jr.—both in April of 1968—and with ongoing public pressure, it would seem the university saw fit to ramp up their effort at containing any possible threat on their campus. The spunky though loosely organized students of SDS and the *Free Press Underground* continued, as they had throughout their publication history, to advocate for student control of the university and to raise awareness of issues such as homophobia, racism, sexism, and the university's assistance with the war effort. However, in using provocative rhetorical techniques, ultimately they prompted the university to respond with significant force. The act of publishing the cartoon, though perhaps a powerful metaphor for the right to speak freely and its necessity in the democratic environment the students hoped to make within the university, was taken to be an act of profanity just as Showalter's metaphor for rejuvenation as burning was taken to be a call for violence. Both sides employed deliberate misinterpretation and/or overinterpretation of one another and antagonistic rhetoric, thus moving the conversation further and further away from legitimacy, or what some might call "good faith."

The "speech" act of publishing the cartoon was meant to communicate the feeling of suppression at having earlier been kicked out of the Union for peacefully distributing what were seen as subversive materials, but the truly nuanced subversive content of any SDS materials or communications had become overshadowed by provocative elements stealing the limelight. This style garnered them attention but was a double-edged sword. This history of back-and-forth suggests how this confrontation became inevitable, and how in many ways SDS provided the university with the tools to dismantle it, while the university took increasingly severe steps to punish a threat that looks minor in hindsight.

Conclusion

The Papish/*Free Press Underground* free speech incident represents a turning point in free speech on the college campus, and in the historical development of the 60s protest movement. It predates but is not far from the incendiary speech acts that regularly make the news today. The historical context of the image and the incident present the convergence of free speech controversy and provocative rhetoric that has always been a rich part of politics. The most obvious or evocative read of these situations, though, may very well obscure complex power relationships and struggles that are of value in understanding and furthering the cause of intellectual freedom and preparing others to responsibly consume information. The full historical record provides a depth of meaning to these incidents from which historical, cultural, and social value may be derived, allowing us to see past blunted reactions and quick interpretations to construct a fuller examination of underlying realities, which may then better inform how we approach difference and responsibly process controversial or divisive speech.

Barbara Papish won her case, but the SDS was barely in existence by 1973, and the war in Vietnam would continue for two more years (Heiderman 2018). The speech act in which she was involved as a publisher of the *Free Press Underground* would add to the precedents for freedom of speech in America, and though it would attract attention, it would do little to articulate and advance the ambitions or frustrations of her and her peers. This case can be extrapolated into a lesson on the fact that freedom does not guarantee the ability to understand and be understood, and analysis of this case presents an opportunity for professionals concerned with intellectual freedom to adjust their purview to reconcile that distinction through historical details and context.

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NEWS UPDATES

FREEDOM TO READ FOUNDATION REPORT TO COUNCIL

EDITOR'S NOTE: *This report was submitted by FTRF President Emily Knox and presented on June 23, 2020, to ALA Council at the American Library Association's online event, ALA Virtual.*

As president of the Freedom to Read Foundation, it is my privilege to report on the foundation's activities since the 2020 Midwinter Meeting:

Free Expression in a Time of Crisis

In preparing this report on the foundation's activities this spring, it feels like I became president of the Freedom to Read Foundation a lifetime ago. Our country has been through so much since January.

First, we grappled as individuals and institutions with the ongoing pandemic, and then came the nationwide protests following the death of George Floyd and the outcry against police injustice and racial inequality.

Throughout it all, the Freedom to Read Foundation has supported our human right to speak out. Without our support for protests in the midst of stay-at-home orders, municipal governments would have gained legal authority to suppress the protests that came in the wake of the murders of Ahmaud Arbery, Breonna Taylor, and George Floyd. Our work with our allies in the civil liberties community have assured that everyone's voice is heard.

It is my strong belief that, in a social system steeped in white supremacy, patriarchy, homophobia, transphobia, and other bigotries, it is our right to freedom of expression that protects the rights of the marginalized. We would not be able to support #blacklivesmatter without freedom of expression; mayors, town councils, and boards across the country would be able to pick and choose which statements and actions they feel are appropriate, rather than upholding equal protection of the laws.

Current Litigation

This spring, the Freedom to Read Foundation added two important free expression cases to its docket. Both lawsuits address challenging First Amendment controversies that could compromise the ability of libraries and library workers to acquire and make available books, images, and other materials to meet the information needs of their users.

FTRF has signed on to an amicus brief filed with the Ohio Supreme Court in the case of *Gibson Bros. Inc. v. Oberlin College, et al.* This lawsuit was filed by the owners of Gibson's Food Market following a public protest that occurred at Oberlin College in November 2016. The family that owns the market and bakery sued Oberlin College and its Dean of Students, alleging that they were defamed by a flyer distributed at the protest and a resolution passed by the Oberlin Student Senate that was posted in the college's student center. A jury has found Oberlin College and the Dean guilty of defamation after the trial court instructed the jury that it could find the defendants liable on the basis of mere negligence in redistributing the materials. But Ohio Supreme Court precedent states that those who redistribute others' speech may only be held liable for defamation if there is a showing that the defendants acted with actual malice, a standard that requires a knowledge of falsity or a reckless disregard of the truth.

The case is important for libraries and any other entity that redistributes others' speech. A legal standard for defamation that only requires a showing of negligence, rather than actual malice, is problematic for libraries and library workers, who are not in a position to examine all the books and materials they lend to patrons to determine if the material is defamatory. The brief joined by FTRF urges the Ohio Supreme Court to find that a defamation claim against an entity that distributes others' speech can succeed only if the plaintiff demonstrates actual malice on the part of the defendant.

Joining FTRF on the brief is the Reporters Committee for Freedom of the Press and a large number of free expression and civil liberties organizations.

FTRF has also joined an amicus brief in the case of *Bethany Austin v State of Illinois*. Austin is challenging her conviction under an Illinois statute that criminalizes the nonconsensual dissemination of private sexual images. She was charged and tried after she sought to contradict her ex-fiancé's account of their breakup by including texts and photos sent to her phone by her ex-fiancé in a letter to family members that included nude photos. The ex-fiancé learned about her correspondence to her family and had her prosecuted under the statute, which does not require a proof of malicious intent.

The Illinois Supreme Court upheld her conviction, holding that the statute was a content-neutral time, place, and manner speech restriction only subject to intermediate scrutiny, instead of strict scrutiny, the standard that is usually applied to evaluate restrictions on speech.

Austin has asked the U.S. Supreme Court to review her conviction, on the grounds that the statute in question is an overly broad content-based speech restriction. Her petition for certiorari argues that the statute broadly criminalizes any sharing of private sexual images and does not require proof of malicious intent or

knowledge that the subject did not consent. FTRF has joined with a number of free expression groups to file an amicus brief in support of Austin's petition, on the grounds that the Illinois Supreme Court erroneously held that the law is not a content-based restriction on speech subject to strict scrutiny. While FTRF, without question, supports laws that punish individuals who deliberately harass or intimidate another person by publishing their intimate photos without consent, it opposes those laws that are written so broadly that they can be used to prosecute librarians, booksellers, publishers, and others for the distribution of images that are newsworthy or educational, such as the image of "Napalm Girl," from the Vietnam War.

Finally, I am pleased to report a partial victory in the ongoing lawsuit *PEN American Center v. Trump*, which seeks to protect journalists from retaliation by President Trump or those government officers who work for him whenever they publish or speak speech critical of Trump or his administration. FTRF was deeply concerned when the government filed a motion to dismiss the lawsuit, alleging that PEN America did not have associational or organizational standing to bring the lawsuit, as FTRF itself relies on its associational or organizational standing to file lawsuits challenging First Amendment violations on behalf of its members. For this reason, FTRF signed an amicus brief that argued that PEN America had plausibly alleged an injury-in-fact sufficient to demonstrate organizational standing that would allow PEN to pursue legal action against the current administration. On March 25, the trial court ruled that PEN America could move forward with two of its claims related to the administration's attempt to deny press credentials and security clearances to journalists critical of the administration. We will continue to monitor this important lawsuit.

First Amendment and Free Expression Advocacy

This past spring, FTRF joined a number of advocacy efforts that sought to vindicate or protect fundamental First Amendment rights and intellectual freedoms. These efforts ranged from comments submitted to the Department of Education in response to a proposed rulemaking regulating free speech on college and university campuses, to a joint letter protesting the removal of several classic novels from the high school English curriculum of the Matanuska-Susitna Borough School District in Alaska.

Most recently, FTRF joined with free expression and civil liberties allies to ask for the elimination of fees and charges for e-books in prisons during the pandemic; to defend the right to protest during the pandemic; and to protest a website's decision to remove a political cartoon critical of Donald Trump after the Trump Re-Election Campaign incorrectly claimed that the cartoon infringed upon its trademarks in the phrase "Make America Great Again."

We have also joined with our partners at the National Coalition Against Censorship and 48 other free expression and civil liberties groups to issue a statement urging protection of journalists who are under attack as they cover the national protest against police violence and racial inequality:

> A free press is essential at a moment like this. Americans need to see what is happening in their streets. They want to know why people are protesting. Journalists must be free to report so the rest of us can feel the pain and anger of people who are tired of injustice. We strongly urge public officials to do everything in their power to protect journalists and demonstrators, including punishing police officers who have willfully violated First Amendment rights. Democracy depends on it.

The Judith F. Krug Memorial Fund

Established by the family, friends, and colleagues of Judith F. Krug, the Judith F. Krug Memorial Fund supports projects and programs that carry on Judith's mission to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely.

Banned Books Week Grants

A major initiative of the Krug Fund is its support for local Banned Books Week celebrations in schools and libraries across the country. Each spring, the Krug Fund awards five to seven Banned Book Week grants that provide financial support and guidance to libraries, schools, and community organizations planning Banned Books Week celebrations. These grants assist libraries and schools that would otherwise not have the resources to do Banned Book Week events. The 2020 grantees will be announced in late June 2020. To learn about the 2020 grantees, please visit the FTRF website at www.ftrf.org/?Krug_BBW.

LIS and Professional Education

The Krug Fund continues to successfully partner with the University of Illinois' School of Information Science and the San Jose State University School of Information to support dedicated coursework on intellectual freedom in libraries. Professor Emily Knox teaches "Intellectual Freedom and Censorship" at the

University of Illinois while Professors Beth Wrenn-Estes and Carrie Gardner teach courses on intellectual freedom for San Jose State. We thank the University of Illinois and San Jose State University for partnering with the Freedom to Read Foundation to assure that high-quality intellectual freedom curricula and training remains available to LIS students preparing for their professional careers. We thank FTRF educational consultant Joyce Hagen-McIntosh for her dedicated support for the course instructors and the students enrolled in these classes.

The Krug Fund also awards scholarships to students wishing to attend the courses provided by the University of Illinois and San Jose State. The 2020 scholarship recipients will be announced in late June. Information about the grantees will be available on the FTRF website.

Continuing Professional Education

This spring, the FTRF Education Committee offered four continuing education webinars for FTRF members and library workers interested in enhancing their knowledge of intellectual freedom and First Amendment principles. The four webinars were created to respond to library workers' need for engaging and relevant online professional education opportunities during the COVID-19 pandemic.

All webinars were complimentary for FTRF members and offered at a nominal fee to individuals and groups. The four webinars addressed diverse topics related to access, privacy, and intellectual freedom and were moderated by FTRF educational consultant Joyce Hagen-McIntosh. They included:

- "Reaching Students When Access to Technology is Out of Reach," with Angela Branyon, Assistant Professor at the University of West Georgia, Carrollton, GA; Bob Bocher, State E-rate and Broadband Support Team, Wisconsin Department of Public Instruction; and Erin Hollingsworth, District Librarian, North Slope Borough School District, Utqiaġvik, Alaska
- "Intellectual Freedom and the Law: Social Media, First Amendment Audits, and the Library as a Public Forum," with Theresa Chmara, General Counsel for the Freedom to Read Foundation
- "The Challenge of Challenges: Strategies for Protecting Inclusion and Silencing Censors," with Martha Hickson, Librarian, North Hunterdon High School, Annandale, NJ and Leslie Edwards, Librarian, Voorhees High School, Glen Gardner, NJ
- "The Shifting Landscape of Challenges," with Valerie Nye, Library Director at the Santa Fe Community College; James Allen Davis, Adult Services Librarian for the Central Branch of the Denver Public Library; Rhiannon Sorrell (Diné), Instruction and Digital Services Librarian at Diné College in Tsaile, Arizona; and Jennifer Stickles, Library Manager of the Salamanca (NY) Public Library

Gordon A. Conable Conference Scholarships

The Conable Conference Scholarship honors the memory of Gordon Conable, a past president of the Freedom to Read Foundation, an ALA Councilor, and a tireless champion of intellectual freedom. The Conable Scholarship provides financial assistance to a new librarian or library student who shows a particular interest in intellectual freedom and wishes to attend the ALA Annual Conference. This year, we are pleased to be able to offer two scholarships, one for a LIS student and a second for a library worker who is in the early stages of their career. Due to the disruption caused by the COVID-19 pandemic, the scholarship will pay for each recipient's registration for the ALA Virtual Annual Event and provide sufficient financial assistance to each recipient so that they can attend the ALA Midwinter Meeting in Indianapolis. The 2020 recipients will be announced in late June. Information about the scholarship recipients will be available on the FTRF website.

Mentoring was an important undertaking for Gordon, and the FTRF Board of Trustees is pleased to be able to honor his memory through this significant work. If you would like to donate to the Conable Scholarship, please visit the FTRF website at www.ftrf.org.

2020 Roll of Honor Award Recipient Kelley L. Allen

I am pleased to announce that the 2020 FTRF Roll of Honor Award recipient is Kelley L. Allen, Director of Books at the gaming site HumbleBundle.com, based out of San Francisco. Humble Bundle is a new business model in which customers pay what they want for digital content with a portion of their payments earmarked for charity. To date, company-wide, Humble has raised over $160 million for charity since their launch in 2010. As Director of Humble Books, Allen has launched hundreds of promotions with dozens of book and comics publishers, raising over $10 million for charity in the process. In 2019 Kelley hosted a highly successful Humble Books fundraiser on behalf of the Freedom to Read Foundation and helped raise a significant amount of money for the foundation.

Before her tenure at Humble Books, Kelley worked extensively in the field of e-books and book

publishing. She has worked as the Director of New Media at Random House and as Director of Acquisition for the Sony eBook store. She holds her M.S. in Publishing from Pace University.

The FTRF Roll of Honor was established in 1987 to recognize and honor individuals who have contributed substantially to the foundation through adherence to its principles and/or substantial monetary support. For more information about the Roll of Honor and other FTRF grants, awards, and scholarships, visit ftrf.org.

FTRF Membership

The work of the foundation continues even in the midst of social change. If you are not currently a member, I ask you to join us in our work to protect and defend the First Amendment to the Constitution and support the right of libraries to collect—and individuals to access—information.

I encourage all ALA Councilors and all ALA members to join me in becoming a personal member of the Freedom to Read Foundation. I also ask that you invite your institution or organization to join FTRF as an organizational member. Please send a check ($50+ for personal members, $100+ for organizations, $35 for new professionals and $10+ for students) to:

Freedom to Read Foundation
225 N. Michigan Ave., Suite 1300
Chicago, Illinois 60601

Alternatively, you can join or renew your membership by calling (800) 545-2433, ext. 4226, or online at www.ftrf.org.

Respectfully submitted,
Emily Knox
President, Freedom to Read Foundation

INTELLECTUAL FREEDOM COMMITTEE REPORT TO COUNCIL

EDITOR'S NOTE: *This report was presented by Julia Warga, chair of the American Library Association's Intellectual Freedom Committee, on June 23, 2020, to ALA Council at the American Library Association's online event, ALA Virtual. Warga was joined by Andrew Harant, chair of the American Library Association's Committee on Professional Ethics, to co-present the letter addressing Forward Together recommendations.*

The ALA Intellectual Freedom Committee (IFC) is pleased to present this update of its activities.

Information Standing Committee Recommendation for Forward Together Proposal

Members of the Committee on Professional Ethics, Intellectual Freedom Committee, and Intellectual Freedom Round Table have expressed concern about the lack of a standing committee to address issues and topics of importance involving professional ethics, intellectual freedom, and privacy in the Forward Together recommendations. On May 28, COPE Chair Andrew Harant and IFC Chair Julia Warga sent a letter to ALA leadership that respectfully proposes the addition of a seventh standing committee to the Forward Together recommendations: Professional Values. The Professional Values Standing Committee would be the arm of the new ALA leadership structure that would focus on intellectual freedom, professional ethics, and privacy. It would combine the work of the Intellectual Freedom Committee, Committee on Professional Ethics, and IFC Privacy Subcommittee, and it would align with ALA's Office for Intellectual Freedom.

The letter, which outlines these concerns and the need for a Professional Values Standing Committee, is included in this report as an information item. It was approved by both COPE and IFC. [*See page 34.*]

Guidelines for Reopening Libraries During the COVID-19 Pandemic

Can public libraries require staff or patrons to wear masks if they wish to enter the building? Can public libraries require temperature or health status checks? As public libraries make plans to reopen, they must consider how best to balance the safety of staff and patrons with the mission of providing the community with access to the resources traditionally offered by the library. The IFC has approved a set of guidelines that offer next steps, guidance, and answers to frequently asked questions. "Guidelines for Reopening Libraries During the COVID 19 Pandemic" is included in this report as an information item. [*See page 35.*]

Merritt Fund

The LeRoy C. Merritt Humanitarian Fund was established in 1970 as a special trust in memory of Dr. LeRoy C. Merritt. It is devoted to the support, maintenance, medical care, and welfare of librarians who, in the trustees' opinion, are denied employment rights or discriminated against on the basis of gender, sexual orientation, race, color, creed, religion, age, disability, or place of national origin, or denied employment rights because of defense of intellectual freedom.

The year 2020 marks the 50th anniversary of the founding of the Merritt Fund. Due to ALA's decision to make Annual a virtual event, the Merritt Fund trustees and the IFRT Merritt Fund Support Committee have decided to celebrate this

milestone at ALA's Indianapolis Midwinter event.

IFC Privacy Subcommittee

The IFC Privacy Subcommittee continues to raise concerns, answer questions, and create resources addressing privacy in the pandemic, as well as continues its efforts in developing privacy guidelines for vendors.

