

## Intellectual freedom

### Intellectual Freedom: Basic training for new staff and a refresher for the rest of us

Thursday Jan 12, 2012

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**Start Time:** Pacific - 12 PM, Mountain - 1 PM, Central - 2 PM, Eastern - 3 PM

**Presenter:** : Mary Minow



# Intellectual Freedom: Basic Training for New Staff and a Refresher for the Rest of Us

## What is Intellectual Freedom?

### Legally Speaking

- Books
- Internet (especially Child Porn)

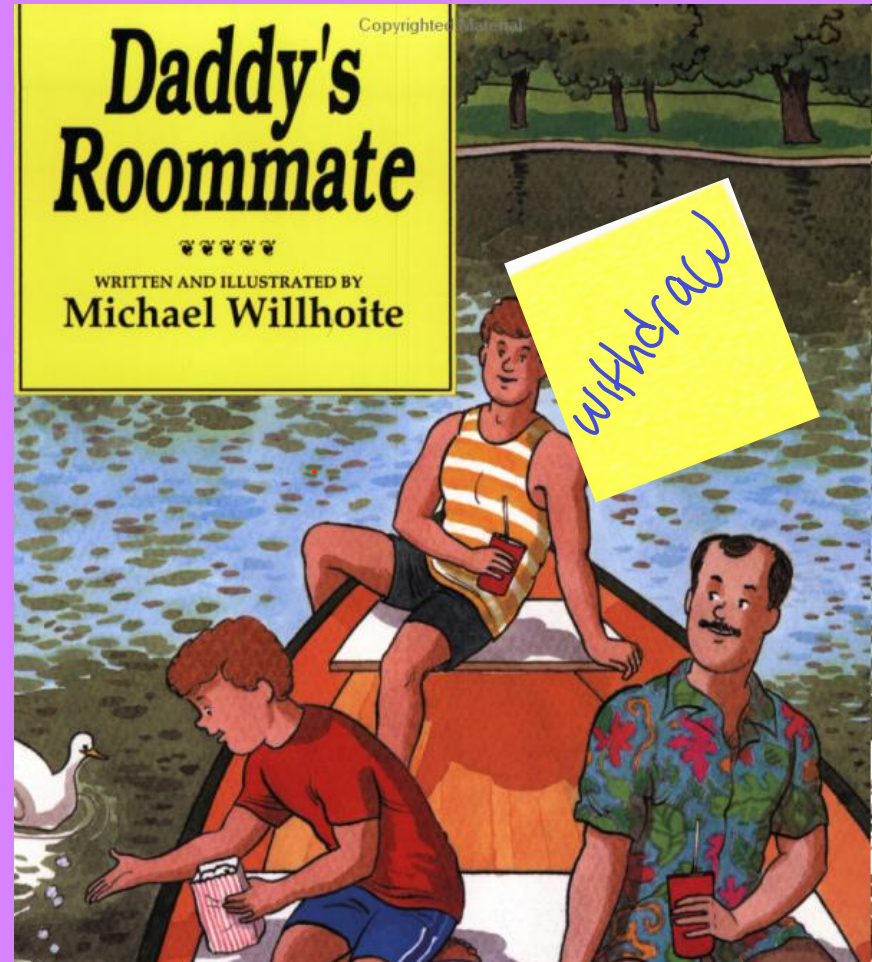
### Strategies



**Legal information, not legal advice**

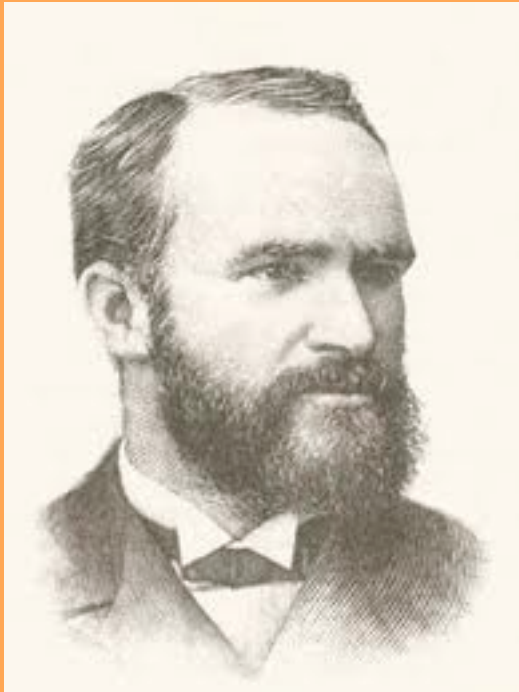
# What is Intellectual Freedom?

**Patron asks  
you to remove  
book**



1876

American Library Association founded



Melvil Dewey

Avoided controversial literature

Librarian as moral censor

"only the best books on the best subjects were to be collected."

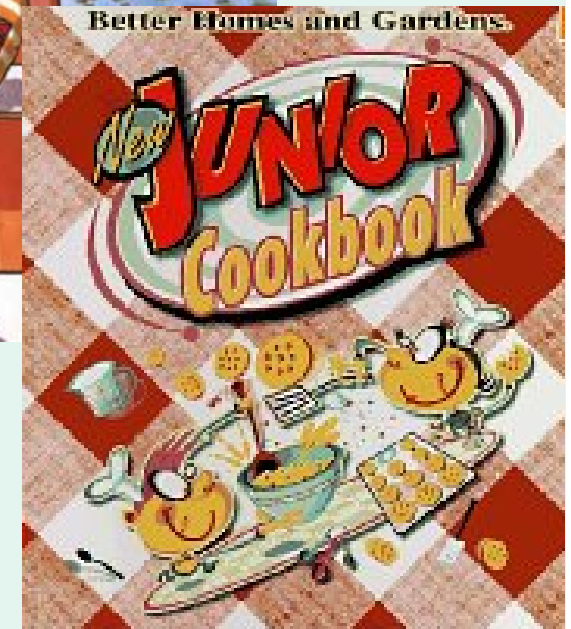
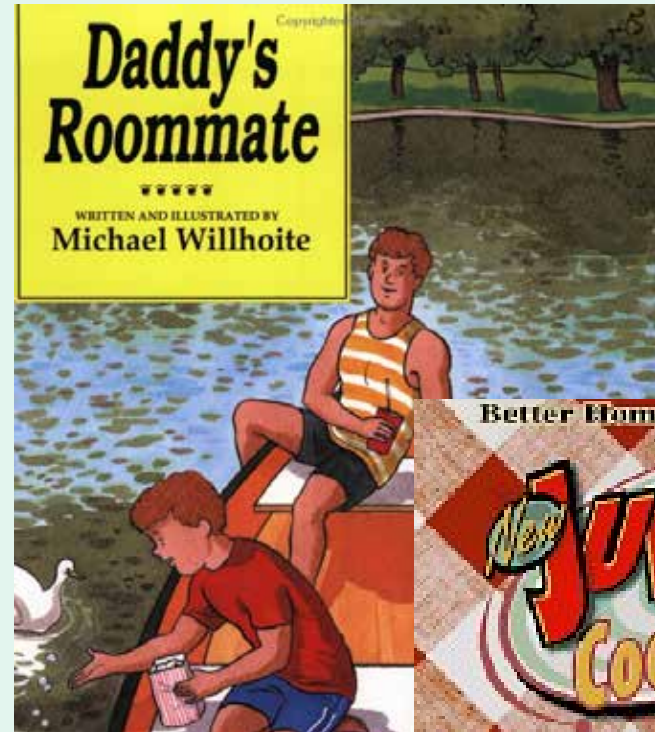
See *Defending Access with Confidence: A Practical Workshop on Intellectual Freedom* by Catherine Lord (ALA: 2005) <http://www.alastore.ala.org/detail.aspx?ID=286>



# Personal v. Professional

## Code of Ethics

We do not allow our personal beliefs to interfere with access to information.

