



We've Come a Long Way (Baby)! Or Have We?

Evolving Intellectual Freedom Issues in
the United States and Florida

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This paper analyzes a shifting landscape of intellectual freedom (IF) in and outside Florida for children, adolescents, teens, and adults. National ideals stand in tension with local and state developments as new threats are visible in historical, legal, and technological context. Examples include doctrinal shifts, legislative bills, electronic surveillance, and recent attempts to censor books, classroom texts, and reading lists.

Privacy rights for minors in Florida are increasingly unstable. New assertions of parental rights are part of a larger conservative animus. Proponents of IF can identify a lessening of ideals and standards that began after doctrinal fruition in the 1960s and 70s, and respond to related occurrences to help mitigate the impact of increasingly reactionary social and political currents. At the same time, progressive librarians can resist erosion of professional independence that comes when censorship pressures undermine core values.

Historical Context

Intellectual freedom (IF) is one of eleven core values of librarianship. Along with access and confidentiality/privacy, IF is deeply rooted in professional ethics. Together, each supports the freedom of individuals to access all points of

view without restriction or undue surveillance.¹ All three core values evolved out of a period stretching from the 1930s into the 1970s. Yet the historical roots penetrate deeper into the past—to another fifty-plus years stretching back to the founding of the American Library Association



(ALA) in 1876 and which includes the Progressive Era (1890–1920s).

The Progressive Era was a watershed period of American liberalism. It created early and systematic environmental preservation and conservation, women's suffrage and birth control movements, and protections for working classes and children experiencing the ravages of corporatization and industrialization. The period also created a basis for future expanse of government regulation and protection that allowed a nascent middle class to prosper and expand throughout the century, absorbing masses of immigrants into an American way of life.

At times however, a strong reactionary conservatism pervaded the milieu. Aspiring and affluent classes acted to oppose or control immigrant groups. Responses included fixations on ethnic and racial differences. Immigrants in northern cities were linked to perceived threats in proliferating saloons, urban political machines, and socialist ideology. Southern states constructed a system of legal apartheid. Prohibition grew out of a tension between Irish and Italian cultures and established Protestant ideas of morality. Religious reactionaries galvanized against scientific evolution, while racists became more organized. Ku Klux Klan membership grew with an expanded hostility against Jews and Catholics in addition to African Americans, to an all-time high of up to 5 million white Protestants.²

Progressive Era librarianship was in many ways the antithesis of IF, and was defined largely in terms of service as social censor, with emphasis on repressing controversial literature and serving to uphold morality.³ Militarism and a rise in nationalism contributed to deeper forms of censorship. When the United States entered into World War I in 1917, the librarian as censor collaborated with the U.S. government to repress what soldiers could read, moving beyond morality and into the realm of politics and viewpoint. Library-related censorship continued to manifest itself as a force seeking to shape and restrict collections and access.

The Progressive Era also brought a focus on children that was formative and longstanding, and it had a secondary impact on librarianship. Government protection of minors was a response to a rapid doubling of child industrial labor from 1890 to 1910 and paralleled growth of mandatory public schools as populations surged. Increasingly literate children accessed mass-produced books while there was a post-1900 expansion of access to new public libraries. School library collections began to form, and integrative roles between public libraries and schools were established in professional philosophy and praxis.

In Florida, Tampa received the state's first gift from Andrew Carnegie in 1901, as the industrialist-turned-philanthropist ramped up capitalization of new libraries through multiple organizations. This occurred well in advance of the 1911 formation of his main funding apparatus, the Carnegie Corporation of New York. Over a period of sixteen years, thirteen other libraries were built in Florida with the help of Carnegie funds, including nine public and four academic libraries.⁴ Although the trend reflected a real growth of access and expanding intellectual choice for the literate, ALA President Arthur Bostwick also reflected that era's chauvinism. In 1908, he celebrated librarians as having greatness "thrust upon them" with what he saw as a growing social need for "censorship" aligned with the "library's . . . educational functions . . . bear[ing] on more and more of the young and immature."⁵ In tune with ALA leadership, attendees of the 1908 Teacher's Association meeting in St. Petersburg, where the Florida Library Association (FLA) held its annual business meeting, heard how teachers and librarians must be careful—and not purchase books beyond an assumed level of comprehension. Furthermore, "simplicity, adaptability and rationality should ever be kept in mind, avoiding too much fiction."⁶ This reflected a larger fiction debate—whether it was appropriate to include or increase its prevalence in public libraries and the extent it should serve as an education tool. The debate would continue for decades not subsiding until after World War II. But levels of comprehension in reader's advisories and other contexts would become an issue of potential bias and obstacle to access in the second half of the century.

Yet IF ideals would not reach maturity until well after the onset of the Great Depression. Both the Library Bill of Rights (LBR) and Freedom to Read (FTR) ideals—from which IF ideals flow—arose out of a progressive response to economic collapse and world war against fascism and imperialism in the 30s and 40s, McCarthyism of the 50s, and repressions leading up to civil rights movement achievements of the 1960s. Building on Progressive Era success, there was a second women's rights movement leading to congressional passage of the Equal Rights Amendment (1972) and acceptance by thirty-five states.⁷ Ageism also was addressed in the Age Discrimination in Employment Act (1967). In this period, American librarianship arrived at a most striking advance regarding intellectual freedom for minors when the ideal of unfettered access to library collections for children arose in the 1960s.