On May 8, the Privacy Subcommittee hosted the webinar "Protecting Privacy in a Pandemic: A Town Hall for Library and Information Workers." Privacy Subcommittee Chair Erin Berman, member Bill Marden, and Michelle Gibeault (Chair of Instruction and Librarian for Humanities at Tulane University and co-convener of the Digital Library Federation's Privacy and Ethics in Technology [PET] working group) highlighted best practices regarding video platforms, data collection, and vendor relations. The webinar welcomed more than 800 registrants and 500 attendees, with a lively Q&A. The webinar recording is available on the OIF YouTube channel. Resources from the webinar as well as additional tools were compiled in a resource guide published on ChoosePrivacyEveryDay.org.

The Choose Privacy Every Day blog has been a resource for library workers and educators, and has published posts on calling and medical screening during a pandemic, virtual programming, contact tracing and Zoom privacy. The Privacy Subcommittee is also recruiting its first team of bloggers to offer library workers current perspectives and advice about privacy issues.

The subcommittee continues to work on several resources and projects. The Intellectual Freedom Committee and its Privacy Subcommittee have reached out to vendors to join the Working Group to Align Vendor Privacy Policies with ALA Policies and Ethics, which was approved in a resolution at the 2020 ALA Midwinter Meeting. Subcommittee members are also crafting checklists about vendors and assistive technology that will complement the guidelines published on the ALA website. The subcommittee anticipates to update ALA on its findings and progress during the 2021 Midwinter Meeting.

The subcommittee also created "Guidelines on Contact Tracing, Health Checks, and Library Users' Privacy" to assist libraries in maintaining user privacy as they face new challenges in upholding library workers' commitment to not monitor, track, or profile an individual's library use beyond libraries' operational needs. The IFC voted to approve the guidelines, and they are included in this report as an information item. [*See page 38.*]

Censorship and Recent Challenges

The Office for Intellectual Freedom monitors censorship, state and federal legislation, and privacy concerns. OIF also provides confidential support during challenges to library materials and services. Censorship doesn't stop during a pandemic, as illustrated by the Matanuska-Susitna Borough School District (AK) School Board's vote to remove five titles from the English curriculum, which was later rescinded. From January 1 - May 29, 2020, OIF has tracked 61 unique cases to 105 books, including to *Lily and Dunkin* (FL) and *10,000 Dresses* (WI).

Initiatives

Top 10 Most Challenged Books and Banned Books Week

On April 20 during National Library Week, the Office for Intellectual Freedom published the Top 10 Most Challenged Books of 2019. Listed below, the list indicates that 8 of the 10 titles were challenged because of LGBTQIA+ content:

1. ***George* by Alex Gino**
   Reasons: challenged, banned, restricted, and hidden to avoid controversy; for LGBTQIA+ content and a transgender character; because schools and libraries should not "put books in a child's hand that require discussion"; for sexual references; and for conflicting with a religious viewpoint and "traditional family structure"
2. ***Beyond Magenta: Transgender Teens Speak Out* by Susan Kuklin**
   Reasons: challenged for LGBTQIA+ content, for "its effect on any young people who would read it," and for concerns that it was sexually explicit and biased
3. ***A Day in the Life of Marlon Bundo* by Jill Twiss, illustrated by EG Keller**
   Reasons: Challenged and vandalized for LGBTQIA+ content and political viewpoints, for concerns that it is "designed to pollute the morals of its readers," and for not including a content warning
4. ***Sex is a Funny Word* by Cory Silverberg, illustrated by Fiona Smyth**
   Reasons: Challenged, banned, and relocated for LGBTQIA+ content; for discussing gender identity and sex education; and for concerns that the title and illustrations were "inappropriate"
5. ***Prince & Knight* by Daniel Haack, illustrated by Stevie Lewis**
   Reasons: Challenged and restricted for featuring a gay marriage and LGBTQIA+ content; for being "a deliberate attempt

to indoctrinate young children" with the potential to cause confusion, curiosity, and gender dysphoria; and for conflicting with a religious viewpoint

6. ***I Am Jazz* by Jessica Herthel and Jazz Jennings, illustrated by Shelagh McNicholas**
   Reasons: Challenged and relocated for LGBTQIA+ content, for a transgender character, and for confronting a topic that is "sensitive, controversial, and politically charged"
7. ***The Handmaid's Tale* by Margaret Atwood**
   Reasons: Banned and challenged for profanity and for "vulgarity and sexual overtones"
8. ***Drama* written and illustrated by Raina Telgemeier**
   Reasons: Challenged for LGBTQIA+ content and for concerns that it goes against "family values/morals"
9. ***Harry Potter series* by J. K. Rowling**
   Reasons: Banned and forbidden from discussion for referring to magic and witchcraft, for containing actual curses and spells, and for characters that use "nefarious means" to attain goals
10. ***And Tango Makes Three* by Peter Parnell and Justin Richardson, illustrated by Henry Cole**
    Reason: Challenged and relocated for LGBTQIA+ content

OIF coordinated with the Banned Books Week Coalition to release the theme of Banned Books Week 2020: "Censorship is a Dead End. Find Your Freedom to Read." The IFC provided helpful feedback on designs and taglines during the production of the theme. Posters, bookmarks, and bracelets are available on the ALA Store. T-shirts are also available on the ALA Gift Shop.

IFC Resolution, Guidelines, and Working Groups

"Resolution Condemning Police Violence Against BIPOC, Protesters, and Journalists"

We are deeply saddened by the deaths of George Floyd, Breonna Taylor, Tony McDade, Ahmaud Arbery, and far too many other People of Color who have been killed as a result of police brutality and systemic racism. We recognize "that institutionalized inequities based on race are embedded into our society and are reinforced through social institutions" (ALA Policy B.3.2 Combating Racism) and we condemn the systemic racism and violence that Black people, Indigenous people, and People of Color experience on a daily basis in our inequitable society. We condemn the violence that protesters and journalists across the country are facing while exercising their First Amendment rights.

"Resolution Condemning Police Violence Against BIPOC, Protesters, and Journalists," written and voted on by the IFC, calls upon ALA members to support initiatives to end police violence against Black people, to combat the systemic racism that infects our society, and to speak out against all attempts to restrict First Amendment rights; calls upon federal, state, and local governments to uphold, preserve, and respect the constitutional rights of protestors, of journalists, and of all people who want to make their voices heard and to share their words and ideas with the rest of the world and future generations; and directs ALA staff to expeditiously publish and distribute this resolution to all ALA members through appropriate channels of communication.

"Resolution Condemning Police Violence Against BIPOC, Protesters, and Journalists" is included in this report as an action item. [*See page 39.*]

Video Surveillance in Libraries Guidelines

As ALA does not have specific guidelines, interpretations, or policies addressing best practices in the use of video surveillance in libraries, an IFC working group was charged with investigating and addressing concerns about general surveillance in libraries, including the use of video to record users and their activities in the library. The working group developed guidelines for reviewing policies addressing different forms of video surveillance. The guidelines are divided into sections, such as security cameras, public records, users filming in the library, and training for library workers. The committee voted to approve "Video Surveillance in the Library Guidelines," and the resource is included in this report as an information item. [*See page 39.*]

Upcoming Webinars

The Intellectual Freedom Committee and United for Libraries have partnered to host the webinar "Vendor Negotiation That Supports Patron Privacy and Intellectual Freedom" on June 18. Moderated by IFC member Holly Eberle, the speakers are Privacy Subcommittee Chair Erin Berman, Privacy Subcommittee member Bill Marden, and Privacy Subcommittee member and United for Libraries board member Amandeep Kochar.

Continuing Working Groups

IFC continues to respond to threats to intellectual freedom, and update and revise resources to offer guidance to library workers.

The IFC Facial Recognition Working Group is currently reviewing and coding responses from a survey that was distributed to the library community about facial recognition. The working group is planning to develop a resolution and/

or other resources for libraries that identify areas of concern related to facial recognition software. Another IFC working group is updating the Q&A "Access to Digital Information, Services and Networks," last revised in 2010. The committee is also reviewing "Libraries and the Internet Toolkit."

Thank You to Outgoing Members and Welcome to New Members

The IFC would like to thank outgoing IFC members Helen Adams, Shenise McGhee, Cecelia Parks, Kim Patton, John Spears, and Geoff Dickinson for their diligent work and advocacy. The committee would also like to thank IFC Chair Julia Warga for her leadership, thoughtfulness and energy that has driven the committee's work, including interpretations, guidelines, program proposals, and resolutions.

The committee is looking forward to working with incoming members Glen J. Benedict, Peter Coyl, Lesliediana Jones, and Sophia Sotilleo, and incoming and returning chair Martin Garnar.

Action Items

The Intellectual Freedom Committee moves the adoption of the following action item:

CD # 19.9 "Resolution Condemning Police Violence Against BIPOC, Protesters, and Journalists"

In closing, the Intellectual Freedom Committee thanks the division and chapter intellectual freedom committees, the Intellectual Freedom Round Table, the unit liaisons, and the OIF staff for their commitment, assistance, and hard work.

Respectfully Submitted,
ALA Intellectual Freedom Committee
Julia Warga, IFC chair
Helen Ruth Adams
Jim DelRosso
M. Teresa Doherty
Holly Melissa Eberle
Steven Greechie
Dana Hettich
Shenise L. McGhee
Cecelia L. Parks
Kimberly Anne Patton
John Spears
Geoff Dickinson, Committee Associate
Lisa Mandina, Committee Associate

COMMITTEE ON PROFESSIONAL ETHICS AND INTELLECTUAL FREEDOM COMMITTEE'S LETTER ADDRESSING FORWARD TOGETHER RECOMMENDATIONS

May 14, 2020
ALA Committee on Organization
Chair, James G. Neal

Dear Chairperson Neal and members of ALA's Committee on Organization:

We are writing to express concern about the lack of a standing committee to address issues and topics of importance involving professional ethics, intellectual freedom, and privacy in the Forward Together recommendations. As we understand it, the Forward Together proposal is now being reviewed by the Committee on Organization (COO), as the Steering Committee on Organizational Effectiveness (SCOE) has finished its work with its final report.

At the outset of this tremendous and complex task, SCOE was charged, in part, to "embrace the Association's core values." In the proposed new leadership structure for ALA, there is not a clear and discernible path to ensure that core professional library values, such as Intellectual Freedom, Professional Ethics, and Privacy, have a consistent voice and seat at the table in order to inform the association's mission and practice. Many members of the Committee on Professional Ethics, Intellectual Freedom Committee and its Privacy Subcommittee, and Intellectual Freedom Round Table have expressed concerns that such a decision suggests that professional values are no longer viewed as a core value or core function of the Association or the library profession.

We respectfully propose the addition of a seventh standing committee to the Forward Together recommendations—Professional Values. The Professional Values Standing Committee would be the arm of the new ALA leadership structure that would focus on Intellectual Freedom, Professional Ethics, and Privacy. It would combine the work of the Intellectual Freedom Committee, Committee on Professional Ethics, and IFC Privacy Subcommittee and align with ALA's Office for Intellectual Freedom.

The work these committees do is important. They monitor and respond to ongoing intellectual freedom and privacy developments in libraries, including technology, politics, legislation, and social trends. They also ensure that the association's statements concerning intellectual freedom, privacy, and ethics remain current and responsive to the needs of the profession. For example, within the past year, the Library Bill of Rights, one of our profession's most important statements of our core values, was amended to include a new article that codifies Privacy as a core right. ALA's Code of Ethics was also re-evaluated, a regular practice that ensures our values remain grounded in the experiences of libraries and library workers. The Forward Together leadership structure gives no clear direction of how this work would get done or who will be charged with the responsibility for

these foundational documents, along with their various interpretations and accompanying documents, that guide the practices of library workers.

Hot-button issues for libraries that generate media attention and social media debates seem more often than not to involve intellectual freedom issues. Recent examples include anti-transgender rights groups using public library meeting rooms, controversies involving drag queen storytimes, facial recognition technology being implemented in schools, and legislation designed to impair library workers' ability to develop diverse collections and allow the censorship of library collections and programs. For ALA leadership to best be prepared to mobilize and respond to such issues effectively, there should be a standing committee to ensure expertise in intellectual freedom issues within the ALA leadership structure.

We recognize the need for change in ALA governance structure and appreciate the amount of time, energy, and thought that SCOE has put into its recommendations and that COO is currently undertaking. Aligning ALA structures and reducing the financial footprint will allow leaders to implement a vision for a reimagined association as outlined in the Code of Ethics of the American Library Association to "strive for excellence in the profession by maintaining and enhancing our own knowledge and skills, by encouraging the professional development of co-workers, and by fostering the aspirations of potential members of the profession." As we move forward together through this process, we must also endeavor to "treat co-workers and other colleagues with respect, fairness, and good faith." It is within this spirit that we make this proposal to ensure that intellectual freedom, privacy, and ethics remain a vital part of ALA and our profession.

Thank you for all of your hard work and efforts, and for considering our proposal.

Sincerely,

Andrew Harant
Chair, Committee on Professional Ethics

Julia Warga
Chair, Intellectual Freedom Committee

Cc: Wanda Brown, ALA President; Julius Jefferson, ALA President-Elect; Patty Wong, incoming ALA President-Elect; Tracie Hall, ALA Executive Director

ALA Executive Board

ALA Committee on Professional Ethics

ALA Intellectual Freedom Committee

GUIDELINES FOR REOPENING LIBRARIES DURING THE COVID-19 PANDEMIC

by Theresa Chmara, J.D.

As public libraries make plans to phase in reopening during the COVID-19 pandemic, they must consider how best to balance the safety of staff and patrons with the mission of providing the community with access to the resources traditionally offered by the library. In drafting plans to phase in reopening and policies to govern use of the library during these unprecedented times, public libraries should take the following steps:

- Consult with legal counsel regarding both reopening plans and policies to govern staff and patron access to and use of the facility.
- Review federal, state and local laws that may impact plans and policies, including but not limited to relevant Executive Orders, State Privacy and Confidentiality laws and local municipal directives regarding access to public buildings. Check for frequent updates as policies may need to be adjusted in response to new information about COVID-19 and its spread.
- Review agency guidelines, including but not limited to local health offices, Centers for Disease Control (CDC) guidance on maintaining sanitary conditions and safe spaces, Equal Employment Opportunity Commission (EEOC) guidance on employment issues and the Occupational Safety and Health Administration (OSHA) guidance on protecting employees in workplaces. Check for frequent updates as policies may need to be adjusted in response to new information about COVID-19 and its spread.
- Consult the American Library Association Bill of Rights and Policy Guidelines for specific guidance on how to balance the interests of safety for staff and patrons with the need to maintain the privacy rights of employees and community members utilizing the library and its resources.
- Be certain that all policies are reasonable and necessary for the safety of staff and members of the community.
- Document why certain policies are deemed reasonable and necessary.
- Draft policies that can be applied objectively by staff and provide staff training on how to enforce the policies.
- Enforce policies consistently.
- To the extent that policies deny access to the facility or library resources, provide an appeal procedure for review of the denial.

Frequently Asked Questions

1. Can policies concerning patron access be based on protecting staff health and wellness?

As an employer, a public library has an obligation to protect the health and safety of its staff. OSHA provides general guidance and recommendations on how to protect workers during the COVID-19 crisis. Courts have held that patrons have a First Amendment right to access the library because the right to receive information is a corollary to the right to speak. However, the library also has the right to establish reasonable rules governing library use. Maintaining a safe environment for staff and patrons would be considered reasonable and necessary. For example, one court upheld the right of a public library to require that patrons wear shoes because the library could document through incident reports that the floors sometimes contained glass and other dangerous materials that could pose a health and safety risk. See *Neinast v. Board of Trustees*, 190 F.2d 1040 (S.D. Ohio 2002), *aff'd*, 346 F.3d 585 (6th Cir. 2003). In drafting any policy that would restrict access to patrons, the public library must consider whether it can justify the rule as reasonable and necessary for that particular library. What will be considered reasonable and necessary in one library may not be considered reasonable or necessary for another library. Public libraries should also note that content neutral and reasonable time, place and manner restrictions may be imposed for the purpose of maintaining a safe environment. Thus, for example, a public library could impose a requirement that only a limited number of patrons can access the library at any one time and that patrons can only be in the library for a set period of time to maintain safety. As always, those rules must be enforced consistently. Look to guidance from local health officials and the CDC to determine how to set reasonable time, place and manner restrictions.

2. Can public libraries require temperature or health status checks before staff or patrons enter the building?

Although temperature and other health status checks generally would be considered medical tests and thus be impermissible in an employment situation, the EEOC has issued guidance that allows such tests during the COVID-19 pandemic. As most libraries will not be considered covered entities under the Health Insurance Portability and Accountability Act (HIPAA), libraries should also consult the AMA Privacy Principles if they are required to do temperature checks or otherwise determine that such a requirement is necessary. Although the EEOC guidance does permit employers to retain temperature check and other medical information in files that are separate from employee personnel files, libraries should consider whether there is a legal requirement in their jurisdiction to retain such information or there is a need for such information to be retained before implementing a policy of retention. As a best practice, libraries should only retain documents with personally identifiable information when required by law or otherwise necessary to allow the library to manage the use of library services and resources. If libraries retain such information, it is critical that any medical information from temperature or other health status checks must be kept *confidential*. In order to comply with employment laws, public libraries should conduct any temperature and other health status checks on staff in a private manner. There is no clear guidance at this time regarding health status checks of patrons. In considering whether to require such checks, the library should consult federal, state and local laws, as well as local health official and CDC guidance on whether to institute such procedures. There may be a law in place that permits such checks. Guidance from the CDC or local health officials might encourage such practices for all public buildings. In that case, a library might be able to justify such an imposition on access as reasonable and necessary to maintain the safety of staff and patrons. Before instituting procedures to check temperatures or otherwise collect medical information, libraries should consider the use of medical personnel to conduct such procedures and should determine whether any state or local law requires use of medical personnel for such procedures.

3. Can public libraries require staff or patrons to wear masks if they wish to enter the building?

In each particular setting and physical space, the public library must consider whether a mask requirement is reasonable and necessary to maintain safety. The CDC recommends the use of facial masks where other procedures, such as social distancing or partitioning of spaces is not feasible. In considering whether to require staff and patrons to wear masks, the library should consult federal, state and local laws, as well as guidance from local health officials and the CDC on whether to institute such a requirement. There may be a state or local law in place that requires masks. Guidance from local health officials or the CDC might encourage use of masks for all public buildings once a community has moved to a reopening phase. In that case, a library might be able to justify a mask requirement as reasonable and necessary to maintain

the safety of staff and patrons. In some jurisdictions, employers who require masks must supply the masks for their employees. If there is an executive order or other legal requirement that staff and patrons wear masks in a particular state or local community, review the order carefully to determine if there is an exception for those who have a medical condition that precludes wearing a mask and consider alternatives to address safety concerns.