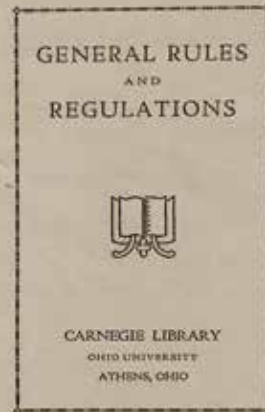


Vegetarian librarian opposed to hamburgers

# Legally Speaking

## Will Library Win in Court?

# Library Restriction on Speech



### General Rules and Regulations

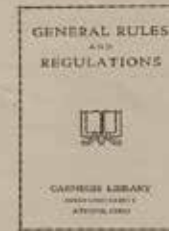
1. The Library is open from 9:00 A. M. to 5:00 P. M. on Mondays, Tuesdays, Wednesdays, and Thursdays; and from 9:00 A. M. to 5:00 P. M. on Fridays and Saturdays. On Sundays, it is open from 2:30 P. M. to 4:00 P. M. for reference work only.
2. The Reference room is open from 9:00 A. M. to 12:00 A. M. and from 1:00 P. M. to 5:00 P. M.
3. The faculty, students and employees of the University and the residents of Athens are permitted to draw books from the library. If a resident borrows books for home use, he is requested to fill out a registration card. Non-residents may also draw books upon showing satisfactory references.
4. Free access to the stacks is given during all hours in which the Library is open. The books from the stacks may be used in the Library without making a charge. When a person wishes to take a book from the building, he must under all circumstances have the book charged at the charging desk. Here the

- book card is stamped with the date due, and the borrower signs his name opposite the date. This card is then filed by the librarian. The due slip in the back of the book is then stamped with the date. A book may be kept for two weeks, with the privilege of renewal for another two weeks, provided the book is not in demand or not overdue.
5. When returning a book, the borrower presents it at the charging desk where the student cancels the charge.
  6. Students using books in the stacks are requested not to return them to the stacks, but to leave them on the tables provided for the purpose.
  7. All books in circulation are subject to recall at any time in case of need.
  8. Two books at a time may be drawn, one only being fiction.
  9. All books must be properly charged before they are taken from the library.
  10. General reference books such as dictionaries, encyclopedias, atlases, etc. do not circulate.
  11. Current periodicals may not be taken for home use. Back numbers not in demand may be borrowed for 24 hours. Bound periodicals may not be taken from the library, as

they are needed for reference purposes at all times.

12. Books from the reserve desk may not be drawn for home use until closing time. These books must be returned by 8:15 A. M. the following morning. A willful violation of this rule will result in the withdrawal of library privileges.
13. Whenever a borrower loans a book, he must forfeit the cost of the book.
14. A fine of two cents a day is charged on all overdue books. Notification of the fine will be sent when books are one week overdue.
15. Hats, wraps and umbrellas should be left in the vestibule. Bags and suitcases for carrying books are prohibited.
16. In order that the reading rooms may be kept quiet to afford the best opportunity for study, all persons should refrain from conversation.
17. There is a law of the State of Ohio which says: "Whoever intentionally defaces, alters, tears or destroys, in whole or in part, a newspaper, magazine, or periodical, or a file in a Reading Room, or cuts therefrom an article or advertisement, shall be fined not less than ten dollars nor more than one hundred dollars, or imprisoned not more than thirty days, or both."

# Or will Patron win?



book used in connection with the rules of the Carnegie Library, or other similar rules, the same shall apply to the books of the Carnegie Library. A book may be loaned for five weeks, with the privilege of renewal for another five weeks, provided the book is not in demand of the library.

7. Where applicable to books, the borrower is responsible for the safekeeping of the book, and for its return to the library at the expiration of the loan period.

8. The borrower is responsible for the safekeeping of the book, and for its return to the library at the expiration of the loan period.

9. The borrower is responsible for the safekeeping of the book, and for its return to the library at the expiration of the loan period.

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13. The borrower is responsible for the safekeeping of the book, and for its return to the library at the expiration of the loan period.

## General Rules and Regulations

1. This library is open from 10 A. M. to 8 P. M. on weekdays, 10 A. M. to 6 P. M. on Saturdays, and 10 A. M. to 6 P. M. on Sundays and public holidays. The library is closed on days when the Carnegie Library is closed.

2. The borrower is responsible for the safekeeping of the book, and for its return to the library at the expiration of the loan period.

3. The borrower is responsible for the safekeeping of the book, and for its return to the library at the expiration of the loan period.

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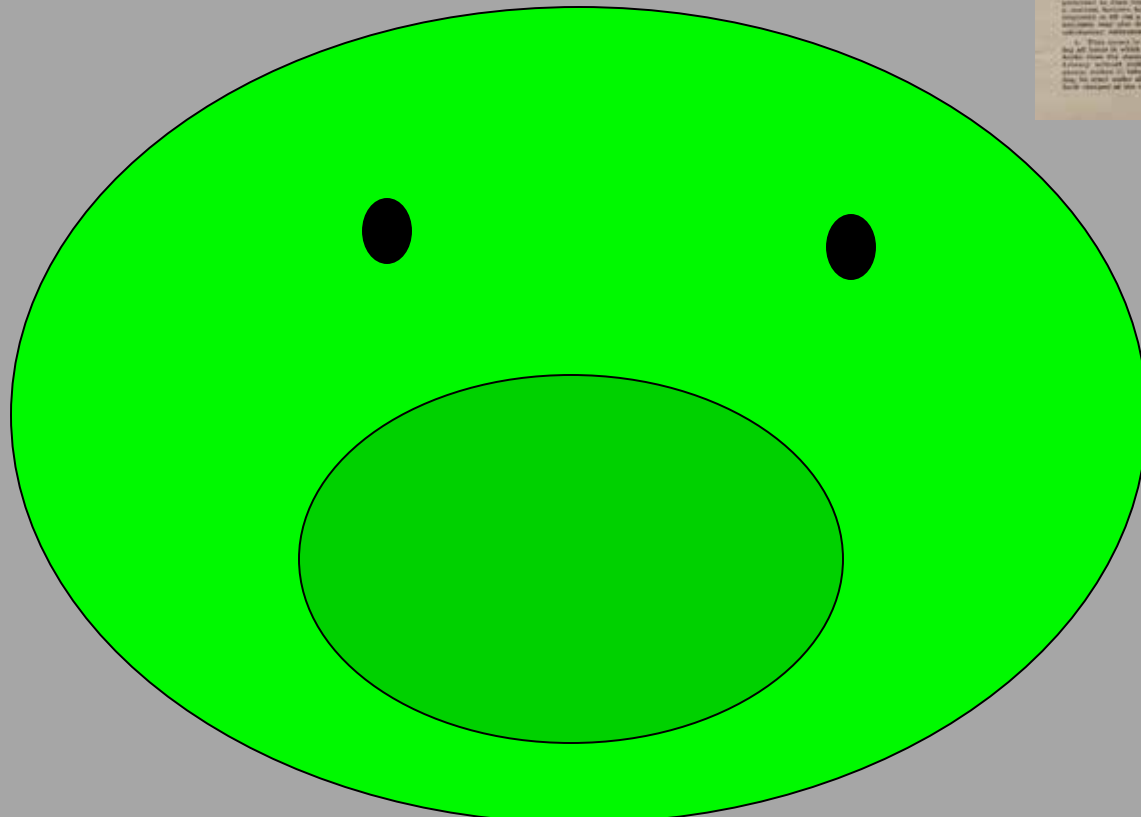
21. The borrower is responsible for the safekeeping of the book, and for its return to the library at the expiration of the loan period.

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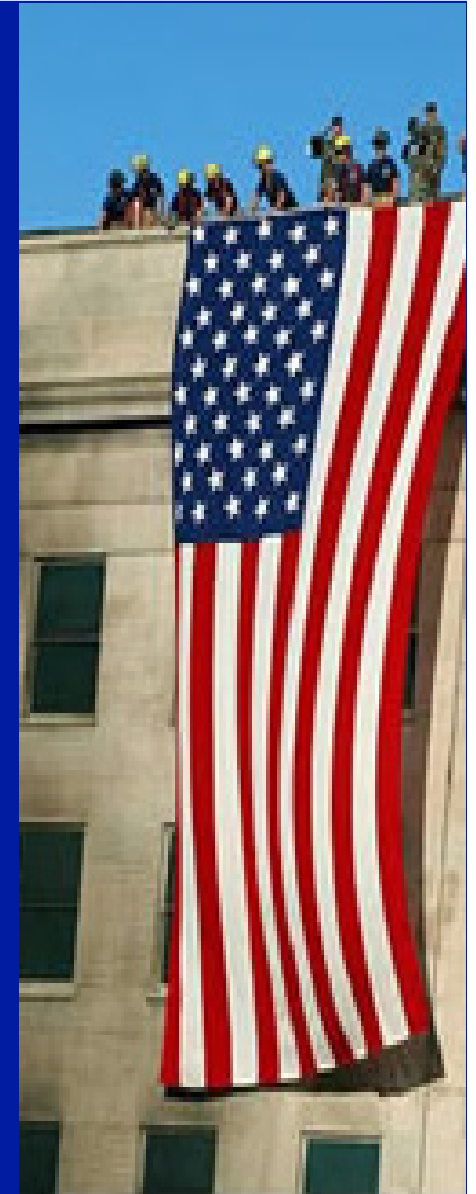
25. The borrower is responsible for the safekeeping of the book, and for its return to the library at the expiration of the loan period.



Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof; or abridging the freedom of **speech**, or of the press; or the right of the people peaceably to **assemble**, and to **petition** the government for a redress of grievances.