In 1961, the LBR was amended so library access should never be abridged because of "race, religion, national origin or political views." By 1967, children received their



rights as “age” was added, along with “social views.”⁸ Protection of divergent social views covered new areas of collection access, including civil rights, black nationalism, feminism, ecology, and myriad other sociopolitical subjects. The combined privileges inherent in core professional values allowed children new access and awareness about trends within the world they were growing up within.

It would take longer for the FLA to fully express national achievements through its first Intellectual Freedom Manual (IFM), ratified in 1990. Yet today’s version fully aligns with the highest ideals of the ALA LBR and directly references Article V of the LBR: “library [use] should not be denied or abridged because of . . . age, [or] background.” In addition, within the FLA IFM, there is full recognition of the broadest ALA interpretation: “every restriction on access . . . based solely on the chronological age, educational level, and literacy skills, or legal emancipation of users violates Article V.”⁹

In tandem with a most popular advertising jingle born of the 60s and 70s, one could say, “We’ve come a long way (baby!).”¹⁰ But just as there was convolution in women being marketed their own cigarette—by recognizing a pinnacle of their social and sexual liberation, alongside evidence of health problems caused by tobacco companies in a decade defined by sexist advertising—the principles of access and intellectual freedom for minors is not completely solid and without controversy.

Consensus and Change

During the formative stages of library beliefs, subtle and not-so-subtle ambiguities exist in seminal documents. Carefully crafted wording, sometimes purposefully vague, reflects pragmatism and consensus-building. With this comes the possibility for later stages of amendment. Yet it also reflects unresolved tensions.¹¹

Shifting attitudes can be found in the LBR adopted in 1939. It took years of revision and consensus building—in 1944, 1948, 1961, 1967, and 1980—to arrive at the current version. Freedom to Read (FTR) was revised four times in the decades following its initial creation in 1953. FLA’s IF manual of 1990 experienced revisions in 1993, 2009, and 2014.

After “age” was added to Article V of the LBR in the late 60s, subsequent related ALA interpretations arose. “Free Access to Libraries for Minors” (FALM)—adopted in 1972—was amended in 1981, 1991, and in 2008. FALM, especially its early wording in 1972, was in many ways the high point as a most explicit right of children to think and explore for themselves in libraries as part of the

process of maturation and becoming effective individuals. The document stood against all current restrictions in libraries because of age and local assumptions that librarians must act to restrict minor’s rights “to avoid controversy with parents.”¹²

Free access dovetailed with the Benjamin Spock-influenced Baby Boomer generation, which largely recognized the need to foster individualism in children. At the 1972 ALA Midwinter Meeting, IF committee discussion aligned with this awareness, articulating that children matured at significantly different rates and were exposed to “adult life” at increasingly earlier ages. FALM also stated that librarians needed to adjust to the times and included admonitions against known examples of bias in library policy that hindered access for children. Moreover, it directly provided guidance to librarians who would restrict access because of what they thought parents would object to, making it clear we were not to act in *loco parentis*.¹³ This included both public and school librarians, with the later especially bolstered in that even though school librarians must act in *loco parentis* regarding safety and health of students, a provision of censorship did not necessarily have to be part of public school doctrine and contracts.

The 1970s also brought a high point in terms of legal successes in the United States that supported First Amendment rights for minors, but with limitations. In 1973, Chief Justice Berger came close to achieving a majority opinion that would have rescinded *Roth v. United States* and all obscenity laws. In other words, anything “patently offensive” or “utterly without redeeming social value” would have been protected under the First Amendment for adults with continued restriction for minors. Instead, in *Miller v. California*, a more refined definition of obscenity was created that built on *Roth*. The resulting “Three-prong standard,” or Miller test as it is known now, meant that a work in question must be patently offensive as defined by state law, appeal to a prurient interest defined by contemporary community standards reflecting beliefs of the average person, and lack “serious, artistic, political or scientific value” to be legally obscene and prohibited by local courts.¹⁴

Florida became a center of jurisprudence pertaining to minors in 1975 in the U.S. Supreme Court with *Erznoznik v. City of Jacksonville*. Justice Powell, speaking for the majority, stated that if speech was not obscene or subject to any other “legitimate proscription,” a local legislature cannot suppress “ideas or images” that it thinks are unsuitable for youth. Still, there was an unresolved tension where First Amendment rights might begin or end for minors, and the exact limit or extent of local control that might



define a “legitimate proscription.” Other successes outside Florida included a 1978 federal case in Massachusetts overturning a school board attempt to remove an anthology of poetry by adolescents in a high school library and a legal decision in New Hampshire that forced a high school library to return *Ms. Magazine* after its removal because of parental opposition to topics of sexuality, contraception, masturbation, lesbianism, and left-wing musicians.¹⁵

Roughly three decades would pass after FALM’s adoption in the 70s before select ALA amendments included wording that largely expanded and made parental rights more evident and illuminated a retrenchment concerning children’s rights. This resulted in part from a 1999 document: *Libraries: An American Value* (LAV). LAV was the ALA’s first “contract with the public.” Although it generalized support for the “constitutional rights for children and teenagers,” LAV codified and made more visible “the right of parents and guardians to guide their own children’s use of the library.” Most notably, it guaranteed the ability of individuals to express “opinions about library resources and services.”¹⁶

By 2004, the original succinct 1972 FALM paragraph on parental ability to restrict *only* what their own children might access became infused with more expansive and complex wording reflecting broader LAV ideas and an assuaged tone from that of the more progressive and simply assertive tone from the 60s and 70s.