4. Can public libraries require patrons to leave the building because they are exhibiting COVID-19 symptoms?
Asking a patron to leave based on a suspicion that the patron has COVID-19 may be difficult. Courts have held that patrons have a First Amendment right to access the library because the right to receive information is a corollary to the right to speak. Courts have also held that the library has the right to establish reasonable rules governing library use. Maintaining a safe environment for staff and patrons would be considered reasonable and necessary. Therefore, it would appear to be reasonable and necessary to have policies in place that allow staff to ask a patron to leave if that patron poses a risk to the health and safety of staff and other patrons. The difficulty will lie in enforcement of such a policy. Although the CDC has set forth some typical symptoms for COVID-19, many of those symptoms could just as easily be attributable to other conditions. For example, a person that is coughing or sneezing could have allergies. In considering whether to have a policy that permits staff to ask a patron to leave based on the patron having possible symptoms of COVID-19, the library should consult federal, state and local laws, as well as CDC guidance on whether to permit such a practice. If such a policy exists, the library should have an appeal process that allows the patron to appeal the decision of a staff member. If such a policy exists, libraries must conduct extensive training for staff to assure that the policy is carried out consistently. If the policy allows a staff member to ask a patron to leave because the patron exhibits certain symptoms, then any patron exhibiting such symptoms must be asked to leave. There can be no exceptions. Given the difficulty in enforcing requests to leave based on symptoms, public libraries might consider alternative methods of limiting exposure of staff and other patrons to patrons with possible symptoms. For example, a public library could impose time, place and manner restrictions that apply to all patrons and limit access to the library for a set amount of time, thus allowing staff to ask a patron to leave based on objective time limits, rather than the subjective judgment of symptoms. This would limit the amount of time that any one patron is in the library and potentially spreading the virus. If a policy exists that allows staff to ask members to leave and a patron refuses, the staff should follow established policies and procedures for how to respond as they would for violations of any patron behavior policy.

5. Can public libraries be required to use sign-in logs for access to the library that collect personally identifiable information of patrons for release to other agencies for contact tracing?
If a public library is required to use a sign-in log or otherwise concludes that such a log is necessary in the context of their particular library, the library must be cautious in how it collects such information and how that information will be retained, used or shared. Public libraries collect personally identifiable information from patrons in many instances. A public library may have an Internet sign-up list, a meeting room request form or other logs that collect the personally identifiable information of patrons. In fact, collecting such information in the form of a sign-in log for library access during the phased in reopening might be reasonable and necessary if, for example, the library has a policy during reopening that only allows a limited number of patrons into the library for a limited amount of time. Tracking who has entered the library and whether they have departed according to the time limitation policy might be necessary to ensure that other patrons have access to library resources in a fair and reasonable manner, and that the greatest number of members in the community can access library resources. Alternatively, the library could avoid using a sign-on log for this purpose if it utilized a procedure where a set number of patrons entered the library at a certain time and for a set amount of time and all had to exit the library at the same time. This type of time, place and manner procedure would eliminate the need to track who has entered the library. The library would only need to track the number of people in the library during a specific time period. As a best practice, libraries should limit the collection of personally identifiable information in all circumstances unless required by law or otherwise necessary to permit the library to carry out the functions of managing library services. If a library has a sign-in requirement, it must include procedures to maintain the privacy and confidentiality of that information. For example, the information should be gathered in a confidential manner and the sign-in log should not be displayed publicly in a manner that would allow other

patrons, members of the public or other government agents to see the information. The information from sign-in logs should be retained only for as long as required by law or necessary for the library to manage access to library services. If the library is required to retain such information, the information must be secured in a confidential manner. If a request is made for such information by another government agency or member of the public, the library should consult legal counsel immediately. State privacy and confidentially laws often prohibit libraries from providing personally identifiable patron information to third parties, including to other government agencies, without a subpoena or court order. Public libraries who receive a request for such patron information should consult with legal counsel before disseminating any patron information to third parties, including other government agencies.

6. Can a public library terminate an employee that refuses to return to work in the physical space of the library?
The EEOC provides guidance on whether an employer can terminate an employee for refusing to return to work. This EEOC guidance also provides important information about other employment related issues surrounding COVID-19, including guidance for employers that might be required to make reasonable accommodations for staff in high risk categories who are unable to return to the physical workplace.

These materials are not a legal opinion nor should they be regarded as legal advice. Readers should consult their own legal counsel for legal advice regarding their particular situation.

These guidelines were authored by Theresa Chmara and approved by the Intellectual Freedom Committee on June 8, 2020.

Theresa Chmara *is an attorney in Washington, DC. She also is the General Counsel of the Freedom to Read Foundation. She is the author of* Privacy and Confidentiality Issues: A Guide for Libraries and their Lawyers *(ALA 2009). She has been a First Amendment lawyer for over twenty-five years and is a frequent speaker on intellectual freedom issues in libraries. She is a contributing author for the* Intellectual Freedom Manual *published by the Office of Intellectual Freedom of the American Library Association.*

GUIDELINES ON CONTACT TRACING, HEALTH CHECKS, AND LIBRARY USERS' PRIVACY

All people, regardless of origin, age, background, or views, possess a right to privacy and confidentiality in their library use. Libraries should advocate for, educate about, and protect people's privacy, safeguarding all library use data, including personally identifiable information.

—Article VII *Library Bill of Rights*

The right to privacy is one of the foundations upon which our libraries are built. Privacy is one of the key reasons libraries are such a trusted part of every community. In a world that thrives on surveillance and data mining, libraries provide a safe place for users of all ages to seek out information free from unreasonable intrusion into or surveillance of their use. As libraries across the world have shut their doors due to the COVID-19 pandemic, we face the challenge of upholding our commitment to not monitor, track, or profile an individual's library use beyond our operational needs.

Confronted with a global health emergency and civil unrest, now more than ever we must ensure that our libraries continue to provide uninterrupted, safe, and confidential access to our services, in accordance with our core values and the laws that protect the confidentiality of library users' information.

As libraries begin to reopen, many are faced with the possibility that they will be required to conduct health screenings and contact tracing that may potentially impact library users' privacy and right to access library services. Libraries that are required to perform health screenings prior to allowing entrance should avoid collecting and storing any medical data and do such screenings in private. The Choose Privacy Every Day website has guidance for libraries on how to do health screenings while maintaining user privacy and confidentiality.

We believe contact tracing has serious implications for libraries. Civil liberties organizations have strong concerns about the potential threat to individual rights posed by the collection of sensitive data that discloses information about individuals' movements and their social, sexual, religious, and political associations. There is also concern about the potential abuse of any collected data for commercial gain, discrimination, and stigmatization of marginalized groups. A public health surveillance program implemented in the current situation could become permanent, resulting in an irrevocable loss of privacy and civil liberties.

This moment is an opportunity for libraries to step up and reinforce their communities' faith in them as information safe havens. Instilling the right to privacy into library services is an act of empathy and kindness that we can provide to all of our users. Libraries seeking more guidance can visit

the Choose Privacy Every Day website's Protecting Privacy in a Pandemic Resource Guide and sign up to receive regular updates on privacy-related topics.

RESOLUTION CONDEMNING POLICE VIOLENCE AGAINST BIPOC, PROTESTERS, AND JOURNALISTS

Whereas the American Library Association (ALA) is deeply saddened by the deaths of George Floyd, Breonna Taylor, Tony McDade, Ahmaud Arbery, and far too many other People of Color who have been killed as a result of police brutality and systemic racism;

Whereas we are in solidarity with the statements of The Black Caucus of The American Library Association (BCALA) and Asian Pacific American Librarians Association (APALA), and affirm our earlier statement condemning violence and racism towards Black people, Indigenous people, and all People of Color[1];

Whereas we recognize "that institutionalized inequities based on race are embedded into our society and are reinforced through social institutions" (ALA Policy B.3.2 Combating Racism) and we condemn the systemic racism and violence that Black people, Indigenous people, and People of Color experience on a daily basis in our inequitable society;

Whereas the U.S. Press Freedom Tracker, produced by the Freedom of the Press Foundation, has tracked over 400 incidents of violence, arrest, and destruction of equipment against journalists covering protests[2];

Whereas the First Amendment promises freedom of speech, freedom of the press, the right to assemble, and the right to petition the government, all of which are essential freedoms of our democracy and vital components of intellectual freedom;

Whereas we condemn the violence that protesters and journalists across the country are facing while exercising their First Amendment rights—the former raise their voices to demand justice, and the latter seek to document and share history as it is being made: both have been subject to gratuitous attacks from police;

Whereas ALA has pledged to "[s]upport anti-racism work within the broader society by monitoring, evaluating and advocating for human rights and equity legislation, regulations, policy and practice" (ALA Policy B.3.3 Combating Prejudice, Stereotyping, and Discrimination); and

Whereas the "The Universal Right to Free Expression: An Interpretation of the *Library Bill of Rights*" states that ALA "opposes any use of governmental prerogative that leads to intimidation of individuals that prevents them from exercising their rights to hold opinions without interference, and to seek, receive, and impart information and ideas. We urge libraries and librarians everywhere to resist such abuse of governmental power, and to support those against whom such governmental power has been employed"; now, therefore, be it

Resolved, that the American Library Association (ALA), on behalf of its members:

1. calls upon its members to support initiatives to end police violence against Black people, to combat the systemic racism that infects our society, and to speak out against all attempts to restrict First Amendment rights.
2. calls upon federal, state, and local governments to uphold, preserve, and respect the constitutional rights of protestors, of journalists, and of all people who want to make their voices heard and to share their words and ideas with the rest of the world and future generations.
3. directs ALA staff to expeditiously publish and distribute this resolution to all ALA members through appropriate channels of communication.

[1] "Statement Condemning Increased Violence and Racism Towards Black Americans and People of Color," The Black Caucus of The American Library Association, May 28, 2020; "APALA stands with BCALA and Black Lives Matter," Asian Pacific American Librarians Association, June 1, 2020; "ALA Executive Board stands with BCALA in condemning violence and racism towards Black people and all People of Color," American Library Association, June 1, 2020.
[2] U.S. Press Freedom Tracker (retrieved on June 11, 2020)

VIDEO SURVEILLANCE IN THE LIBRARY GUIDELINES

Video surveillance in the library can take many forms. It can include institutional surveillance for security purposes, individuals using their own devices to film the library building or library users, or individuals filming library workers. Libraries should develop policies that clearly address all forms of video surveillance that may occur in their spaces, make those policies publicly available, and give notice to both staff and the public when those policies are adopted or amended. Because there is no one-size-fits-all policy for video surveillance in libraries, libraries should develop policies in consultation with legal counsel that address each library's unique circumstances.

Video surveillance is only one type of surveillance that may occur in libraries. For guidance on protecting users' privacy and defending against government and corporate surveillance, see "Privacy: An

Interpretation of the *Library Bill of Rights*," the "Privacy and Confidentiality Q&A," library privacy guidelines and checklists, and the "Visits and Requests from Law Enforcement Concerning Library Records and User Information."

Below are some guidelines for developing policies addressing different forms of video surveillance.

Security Cameras

The decision to conduct surveillance for security purposes, including the use of security cameras, should carefully weigh the safety and security benefits derived from surveillance with the library's duty to protect users' rights to privacy and confidentiality as outlined in applicable state laws and in Article VII of the *Library Bill of Rights*. Achieving a balance between user rights and the need for security is especially important as surveillance technology increases in sophistication and is capable of recording information about users' library use that has historically been carefully protected from disclosure. If libraries decide that video surveillance is necessary, they should develop policies that clearly define the scope and purpose of surveillance and which include strong protections of library users' privacy and confidentiality.

The "Privacy and Confidentiality Q&A" states:

> [Video surveillance] policies should state the cameras are to be used only for the narrow purpose of enhancing the physical security of the library, its property, staff, and users. Policies should include: protocols for posting signs and giving notice about the presence of surveillance equipment, storage of data and/or media in a secure location, and routine destruction of data as soon as permitted by law.[1]

Policies should inform users whether or not security camera footage is being monitored in real time, and if that footage is retained by the library. The policy should also outline who has access to view live or recorded security camera footage. Access should be limited to the minimum necessary for security purposes. Video recordings should only be shared when necessary to protect the interests of the library and its staff and when permitted by the state library confidentiality statute. If the library's security cameras are part of a larger surveillance system (as is the case in many school libraries), policies should be developed in conjunction with the larger system to allow maximum autonomy for the library to protect users' privacy and confidentiality to the fullest extent possible. Policies should also be regularly reviewed as surveillance technology advances and the legal environment shifts, especially with regard to issues like facial recognition.

Users Filming in the Library

The activities of users filming in the library should be addressed by policies concerning behavior or media relations. These policies should carefully balance protection of users' privacy with users' First Amendment right to access the library, privacy concerns, safety concerns, disruptions, and potential harassment of users and staff. This balance will look different in each library; for example, some libraries housed in historic buildings may allow users to film the space but not anyone in it, while other libraries may choose not to allow filming in their space at all.

Regardless of the specifics of each situation, policies regarding filming in the library should be directly tied to the library's mission statement, be as specific as possible, and be consistently enforced. Any restrictions should be content-neutral; however, libraries can enforce time, place, and manner restrictions on filming.

If filming is allowed, behavior and other policies should be carefully crafted to protect users from intimidation and harassment, as well as to ensure that any evidence of individuals' library use is kept confidential, similar to the confidentiality of circulation records. Library users should not expect to be free from observation, except in those spaces within libraries where users have an expectation of privacy, such as bathrooms, study rooms, or offices, and those spaces should be clearly marked as private spaces.

Users Filming Library Workers

Policies concerning users filming in the library should also address the issue of users filming library workers. In their capacity as employees, library workers do not have the same privacy rights as library users, and courts have upheld the right to record public employees carrying out their duties in public spaces.[2] However, filming in the library should not monopolize library workers' time or interfere with the performance of their duties. Filming that interferes with or harasses workers should be addressed by the library's behavior policies. Additionally, private spaces reserved for use by the staff should be clearly identified by signage that identifies those places as private, staff-only spaces and that bars entry by the public.

Public libraries may be the targets of "First Amendment audits," in which individuals claim a right as taxpayers to film in any space accessible to the public, and they test that right by going into public spaces and recording videos with the goal of

documenting First Amendment violations that can later be used in legal claims against the target. Best practice for dealing with these "auditors" is to not engage with them and allow them to film as long as they comply with all library policies, including but not limited to those regarding behavior, media, and staff harassment.[3]

Library Worker Training

Library workers should be trained on all policies and procedures related to video surveillance in the library. They should feel confident in their knowledge and comfortable enforcing the policies to ensure that policies are enforced consistently. Library workers should also be trained on professional ethics and issues of equity, diversity, and inclusion to appropriately guide the development and enforcement of policies.

Public Records

Any documents or information, including video surveillance footage, created or filed by a government agency or entity may be considered a public record. By law, all public records should be made available upon request; however, under some state laws, records concerning an individual's use of the library are confidential and exempt from public records law. Libraries have a responsibility to protect user privacy and should, therefore, develop policies with legal counsel that adhere to state and local law to ensure that individual privacy rights are upheld when recording and retaining library video surveillance footage. Because some state library confidentiality laws prohibit libraries from disclosing any information that identifies a person as having used a library or a library service, libraries should be cautious about releasing tapes of video surveillance without a court order or subpoena. Since video surveillance footage may identify library users and their usage of library resources and services, video recordings should be routinely purged or destroyed as soon as permitted by law.

Law Enforcement

Libraries should not share a library user's records and information with law enforcement *except* with the permission of the user, in response to a subpoena or court order, or in accordance with state library confidentiality law. Records of video surveillance in the library are protected under the same considerations of privacy and confidentiality as all other library records, and the same rules and guidelines for access apply. Libraries should consult with legal counsel about applicable laws governing the retention and release of video surveillance records. For more information, see "Visits an Requests from Law Enforcement Concerning Library Records and User Informaiton."[4]

[1] "Privacy and Confidentiality Q&A," Intellectual Freedom Committee's Privacy Subcommittee, last revised July 29, 2019.
[2] "Recording Police Officers and Public Officials," Digital Media Law Project.
[3] Deborah Caldwell-Stone, "Auditing the First Amendment at Your Public Library," Intellectual Freedom Blog, October 2, 2019.
[4] "Issue at a Glance: Visits and Requests from Law Enforcement Concerning Library Records and User Information," in *Intellectual Freedom Manual*, 9th ed. (Chicago: ALA Editions, 2015).

COMMITTEE ON PROFESSIONAL ETHICS

EDITOR'S NOTE: *This report was submitted by Andrew Harant, chair of the American Library Association's Committee on Professional Ethics, to ALA Council at the American Library Association's online event, ALA Virtual.*

As chair of the Committee on Professional Ethics (COPE), I am pleased to report on the committee's activities since the 2020 Midwinter Meeting in Philadelphia, Pennsylvania.

Charge

The council Committee on Professional Ethics shall augment the *Code of Ethics* (ala.org/tools/ethics) by explanatory interpretations and additional statements, prepared by this committee or elicited from other units of ALA. When units of the association develop statements dealing with ethical issues, a copy will be sent to the committee on professional ethics for review so that it may be compared to the existing ALA *Code of Ethics* in order to determine whether or not conflicts occur.

Forward Together Response

Members of the Committee on Professional Ethics, the Intellectual Freedom Committee, and the Intellectual Freedom Round Table have expressed concern about the lack of a standing committee to address issues and topics of importance addressing professional ethics, intellectual freedom, and privacy in the Forward Together recommendations. Many expressed a belief that the decision suggests that professional values are no longer viewed as a core value or core function of the association or the library profession. COPE Chair Andy Harant and IFC Chair Julia Warga have written a letter to ALA's Executive Board and Committee on Organizations outlining their concerns and suggesting a solution for future appointees of Forward Together to consider. The letter, which outlines these concerns and the need for a Professional Values Standing Committee, is attached to this report as an information item. It was approved by both COPE and IFC.

[*See page 34.*]

Programs

The Committee on Professional Ethics presented a program for the 2020 PLA Conference in Nashville titled "What Would You Do? Ethical Issues in Public Libraries." Through scenarios involving patron behavior, controversial programming, and diversity in collection development, panelists Sara Dallas and Maria McCauley led the audience in discussing ethical issues and applying the Code of Ethics to real-life situations. COPE is working with United for Libraries to recreate this program virtually to provide access to more library workers and broaden the awareness of professional ethics.