First Amendment to the Constitution

# WE ARE THE GOVERNMENT





# Legal Framework

**Constitution**

**Federal Law**

**State Laws**

**Local laws**

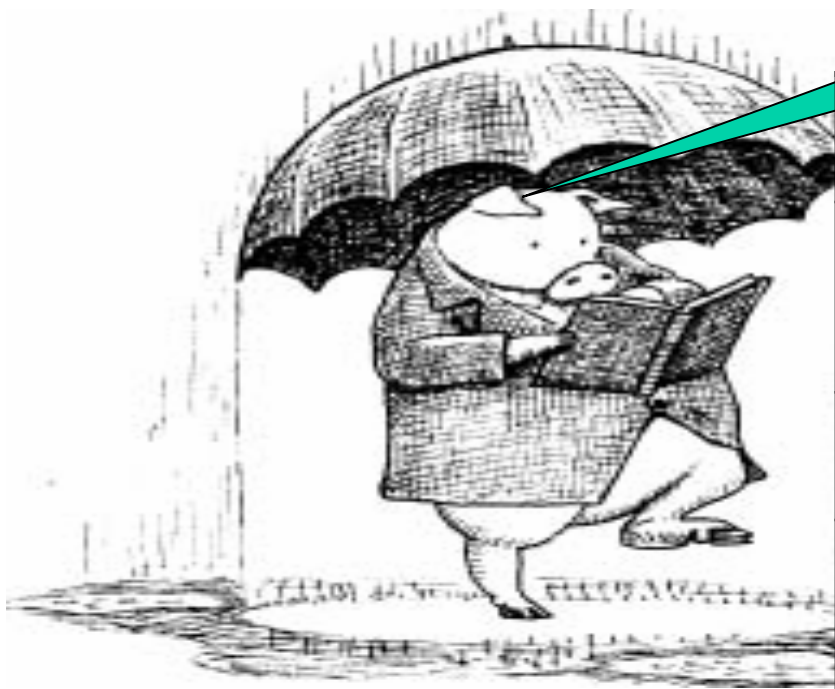
**Library Policies**

**Where does ALA Code  
of Ethics fit in?**

# Legal Definitions

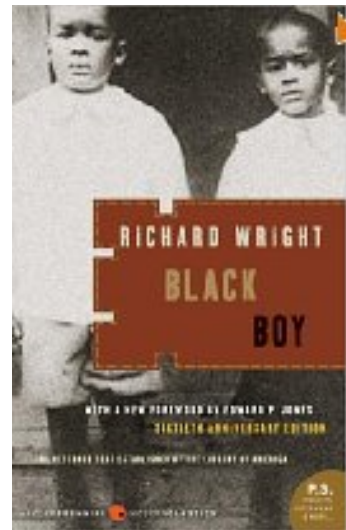
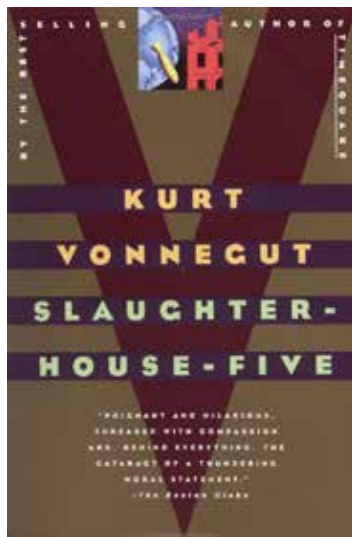
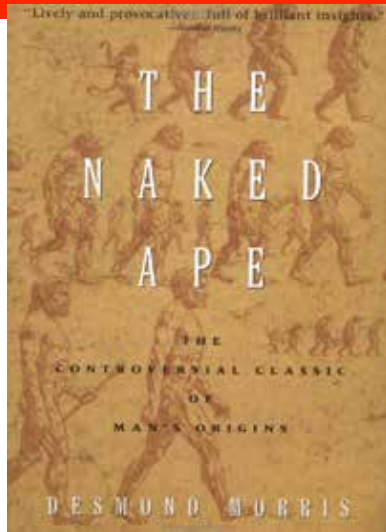


*Speech protected under umbrella of First Amendment:*



Violent	Inappropriate
Disgusting	May lead to illegal behavior
Profane	as well as
Hateful	Beautiful
Indecent	Poetic

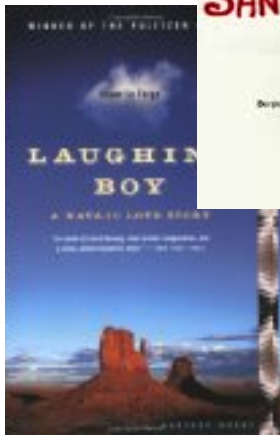
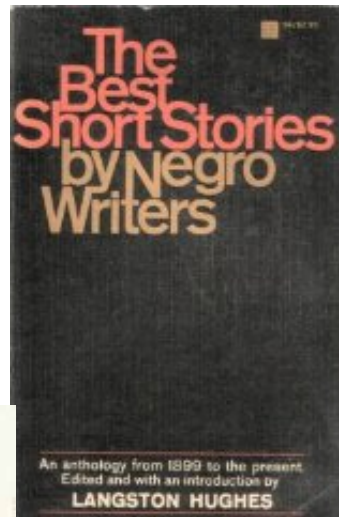
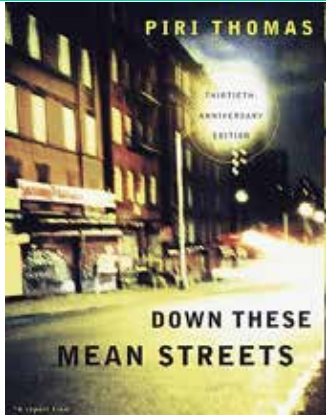
# BOOKS: Court Case: May a library remove books based on viewpoint?



Student sued when school board removed books as “anti-American, anti-Christian, anti-Semitic, and just plain filthy”

*Bd. of Ed. v. Pico*, 457 U.S. 853 (1982)

# No. U.S. Supreme Court



*Schools in loco parentis* and set curriculum, but cannot remove books unless educationally unsuitable or pervasively vulgar.

Settlement: Books returned to shelves.

*Bd. of Ed. v. Pico*, 457 U.S. 853 (1982) is cited for this proposition. The decision was a plurality, not a majority. Lower court decisions citing it are controlling.

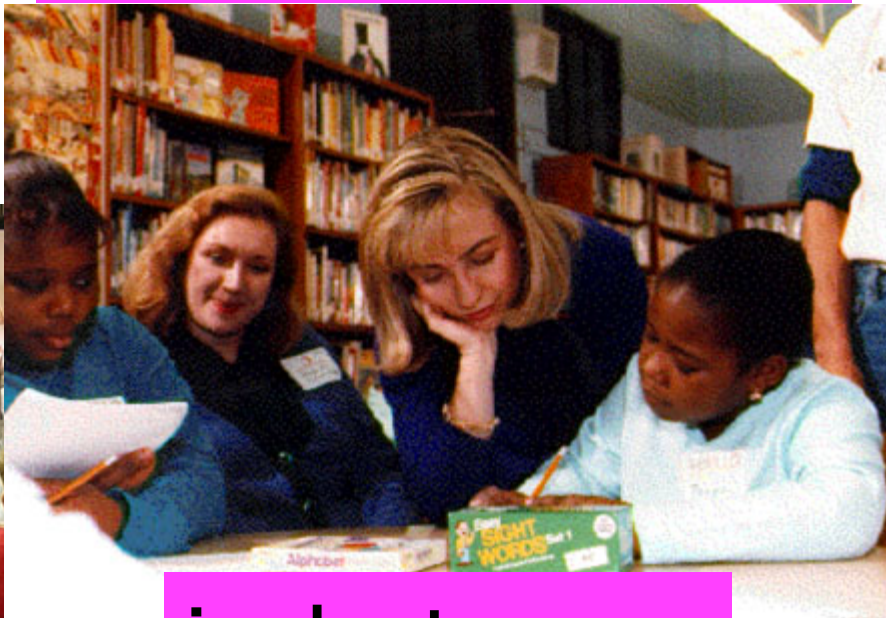


**School Boards may consider vulgarity and educational suitability, but not merely the unorthodox ideas represented**

Classrooms  
educationally  
suitable

School libraries

Public Libraries  
freewheeling

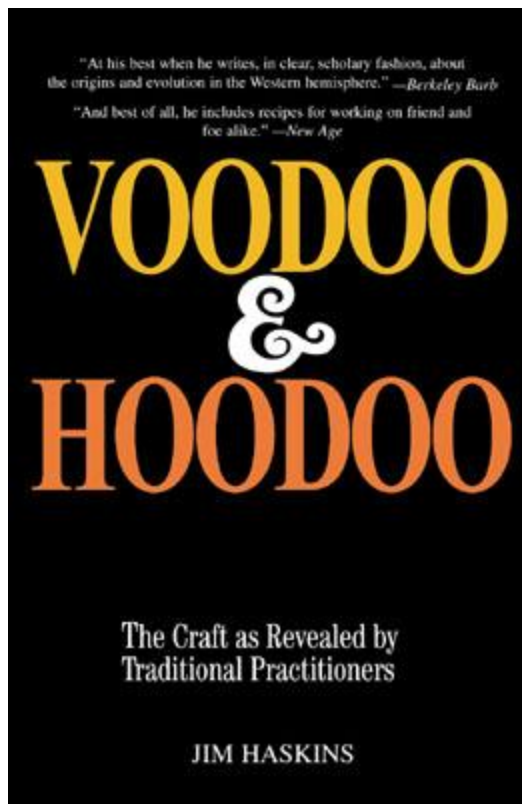


in between

*Bd. of Ed. v. Pico*, 457 U.S. 853 (1982)



