



ARE WE *LUCKY* FOR THE FIRST AMENDMENT?

A Brief History of Students' Right to Read

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Winter 2007 marked an episode of high anxiety in our profession, when a children's book triggered discussion about words and their suitability for young readers. It seems that the entire world now knows that the word "scrotum" appears on the first page of the latest Newbery winner, *The Higher Power of Lucky* by Los Angeles librarian Susan Patron. That's a dog's scrotum, and, quite frankly, it's just another word in a charming and thoughtful book about an imaginative and resourceful ten-year-old girl who is searching for love and security.

School library media specialists (SLMSs) feared being confronted by accusatory parents or inflamed teachers who would not want to teach that vocabulary lesson. Acting as self-censors, some librarians openly declared they would not purchase the book (Bosman 2007; Jacobson 2007; Sorensen 2007). Other SLMSs were surprised at this response, cognizant of the basics of the First Amendment and the right to read. They knew the courts have low regard for book banning based on one word, or on book banning in general when its intent is to suppress diverse viewpoints. It is time for us all to review where we are today regarding First Amendment rights for students and how we got here. It was a long battle to gain those rights; we should not surrender them now.

First Amendment Rights

First Amendment rights ensure United States citizens have freedom of speech and of the press, among other freedoms relating to expression of beliefs and ideas. The right to receive information has been interpreted as a corollary to the First Amendment, implying the right to read and think for oneself. This is an

important right for K–12 students. To develop into informed citizens in a free society, they must be allowed to explore ideas in order to partake in "that continual and fearless sifting and winnowing by which alone the truth can be found" (Herfurth 1949). This does not mean that adults and students must have the access to same materials, or that a kindergartener should have the same access as a young adult. A balance must be struck between age and access, but on the whole, intellectual freedom is the overriding principle.

Parents As Censors

Despite the imperative for schools to teach students to seek out, critically analyze, and apply information, censors—and they can be parents, teachers, administrators, and even community members—believe they know what is best for *all* students to read and what information children *should not* receive in the name of protection. This restrictive view is often based on an unarticulated assumption between ideas and actions; if students read about drugs or sex, for example, they may be inclined to indulge.

The courts have, in the past four decades, disagreed with the view that information can be detrimental to young people. The following landmark cases demonstrate how K–12 students have increasingly been accorded their First Amendment rights.

Tinker v. Des Moines

In December 1965, a Des Moines, Iowa, eighth-grader, Mary Beth Tinker, her brother, and other students wore black armbands to school, symbolically mourning American involvement in Vietnam. For this action, they were suspended

because the armbands *could* be a "disruptive influence at the school." The Iowa Civil Liberties Union sought an injunction against this policy (Irons 1988). The Supreme Court, on February 24, 1969, ruled that:

wearing of an armband to express views is a symbolic act that is within the Free Speech Clause of the First Amendment . . . ; First Amendment rights, applied in . . . the school environment, are available to teachers and students. *It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate (Tinker v. Des Moines 1969).*

The armbands were not disruptive. The students affirmed their right to free expression within the boundaries of respect for others.

Board of Education v. Island Trees Union Free School District No. 26 v. Pico

In this case, two school board members in the Long Island's Island Trees community acquired a list of books that a more conservative New York community believed to be unsuitable for students. Comparing the list with the Island Trees media center's materials, they found nine of the offending books, removing them from the media center shelves on a November evening in 1975. Community confrontations ensued, with the school board insisting they were not censors but protectors of the children reflecting the values of the community. In 1979, a New York judge agreed that the school board had the power to make decisions about school curriculum and books, but in 1982, the Supreme Court

Related Internet Resources

First Amendment Schools, <www.firstamendmentschools.org>. Web site for the national school reform initiative, designed to help schools teach and practice the civic principles and virtues vital to democracy, freedom, and the common good.

Office for Intellectual Freedom, <www.ala.org/ala/oif>. Prodigious information and assistance at this Web site sponsored by the American Library Association.