Due to the change and limitations in programming for ALA's Virtual Event on June 24-26, 2020, COPE's co-sponsored program with the Intellectual Freedom Committee on "Practical Applications of the Interpretations of the ALA Library Bill of Rights" will be postponed and possibly offered virtually. COPE and the Intellectual Freedom Round Table will be presenting a recorded conversation on Wednesday, June 24, 2020 titled "Intellectual Freedom, Hate Speech, the First Amendment, and You." This conversation features Nadine Strossen, author of the book *Hate: Why We Should Resist it with Free Speech, Not Censorship*. IFRT will facilitate a live Q&A after the recording.

Writing

To raise awareness of ethical issues and to highlight COPE resources, members, liaisons, and associates of the Committee on Professional Ethics are contributing to the Intellectual Freedom Blog.

- "Green-Dots Mean Go, Part Two: An Interview with Kate Klise, Author of Don't Check Out This Book!" by Brian Wilson, ALSC Liaison
- "Assisting Customers with Digital Alteration: An Ethical Conundrum" by Andy Harant, COPE Chair

Professional Ethics Liaisons

Stephen Matthews served as COPE's liaison to the ALA Intellectual Freedom Committee. He has actively raised ethical issues and concerns in email conversations, in comments on documents, and in virtual and in-person IFC meetings.

The opening line of the *Code of Ethics of the American Library Association* states, "As members of the American Library Association, we recognize the importance of codifying and making known to the profession and to the general public the ethical principles that guide the work of librarians, other professionals providing information services, library trustees and library staffs." To this end, COPE relies on the time and energy devoted by liaisons of divisions, round tables, and affiliates. Thank you to Nancy Bolt (ASGCLA Liaison); Gina Seymour (YALSA Liaison); Elizabeth Shoemaker (ALCTS Liaison); Jill Sodt (ACRL Liaison); Brian Wilson (ALSC Liaison); Carrie Willson (PLA Liaison); and Eboni Henry (ALA Executive Board Liaison).

COPE is seeking additional liaisons to assist in crafting resources, developing and presenting programs, providing feedback on documents and professional ethics concerns, and sharing updates from their particular group. Please see the COPE roster to view the list of representatives (ala.org/groups/committees/ala/ala-profethic). Those interested can contact COPE Staff Liaison Kristin Pekoll at kpekoll@ala.org.

Thank You and Welcome

It is with sadness that I say good-bye to ALA's Committee on Professional Ethics. My term as chair has come to an end and it follows four years serving as a member of this important and necessary committee. I'm proud of our skit programs at ALA and PLA conferences, our work to update the Code of Ethics Q&A's and interpretation, our joint efforts with ALA's Intellectual Freedom Committee to create ALA's Intellectual Freedom Education and Advocacy policy statement and to advocate for professional values to remain a core focus within ALA, and of personally learning so much and meeting wonderful people. I want to express my gratitude to the other members who are finishing their terms on the committee: Miranda Bennett, Sonja Eyler, Hilda Weisburg, and committee associate Rachel Turner. I would also like to express my gratitude to OIF Staff Liaisons Kristin Pekoll and Deborah Caldwell-Stone for their invaluable help and guidance to me and to ALA President Wanda K. Brown and the Executive Board for their confidence in the committee and allowing them to serve ALA.

I look forward to what the incoming members of the committee will do. Please join me in welcoming Natisha Harper, Nancy Kirkpatrick, Rory Patterson, Catherine Smith, and committee associate Dr. Sheri Edwards.

Respectfully Submitted,
ALA Committee on Professional Ethics
Andrew Harant (Chair)
Miranda Bennett
Sonja Eyler
Sarah Houghton
Alexia Hudson-Ward
Stephen Matthews
Hilda Weisburg
Ellen Spring (Committee Associate)
Rachel Turner (Committee Associate)

MUSEUMS
Santa Fe, New Mexico

During a 2019 environmentally focused exhibition at the New Mexico Museum of Art (MOA), a poetry zine, which focused on the impact of fracking, was removed upon the recommendation of the New Mexico Department of Cultural Affairs (DCA) because it contained political commentary. The Arts Advocacy Program at the National Coalition Against Censorship (NCAC) urged the MAO to take the incident as an opportunity to better develop artistic freedom upholding policies.

The zine, titled *The Social & Sublime: Land, Place, and Art*, focused on "issues of land use, expansion and border conflicts, and industrialization and the conservation of natural resources." While these are certainly political issues as stated in the exhibition description, they are explored through lenses "ranging from the purely formal to the politically engaged." As the NCAC stated, "A zine dedicated to poetry about the impact of fracking on the local community neatly fits within the parameters of the show. Indeed, many other works in the show also took political positions, as art often does."

The DCA maintained that distributing the zine "would be considered using state property to support [a] political cause." The DCA mistakenly referred to a governmental conduct act prohibiting "a public officer or employee from . . . using property belonging to a state agency or allowing its use for other than authorized purposes." Contrary to what DCA asserts, exhibiting art with a political position does not constitute support of that position by the museum. Otherwise, no cultural institutions open to the public could provide space for any work that explores relevant political topics, including discussions of war, immigration, climate change, public health, and economic disparities. This very exhibition would never have taken flight.

Evidently, the apprehension was not because the work reflected a particular political position, but rather, it was the nature of that position. As the NCAC report stated, "The zine is a condemnation of the devastating impact of the fossil fuel industry, and specifically fracking, on communities, ecological systems, and the climate within New Mexico. In a state highly dependent on the fossil fuel industry, this is a controversial position. But a publicly funded institution cannot discriminate against specific political positions, no matter how unpopular: such discrimination would violate the First Amendment."

Though the zine was later included as a resource in the museum, that does not change that the removal took place, and "does not provide any clarity as to [the] MOA's exhibition policy." Therefore, the NCAC urged the MOA, in collaboration with the DCA, "to adopt a formal policy affirming artistic freedom, including the right of artists to voice political opinions without fear of being silenced. The museum should also make it clear that exhibiting political artwork does not mean that the institution itself endorses specific political positions. This is the only way [the] MOA can remain a site of encounter with new and radical ideas, a site where social and political dialogue happens, not become a place of pure entertainment governed by political censorship."

The NCAC offered to assist the MOA with the development of a new policy.

Reported by: National Coalition Against Censorship, March 17, 2020.

PUBLISHERS
New York, New York

On March 6, 2020, a day after Hachette Book Group's (HBG) employees protested the publisher's deal with filmmaker Woody Allen, the plans to publish his autobiography were cancelled. All rights were returned to Allen.

"The decision to cancel Mr. Allen's book was a difficult one," a spokesperson for the publisher said in a statement. "We take our relationships with authors very seriously, and do not cancel books lightly. We have published and will continue to publish many challenging books. As publishers, we make sure every day in our work that different voices and conflicting points of views can be heard."

The spokesperson added, however, that after discussing the matter with their employees, Hachette executives said that they "came to the conclusion that moving forward with publication would not be feasible for HBG."

Letty Aronson, Allen's sister and producer, declined to comment.

Hachette announced the book deal on March 2, 2020, stating that its Grand Central Publishing imprint would release Allen's autobiography *Apropos of Nothing* on April 7, 2020. It described the book as "a comprehensive account of his life, both personal and professional," and said it would include Allen's writing on "his relationships with family, friends, and the loves of his life."

In an early March 2020 email exchange, journalist Ronan Farrow, whose book *Catch and Kill* was published by another Hachette imprint, criticized HBG, calling its decision to publish Allen's book a betrayal. "Your policy of editorial independence among your imprints does not relieve you of your moral and professional obligations as the publisher of *Catch and Kill*, and as the leader of a company

being asked to assist in efforts by abusive men to whitewash their crimes," wrote Farrow in an email to HBG Chief Executive Michael Pietsch.

Farrow, who helped propel the #MeToo movement by reporting on accusations of sexual assault against Harvey Weinstein and other powerful men, is Allen's son with actress Mia Farrow. Ronan Farrow and his adopted sister, Dylan Farrow, have long accused Allen of molesting her when she was a child, allegations he has denied. Two investigations ensued; Allen was not charged.

In an interview on March 3, 2020, Pietsch defended the decision to publish Allen's book, saying that the company's imprints do not engage in editorial interference with each other. "Grand Central Publishing believes strongly that there's a large audience that wants to hear the story of Woody Allen's life as told by Woody Allen himself," he said. "That's what they've chosen to publish."

On March 5, 2020, Hachette employees staged a walkout to protest their company's plans, resulting in HBG having "a fuller discussion" with its staff members.

Following the announcement of the book's cancellation on March 6, Suzanne Nossel, the chief executive of the free-speech nonprofit PEN America, called the situation "something of a perfect storm."

This incident, she said in a statement, "involved not just a controversial book, but a publisher that was working with individuals on both sides of a longstanding and traumatic familial rupture. This presented unique circumstances that clearly colored the positions staked out and decisions taken. If the end result here is that this book, regardless of its merits, disappears without a trace, readers will be denied the opportunity to read it and render their own judgments."

The French arm of Hachette, Éditions Stock, said it planned to proceed with publishing Allen's book. The imprint's director, Manuel Carcassonne, expressed his support for the project in an interview with the magazine *Le Point* published on March 7.

"The American situation is not ours," Carcassonne said. "Woody Allen is a great artist, director and writer, and his New York Jewish humor is evident in each line of this memoir, in its self-mockery, its modesty, its ability to dress up tragedy as comedy. Including at his expense. It's unfortunate that this decision was made—unfortunate for freedom of expression but perfectly understandable in the American context."

Note: *Apropos of Nothing* was released by Arcade Publishing on March 23, 2020.

Reported in: *New York Times*, March 6, 2020, updated March 9, 2020.

SCHOOLS
Ludlow, Massachusetts

Sex may be a funny word according to award-winning children's author and sex educator Cory Silverberg, but some parents of students at Baird Middle School in Ludlow, Massachusetts, were not amused.

Silverberg's *Sex is a Funny Word* (2015) has won awards in the US and Canada and received starred reviews from *Publishers Weekly* and the *School Library Journal*, as well as praise from *Kirkus Reviews*. It also landed on the American Library Association's Top 10 Most Challenged Books lists for 2017 and 2019—and now, according to Superintendent Todd H. Gazda, is at the center of an ongoing controversy in the Ludlow Public School District over what books should remain on the shelves at the Baird Middle School.

Sex is a Funny Word is a comic-style book designed as an educational guide for children ages eight to ten as well as their parents and caregivers. It explores changing bodies, gender, and sexuality.

"There are illustrations, for instance of a penis and a vagina, which are anatomically correct . . . but there are also discussions about negative, private touching, which is a very important lesson these kids should learn," Gazda said.

Sex is a Funny Word is the third title this academic year to raise the ire of parents, he added. The first was *A Court of Wings and Ruin*, the third in a fantasy series by Sarah J. Maas; the second title was the graphic novel *Sacred Heart* by Liz Suburbia, which came in with a large batch of donated books to the library.

"The librarian can't read every single book in the library," Gazda said. "They rely on reviews and recommendations."

When the first two books were flagged by parents, the school principal and librarian readily agreed they didn't belong in a middle school library. That, Gazda said, is the first step in an established process the school district has in place to vet the appropriateness of library books: first, contact the school principal and librarian; second, if those two don't feel comfortable making unilateral decisions to remove the book, parents are asked to fill out a short form and submit it to a subcommittee comprised of two Ludlow School Committee members, two teachers, and a librarian.

"Everyone reads the book and they decide whether the book should stay on the shelves," said longtime Ludlow School Committee member James "Chip" Harrington, who is not a member of that subcommittee. "Everyone has a different definition of what inappropriate or obscene is . . . so I think our message as a body

has been 'We hear you. We get it. Please just follow the policy.'"

Some parents who spoke about library book concerns at a February 25 Ludlow School Committee meeting said they believe the district should be more proactive about pulling what they perceive as unsuitable reading material.

"Why is this being put on us, as parents, to find all these books that we believe are inappropriate for our children? When . . . we had nothing to do with these books being brought into the school," one mother told the panel during the meeting, according to a public access channel broadcast. "You guys should be doing something to be proactive. Go through the library. See what's in there."

"Our kids are being poisoned with this stuff in the meantime," one father said.

Another father said, "None of these books here are gonna get kids into the Ivy Leagues, I can tell you that."

A middle school staffer flagged *Sex is a Funny Word* for review, Gazda said. The book survived the subcommittee's vetting and remains on the shelves at Baird Middle School.

A description by the American Library Association's Office for Intellectual Freedom stated, "This 2015 informational children's book written by a certified sex educator was challenged because it addresses sex education and is believed to lead children to 'want to have sex or ask questions about sex.'"

Gazda added that he believes the controversy is being stoked by social media. In some cases, he said the dialogue has devolved to include personal attacks on school personnel. He and officials from the teachers' union addressed the issue in a statement to parents and guardians in February.

"Gossip, hearsay, untrue statements, and personal attacks, such as those occurring now, inflame emotions and are counterproductive to working together," the statement read.

Gazda also laments that the most vocal parents have refused to follow the district's process to bring scrutiny to library books they feel are unsuitable for certain age groups.

"This has been going on for weeks and I haven't received one form," he said. "I can't just walk into a building and start pulling books off the shelves myself."

Reported in: MassLive Media, February 28, 2020.

Columbus, Wisconsin

10,000 Dresses (2008), written by Marcus Ewert and illustrated by Rex Ray, about a transgender girl who loves dresses, will likely remain on library shelves in the Columbus (WI) Elementary School library, after a ruling by a district committee.

10,000 Dresses, which has been in the school library's collection since March 2016, gained attention after Nathan Pollnow's six-year-old daughter brought the book home from school. Pollnow filed a complaint with the district on January 20, 2020, saying the book is inappropriate for a kindergartener.

On February 28, 2020, a school district committee voted unanimously to keep *10,000 Dresses* in the school district. That recommendation now moves on to the school district's superintendent.

"Not against transgenders, man. It's your thing, do whatever you want. But I think it's a time and a place and parents need to make that argument, or [have] that discussion," Pollnow told NBC15 News. "They don't need the school district unpacking things for them."

"You are either a boy or you are a girl. That is the way you are born," he said. "Until you are of age, you really shouldn't have to know there's a difference. That's health class in high school, maybe earlier in junior high. But definitely not kindergarten."

Pollnow told the *Columbus Journal* that he read the book and said, "The entire book is about cross-dressing in young males. My objection to this is not about homosexuality but on the appropriateness of the subject matter, particularly for children under eight years of age. Young children have an innocence they cannot regain when exposed to such material. This book not only encourages cross-dressing, it undermines the authority of parents by making the neighbor the hero when parents objected. I want to thank you for considering my suggestion; remember being politically correct is not always right."

At the first meeting on February 21, 2020, which was not open to the public, Director of Curriculum and Instruction Becky Schmidt provided to each committee member a copy of the book, the district's policies on library instructional materials, and a packet from the Cooperative Children's Book Center in Madison, reviewing the book's contents.

"We want to make sure that when we're putting a committee together, that we're doing it appropriately and a good job of putting the team together, the committee together. And that we're going to do a good job by responding to the parents' concern," said Annette Deuman, superintendent of the Columbus School District.

That committee had until February 28 to review the book, district policies, and the Cooperative Children's Book Center reviews.

Community members were invited to attend the February 28 meeting. Dozens came forward in support of the book.

"I have a fundamental dislike of banning books, period. And I also

have a fundamental value that kids have to learn from an early age on core values, so that they stay with them for their whole life," said Tessie Sharrow of Columbus. "And this is not about anything other than a child that has a different idea of how to dress."

Nikole Neidlinger, a mother of a six-year-old child in Monona, had a different reaction to the book's presence in school libraries. Neidlinger contacted the *Columbus Journal* via email after reading the online version of this story.

"My six-year-old son breathes easier by reading books such as this one, and by knowing there are 'kids like him' surviving and thriving," Neidlinger said. "Your story is so important, but only illustrated one side of the 'debate.'"

Neidlinger recently moved to the Madison area from San Francisco. She was initially worried about coming to Wisconsin, fearing communities might not be as accepting of her child.

"If we don't talk about these important issues, things will never change," Neidlinger said. "My then five-year-old son came to me so sure about his gender identity, that I concluded this level of commitment made it literally impossible for it to have been culturally/family or 'reading the wrong books' induced. It was consistent, insistent, and persistent. He was five then, and had no idea about the cultural ramifications of being 'gender expansive' in today's world. As a parent all we want is for the world to be kind to our babies. Hearing these parents that think my baby's a freak breaks my adult heart. Please consider that these are small children. We all want the same things for our kids. We're all much more alike than we are different."

Pollnow disagrees with the committee's ruling.

"I believe they didn't even listen to me today. That's really what I feel. I watched them. I believe four out of the six that were there already had speeches written. They knew they were going to give opinions. They didn't give credence to anything I said," he told NBC15 News after the meeting on February 28.

The committee has 30 business days to submit a formal recommendation to Superintendent Deuman. "I'll make the determination based on the committee, and how they have gone through," said Deuman. "So I'll take the process. My personal opinion has to stay out, just like the committee really looked at their personal opinions. They reviewed it based on the criteria."

Reported in: *Columbus Journal*, February 24, 2020, updated February 26, 2020; *NBC15 News* (WMTV, Madison), February 28, 2020.

Colton, California

A book published fifty years ago by a Pulitzer- and Nobel Prize-winning author is stirring up controversy at Colton High School, where teachers were banned from discussing the book with their students. Toni Morrison's *The Bluest Eye* (1970) was banned from Colton (CA) Joint Unified School District's core and extended reading list for AP English Literature classes due to sexually explicit content, but later reinstated. *The Bluest Eye* is about an African American girl growing up during the Great Depression. In the book, the girl is raped by her drunk father.

The Bluest Eye, which previously had been on the district's approved reading list, was the only book removed from the district's nearly 500-item catalog of literature up for review.

"It's awful. It's awful what the protagonist goes through, yet important to talk about," said Lucy Leyva, a teacher at Colton High School.

Teachers like Leyva are not talking about the book anymore, after a handful of parents at another school in the district complained.

"I'm upset and hurt that they cannot trust what we as teachers know is best for our students," Leyva said.

The school district says parents are notified whenever there is a controversial book, and parents are given the choice of opting out. Still, some parents complained. The school board then voted 4-2 to stop teachers from teaching the book.

"A lot of these problems with racism and what have you are in there, and they still follow us to this very day, so to have that taken away from us, it's like we're trying to pretend the problem doesn't exist when it really does," said student Isaiah Enriquez. "We need to have this opportunity as students, as educators to sit down and understand this is how life is."

"There are dozens of books on the list that deal with controversial issues," said Dan Flores, a Colton school board member who opposed the removal. "Yet, the only one being removed is by Toni Morrison, one of the most prominent Black female authors of recent time. Her literature speaks to the African American experience in America and I could not personally support removing one of her books from our reading list altogether."