# School Libraries Book Removal



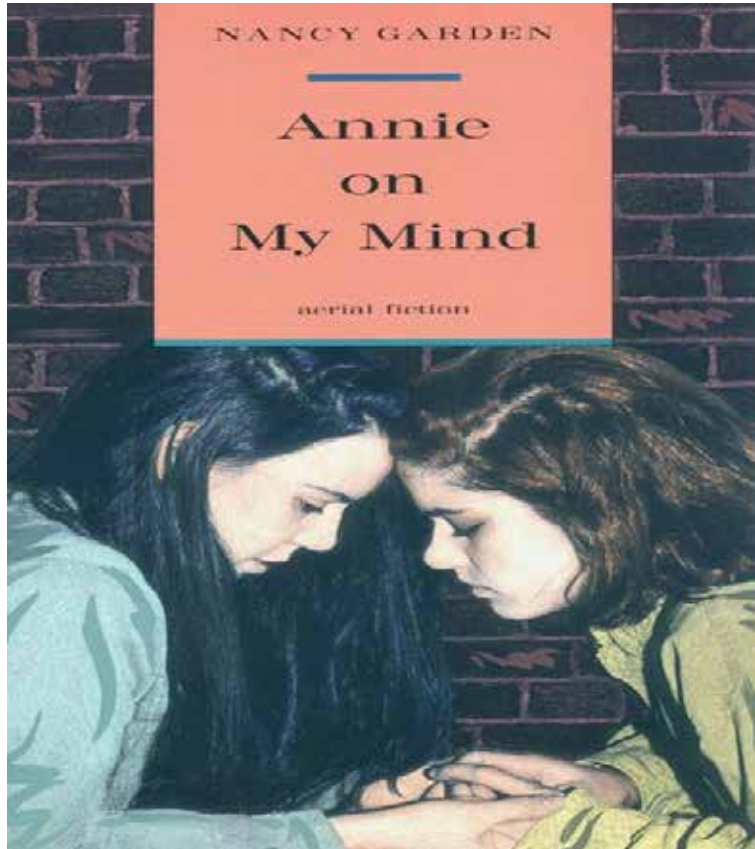
Scholarly and practical look  
West African religions in U.S.

Spells to do ill  
Love Spells

**Court:** Deny access to ideas?  
If so, return to shelves

*Campbell v. St. Tammany Parish School Board*, 64 F.3d 184 (5th Cir. 1995)

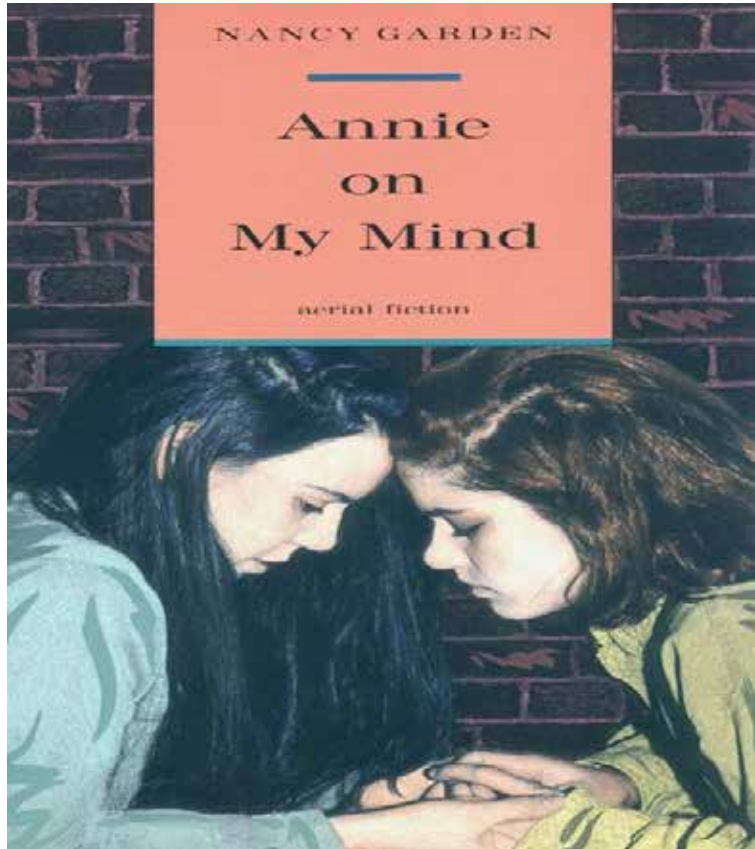
# School Board removes Annie



novel about teenage  
lesbian relationship

*Case v. Unified School District No. 233*, 908 F. Supp. 864 (D. Kan. 1995)

# Court: Free Speech Violation

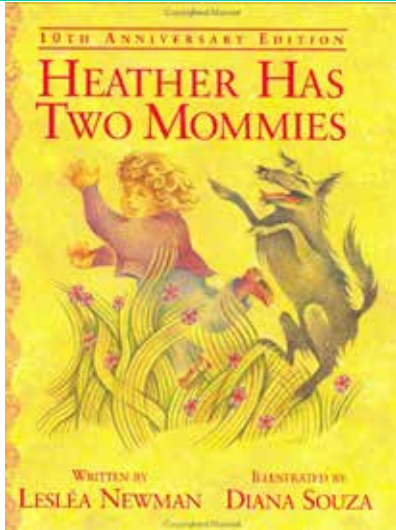


**Removal not based on  
“educational suitability”**

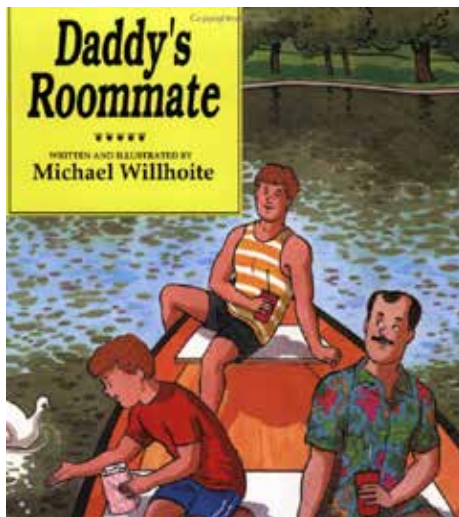
**but on ideology**

*Case v. Unified School District No. 233*, 908 F. Supp. 864 (D. Kan. 1995)

# Public Library: Move books to adult shelves?



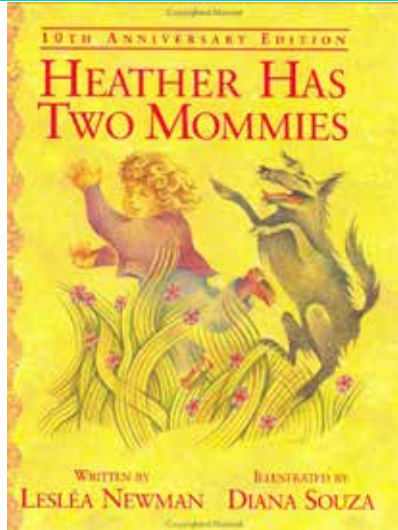
City council:  
300 petitioners may demand  
children's books go to adult area



**Court:**

*Sund v. City of Wichita Falls*, 121 F. Supp. 2d 530, (N.D. Tex. 2000)

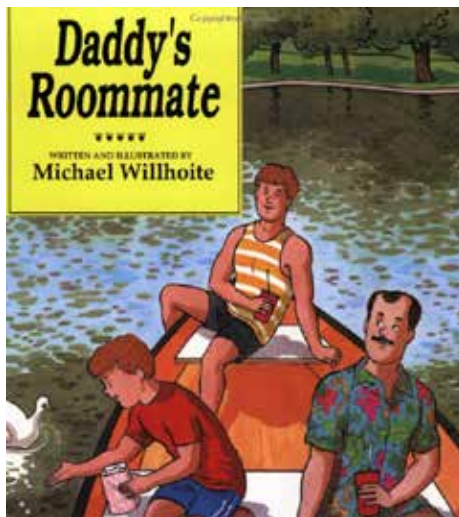
# No. Patron's don't decide this.



**Children and parents sued library.**

Books returned to children's area.