Minors' Right to Receive Information, American Library Association, <www.ala.org/ala/oif/ifissues/issuesrelatedlinks/minorsrights.htm>. Discussion of history and issues.

Students Right to Read, National Council of Teachers of English, <www.ncte.org/about/over/positions/category/cens/107616.htm>. Guidelines on the right to read and the English teacher.

found in favor of keeping the books on the shelves (Gold 1994). It ruled that school boards had the right to remove materials they deemed “educationally unsuitable,” or “pervasively vulgar,” but that they may not restrict access to materials simply because they disagree with the ideas in them (Office for Intellectual Freedom 2006, 385).

Annie on My Mind by Nancy Garden

Annie on My Mind by Nancy Garden, a gay-themed book about two teenage girls, was removed from the shelves of the Olathe School District Kansas high school library to “avoid controversy” in 1993. A suit was filed against the school district, resulting in a 1995 United States District Court decision that a school district may not remove books from the library shelves unless they are “educationally unsuitable.” Removal of *Annie on My Mind* was called unconstitutional because it attempted to “prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” This amounted to an act of “viewpoint discrimination” (“Censorship Is Not Alive and Well” 1995, 1; Meyer 1996, 23).

The Internet and the Children's Internet Protection Act (CIPA)

With the arrival of the Internet age, attempts to restrict minors' access to information heightened. The Communications Decency Act (CDA) was enacted in 1996 to keep “indecent” material away from anyone under the age of eighteen. “Indecent” was not defined in the law, making it difficult to determine what material should be restricted.

In *ACLU v. Reno*, the court ruled that restricting access to “indecent” materials was unconstitutional because “indecent” is vague and overly broad. It also was argued that the Internet—unlike a highly regulated broadcast medium—was similar to print, in that users have to take specific action to seek out material, rather than passively hearing something broadcast over radio or television. On June 26, 1997, the United States Supreme Court ruled CDA unconstitutional

by a vote of 9 to 0 (Office for Intellectual Freedom 2006).

Following CDA's death came the *Children's Internet Protection Act* (CIPA), decreeing that public and school libraries wishing to take advantage of the federal Internet discount rate must have an Internet safety policy and filtering technology in place. Schools subject to CIPA also were required to monitor online activities of minors (Federal Communications Commission 2006). The argument against CIPA was that filters were imperfect tools that also blocked constitutionally protected material. Nevertheless, upon challenge in the *United States v. American Library Association*, 2003, CIPA was judged constitutional for public libraries because a filter can be disabled, thus restoring access to information.

In school media centers, education should be part of monitoring online activities of minors. *Information Power's* information literacy guidelines can help SLMSs counter the negative effects of filtering, equipping the students to use the Internet responsibly while retaining their right to read and explore ideas.

Conclusion

Are students “lucky” to have First Amendment rights? Really, luck has nothing to do with it. Minors' First Amendment rights are defended daily by courageous, unnamed SLMSs who believe young minds cannot be irreversibly harmed by words or ideas. Across the country they have affirmed through their purchases that *The Higher Power of Lucky* is a charming and gentle story that is not “pervasively vulgar.”

Here, in part, is the reaction from one Minnesota SLMS:

Come on folks . . . I am not worried about this word . . . I am worried about my student who attempted suicide twice . . . I am worried about my principals giving up because they are being worn down by parents who are demanding perfect people handle their children and there are none to be found . . . I am worried about the kids whose mom has three part-time jobs and no insurance . . . I am worried about my Goth student that thinks nobody cares about him as a human being . . . I'm

sorry, this is a word that just doesn't worry me . . . I want my students to live to the next day . . . that worries me (Ross 2007).

If SLMSs are to teach K–12 students to be independent, critical thinkers, participating fully in a free society, they must guard against censorship by others and—equally important—by themselves. Let us focus our energy where it really counts—bringing students and good literature together. It will take more than “luck,” but we may save some of them by being true to our profession’s values, defending

their right to read, and providing them with a wide range of quality materials.



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