Reported in: *The Mercury News* (San Jose, California), February 12, 2020; *Eyewitness News* (ABC 7, Los Angeles, California), February 20, 2020.

NEWS FROM THE BENCH

GOVERNMENT
Washington, DC

On April 27, 2020, in the matter of ***Georgia et al. v. Public.Resource.Org, Inc.***, the **United States Supreme Court** upheld the right of a nonprofit organization, Public.Resource.Org (PRO), to freely share the official law code of Georgia. The state had claimed to own the copyright, per code 17 U. S. C. §102(a), for the Official Code of Georgia Annotated, and therefore sued the organization for publishing it online. The right to publish other legally significant public documents will be helped by the precedent set by this significant ruling.

"Officials empowered to speak with the force of law cannot be the authors of—and therefore cannot copyright—the works they create in the course of their official duties," wrote Chief Justice John Roberts in an opinion that was joined by four other justices on the nine-member court.

Everyone involved in the case agreed that copyright protection does not apply to the text of state statutes. However, the state of Georgia argued that the annotations, which are produced by a division of LexisNexis under a work-for-hire contract with the state, are protected by copyright. Those annotations provide supplemental information about the law, including summaries of judicial opinions, information about legislative history, and citations to relevant law review articles.

Because the state does not publish any other type of official report, the copyright status of the annotated code matters. Anyone can obtain an unofficial version of state law for free from LexisNexis' website, but its terms of service explicitly indicate that it might be inaccurate. The company also prohibits users from scraping the site's content or using it commercially. To receive the official, up-to-date version of Georgia state law, users must pay LexisNexis hundreds of dollars for a code of the official version, which includes annotations.

PRO defied Georgia's rules and published the entire code, including annotations, on its website. The group argued that as an official document of the state legislature, it could not be protected by copyright. The state sued and won at the trial court level. The 11th Circuit Court of Appeals reversed that ruling and sided with the nonprofit. In a daring move, PRO urged the Supreme Court to review the case, even though doing so could reverse their appellate win, because they wanted to set a nationwide precedent.

The nonprofit's wager just barely paid off. Five justices agreed with PRO's argument that Georgia's official code was in the public domain. Four justices dissented and would have allowed the state to copyright portions of its official legal code.

In an opinion written by Chief Justice John Roberts, the high court held that the key factor was who had written the materials. Although most of the annotations were initially drafted by LexisNexis personnel, the state's legislative council held final authority over the document's contents.

Four justices dissented, writing two dissenting opinions. Clarence Thomas, in an opinion joined by fellow conservative Sam Alito and largely joined by liberal Stephen Breyer, argued that the courts were stretching century-old precedents too far. The old rulings had been clear that laws themselves couldn't be copyrighted, Thomas argued, but hadn't been so clear about when copyright should apply to related materials that do not have the force of law.

Thomas pointed out that twenty-two other states have used arrangements comparable to Georgia's to publish their own state laws. Georgia—as well as many other states—grants a company like LexisNexis a monopoly right to publish the official annotated state code. In exchange, LexisNexis spends significant amounts of money to produce the annotations. This saves states from spending taxpayer dollars to directly fund the annotation process.

These rulings will force states to rethink this approach—either paying for the annotations or discontinuing annotations altogether. Thomas argued that it would be better for the high court to leave the status quo in place and let Congress alter copyright law if it did not approve of states claiming copyright over the nonbinding portions of state legal codes.

A second dissent by liberal Ruth Bader Ginsburg—also signed by Breyer—took a different tack. She argued that the law only denied copyright protection to works produced by a legislature in the course of its official duties. But she argued that the process of annotating existing laws is inherently separate from the process of enacting laws in the first place.

"Annotating begins only after lawmaking ends," Ginsburg argued. Hence, she argued that it didn't make sense to treat annotations the same way as the text of a statute itself.

However, one potential problem with the dissenters' approach is that it could have created a legal minefield for people wanting to republish the public domain portions of official documents. If Ginsburg and Thomas had gotten their way, Georgia's official annotated code would continue to be a mixture of copyrighted and public domain works. That would have forced anyone who wanted to republish state law to perform the laborious task of deleting the copyrighted parts first. The practical impact would be to raise the cost of providing the public

with copies of official legal documents like the Georgia code.

The Supreme Court majority rejected the dissenters' narrow interpretations of past precedents. Instead, they held that any works produced by the legislature are excluded from copyright protection, whether they're directly connected to the legislative process or not—and whether or not they are legally binding.

Reported by: Ars Technica, April 27, 2020.

Washington, DC

The **US Supreme Court** on May 29, 2020, declined to block California Governor Gavin Newsom's executive order placing numerical restrictions on all gatherings to combat the spread of the highly infectious coronavirus causing COVID-19, which a church had claimed were a violation of its First Amendment rights to free exercise of religion. In ***South Bay United Pentecostal Church v. Newsom***, the court did not issue any opinion on the case itself, but denied the church's application for emergency injunction relief. Previously, the Ninth Circuit panel and the district judge had similarly denied the church's motion for a preliminary injunction.

Chief Justice John Roberts, who joined the majority in rejecting the emergency application, wrote,

> Although California's guidelines place restrictions on places of worship, those restrictions appear consistent with the Free Exercise Clause of the First Amendment. Similar or more severe restrictions apply to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended periods of time. And the Order exempts or treats more leniently only dissimilar activities, such as operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods.

Justice Brett Kavanaugh wrote a dissenting opinion, joined by Justices Clarence Thomas and Neil Gorsuch, concluding that the California order did not treat the religious institutions the same as "comparable secular businesses" such as grocery stores. Kavanaugh argued that due to this differential treatment, strict scrutiny should apply, and California had not advanced a sufficiently compelling reason to treat religious gatherings differently.

Reported in: *Constitutional Law Prof Blog*, May 30, 2020.

Washington, DC

Michael Pack, appointed by President Donald Trump and confirmed in 2020 as chief executive officer of the US Agency for Global Media (USAGM), is being sued in **US District Court for the District of Columbia** by the Open Technology Fund (OTF) and OTF board members he fired, who claim that Pack's actions are politically motivated and put the OTF's mission at risk. OTF is ostensibly nonpartisan. Its mission is to help people in authoritarian countries circumvent internet censorship from their governments.

Pack survived a contentious confirmation battle to lead the USAGM, which oversees federally funded news outlets like Voice of America (VOA) and Radio Liberty/Radio Free Europe. It also oversees OTF.

President Trump objected to some of VOA's reporting on the coronavirus and said Pack is doing "a great job" in shaking up the leadership of the USAGM's entities.

"It is hard to conceive of a more serious breach of the organizations' legally protected independence than the wholesale decapitation of their leadership by an ideologically-oriented maker of political films, installed by the President for the stated purpose of altering the organizations' content," the lawsuit says.

The suit claims that the Open Technology Fund has more independence than VOA and other organizations under USAGM, which should keep Pack out of personnel decisions at OTF. The suit concedes that the International Broadcasting Act gives the CEO of USAGM the power to name officers and directors of VOA, Radio Free Europe, Radio Free Asia, and the Middle East Broadcasting Networks. However, the lawsuit says, "Open Technology Fund was not one of the entities specifically 'authorized' by the Act."

Reported in: www.foxnews.com, June 24, 2020.

Jefferson City, Missouri

On March 31, 2020, the **Supreme Court of Missouri** dealt a blow to a controversial 2018 labor law that restricts public employees' right to picket.

In a unanimous decision issued in the matter of ***Rebecca Karney and Johnny Miller v. The Department of Labor and Industrial Relations and Todd Smith and Darryl Forte and Jackson County, Missouri***, the Supreme Court upheld a lower court ruling that struck down the picketing restriction. The statute in question requires that labor agreements between unions and public bodies prohibit any kind of picketing. But this prohibition is "unconstitutionally broad" and would violate public employees' freedom of speech, Judge Zel Fischer wrote in his opinion.

Previous court rulings have recognized that public employees' speech "on matters of public concern" can

only be restricted if it would interfere with the efficient delivery of public services, Fischer wrote.

"A perfect example of this unobtrusive speech is before this Court today," he wrote.

The plaintiffs in the case are dispatchers in the Jackson County Sheriff's Office, members of Local 6360 of the Communications Workers of America. The union's previous labor agreement, which expired in December 2018, did not prohibit picketing.

According to arguments the plaintiffs filed with the court, while negotiating a new contract, the dispatchers picketed the sheriff's office to draw attention to their pay.

Fischer wrote that this was an example of constitutionally protected speech by public employees. The dispatchers didn't strike, walk off the job, or request that people boycott the sheriff's office. The picketing was done on the dispatchers' own time, he wrote.

"The picket was also openly aided by officers in the department who came outside to bring the protesters coffee," Fischer wrote.

However, the decision does not change restrictions on public employees' right to strike. The 2018 law requires that labor agreements forbid public sector employees from striking. Fischer's decision notes that this is "well-settled doctrine" in Missouri, citing a 2007 ruling as precedent. The picketing language struck down by the court was enacted as part of a 2018 law that opponents argued would undermine public sector unions.

Reported by: *St. Louis Post-Dispatch*, April 1, 2020.

Washington, DC

Black Lives Matter sued President Donald Trump and his administration on June 4, 2020, alleging that their civil rights and First Amendment rights were violated when peaceful protesters were forced out of Lafayette Square so Trump could take a photo in front of a nearby church. In ***Black Lives Matter D.C. v. Trump*** in **US District Court for the District of Columbia,** the Washington, DC, chapter of the activist organization filed the suit along with the American Civil Liberties Union (ACLU), alleging that the administration violated their First and Fourth Amendment rights, which protect the right to protest and protect against unreasonable search and seizure.

Authorities fired flash-bang shells, tear gas, smoke canisters, pepper balls, and rubber bullets into the crowd, the suit said. US Park Police have disputed that their officers used tear gas. The square was cleared just moments before Trump left the White House and walked to St. John's Episcopal Church, where he posed for a photo with a Bible.

The lawsuit also claims that the administration conspired to deprive them of their civil rights and protections. "The conspiracy targeted Plaintiffs' protected First Amendment activities because Defendants held animus towards Plaintiffs' viewpoints," the lawsuit said. "The violent actions of the conspirators directly and unlawfully interfered with these activities."

Black Lives Matter and the ACLU are asking for an injunction to stop the administration from continuing to use force against protesters.

"Defendants' actions to shut down the Lafayette Square demonstration is the manifestation of the very despotism against which the First Amendment was intended to protect," the suit said.

Reported in: NBC News, June 4, 2020.

LIBRARIES

Kansas City, Missouri

On January 30, 2020, US District Judge Beth Phillips of the **Western District of Missouri** ruled in favor of off-duty police detective Brent Parsons who arrested Jeremy Rothe-Kushel, who then sued the detective as well as thirteen others over the incident. ***Jeremy Rothe-Kushel v. Jewish Community Foundation of Greater Kansas City*** was filed by Rothe-Kushel after his highly publicized expulsion from a Kansas City library public event on May 9, 2016. The incident attracted national headlines.

Rothe-Kushel, a documentary filmmaker from Lawrence, Kansas, claimed his First and Fourth Amendment rights were violated after he was physically restrained following a lecture at the library's Plaza branch by American diplomat and former Middle East envoy Dennis Ross on May 9.

The Jewish Community Foundation and the Truman Library Institute organized the lecture about President Harry Truman's recognition of the state of Israel. There was heightened security at the event because of the shootings in April 2014 that left three people dead at the Jewish Community Center and Village Shalom in Overland Park, Kansas.

During a post-lecture question-and-answer session, Rothe-Kushel asked Ross a long, rambling question referring to what he said was a history of state-sponsored terrorism by Israel and the United States. Ross responded and Rothe-Kushel began arguing with him. Blair Hawkins, director of security for the Jewish Federation of Greater Kansas City and the person in charge of security for the event, then tried to physically remove Rothe-Kushel from the microphone.

Video of the incident shows Hawkins grabbing Rothe-Kushel's arm, telling him, "You're done," then

attempting to remove him from the microphone. As a second person approaches the microphone to ask a question, Rothe-Kushel is seen continuing to yell.

After an off-duty officer hired for the event asked for his identification and he refused to give it, Rothe-Kushel was arrested. Steven Woolfolk, the library's director of programming and marketing, was also arrested after he attempted to intervene and block Rothe-Kushel's removal. Woolfolk was charged with obstruction, interfering with an arrest, and assaulting a police officer, but in September 2017 a Kansas City Municipal Court judge acquitted him of all three charges.

The actions taken by the officers sparked outrage among civil libertarians and were condemned by the library's executive director at the time, R. Crosby Kemper III, who said the officers had overreacted.

Rothe-Kushel's lawsuit named fourteen defendants, including officials of the Jewish Community Foundation and the Truman Library Institute; Hawkins and the other off-duty police officers involved in the incident; Kansas City Chief of Police Rick Smith; and members of the Kansas City Board of Police Commissioners, including the Kansas City mayor at the time, Sly James.

Later, Rothe-Kushel voluntarily dismissed his lawsuit against the members of the police board and the off-duty officers, except for Brent Parsons, the detective who arrested him.

Judge Phillips found in favor of Parsons given that he had probable cause to arrest Rothe-Kushel for trespassing and for refusing to provide his identification.

Though Phillips also found that Rothe-Kushel had a First Amendment right to ask Ross questions, she said that right was not limitless: "He could not ask so many questions that other audience members were deprived of the opportunity, and he had no right to argue with Ambassador Ross."

On his claims of conspiracy to violate his civil rights, false arrest, and conspiracy under state law, Phillips found against Rothe-Kushel. Rothe-Kushel declined to say whether he had reached settlements with any of the defendants.

Fred Slough, another attorney representing Rothe-Kushel, said it was "a serious wrong" for Rothe-Kushel to have been removed and arrested. He said Rothe-Kushel would have complied with a request to leave the library.

"Instead he was grabbed and manhandled in the middle of an exchange with the Ambassador that was not a disturbance, except in the sense that some in the audience audibly disagreed with its content," Slough said via email. "The law does not allow such a 'heckler's veto' of free speech."

Reported by: KCUR 90.3 (NPR), January 31, 2020; Associated Press, February 11, 2020; *Kansas City Star*, February 12, 2020.

Greenville County, North Carolina

The Greenville County Library System has paid a $30,000 settlement to a former librarian, Jonathan Newton, who said he was fired for facilitating a Drag Queen Story Hour event in February 2019. The wrongful termination lawsuit, ***Newton v. James***, was filed in April 2020 in the **Greenville County, North Carolina, Court of Common Pleas**, and was dismissed on June 3, 2020, according to court records.

According to the lawsuit, a group named Mom's Liberal Happy Hour SC had applied for space at the Five Forks branch in Simpsonville, South Carolina, to host a story hour in which drag queens would read to children, and Newton claims that the library's executive director, Beverly James, and the Greenville County Council decided to stop it. (*See* JIFP, *Spring 2019, page 68*.) Both James and Greenville County were named as defendants in the suit.

The story hour eventually did take place, but Newton claimed he was then forced out of his job of seventeen years for "insubordination" and for "defending other people's civil liberties."

The suit cited the American Library Association's (ALA) *Library Bill of Rights* that states that libraries that make meeting rooms available to the public should make them available on an equitable basis, "regardless of the beliefs or affiliations of individuals or groups requesting their use."

Just a week before he says he was forced to resign, Newton was named the recipient of the American Library Association's 2020 Gordon M. Conable Award, which "honors a public library staff member, a library trustee, or a public library that has demonstrated a commitment to intellectual freedom and the Library Bill of Rights."

The ALA said Newton was chosen because he "upheld the decision to allow a community group to book meeting space in the library to host a Drag Queen Story Hour despite backlash from members of the public." Reported in: NBC News, April 10, 2020; *Greenville Journal,* August 12.

MUSEUMS

Raleigh, North Carolina

On March 23, 2020, the **United States Supreme Court** ruled that a state government infringing on someone's copyright doesn't have to worry about getting sued. The high court held that federalism outmaneuvers copyright law, effectively giving states a free pass.

Allen et al. v. Cooper, Governor of North Carolina, et al. pitted Frederick Allen, a North Carolina videographer, against the state of North Carolina, the legal owner of a famous shipwreck, the *Queen Anne's Revenge*, which was the flagship of legendary pirate Blackbeard until it ran aground off the coast of North Carolina in 1718. The wreck was discovered in 1996 by a company that obtained a contract from the state to do recovery work. The company hired Allen to document those efforts with photos and videos.

Allen spent more than a decade documenting the recovery operation, retaining copyright protection for his work. However, the state published some of his photos on its website without obtaining permission. Ultimately, the state paid Allen $15,000. Then the state published his work online a second time without permission and Allen sued.

The state argued that Allen's lawsuit should be dismissed under the principle of sovereign immunity. A series of Supreme Court rulings has severely limited the ability of individuals to sue state governments since the 1990s.

A relevant precedent set by a 1999 Supreme Court ruling, which was decided by a close 5-4 vote, stated that individuals couldn't sue states for *patent* infringement. Given the close association between copyright and patent law, it wasn't much of a leap for the Supreme Court to hold that the same logic applies to copyright lawsuits.

So, does this ruling mean that states have a blank check to start violating copyright law? In the short term, the answer seems to be yes. While states are technically immune from copyright lawsuits, the practical implications of this ruling appear limited. And, if some state does routinely violate copyright law, Congress could pass a new law allowing private lawsuits.

Passed after the Civil War, the 14th Amendment gives Congress the power to protect individuals against states violating their rights. Allen argued that it gave Congress the power to protect people against copyright infringement by states. That's exactly what Congress was trying to do when it passed a law in 1990 specifically giving individuals the power to sue states for copyright infringement.

However, the Supreme Court ruled that this 1990 law did not pass muster under the 14th Amendment. One reason was that Congress failed to establish a systematic problem with states violating individuals' copyrights. Before passing the law, a study commissioned by Congress found only about a dozen examples of states violating copyright law. In the court's view, this paltry evidence of state infringement meant that it was not a serious enough problem to justify impinging on state sovereignty.

But, if state copyright infringement became a widespread problem, then the analysis might change. In a world where states are routinely and deliberately violating individuals' copyrights, a law allowing private lawsuits against states could be justified under the 14th Amendment.

Reported by: Ars Technica, March 24, 2020.