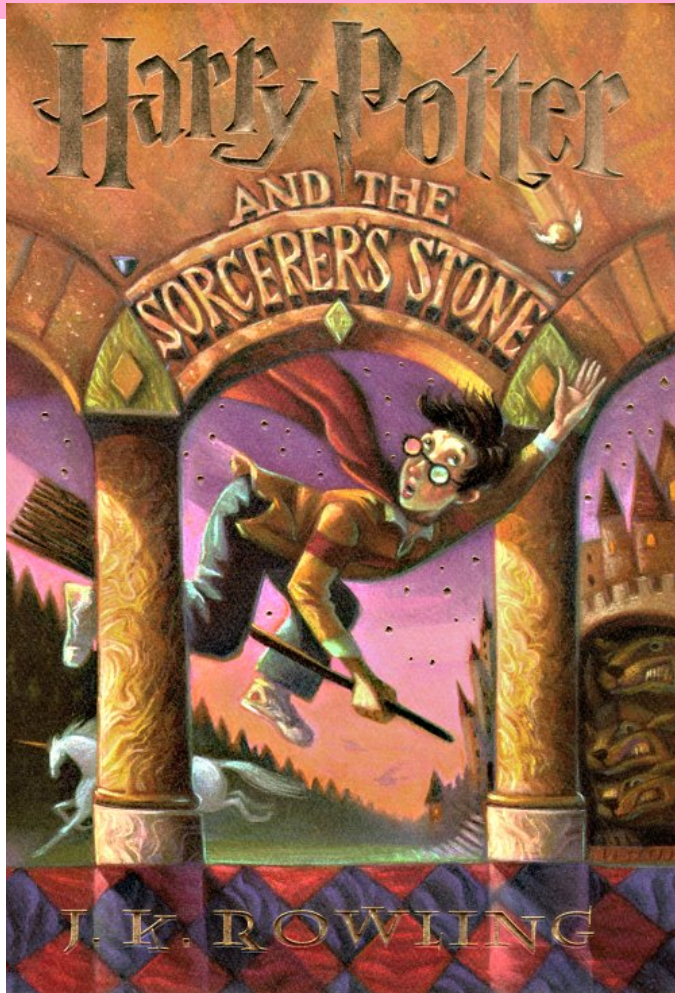
Next group may want to move children's bibles away from kids.



*Sund v. City of Wichita Falls*, 121 F. Supp. 2d 530, (N.D. Tex. 2000)



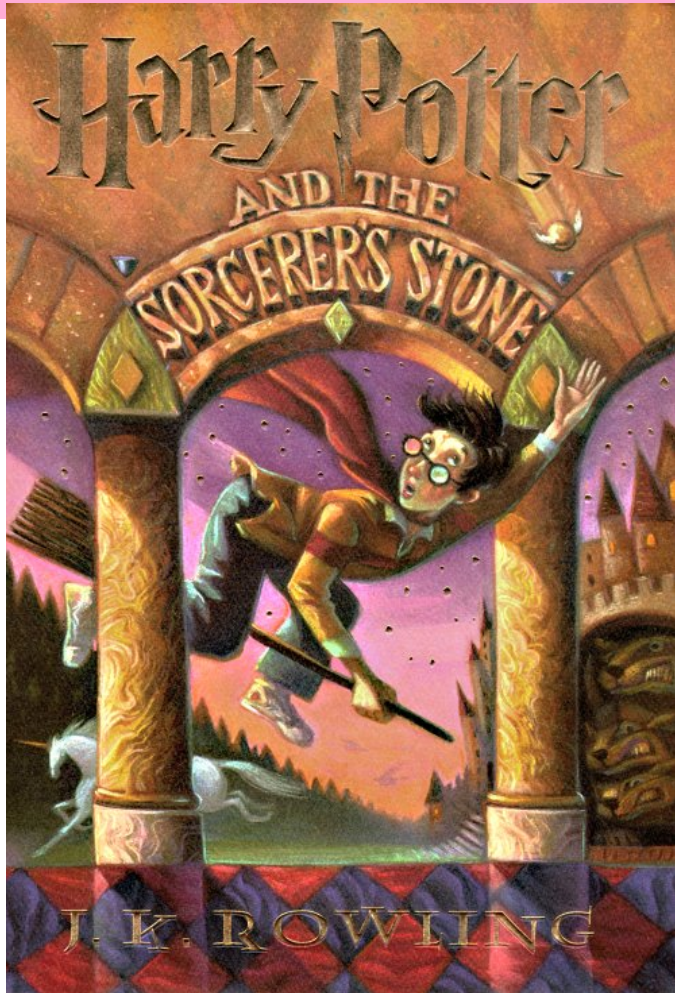
# May library require parent's permission to read Harry Potter?



School board required parent's permission to read Harry.

*Counts v. Cedarville Sch. Dist.* 295 F. Supp. 2d 996 (2003)

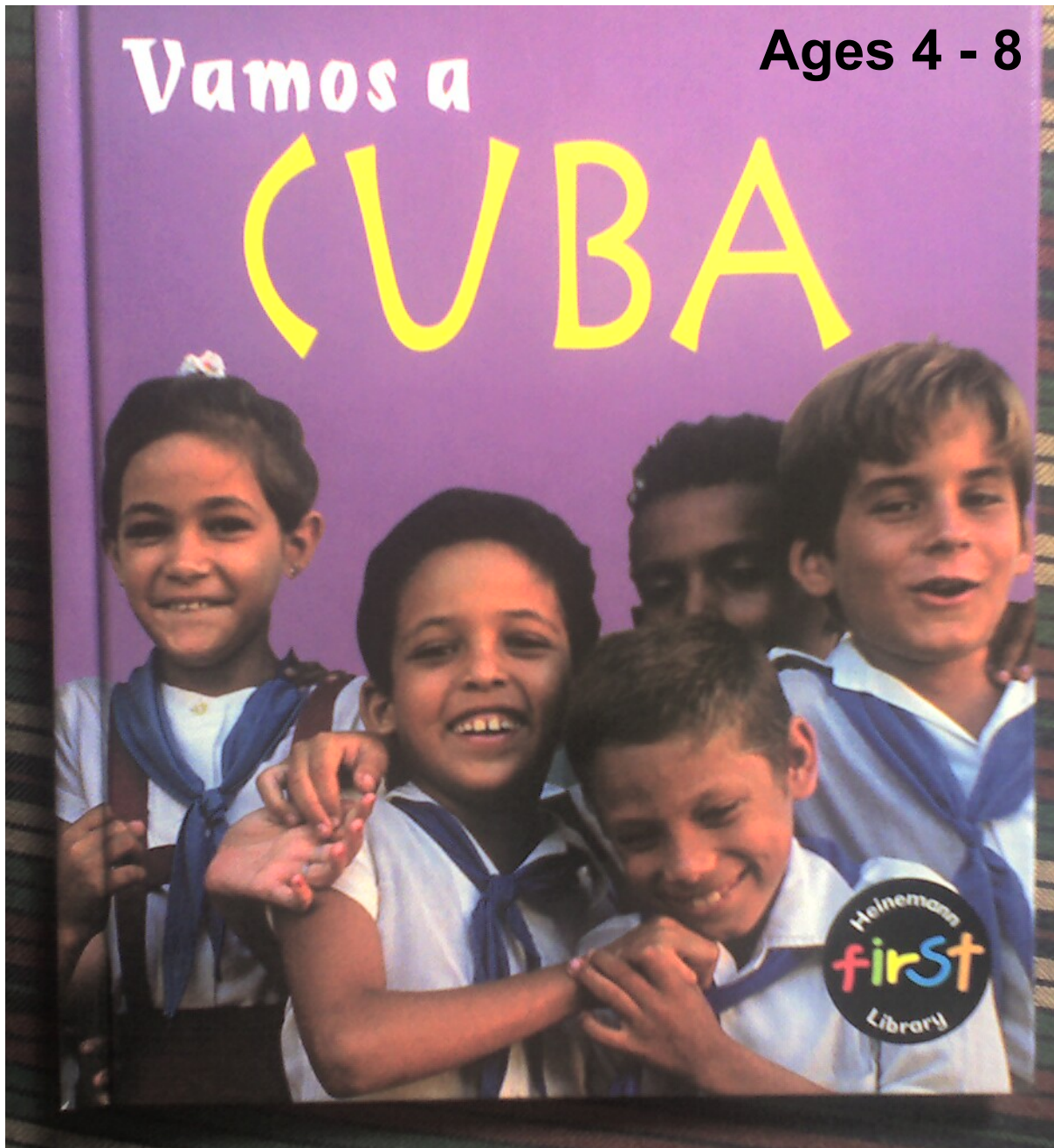
# No. Return to Open Shelves



Court: too much burden,  
stigma for children

*Counts v. Cedarville Sch. Dist. (Ark.)* 295 F. Supp. 2d 996 (2003)



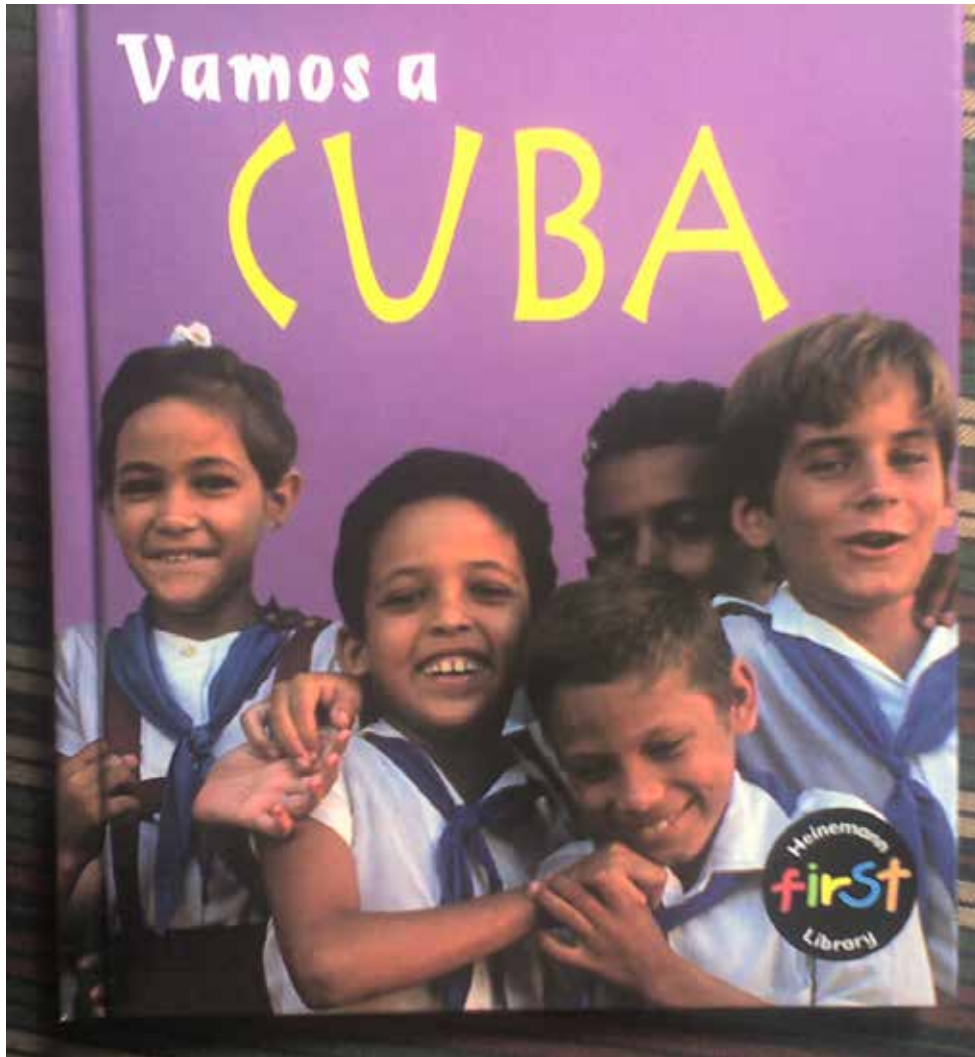


## May School Board Remove?

"The people of Cuba eat, work and study like you"

**Complaint:** Nothing could be further from the truth. People of Cuba survive without civil liberties and due process.

*ACLU v. Miami-Dade County Sch. Bd.*, 557 F.3d 1177, 1200 (11th Cir.), *cert. denied*, 130 S. Ct. 659 (2009).



**COURT: YES**

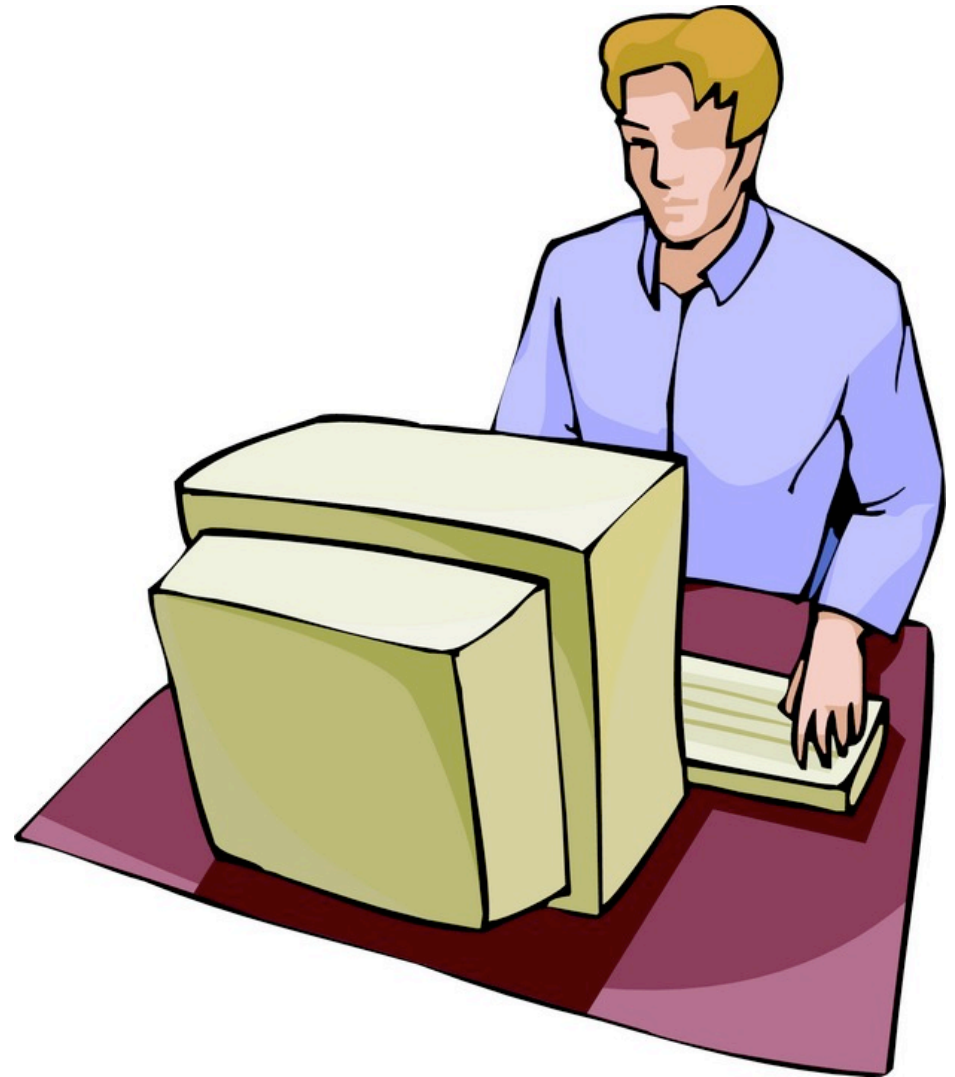
Book was inaccurate.

*ACLU v. Miami-Dade County Sch. Bd.*, 557 F.3d 1177 (11th Cir.),  
*cert. denied*, 130 S. Ct. 659 (2009).

# Internet

**Man looks at  
porn on the  
computer.**

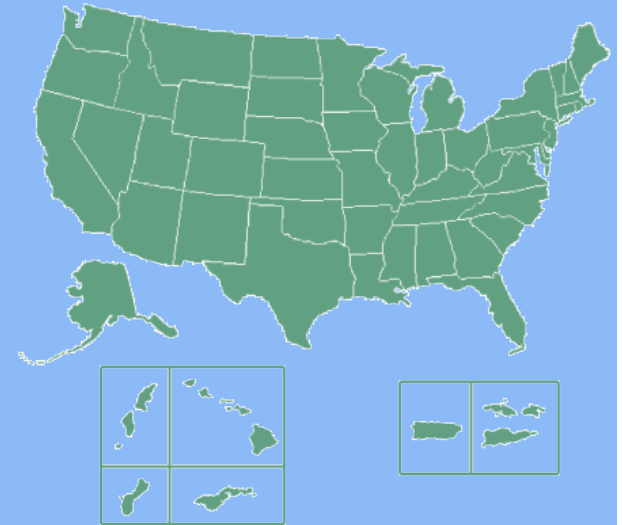
**Another patron  
complains.**





# Federal Law

## Children's Internet Protection Act (CIPA)



libraries with certain federal funds must block

**child pornography,**

**obscenity and material**

**“harmful to minors”**

# Court: Law is Constitutional

Upheld – only  
restricts

c-o-h

...and (arguably) must  
disable on request by  
adult

[http://www.firstmonday.org/  
htbin/cgiwrap/bin/ojs/index.php/fm/issue/view/170](http://www.firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/issue/view/170)

*United States v. American Library  
Association, 539 U.S. 194 (2003)*

**"Make Mine Unfiltered!"**



Adults have the legal right to ask for and receive unfiltered access to the Internet in their public library.