SCHOOLS
Portland, Oregon

On February 12, 2020, in the matter of ***Parents for Privacy, et al. v. William P. Barr et al.***, the **United States Court of Appeals for the Ninth Circuit** ruled in favor of an Oregon school district's policy allowing transgender students to use the bathroom that aligns with their gender identity. A group of parents and students sued to challenge the policy, arguing that it violated their constitutional rights to privacy and that the policy itself was discriminatory.

"It is clear that this case touches on deeply personal issues about which many have strong feelings and beliefs," the panel wrote. "We agree with the district court and hold that there is no 14th Amendment fundamental privacy right to avoid all risk of intimate exposure to or by a transgender person who was assigned the opposite biological sex at birth. We also hold that a policy that treats all students equally does not discriminate based on sex."

The plaintiffs had equated the school's policy to past cases in which the government had intruded on people's bodily privacy. They argued that high school students have "the right to be free from State-compelled risk of intimate exposure of oneself to the opposite sex," a right "implicit in the concept of ordered liberty." The district court that heard the case disagreed. The cases the plaintiffs cited involved more egregious government intrusions, such as arbitrary strip searches. "The potential threat that a high school student might see or be seen by someone of the opposite biological sex while either are undressing or performing bodily functions in a restroom, shower, or locker room does not give rise to a constitutional violation," the district court wrote.

The Ninth Circuit agreed. Additionally, the panel said, "the 14th Amendment does not provide a fundamental parental right to determine the bathroom policies of the public schools to which parents may send their children."

In dismissing the plaintiffs' overly broad characterization of privacy rights, the court added, "this conclusion is supported by the fact that the Student Safety Plan provides

alternative options and privacy protections to those who do not want to share facilities with a transgender student."

The plaintiff students had argued that the alternatives were inconvenient and less desirable. But the court noted judicial precedent holding that when the government seeks to accommodate competing interests, like a transgender student's well-being and that of the offended students, inconvenience and discomfort do not create privacy violations.

Reported in: Jurist, February 13, 2020.

State of California

On February 20, 2020, the state of California agreed to settle a multi-year, high-profile lawsuit (***Ella T. v. State of California***) accusing the state of depriving low-income students of color of their constitutional right to a basic education by failing to teach them reading skills.

Under an agreement reached with plaintiffs in the complaint, Judge Rupert Byrdsong of the **Los Angeles County Superior Court** ruled that the state will pay $50 million specifically to improve literacy in the seventy-five California elementary schools with the highest concentration of third-graders scoring in the bottom tier of the state's standardized reading test. Part of the agreement requires the legislature's approval.

According to an outline provided by Public Counsel, the pro bono firm representing the plaintiffs, the agreement requires that the state advise public schools on how to reduce disparities in the discipline of students of color.

Public Counsel celebrated Judge Rupert Byrdsong's approval of the settlement, calling it "a historic first step forward towards affirming the [right to literacy] for all children in California."

In a statement, Vicky Waters, a press secretary for Governor Gavin Newsom, said, "California is committed to closing opportunity gaps by directing extra support and resources to school districts and schools that serve students who need extra help." She noted that California rearranged its school funding formula in 2013 to target additional money for schools with a greater share of disadvantaged students and added that Newsom's 2020-21 budget would steer $600 million in "opportunity grants" to low-performing, high-poverty schools.

"Today's announced settlement builds further on these proposed investments and focuses on strengthening early literacy programs, which are critical to a child's later success in school," Waters said.

However, while some gaps in achievement have been narrowed, the gap between Black students and their white and Asian peers has remained mostly stagnant. The slow improvement has fueled growing calls from some legislators and civil rights advocates to strengthen oversight of how school districts spend extra money intended for students who are low-income, are English language learners, and are in foster care.

Introduced in Los Angeles County Superior Court in December 2017, the lawsuit listed the California Department of Education and State Board of Education as defendants. Plaintiffs claimed it was the "first in the nation" to seek to establish access to literacy as a constitutional right.

The plaintiffs included current and former students of three California elementary schools with some of the lowest reading proficiency marks in California: La Salle Avenue Elementary in Los Angeles Unified School District, Van Buren Elementary in Stockton Unified, and the Inglewood charter school Children of Promise Preparatory Academy. The suit sought to hold the state accountable for students' poor literacy levels, noting that eleven of the country's twenty-six lowest-performing large school districts are based in California.

According to the suit, Ella T., a seven-year-old Black student at La Salle Elementary when the complaint was introduced, did not receive the "intensive support" and interventions she needed by the time she left first grade still reading below kindergarten level.

There were several other students of color represented in the complaint who also were several grade levels behind in reading literacy. One Black student who attended La Salle, identified in the suit as eleven-year-old Russell W., did a book report for his 5th grade class on *The Cat in the Hat*, a book meant for much younger readers.

Reported in: *Times-Herald*, February 20, 2020.

Charleston, South Carolina

On March 11, 2020, the **United States District Court for the District of South Carolina** entered a consent decree that declares the state's 1988 anti-LGBTQ curriculum law unconstitutional and bars its enforcement. The court's decree comes two weeks after a federal lawsuit was filed on behalf of a high school student organization, Gender and Sexuality Alliance, as well as the Campaign for Southern Equality and South Carolina Equality Coalition, including their members who are public school students in South Carolina. The statute prohibited any discussion of same-sex relationships in health education in public schools except in the context of sexually transmitted diseases. The lawsuit was filed by the National

Center for Lesbian Rights (NCLR) and Lambda Legal, along with private counsel Womble Bond Dickinson, Brazil & Burke, and law professor Clifford Rosky.

"I am very excited that this discriminatory law can no longer be enforced in South Carolina, and I hope we can continue to work toward a more accepting and equal state-wide community," said Eli Bundy, a tenth grader who is the president of the Gender and Sexuality Alliance (GSA), an organization of high school students at a public magnet school in the Charleston County School District. "I know how frustrating it can feel to be told by a teacher that they can't talk about who you are. I'm so grateful that no other South Carolina student will have to go through school feeling like they have been erased."

The lawsuit, ***Gender and Sexuality Alliance v. Spearman***, alleged that S.C. Code § 59-32-30(A)(5), a provision of the South Carolina's 1988 Comprehensive Health Education Act, violated the Equal Protection Clause of the 14th Amendment by discriminating against students who are lesbian, gay, bisexual, transgender, and queer (LGBTQ).

The law singled out LGBTQ students for negative treatment and did not impose any comparable restriction on health education about heterosexual students. Any teacher who violated the provision was subject to dismissal. The South Carolina Attorney General had recently issued an opinion that a court would likely find the law unconstitutional. In response to a motion by the parties in the case, the court agreed the discriminatory law violated the equal protection requirement of the US Constitution and barred state officials from continuing to enforce the law.

"In South Carolina, people across the political and ideological spectrum understand that no one should be excluded because of their LGBTQ identity. We have common ground in the shared goal of ensuring that all students are safe, respected, and supported in school," said Kevin Hall, office managing partner at Womble Bond Dickinson based in Columbia, South Carolina. "This court order means that we can put this clearly unconstitutional thrity-two-year-old law behind us, and it marks a new day for LGBTQ students here, who can now go to school without the stigma that this law cast over them. My hat's off to the courageous students in South Carolina who spoke out against this damaging law."

Students in states with discriminatory curriculum laws report more hostile school climates. Data from a 2017 Gay and Lesbian Independent School Teachers Network's (GLSEN) National School Climate Survey assessing LGBTQ middle and high school students demonstrates that South Carolina schools are not safe for most LGBTQ students; nearly 90% said they regularly heard homophobic remarks, and LGBTQ students reported that in the last year, 76% experienced verbal harassment, 34% experienced physical harassment, and 14% were physically assaulted due to their sexual orientation.

Reported by: Lambda Legal, March 11, 2020.

West Bloomfield, Michigan

On April 23, 2020, a federal appeals court stated that in reviving a lawsuit against the state of Michigan, students at underperforming Detroit public schools have a constitutional right to literacy. The court sent the case, ***Gary B., Jessie K., Cristopher R., Isaias R., Esmeralda V., Paul M., & Jaime R. v. Gretchen Whitmer et al.,*** back to a federal judge in Detroit who had dismissed a lawsuit against state officials.

The 2016 lawsuit alleged that the city's public schools were in "slum-like conditions" and "functionally incapable of delivering access to literacy."

In a 2-1 decision from the **United States Sixth Circuit Court of Appeals**, judges Eric Clay and Jane Stranch said that a basic minimum education should be recognized as a fundamental right.

The ruling came on the same day that groups announced a $23 million effort to provide computer tablets and high-speed internet to 51,000 students in the Detroit Public Schools Community District.

The lawsuit had named Governor Rick Snyder, the state school board, and others. When Governor Gretchen Whitmer was elected in 2018, she replaced Snyder as a defendant.

Carter Phillips, a co-counsel with Los Angeles-based Public Counsel, who represents the students named in the lawsuit, said, "The court in Cincinnati took a bold step today in recognizing a fundamental constitutional right of access to literacy and in doing so has given hope to the school children in Detroit who were so neglected for so long."

In 2018, US District Judge Stephen Murphy III had dismissed the lawsuit, asserting the US Constitution doesn't guarantee a fundamental right to literacy.

"If I sat in the state Legislature or on the local school board, I would work diligently to investigate and remedy the serious problems that the plaintiffs assert," appeals court Judge Eric Murphy said in a dissent, adding that the constitution doesn't give courts "roving power to redress every social and economic ill."

Detroit Mayor Mike Duggan was pleased with the majority decision.

"Literacy is something every child should have a fair chance to attain. We

hope instead of filing another appeal, the parties sit down and focus on how to make literacy available to every child in Michigan," Duggan said.

Governor Whitmer's office said it was reviewing the opinion. State attorneys had argued that the state doesn't control Detroit schools and can't be sued, although the district was run for years by managers appointed by governors. It's not known if the state will ask the full Sixth Circuit to take a fresh look at the case.

"The governor has a strong record on education and has always believed we have a responsibility to teach every child to read," said Whitmer spokesperson Tiffany Brown.

Reported by: AP News, April 23, 2020.

SOCIAL MEDIA

New York, New York

In the matter of ***Knight First Amendment Institute, et al. v. Donald Trump, Daniel Scavino, and Sarah Huckabee Sanders***, the entire **United States Court of Appeals for the Second Circuit** for the state of New York denied the Trump administration's request to revisit an earlier holding that Trump violated the First Amendment by blocking individual Twitter users who were critical of the president or his policies.

"Excluding people from an otherwise public forum such as this by blocking those who express views critical of a public official is, we concluded, unconstitutional," wrote Judge Barrington D. Parker.

"Twitter is not just an official channel of communication for the President; it is his most important channel of communication," concluded the judge in a decision with implications for how elected officials throughout the country can use social media platforms to communicate with constituents.

Two judges nominated to the bench by Trump disagreed with the decision and would have reconsidered the earlier ruling.

"The First Amendment's guarantee of free speech does not include a right to post on other people's personal social media accounts, even if those other people happen to be public officials," Judge Michael H. Park wrote in a dissent, joined by Judge Richard J. Sullivan.

Allowing the court's decision to stand, he wrote, will lead to the social media pages of public officials being "overrun with harassment, trolling, and hate speech, which officials will be powerless to filter."

Park and Sullivan were the only two of the nine judges who agreed with the Trump administration's view, announcing they would have revisited the earlier decision.

The decision on March 23, 2020, leaves in place a unanimous three-judge panel ruling from July 2019. The court held that because the president uses his Twitter account to conduct official government business, he cannot exclude voices or viewpoints with which he disagrees.

The court's initial ruling addressed solely the interactive spaces on Twitter for replies and comments, and only applies to accounts used to conduct official business. The judges did not decide whether elected officials violate the Constitution by blocking users from private accounts.

The Knight First Amendment Institute at Columbia University filed the lawsuit in 2017 on behalf of seven people blocked from the president's account. Katie Fallow, one of their attorneys, said in a statement that the court's action affirms that the First Amendment "bars the President from blocking users from his account simply because he dislikes or disagrees with their tweets."

"This case should send a clear message to other public officials tempted to block critics from social media accounts used for official purposes," she said.

The Justice Department is reviewing the ruling, a spokesperson said.

Reported in: *Washington Post*, March 23, 2020.

Washington, DC

A federal appeals court rejected claims that tech giants Twitter, Facebook, Apple, and Alphabet's Google conspired to suppress conservative viewpoints online.

On May 27, 2020, the **United States Court of Appeals for the District of Columbia Circuit** affirmed the dismissal in the matter of ***Freedom Watch Inc. et al. v. Google Inc. et al.***, filed by the nonprofit group Freedom Watch and the right-wing YouTube personality Laura Loomer, who accused the companies of violating antitrust laws and the First Amendment in a coordinated political plot.

A three-judge panel ruled, in a decision only four pages long, that the organization didn't provide enough evidence of an antitrust violation and that the companies aren't state entities that can violate free speech rights.

"In general, the First Amendment 'prohibits only governmental abridgment of speech,'" the judges wrote, quoting a previous decision.

Larry Klayman, a lawyer for both Freedom Watch and Loomer, one of the plantiffs, said in an interview that he'd file a petition to have the case reheard by an enlarged, "en banc" panel of the court's judges and take the case to the Supreme Court, if necessary. He said he believes the court chose to issue its decision as a response to President Donald Trump's threat to regulate or shutter social media companies for their alleged anticonservative bias.

The brief decision gave "short shrift" to an important social issue, said Klayman.

Of the three judges on the appellate panel, two were appointed by Republican presidents and one by a Democrat. Trevor McFadden, the district court judge who dismissed the case, was appointed by Trump.

The companies said in a joint brief in March 2020 that courts had repeatedly rejected claims that operating a widely used forum for speech by others "is a public function that amounts to state action." Subjecting private companies to First Amendment requirements would chill efforts to police pornography and cyberbullying, they said.

"Private property owners, no matter their social importance, are not the government and are not subject to the constitutional constraints that limit governmental regulation of speech," the companies said.

The case is one of several filed by conservatives which link social media bans to the market dominance of big tech companies. The suit blamed an illegal conspiracy by the companies for a "complete halt" of Freedom Watch's organizational growth and Loomer's thirty-day ban from multiple social media platforms after she said Representative Ilhan Omar, a Democrat from Minnesota, favors Sharia law and is "anti-Jewish."

The DC Circuit's decision comes only after two unlikely allies weighed in on behalf of Freedom Watch and Loomer, asking the court not to affirm the dismissal of the suit without a full proceeding. The District of Columbia's government and the Lawyers' Committee for Civil Rights Under Law filed briefs challenging the trial judge's conclusion that the DC Human Rights Act of 1977 doesn't ban discrimination online.

Reported in: *Bloomberg*, May 27, 2020.

Washington, DC

President Donald Trump's executive order targeting social media companies was challenged in **US District Court for the District of Columbia** on June 2, 2020, in ***Center for Democracy and Technology v. Trump***. The Center for Democracy and Technology (CDT), a nonprofit group, claims Trump's order, issued on May 28, violates free speech protections guaranteed by the First Amendment.

Trump's order asked federal regulators to look at provisions contained in Section 230 of the 1996 Communications Decency Act that insulate social media companies including Twitter and Facebook from liability for content posted by users. The Center for Democracy and Technology's suit claims the order is an unconstitutional retaliation against Twitter and that it seeks to discourage other companies and individuals from disagreeing with the government.

The order followed on the heels of Twitter's decision to add fact-check labels to two of Trump's tweets. Twitter also restricted a post by the president suggesting that protesters who engaged in looting would be met with violence. Legal observers have said Trump lacks the power to modify Section 230 by executive order.

CDT argues that the order violates the First Amendment and asked the court to block government officials from following the order.

Reported in: *Bloomberg Law,* June 2, 2020.

New York, New York

In the matter of ***Stephanie Sinclair v. Ziff Davis LLC and Mashable, Inc.,*** a federal judge in the **United States District Court Southern District of New York** has ruled that the tech news site Mashable did not violate copyright law when it embedded an Instagram photo from photojournalist Stephanie Sinclair in an article.

James Grimmelmann, a copyright law expert at Cornell University, told Ars Technica that the ruling will provide a firmer legal footing for sites that embed third-party content. "It gives you a very clear basis for throwing out most of these cases quickly."

The dispute began when Mashable published an article in 2016 highlighting ten female photojournalists whose work focuses on social justice. Mashable included Sinclair among the ten featured photographers and initially offered her $50 for the rights to one of her photos. When Sinclair declined, Mashable embedded the photo from Sinclair's official Instagram account instead. Sinclair sued, arguing that Mashable had infringed her copyright.

In the past, this kind of legal dispute has revolved around a doctrine called the server test. It focuses on the fact that a publication using a photo-embed code never stores the photo on its own servers or transmits it to the user. Instead, the embed code tells the user's browser how to download the photo directly from another site (in this case Instagram). Most courts have held that this fact means the publisher (in this case, Mashable) cannot be liable for direct copyright infringement since it didn't distribute or display the photo to users.

But not all courts have bought into this logic. In a bombshell ruling in 2018, another New York federal judge held that several news sites had infringed copyright when they embedded a photo of football player Tom Brady in stories. The judge concluded that the technical details of how the photo reached the user's browser should not overshadow the fact that news websites were causing the photo to appear on users' browsers without permission from copyright holders.

So rather than relying on the now-shaky server test, Mashable's defense lawyers took a different approach. They argued that Sinclair had granted a license to Instagram to use her photo when she uploaded it. And Instagram's terms of service state that it has the right to sublicense photos to others. Mashable argued that included users of Instagram's embedding service, such as Mashable.

To Judge Kimba Wood that argument was persuasive. While Sinclair didn't directly license her photo to Mashable, Wood wrote, she "granted Instagram the right to sublicense the photograph, and Instagram validly exercised that right by granting Mashable a sublicense to display the photograph."

In a ruling that neatly sidesteps the complexities and uncertainties of the server test, it is not even mentioned in Wood's opinion. The courts may or may not ultimately uphold the server test. But even if the test fails, Judge Wood's ruling provides an alternate defense for people embedding content from third-party websites.

This new legal principle draws a sharp distinction where the server test left things muddled: situations where someone other than the copyright owner uploaded an image or video. The server test said that someone embedding such an unauthorized social media post would not be a direct copyright infringer, but they could still be liable under complicated doctrines of indirect copyright liability.

Judge Wood's licensing-based reasoning draws, on the other hand, a clear line between authorized and unauthorized social media uploads. Embedding social media posts authorized by copyright holders is unambiguously legal under Wood's reasoning, while the same logic provides no defense to someone who embeds an unauthorized image.

This means that all media organizations would be well-advised to train reporters to be mindful of the source of social media posts they want to embed. Media organizations are on safe legal ground if they embed social media images posted by their legitimate copyright holders. But they should be cautious about embedding images posted by third parties not connected to the copyright holder, in which case they'd be wholly reliant on the server test to justify their actions.