***Ask for yours today!***

[www.librarian.net/cipasigns.html](http://www.librarian.net/cipasigns.html)

U.S. Supreme Court  
**NOT PROTECTED** under  
**Umbrella of First Amendment**

- C
- O
- H



# Library Policies MAY PROHIBIT:

- Child Pornography
- Obscenity
- Harmful to Minors



# Child Pornography

Image of minor "sexually explicit conduct"

None at home

No research purpose

**DO NOT UNBLOCK!**



**Call Police**

[Cybertipline.com](http://Cybertipline.com) or call **1-800-843-5678**

CIPA cites 18 U.S.C. Sec. 2256;  
PROTECT ACT Signed into law April 30, 2003; See 18 U.S.C. §2256(B);



# Obscenity

- Average person applying contemporary community standards would find, taken as a whole, appeals to prurient interest
- Work depicts in patently offensive way sexual conduct defined by state law ... **and**
- Taken as a whole *lacks serious* literary, artistic, political, or scientific value.

CIPA cites 18 U.S.C. § 1460; Courts likely to apply *Miller v. California*, 413 U.S. 15, 24 (1973). See also "Judicial Erosion of Protection for Defendants in Obscenity Prosecutions?: When Courts Say, Literally, Enough is Enough and When Internet Availability Does Not Mean Acceptance." *Harvard Journal of Sports & Entertainment Law*, (Spring 2010) <http://tinyurl.com/obscenityprosecutions>

# Harmful to Minors

“harmful to minors” means any picture, image, graphic image file, or other visual depiction that—

- (A) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
- (B) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
- (C) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

# Harmful to Minors (part of CIPA) NEW to federal law

The term "image, graphic, or depiction" means any picture, photograph, drawing, or other visual representation, in any form or medium, that depicts, in a patently offensive manner, the sexual conduct of a minor, or the genital area of a minor, whether or not the minor is identifiable as such, in a way that is suitable for the sexual stimulation or arousal of minors.

(A) taken and appears to be excretory or defecatory;

(B) depicts the sexual conduct of a minor, or the genital area of a minor, in a patently offensive manner, whether or not the minor is identifiable as such, in a way that is suitable for the sexual stimulation or arousal of minors;

(C) taken and appears to be excretory or defecatory, or depicts the sexual conduct of a minor, or the genital area of a minor, in a way that is suitable for the sexual stimulation or arousal of minors.



means any picture, photograph, drawing, or other visual representation, in any form or medium, that depicts, in a patently offensive manner, the sexual conduct of a minor, or the genital area of a minor, whether or not the minor is identifiable as such, in a way that is suitable for the sexual stimulation or arousal of minors.

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Children's Internet Protection Act (Pub. L. 106-554)

# Libraries with E-Rate discounts and certain LSTA funds \*

Required to block or filter  
“visual depictions”



SEXUAL  
Not merely nudity

CIPA *images* to block

	Adults	Children
Child Pornography	X	X
Obscenity	X	X
Harmful to Minors		X

\*for Internet service or internal connections. Also applies to libraries with LSTA grants for computers and direct costs to access the Internet

CIPA cites 18 U.S.C. § 1460; Courts likely to apply *Miller v. California*, 413 U.S. 15, 24 (1973). See also "Judicial Erosion of Protection for Defendants in Obscenity Prosecutions?: When Courts Say, Literally, Enough is Enough and When Internet Availability Does Not Mean Acceptance." *Harvard Journal of Sports & Entertainment Law*, (Spring 2010) <http://tinyurl.com/obscenityprosecutions>

# Is Violence Harmful to Minors?



*Brown v Entertainment Merchants Association, (2011)*



# NO

Supreme Court ruling:  
graphic violence is not  
"harmful to minors"



*Brown v Entertainment Merchants Association, (2011)*

# Role of Parent

Perhaps library may enforce parental prohibitions ...

May not require parental consent ***prior*** to allowing access

Based on dicta in *Brown v Entertainment Merchants Association*, 131 S.Ct. 2729 (2011)



# State Laws



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Issues & Research » Telecommunications & Information Technology » **State Internet Filtering Laws**

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## Children and the Internet

### Laws Relating to Filtering, Blocking and Usage Policies in Schools and Libraries

*Last update: January 13, 2011*

[Overview](#)

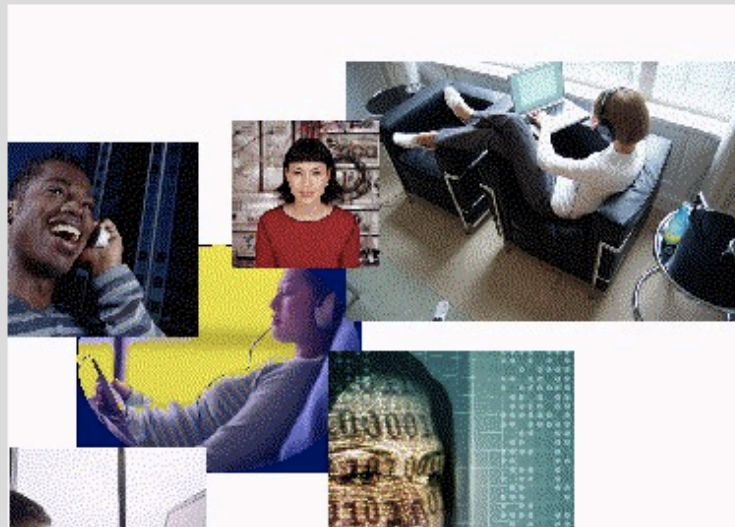
[Federal Children's Internet Protection Act \(CIPA\)](#)

[U.S. Supreme Court Ruling on CIPA](#)

[Articles about the CIPA Ruling](#)

[State Filtering/Blocking Laws](#)

[Other Related Laws](#)



<http://www.ncsl.org/default.aspx?tabid=13491>

# California Law



Requires public libraries that get state funds to adopt a policy regarding Internet access by minors.

Cal. Ed. Code § 18030.5

# California

California gives students free speech rights in public and private colleges and high schools



Calif. Ed. Code Sect. 66301 (state and community colleges)

Sect. 94367 (private universities)

Sect. 48950 (public and private high schools)



# Community College

Student sued after he was detained  
for using myspace in library

Internet Policy: “**appropriate**  
academic, professional and  
institutional purposes”

**Court:** Policy OVERBROAD

Revised Policy: “educational purposes  
by students”



# May Library Filter Hate Sites?

Not recommended.

CONSENT  
JUDGMENT:  
LIBRARY REMOVES  
HATE FILTERS



First Time  
Visitors  
Information Files  
Newspapers  
Audio Files  
Join Online



CofCC  
Merchandise

Handwritten notes: "ed", "al", "15/17"

It's February. Do you know what the public schools are teaching your children? [Black History Myths](#)

[www.cofcc.org/](http://www.cofcc.org/)

Library and University City Public Library acknowledge that  
any Internet filter that restricts access to information and viewpoints  
other than those proscribed by 18 U.S.C. § 8771(1) and 47 U.S.C. §  
254(h)(6) of the Children's Internet Protection Act and Mo. Rev. Stat. §§182.825-7 of the  
Access to Computer Pornography Act is a violation of the First and Fourteenth

*Baum v Maplewood City Library et al – Consent Judgment Feb. 5, 2007* (libraries acknowledge filters restricting hate speech or content other than that proscribed by CIPA is a violation of First and Fourteenth  
<http://tinyurl.com/hatefilters>

# Must libraries disable filters on request? |

Second Amendment Foundation suing library in rural Washington state

\*originally blocked drugs, criminal skills, extreme, gambling, hate speech ...

\*no longer blocks *but*

still won't disable on request



47 U.S.C. § 254(h)(6)(D) (E-rate: disabling permitted for adults); 20 U.S.C. § 9134(f)(3) (disabling permitted without mention of age); Anten, Todd. (Fall, 2005). Note: "Please Disable the Entire Filter": Why Non-Removable Filters on Public Library Computers Violate the First Amendment, *11 Texas Journal on Civil Liberties & Civil Rights* 65; Mary Minow. (April 5, 2004). Lawfully Surfing the Net: Disabling Public Library Internet Filters to Avoid More Lawsuits in the United States *First Monday*, [firstmonday.org/issues/issue9\\_4/minow/](http://firstmonday.org/issues/issue9_4/minow/); *Bradburn v. North Central Regional Library District* (WA Supreme Court upholds library policy of no disabling)(now pending in federal court <http://tinyurl.com/filterdisabling>)

# RULING: Washington Supreme Court

WA Supreme Court:  
Collection development.

No need to disable filters.

**Now in Federal Court**



*Bradburn v. North Central Regional Library District, No. 82200-0, slip op. (Wash. May 6, 2010)*

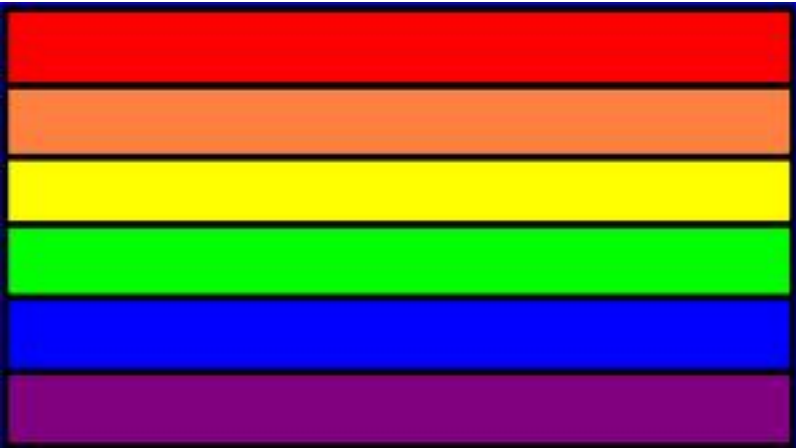
*<http://www.wasupremecourtblog.com/tags/bradburn-v-north-central-regio/>; Bradburn v. North Central Regional Library District, Federal Court docket <http://dockets.justia.com/docket/washington/waedce/2:2006cv00327/41160/>*



# School Filters - Lawsuit

PFLAG (gay and lesbian ) claims school filters pro-gay sites and does not filter anti-gay sites

Claims viewpoint discrimination

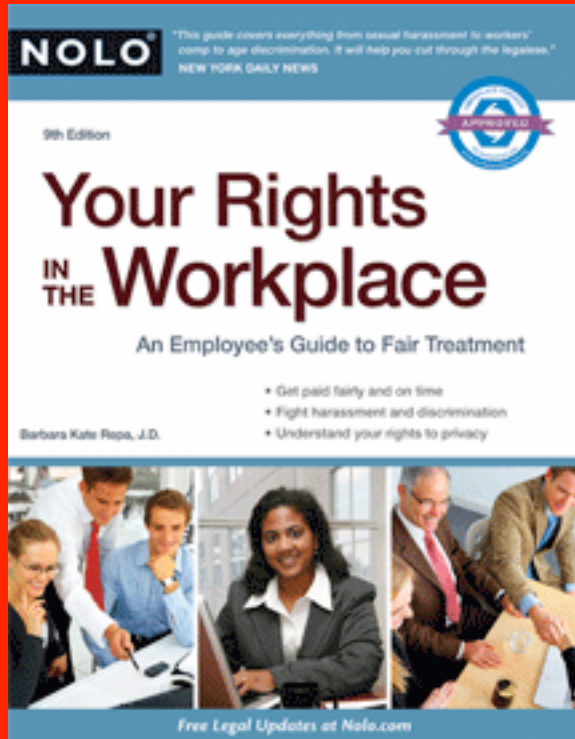


**NOW IN  
FEDERAL  
COURT**

*Parents, Families, and Friends of Lesbians and Gays v. Camdenton R-III Sch. Dist.*

<http://dockets.justia.com/admin/missouri/mowdce/2:2011cv04212/100347/>

# Hostile Work Environment?



Library employees claim hostile work environment

and aggressive sexual comments and touching

**NOW IN  
FEDERAL  
COURT**

*Wilson v. The Birmingham Public Library Foundation (pending)*  
<http://dockets.justia.com/docket/alabama/alndce/2:2010cv02386/132847>

*Jackson v Birmingham, Alabama City (pending)*  
<http://dockets.justia.com/docket/alabama/alndce/2:2011cv02632/138110//>

# Strategy

The screenshot shows the ALA store website interface. At the top left is the ALA store logo. The main navigation bar includes links for Home, About Us, Shipping and Taxes, Request Catalog, and Feedback. A search bar is located on the right. Below the navigation bar, there is a 'Browse by' sidebar with categories like New Products, Bestsellers, Award Products, Books / Professional Development, and Books for Academic Librarians. The main content area displays a book listing for 'Defending Access with Confidence: A Practical Workshop on Intellectual Freedom' by Catherine Lord, including the item number 978-0-8389-8331-7, publisher PLA, and price \$60.00.

**ALA store** [www.alastore.ala.org](http://www.alastore.ala.org) ALA PUBLISHING | AmericanLibraryAssociation

My Account  
[Sign In/Manage Account](#)  
[Wish List](#)

Shopping Cart  
0 Items In  
Total: \$0.00

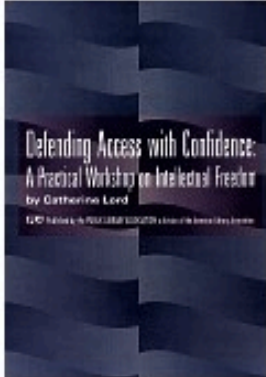
Sign Up for Store Announcements

Home About Us Shipping and Taxes Request Catalog Feedback Quick Search

Browse by

- New Products
- Bestsellers
- Award Products
- Books / Professional Development
- Books for Academic Librarians
- Books for Public Librarians
- Books for School Librarians

Home > [Books / Professional Development](#)



**Defending Access with Confidence: A Practical Workshop on Intellectual Freedom**  
Catherine Lord  
Item Number: 978-0-8389-8331-7  
Publisher: PLA  
Price: \$60.00

See *Defending Access with Confidence: A Practical Workshop on Intellectual Freedom* by Catherine Lord (ALA: 2005) <http://www.alastore.ala.org/detail.aspx?ID=286> ; next slides largely based on Lord's work, with adaptations by Mary Minow and James Robenolt

# ALA Documents

- ALA Library Bill of Rights
- Interpretations
- Freedom to Read Statement
- Freedom to View Statement
- ALA Code of Ethics
- ALA Interpretation of Privacy

# Statements of Library Purpose & Philosophy

- Library Mission Statement
- Statements of Library Principles or Values
- Vision Statement



# Collection & Access

- Materials Selection Policies
- Internet & Database Policies
- ALA Bill of Rights/Interpretations Specifically Adopted by Library
- Collection Maintenance & Weeding
- Requests for Reconsideration

# Making a Referral

## WHEN

- It is not your job, *OR*
- If you are emotionally hooked

## HOW

- Listen
- Inquire: Would patron like to discuss further?
- Escort *OR* take name and phone number and tell patron who will be contacting them

## Know Your Library's Policies, Procedures, & Forms

- Does your library have a written policy and procedure for handling complaints?
- Do you know where reconsideration forms are located? When to use?
- Do you fully understand all of the policies at your library that affect access?



## Remaining Calm...

What do *you* feel like doing when faced with a challenge?

# Fight?





# Flight?



# Professional Detachment: Alternative to Fight or Flight

- (1) Step back and breathe deeply
- (2) Remember: It's not about me
- (3) Remember: It's not about the person making a challenge
- (4) Actively listen

# Step Back and Breathe

Stepping back:

- Visualize an “out of body” experience
- Step outside of yourself

Remember to breathe

Remember:  
It's Not About Me



# Remember: It's Not About the Person Making the Challenge

- Refrain from judgment
- Appreciate that diversity of opinion is what libraries stand for—including patron opinions





# Actively Listen

## SIGNS OF ACTIVE LISTENING

- Eye contact
- Attentive posture
- Paraphrasing for clarity
- Empathy

## HOW TO ACTIVELY LISTEN

- Put your own thoughts aside
- Care about what the other has to say

# Satisfying the Unhappy Customer

- Turn “I can’t” into “I can”  
*I can’t limit your son to G-rated videos, but I can show you a great resource to help you and your son find age-appropriate videos.*
- Ask the customer what they want  
*Can you tell me what you’d like me to do?*
- Offer something  
*May I try to find a book that’s better suited to your tastes?*
- Be willing to say “I’m sorry”  
*I’m really sorry it turned out that way for you.*

# Responding to Challenges: Strategy and Practice



## Take the Weight Off Your Shoulders

- Remember the detachment mindset
- Use techniques that are available to you to turn around an unhappy customer
- And you can use a five-point strategy for resolving complaints to

*make a heavy burden...*

# LIGHT Strategy for Resolving Challenges



***Listen:*** Acknowledge patron concerns

***Inquire:*** Would patron like to discuss it? What would (s)he like done?

***Give/Offer:*** Policies, explanation, referral, “added value”

***Help*** patron by stating what library *can* offer, and if patron is interested, provide a challenge form

***Thank*** the patron for caring enough to express her or his own free speech



# Intellectual Freedom: Basic Training for New Staff and a Refresher for the Rest of Us

What is Intellectual Freedom?

Legally Speaking

- Books
- Internet (especially Child Porn)

**Thank you!**

**Questions?**

Strategies

# Credits



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# Even More Credits



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**Sunburst in Owens Valley**

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A screenshot of the ALA store website. The header includes the ALA store logo, the URL www.alastore.ala.org, and navigation links for My Account and Shop. The main content area shows the product page for 'Defending Access with Confidence: A Practical Workshop on Intellectual Freedom' by Catherine Lord. The product details include the item number 978-0-8389-8331-7, the publisher PLA, and the price \$60.00. A sidebar on the left offers various browsing options like New Products, Bestsellers, and Award Products.

Catherine Lord, *Defending Access with Confidence: A Practical Workshop on Intellectual Freedom* (ALA: 2005)

<http://www.alastore.ala.org/detail.aspx?ID=286>