The licensing-based legal theory significantly limits how embedded images can be used. Like any Instagram user, Sinclair can choose to disable Mashable's use by marking her Instagram post private. She may have exercised this option as her photo no longer appears in Mashable's article.

That license is limited to the use of Instagram's embedding tool. If Mashable wants to use Sinclair's photo for other purposes, it would need to negotiate a separate license.

Reported by: Ars Technica, April 15, 2020.

ARTWORK
Miami, Florida

The American Civil Liberties Union (ACLU) of Florida is suing the city of Miami Beach, Mayor Dan Gelber, and City Manager Jimmy Morales over the removal of a painting memorializing Raymond Herisse, a Haitian American who was fatally shot by Miami Beach police in 2011. The case, ***McGriff et al. v. Miami Beach***, was filed on June 23, 2020, in **US District Court for the Southern District of Florida, Miami Division** in Miami on behalf of the artist Rodney Jackson and the curators Octavia Yearwood and Jared McGriff. It argues that Gelber and Morales violated their First Amendment rights.

Herisse was shot while driving during Miami Beach's Urban Beach Weekend, an event largely attended by Black communities that have seen aggressive police enforcement. He was shot 16 times as police fired 116 bullets.

The painting of Herisse was displayed in an exhibition on Lincoln Road forming part of *Reframe Miami Beach*, a series of art installations focused on works dealing with race and racial justice issues, commissioned by the city in 2019 to coincide with Memorial Day Weekend. The curators say the painting was quickly removed after it was installed and that Morales threatened to shut down the entire exhibition if the painting was not removed.

The complaint notes Gelber's public comments on his decision to support the removal of the work. The mayor said the work "was a commission work for us." He added that Morales "said 'I don't like it' and 'I don't want it,' and I frankly supported that decision."

The civil rights lawyer Alan Levine, who is working on the suit, said, "The defendants will say that we don't have to fund art that we don't want, that it's our dime and we shouldn't have to pay for it, but the truth is that it's not their dime, it's the public's dime." He added, "It's perfectly clear that public money cannot be subject to whether or not public officials approve of someone's point of view."

Reported in: *The Art Newspaper*, June 23, 2020.

FREEDOM OF THE PRESS
Minneapolis, Minnesota

The American Civil Liberties Union of Minnesota (ACLU-MN) filed a class-action lawsuit June 3, 2020, on behalf of journalists who have been targeted and attacked while covering the protests that began after George Floyd was killed in Minneapolis police custody.

The lawsuit, ***Goyette v. Arradondo*** in **US District Court for the District of Minnesota,** seeks a temporary restraining order and a permanent injunction to stop law enforcement from attacking and targeting journalists. It names the City of Minneapolis, Police Chief Medaria Arradondo, police union head Lt. Bob Kroll, the Minnesota Department of Public Safety Commissioner John Harrington, and Minnesota State Patrol Colonel Matthew Langer as defendants. The lead plaintiff is journalist Jared Goyette, who, according to the ACLU, was documenting protesters' attempts to shield and help an injured Black man when police fired a projectile at Goyette's face.

"Law enforcement is using violence and threats to deter the media from vigorously reporting on demonstrations and the conduct of police in public places," said ACLU-MN legal director Teresa Nelson in a statement. "We depend on a free press to hold the police and government accountable for its actions, especially at a time like this when police have brutally murdered one of our community members, and we must ensure that justice is done. Our community, especially people of color, already have a hard time trusting police and government. Targeting journalists erodes that public trust even further."

The lawsuit states that Minneapolis police have a history of unconstitutional actions against journalists. It also criticizes government leadership: "Ostensible leaders of our law enforcement agencies have been unable to curb this unlawful violence. Governor Walz and others have repeatedly issued statements apologizing for the violence against reporters and the unlawful arrests. But these statements, and whatever behind-the-scenes actions have accompanied them, have proven toothless."

Reported in: *The Wrap*, June 3, 2020.

PRIVACY
Indiana

The **Indiana Supreme Court** on June 23, 2020, ruled that a woman accused of stalking has a Constitutional right to refuse to unlock her iPhone. In ***Seo v. Indiana***, the court held that the Fifth Amendment's rule against self-incrimination protected Katelin Seo from giving the police access to potentially incriminating data on her phone.

Lower courts are divided about this issue because the relevant Supreme Court precedents all predate the smartphone era. To understand the two competing theories, Timothy B. Lee, a senior reporter at *Ars Technica*, compared the situation to a pre-digital technology.

> Suppose that police believe that a suspect has incriminating documents stored in a wall safe and they ask a judge to compel the suspect to open the safe. The constitutionality of this order depends on what the police know.
>
> If the government can't show that the suspect knows the combination—perhaps the suspect claims the safe actually belongs to a roommate or business partner—then all courts agree that forcing the suspect to try to open it would be unconstitutional. This is because the act of opening the safe functions as an admission that the suspect owns the safe and the documents inside of it. This fact could be incriminating independent of the contents of any documents found inside the safe.
>
> On the other hand, if the government can show that the suspect knows both the password and which specific documents are in the safe—perhaps because the suspect described the safe's contents during an interrogation—then all courts agree that the suspect can be forced to open the safe. That's because the Fifth Amendment is a right against self-incriminating *testimony*, not the production of incriminating *documents*.
>
> But what if the state can show the suspect knows the combination but doesn't know which documents are in the safe? Here the courts are split.
>
> One theory holds that only the act of opening the safe is testimonial. Once the safe is open, the safe contains whatever documents it contains. The police get the information in the documents directly from the documents, the same as they would if they'd found them lying on the suspect's desk. So the contents of the documents are not compelled testimony.
>
> The other theory—the one endorsed by Indiana's Supreme Court this week—holds that it matters whether the police know which documents they're looking for. If the police are looking for specific documents that they know are in the safe, then there may be no Fifth Amendment problem. But if the request is more of a fishing expedition, then it's barred by the Fifth Amendment, since the act of opening the safe gives the police access to information they wouldn't have otherwise. Some courts have found this argument particularly compelling due to the vast amount of information on modern smartphones.

Indiana's Supreme Court argues that by unlocking her phone, Seo would be giving prosecutors access to files they didn't know existed and might not be able to access any other way.

"Even if we assume the State has shown that Seo knows the password

to her smartphone, the State has failed to demonstrate that any particular files on the device exist or that she possessed those files," Indiana's Supreme Court held. "Detective Inglis simply confirmed that he would be fishing for 'incriminating evidence' from the device."

Reported in: *Ars Technica,* June 24, 2020.

Detroit, Michigan

On June 24, 2020, the American Civil Liberties Union (ACLU) of Michigan filed a complaint against the Detroit Police Department asking that police stop using facial recognition software in investigations.

Civil rights experts say Robert Williams is the first documented example in the United States of someone being wrongfully arrested in which police admitted that facial recognition technology prompted the arrest. The false hit came in a database search conducted by Michigan State Police in a crime lab at the request of the Detroit Police Department, according to charging documents reviewed by NPR.

The police in Detroit were trying to figure out who stole five watches from a Shinola retail store. Investigators pulled a security video that had recorded the incident. Detectives zoomed in on the grainy footage and ran the person who appeared to be the suspect through facial recognition software.

A hit came back: Robert Julian-Borchak Williams, age forty-two, of Farmington Hills, Michigan, about twenty-five miles northwest of Detroit. On January 9, 2020, police arrested him while he stood on his front lawn in front of his wife and two daughters, ages two and five, who cried as they watched their father being placed in the patrol car.

Williams was led to an interrogation room, and police put three photos in front of him: two photos taken from the surveillance camera in the store and a photo of Williams's state-issued driver's license.

"When I look at the picture of the guy, I just see a big Black guy. I don't see a resemblance. I don't think he looks like me at all," Williams said in an interview with NPR. "I picked it up and held it to my face and told him, 'I hope you don't think all Black people look alike,'" Williams said.

Williams was detained for thirty hours and then released on bail until a court hearing on the case, his lawyers say.

At the probable cause hearing, a Wayne County prosecutor announced that the charges against Williams were being dropped due to insufficient evidence. According to the ACLU's complaint, the "prosecutor announced that the charges against Mr. Williams were being dropped 'without prejudice.' In other words, the DPD and the prosecutors were reserving the right to harass Mr. Williams and his family again."

The pursuit of Williams as a possible suspect came despite repeated claims by him and his lawyers that the match generated by artificial intelligence was faulty. The alleged suspect in the security camera image was wearing a red St. Louis Cardinals hat. Williams, a Detroit native, said he would under no circumstances be wearing that hat.

"They never even asked him any questions before arresting him. They never asked him if he had an alibi. They never asked if he had a red Cardinals hat. They never asked him where he was that day," said lawyer Phil Mayor with the ACLU of Michigan.

In a statement to NPR, the Detroit Police Department said after the Williams case, the department enacted new rules. Now, only still photos, not security footage, can be used for facial recognition. And it is now used only in the case of violent crimes.

"Facial recognition software is an investigative tool that is used to generate leads only. Additional investigative work, corroborating evidence and probable cause are required before an arrest can be made," Detroit Police Department Sgt. Nicole Kirkwood said in a statement.

Victoria Burton-Harris, Williams's lawyer, said in an interview that she is skeptical that investigators used the facial recognition software as only one of several possible leads. "When that technology picked my client's face out, from there, it framed and informed everything that officers did subsequently," Burton-Harris said.

Academic and government studies have demonstrated that facial recognition systems misidentify people of color more often than white people.

Reported in npr.org, June 24, 2020.

COLLEGES AND UNIVERSITIES

Scottsdale, Arizona

A lawsuit filed on June 2, 2020, charges Scottsdale Community College (SCC) and one of its professors for teaching material that it says condemns Islam. In ***Sabra v. Maricopa Community College District*** in **US District Court for the District of Arizona**, a student and the Arizona chapter of the Council for American-Islamic Relations (CAIR) ask that SCC and professor Nicholas Damask stop teaching the materials in question until they "do not have the primary effect of disapproving of Islam."

Before suing, the student, Mohamed Sabra, posted three quiz

questions from a world politics class to social media last month. The ensuing online criticism prompted the college's interim President Christina Haines to apologize for the "inaccurate" and "inappropriate" questions.

Haines said Damask would apologize to the student and remove the questions from his curriculum, but Damask pushed back, saying he had no intention of apologizing and that his academic freedom was being threatened.

The chancellor of Maricopa Community College District, of which SCC is a part, stepped in and said the questions posted on social media were taken out of context and fell within the scope of the course.

After school officials sent the professor a prewritten apology letter to sign, Damask reached out to the Foundation for Individual Rights in Education (FIRE) saying his job and academic freedom were threatened.

FIRE wrote a letter to the college about its attempt to force Damask to change his course content and issue an apology. FIRE seeks to defend academic freedom, whether for students or faculty.

"SCC's actions in response to Damask are irreconcilable with its constitutional and statutory obligations as a public institution of higher education," the letter read. "SCC cannot abandon its obligations under the First Amendment and Arizona law."

But Sabra said attorneys aren't arguing against lively discussion and debate on college campuses or even that the motivations of Islamic terrorists can't be discussed in classes. Rather, academic freedom cannot be used to cloak anti-Muslim speech and make broad generalizations about the Muslim faith, Sabra said.

Sabra was enrolled in Damask's online world politics course, which featured lessons on Islamic terrorism. According to the lawsuit, Damask repeatedly condemned Islam as a religion that definitively teaches terrorism.

Screenshots posted by Sabra show that the quiz included statements such as "contemporary terrorism is Islamic" and "terrorism is justified within the context of Jihad in Islam." The quiz also asserted that Islamic terrorists strive to emulate the Prophet Muhammed.

The lawsuit says that Sabra answered the questions based on how Muslims practice their religion, but the answers were marked as incorrect.

"Mr. Sabra was forced to make a decision; either disavow his religion or be punished by getting the answers wrong on the quiz," the lawsuit says.

The court dismissed the lawsuit on August 18, 2020. According to the decision, "the teaching's primary purpose was not the inhibition of religion. The offending component was only a part of one-sixth of the course and taught in the context of explaining terrorism."

Damask was scheduled to teach this course again in a summer semester course beginning June 8, according to the lawsuit.

Reported in: www.azcentral.com, June 3, 2020; www.thefire.org, August 18.

INTERNATIONAL
Paris, France

The **French Constitutional Council,** a top court that reviews legislation to ensure it complies with the French constitution, on June 18, 2020, struck down critical provisions of a law passed by France's parliament in May 2020 to combat online hate speech, dealing a severe blow to the government's effort to police internet content.

In a statement explaining its ***Decision no. 2020-801 DC***, titled ***"Loi Visant à Lutter Contre les Contenus Haineux sur Internet,"*** the court said that some key provisions of the law "infringe upon the exercise of freedom of expression and communication in a way that is not necessary, suitable, and proportionate." The law, which was supported by President Emmanuel Macron's government and sponsored by his party, created an obligation for online platforms to take down hateful content flagged by users within twenty-four hours. If the platforms failed to do so, they risked fines of up to 1.25 million euros, or about $1.4 million.

The Constitutional Council noted that the measure put the onus for analyzing content solely on tech platforms without the involvement of a judge, within a very short time frame, and with the threat of hefty penalties. The court said this created an incentive for risk-averse platforms to indiscriminately remove flagged content, whether or not it was clearly hate speech.

The court also struck down a part of the law that obligated tech platforms to remove—within one hour—content flagged by the authorities as child pornography or terrorist propaganda, arguing that the extremely short time frame and lack of independent review of the content also violated freedom of expression.

Only minor measures in the law, such as the creation of an official online hate speech watchdog, still stand.

Strong anti-hate speech laws already exist in France, often with criminal penalties, but supporters of the new law had argued that those rules, instituted before the emergence of social media platforms, held little sway online.

Reported in: *New York Times*, June 18, 2020.

COLLEGES AND UNIVERSITIES

Milwaukee, Wisconsin

On February 13, 2020, The University of Wisconsin-Milwaukee's (UW-Milwaukee) Division of University Relations and Communications (University Relations) rejected a poster for a talk titled "Academic Freedom in the Age of Trump" because of its "partisan tone," according to professors sponsoring the event. However, the university reversed its decision after the incident caused controversy on Twitter. A university spokesperson later stated that UW-Milwaukee never rejected the poster.

In a blog post about the incident, UW-Milwaukee professor Joel Berkowitz stated that the university initially disputed the promotional poster due to its "combination of the word 'Trump,' the red color, and the imagery of books in chains."

Berkowitz, who is also president of the UW-Milwaukee chapter of the American Association of University Professors (AAUP), had invited national AAUP officer Joerg Tiede to campus to speak on the topic of academic freedom. It was Tiede who chose the title of his presentation but a UW-Milwaukee graphic designer created the poster.

Berkowitz and UW-Milwaukee AAUP officer Rachel Buff planned to promote Tiede's talk by sharing the poster on social media and displaying it on electronic screens across campus. According to Buff and Berkowitz, University Relations notified Buff it had rejected the ad on February 13.

Buff and Berkowitz reported the university gave them options regarding the poster, including submitting a different design, emailing senior staff members in University Relations, or appealing the rejection in a meeting that would take place the day before the talk.

However, according to UW-Milwaukee Vice Chancellor of University Relations and Communications Tom Luljak, University Relations never told the professors they couldn't use the poster to promote the event.

A new approval policy for posters and fliers, which followed an August 2019 incident involving a poster for a criminal justice class featuring a Black student wearing police tape as a scarf, requires a rotating team of three University Relations specialists to review promotions. The debate over the poster originated from that policy, Luljak said in an email.

After one of the specialists raised concerns that the academic freedom talk poster was "political," a marketing manager notified the poster's creators. Notification was "the beginning of a conversation" about how to proceed with the poster, and the university hadn't made a decision yet, Luljak said.

Buff and Berkowitz both shared news of the poster's apparent rejection on Twitter, tagging the national AAUP account. AAUP made its own five-Tweet thread on the incident, asking "Irony aside, what message is @UWM sending in the Age of Trump?"

Following Tweets about the apparent rejection, Luljak approved the poster for use around campus.

"When Rachel Buff sent her tweet, the matter was escalated directly to me, bypassing the brand standards committee," Luljak said. "I quickly reviewed the ad in question and determined it was not a problem and gave the green light for it to be used."

After UW-Milwaukee approved use of the poster, Buff tweeted to thank everyone for speaking up and said "this is what we call a win."

Reported in: *Daily Cardinal*, February 20, 2020.

LIBRARIES

Pocatello, Idaho

After overwhelming public support on social media for Reading Time with the Queens at Marshall Public Library, the founder of the group Citizen Patriots United, Ted King, has ended his campaign to shut down the program. King's Change.org petition, which garnered 453 signatures, was created February 4, 2020.

However, the following week King told the *Idaho State Journal* that, although his beliefs had not changed, social media exchanges with other library users made it clear that the reading program had garnered more widespread support than he initially believed and that it made the most sense for him to end his opposition.

"After I announced my opposition, supporters started a petition of their own and within twenty or thirty minutes they had 100 percent more signatures than we did," King said.

On February 6, Pocatello resident Cassie Ashdown created the petition asking for signatures of people in favor of Reading Time with the Queens, and by February 8, it had attracted more than 1,000 signatures. As of the afternoon of the February 10, the petition in support of the reading program, also created on Change.org, had reached nearly 1,400 signatures.

"I never, ever imagined that my opposition would lead to the hatred and vitriol that followed," King said. "I should have known more about the program before I tried to silence it because I had no idea they had this level of community support."

"I am not some crusader who was trying to silence something that our community stands so strongly behind," King told the *Journal*. "I am nowhere arrogant enough to speak against the majority of the community saying something like, 'Well, I don't like the program so it can't happen.'

The community overwhelmingly supports the program and I believe in a constitutional republic. I don't believe in silencing the voices of the many based on the opposition of a few."

Joseph Crupper, known locally as Cali Je, is the Pocatello resident who started Reading Time with the Queens in 2017. Crupper attended the February 6 City Council meeting, though he did not make a formal statement. Crupper told the *Journal* last month that in addition to reading stories to children while dressed in drag, the program involves craft making, sing-along sessions, and rewarding children for reading with dollar store prizes.

"The petition and planned opposition is not going to stop us from hosting Reading Time with the Queens. As a group, we will not let this deter us from spreading our message of positivity, community-building, self-acceptance, and the importance of literacy for children," said Crupper.

King told the *Journal* last week it's his belief that because the library is a publicly funded Pocatello department, groups with political affiliations or associations should be prohibited from using the library to further their agendas. King stated that he believes that a program involving drag queens reading stories to children promotes LGBTQ ideals, and he associates those values with liberal political ideology.

King also stated that his four-year-old son is impressionable and that he believes that drag queens reading to children will make them more likely to experience gender dysphoria, which involves a conflict between a person's physical or assigned gender and the gender with which he/she/they identify, according to the American Psychiatric Association.

"These drag queens are talking to kids that are just learning gender structures and barriers between boys and girls, and when they see somebody who just bucks that structure, how confusing is that to them?" King said. "They haven't even learned one plus one is two yet. If it's really about promoting a love of literacy in children, then why the drag? Why the controversy? Mr. Rogers did a fantastic job to promote literacy and self-love wearing a red cardigan sweater and Keds."

King had sought out the Pocatello City Council on February 6 to consider "legislation that is non-discriminate but prevents political, ideological or religious groups from presenting at a public library."

In the meantime, the Marshall Public Library cannot and will not make decisions about who can use the venue based on the content of their usage or event, Marshall Public Library Director Eric Suess told the *Journal*. Moreover, Suess said he must operate within the legal framework of Pocatello code and cannot prevent an oppositional attendance to the planned program on February 15.

"Their speech and rights are protected as much as the people presenting," Suess said. "If they plan to attend the event, it should be done in a way that the children can still enjoy the event, sing songs, make crafts and be read to. I am not going to tolerate any activity that prevents [children] from being able to do that."

Reported in: *Idaho State Journal*, February 13, 2020.

Brownsville, Texas

A petition to end a virtual drag queen story time presented to children at the Brownsville Public Library did not change the city's plan to move forward with the event. Jose Colon-Uvalles, also known as Kween Beatrix, a drag performer and LGBTQ+ activist, worked with the library to present the story time.

The petition, started by Deborah Bell, stated that "We, the undersigned, are appalled that the Brownsville Public Library is, in part, behind the orchestration of the dangerous 'Drag Queen Story Hour' phenomenon which is responsible for corrupting children with perverse notions of human nature.

"And, unwary parents, trusting that the library system would never be used to corrupt their children, are taken by surprise. This is both spiritually and morally dangerous.

"Mindful of all of the above, we are calling on the Brownsville Public Library to STOP all promotion of Drag Queen Story Hours with immediate effect in addition to canceling the story hour scheduled for June 26, 2020."

In a statement, Mayor Trey Mendez stated, "As mayor, I feel it is important to celebrate diversity among all of our citizens, including the LGBTQ community. The City of Brownsville was the first city in the Rio Grande Valley to have an LGBTQ task force, which is a symbol of the commission's goals of being inclusive for all of our citizens. Nobody should be discriminated against and every resident of Brownsville deserves to have an equal voice."

Reported in: KVEO, June 23, 2020/updated June 24, 2020; *Brownsville Herald*, June 23, 2020.

ONLINE RETAILER
Seattle, Washington

As a part of its accelerating efforts to remove Nazi and other hate-filled material from its bookstore, Amazon quietly banned Adolf Hitler's manifesto *Mein Kampf* (1925) on March 13, 2020, and then quickly reversed the move. *Mein Kampf* is the foundational text of Nazism. The Houghton Mifflin edition of *Mein Kampf* has been continuously available in the United States since 1943.

According to emails reviewed by the *New York Times*, the retailer told booksellers that had been selling the title, "We cannot offer this book for sale."

The retailer, which controls the majority of the book market in the United States, is caught between two demands that cannot be reconciled. Amazon is under pressure to keep hate literature off its vast platform at a moment when extremist impulses seem on the rise. But the company does not want to be seen as the arbiter of what people are allowed to read, which is traditionally the hallmark of repressive regimes.

Booksellers that sell on Amazon say the retailer has no coherent philosophy about what it decides to prohibit, and seems largely guided by public complaints. Over the last eighteen months, it has dropped books by Nazis, the Nation of Islam, and the American neo-Nazis David Duke and George Lincoln Rockwell. But it has also allowed many equally offensive books to continue to be sold.

An Amazon spokesperson said in a March 17 statement that the platform provides "customers with access to a variety of viewpoints" and noted that "all retailers make decisions about what selection they choose to offer."

Reported in: *New York Times*, March 17, 2020.

PRIVATE INDUSTRY
National

Thanks to the Comic Book Legal Defense Fund (CBLDF) and their coalition partners, the online marketplace Redbubble reinstated a cartoon by Pulitzer Prize–winning editorial cartoonist Nick Anderson that was previously removed after an unwarranted objection by President Donald Trump's reelection campaign. CBLDF applauded Redbubble for reinstating the cartoon and urged them to reject any other attempts by political campaigns to suppress protected speech.

Redbubble restored the cartoon on the morning of May 27, acknowledging that its removal was a mistake in a Tweet: "We're pleased to say that your artwork has been reinstated. We strive to respect IP rights and freedom of speech, but we sometimes make mistakes, as we did here. We're sorry for any inconvenience this has caused."

In a statement to CBLDF, Nick Anderson said,

> I am pleased that Redbubble reversed their decision. I applaud them for this and for recognizing that it was an error.
>
> Still, there are some troubling issues raised. The cartoon was removed less than twenty-four hours after I posted it. I hadn't gotten a single order for it. I doubt anyone had even seen it yet on the Redbubble site. This reveals that the Trump campaign has a system in place, trawling for material they find objectionable. If it happened to me so quickly, it likely has happened to others. How much other content has been removed this way on Redbubble and other sites?
>
> Also, when I received the first notice of the take down, I followed Redbubble's instructions to protest the decision. I honestly thought the original decision was probably made by some underling, with little knowledge of copyright or trademark law, or perhaps it was even made by a bot without human eyes evaluating it. It took more than a week before Redbubble responded (in contrast to the quick response for removal). I was quite surprised that Redbubble didn't reverse the decision. In fact, they doubled down and refused to reinstate the work.
>
> It was only after the Comic Book Legal Defense Fund intervened on my behalf—and the letter written by CBLDF started getting viral attention on social media—that Redbubble reversed their decision. In the end, I recognize that Redbubble did the right thing. But it must be pointed out; the President of the United States is a hypocrite who complains about the "violation" of his free speech on Twitter, then tries to actively suppress the free speech of others. These are actions of an adolescent, wannabe-authoritarian.

"We're sensitive to the issues companies like Redbubble face in balancing competing rights owner issues, and were alarmed to see the president's reelection campaign exploiting those issues to suppress protected speech," said then-CBLDF Executive Director Charles Brownstein. "Our letter articulates the case law in clear terms to help prevent future censorship of this nature. We're pleased that Redbubble has done the right thing in this case. We hope that they will continue to assert the First Amendment rights they and their sellers are guaranteed by rejecting any similar censorship attempts."

Reported by: Comic Book Legal Defense Fund, May 27, 2020.

PUBLISHING
Washington, DC

On Saturday, June 14, 2020, federal judge Royce Lamberth of the Washington, DC, District Court rejected the Trump administration's request to block the publication of former national security adviser John Bolton's new book, *The Room Where It Happened*. However, Bolton may still be facing legal trouble and because of a rush to print, it is possible that his book contains classified information.

In preparation for publishing, Bolton undertook a months-long review of his manuscript with an

official on the National Security Council (NCS). According to the government's complaint against Bolton, in late April, that official, Ellen Knight, concluded "that the manuscript draft did not contain classified information." The government says Bolton abandoned the process after the launch of "an additional review" by another member of the NSC, Michael Ellis. Bolton's attorneys denied that claim, saying he "has fully discharged all duties that the Federal Government may lawfully require of him."

At the time of the Trump administration's attempt to block the release, hundreds of thousands of copies of the book were already out for sale, according to its publisher, and the judge ruled that the administration's efforts had come too late. "The damage is done," he wrote in a ten-page opinion.

"Defendant Bolton has gambled with the national security of the United States. He has exposed his country to harm and himself to civil (and potentially criminal) liability," Judge Lamberth concluded. "But these facts do not control the motion before the Court. The government has failed to establish that an injunction will prevent irreparable harm."

The judge made his distaste for Bolton's conduct clear in his order. He noted that, in opting out of the government's review process, the former national security adviser was likely to run afoul of his nondisclosure agreements with the government.

"Unilateral fast-tracking carried the benefit of publicity and sales, and the cost of substantial risk exposure," Lamberth said.

Bolton still faces the possibility of prosecution and the government's attempts to take back his profits from the book.

The Justice Department had sought a temporary restraining order against Bolton and his publisher, Simon and Schuster, citing what it called the presence of classified information in Bolton's manuscript. But the book already had been widely reported and was scheduled to be released on June 23.

In a statement shared with NPR on June 14, Simon and Schuster stated, "We are grateful that the Court has vindicated the strong First Amendment protections against censorship and prior restraint of publication [and] we are very pleased that the public will now have the opportunity to read Ambassador Bolton's account of his time as National Security Advisor."

Simon and Schuster previously said the injunction "would accomplish nothing."

The president and other deputies have denied the allegations made in the book and dismissed them as "lies and fake stories."

On June 14, Bolton's legal team said that it welcomed the decision—but took issue with the judge's preliminary finding that Bolton didn't comply with the government's prepublication review.

Reported in: *Forbes*, June 16, 2020; National Public Radio, June 20, 2020

SCHOOLS
Cheyenne, Wyoming

The District Reconsideration Committee of Laramie County School District 1 voted unanimously on January 30, 2020, to retain *Drama* (2012) by Raina Telgemeier, despite a parent's complaint that the inclusion of LGTBQ characters and content made the graphic novel inappropriate for elementary school. In November 2019, a parent at Saddle Ridge Elementary School had argued that the book "takes away parents' rights to teach morals and values [and] praises normalization of the LGBTQ community."

At the original school-level meeting, Saddle Ridge officials decided the book would not be removed from the school library. The parents were told that their own child could be restricted from checking out books with LGTBQ themes. However, the parents were unsatisfied and appealed the decision.

A public hearing was held at the Laramie County Community College on January 30. About seventy-five people attended, with a majority of the speakers in support of keeping the book in school libraries. The District Reconsideration Committee then voted to keep *Drama* in school libraries without restrictions. Committee members stated that this is in accordance with school district policy, the book isn't required reading, and the materials in school libraries should be diverse.

The book follows the character Callie and her middle school production of "Moon Over Mississippi," according to the book description. It contains some sections where a boy expresses his feelings for another boy. *Drama* made the list of the American Library Association's Top Ten Most Challenged Books from 2016 to 2019.

The parent who objected to the book, Josh Covill, said his eight-year-old came to him because *Drama* was confusing and upsetting to her. Covill's daughter picked the book out independently in her classroom library. The book is also available in the school's library. Covill stated that the book "is accessible at an inappropriate time for elementary students, from kindergarten through sixth grade, who have not gone through puberty or who are not yet beginning to identify themselves among their friends, families and peers."

Speaking in favor of the book, Ashlynn Kercher, age fourteen, said, "As students, we live through books.

Even now, as a freshman in high school, anytime I read a book, I think 'What if that was me, what if I was able to do this.' In fifth grade, I started to notice I have feelings for other girls. In my head, it didn't seem right because, in all honesty, I'm a book kid, and every book I read ended up with the prince and the princess."

She continued, "I saw that there was another gay character, and I thought, 'Wow, this isn't abnormal to have. That other people feel this way, too. I'm not just the lone person in the crowd that feels this way only," she said. "This book gives students an option to see that this isn't something that's bad. It shows students that other people experience this, and have to go through coming out, realizing themselves that they are gay, bi, or anyone in the LGBTQ community. It helped me a lot because it helped me realize that I'm not alone in this. I'm not attempting to figure out my own sexuality in a sea of straight people."

Laramie County Librarian Carey Hartmann told the *Wyoming Tribune Eagle* prior to the meeting that a key element of any library is defending a person's right to have access to any information that they would like to access. As a librarian developing a collection of materials for the community, they need to know their community very well. The librarian needs to pick materials that represent the perspective of everyone who lives in the community, Hartmann said.

Reported in: *Wyoming Tribune Eagle*, January 31, 2020.

Palmer, Alaska

On Wednesday, May 20, 2020, the Matanuska-Susitna (Mat-Su) Borough School District in Palmer, Alaska rescinded April's contentious decision to pull five literary classics from English elective reading lists and tabled further discussion until next year to develop better policies for controversial materials. The original decision in April garnered immediate claims of censorship from parents and community members and was criticized by national media outlets.

The 6-1 vote to rescind the Mat-Su board's April decision followed a lengthy, emotionally charged discussion. The books in question were:

- *The Great Gatsby* (1925), by F. Scott Fitzgerald
- *Invisible Man* (1952), by Ralph Ellison
- *Catch-22* (1961), by Joseph Heller;
- *The Things They Carried* (1990), by Tim O'Brien
- *I Know Why the Caged Bird Sings* (1969), by Maya Angelou

According to the district's Office of Instruction, the books were deemed controversial because of content related to sexual references, rape, racial slurs, scenes of violence, and profanity; Angelou's book, the office said, includes "sexually explicit material such as the sexual abuse the author suffered as a child" as well as "'anti-white' messaging."

The board also removed a learning resource from the *New York Times* from creative writing classes; that was part of the decision overturned on May 20.

According to CNN, Palmer City Council member Sabrena Combs stated that she was pleased with the "small victory" but said she recognized "we have a long road ahead of us to ensure curriculum for our students is to the standard we desire as parents and community members."

"At this point, I feel the access to important works of literature for students and teachers is being threatened as the majority of the school board wishes to revisit this topic within the next year," she added. "Our school board shouldn't be making curriculum decisions. They should follow public process."

Residents of the community have said the May vote was no different than banning the books, but board members doubled down on the fact that the books would still be accessible and could still be read by students on their own time. The school board rescinded the decision so members would have time to align their policies with state statute when it comes to parental authority to remove students from school activities—including which books they read. The board won't address the issue again until May 2021, after policies for parental involvement are retooled.

"The school board did not ban the books, did not preclude their use by teachers and did not remove the books from school libraries," said member Ryan Ponder, who was the only member to vote against rescinding. "The narrative that has been put out there is not the accurate narrative."

Seventy-six people, almost entirely parents and guardians, supported the reading materials, according to documents obtained in a records request by the Alaska chapter of the American Civil Liberties Union. Some said they thought the list was too limited and not diverse enough.

Reported in: *Anchorage Daily News*, May 20, 2020; Updated May 21, 2020; CNN, May 21, 2020.

Kirkwood, Missouri

A book that tackles tough topics and contains explicit language will continue to be available to Kirkwood middle school students despite the objection of several parents.

Dashka Slater's *The 57 Bus* (2017) will remain in the North Kirkwood Middle School library, available for voluntary checkout. The district's decision follows a parent's request

to Kirkwood administrators and the board of education for a review and reconsideration of the book in February 2020. The book was then reviewed by a district committee.

The *New York Times* bestseller is the true story of two teenagers and a crime that changed their lives. An incident on a school bus left one of them severely burned and the other charged with two hate crimes, facing life in prison. The book explores gender identity, race, social justice, hope, and healing.

The 57 Bus was one of several books offered to students as an option for a reading assignment in an eighth grade English class at North Kirkwood Middle School. Although the book has received acclaim in young adult literature and won several awards, some parents felt that its mature themes and use of explicit language was inappropriate for middle school students.

Kirkwood parent Courtney Rawlins, who read the book after learning it was an option for an eighth grade English language arts assignment, said she was shocked by the "mature topics, the extensive description of transgenderism and the extremely profane and sexually explicit language."

"I shared portions of the book with many, many parents and community members (of differing viewpoints) and the resounding consensus was extreme shock and fury that the school would knowingly expose students to this without parental consent," she said.

The book has been available for checkout at the North Kirkwood Middle School library for the past three years. It is also available in the libraries at Nipher Middle School and Kirkwood High School.

Kirkwood parent Trish Harrison said she believes fear—not explicit language—is driving the push to ban the book.

"Let's be honest—this book is not being challenged due to language," Harrison said at the March 9 Kirkwood School Board meeting. "It is a nonfiction story of an African American teen who sets a nonbinary teen's skirt on fire while riding on the bus," she continued. "The book deals with heavy issues, but the topic of social justice is a heavy issue. Our kids are dealing with heavy issues every day. What better way to learn to think critically and to deal with those issues than to read about them?"

"Some people are trying to make this about gender identity and LGBTQIA, but it's not about that," Natalie Brauch said, another parent who feels that this kind of content is inappropriate for middle school students. "It's about parents who don't want a book made available to students who are not old enough to understand or process the content."

But Harrison believes *The 57 Bus* has many valuable lessons.

"This book is about two families living in the same community who are very, very different from each other . . . but they find a way to forgive, to heal, to have their stories teach each other about inclusivity, empathy, redemption and accountability," she said. "It would be an injustice to all students and all families who want to have access to this book if it was banned."

Though Rawlins said the story is compelling and has some positive messages, she said that does not mean the book is appropriate for middle school students.

Kirkwood High School student Lily Frick, however, made the case that middle school is a very appropriate age for the book, telling school board members how much it helped her.

"I read *The 57 Bus* in eighth grade, which was one of the hardest years in my entire school experience," Frick said, identifying herself as transgender. "I felt so trapped in my identity . . . I felt completely and totally alone in that struggle for a long time, and books like *The 57 Bus* are incredibly important for that reason.

"It's a reminder for kids like me that there are other people in your situation that you can relate to, other people that are in just as much pain as you, and that what we experience isn't something we should be ashamed of," Frick continued. "I'm here to stand up for what I believe and to defend a kid [such as Sasha in the book] who was like me to make sure that their story is one that can live on in our library so that people who are like I am feel like it's OK."

Reported in: *Webster-Kirkwood Times*, March 20, 2020.

COMMUNICATION RECEIVED

The *Journal of Intellectual Freedom and Privacy* has received the following communication from Natale McAneney, the executive director of Fight the New Drug, offered in rebuttal to statements made in "The New Censorship," first published in vol. 4, no. 4:

"Fight the New Drug is unequivocally pro-sex, non-religious, and research-based. As a nonprofit organization, everything we do aligns with our clear mission. ***Mission****: Fight the New Drug is a non-religious and non-legislative organization that exists to provide individuals the opportunity to make an informed decision regarding pornography by raising awareness on its harmful effects using only science, facts, and personal accounts.* ***Source****:* https://fightthenewdrug.org/about/*"*

TARGETS OF THE CENSOR

SPRING-SUMMER 2020

BOOKS

RESOURCES

MAGAZINES

COMICS

ARTWORK

ADVERTISING