1972:

The American Library Association holds that it is the parent—and only the parent—who may restrict his children and only his children—from access to library materials and services. The parent who would rather his child did not have access to certain materials should so advise the child.

2004:

The mission, goals, and objectives of libraries cannot authorize librarians or library governing bodies to assume, abrogate, or overrule the rights and responsibilities of parents. As “*Libraries: An American Value*” states, “We affirm the responsibility and the right of all parents and guardians to guide their own children’s use of the library and its resources and services.” Librarians and governing bodies should maintain that parents—and only parents—have the right and the responsibility to restrict the access of their children—and only their children—to library resources. Parents who do not want their children to have access to certain library services, materials, or facilities should so advise their children. Librarians and library governing bodies cannot assume the role of

parents or the functions of parental authority in the private relationship between parent and child.

Through amendments up to 2004, the FALM paragraph above more than doubled from its original 1972 size and clearly raised parental rights to the LAV level. The LAV was referenced directly, and FALM now recognized parents in the plural instead of the original singular, as if portending a growing collective effort to protest library material.¹⁷ Clearly, expressions of “rights” and professional responsibilities had, in some ways, been downplayed by the library profession. As Eliza Dresang wrote, more nebulous “values” were elevated in a seeming attempt to more generally engage a larger public—including “less compatible groups.” The engagement would contrast with the earlier alliance with booksellers, publishers, children’s book organizations, teacher’s and anticensorship organizations.¹⁸

Confidentiality and privacy rights for all “individuals” also is briefly professed in LAV, but the definition of an individual in the public contract is ambiguous. Left unsaid in LAV and later iterations of FALM was how the public, at state or local level, may or may not differentiate between teenagers, adolescents or children and their rights. Furthermore, there was and still is no reference to the majority of state laws protecting circulation records of minors, even from parents.

The LAV clearly reflects an ALA adjustment to an era defined by various legal outcomes against intellectual freedom, beginning with the Communications Decency Act (CDA, 1996). Known by some legislators as the “Great Internet Sex Panic of 1995,” the CDA arose with the popularization of internet use and undermined First Amendment rights for adults—if children might be exposed online, even if inadvertently, to adult communications. This effort to protect children was so broad and injurious the Supreme Court ruled the CDA unconstitutional in June of 1997.¹⁹

Another pro-IF Supreme Court decision followed in *Reno v. American Civil Liberties Union* (1997), which temporarily reassured that the internet had the highest First Amendment protections. Congress responded by passing CIPA—today’s Children’s Internet Protection Act (2000)—forcing all libraries that receive E-Rate funding or LSTA dollars for internet access to install and manage filters on computers, both public and staff.

After a third Supreme Court ruling, this time upholding CIPA (*United States v. American Library Association*) in June of 2003, the shift to internet filtering increased. In 2001 only thirty-six public libraries in Florida filtered access on all computers, nine on children’s computers, and



thirty-eight libraries did not filter access. By 2007, only twenty-four libraries were not filtering (17 percent of reporting libraries). In 2014, nonfiltering libraries dropped to the all-time low in Florida of just under 13 percent. Also, as of 2015, even all nonfiltering libraries, with the exception of one library in Florida, have internet policies and prohibitions on the display of obscene images or images offensive to others—also related to a requirement of CIPA.²⁰

In 2014, FALM was renamed. “Free” was dropped from the title, with all that the two words “Free Access” imply together, and today’s title is “Access to Library Resources and Services for Minors” (ALRSM).²¹ That same year, a new ALA document “Minors and Internet Activity” (MIA) reflected the impact of CIPA and called for increasing instruction of children to safely navigate the internet through knowledge and skills to shape safe behavior for “responsible use of internet-based communications.” Although FALM, in name, was officially changed after over forty years, the ALA through the MIA still called on libraries and librarians to be First Amendment advocates and to “offer unrestricted access to Internet activity in accordance with local, state and federal laws and to advocate for greater access where it is abridged.”

Local Diversity

Looking closer at Florida library policies at the local level, there is great diversity touching on questions of IF, access, and confidentiality/privacy for children and families. Examples of varying policies include the Florida Division of Libraries in Tallahassee, which has an open access library with no internet filters installed on computers. There are, however, warnings in the policy that the internet is not to be used for recreational purposes, that no pornographic material may be accessed, and that no patron shall access obscene material.²² Although it does not filter, this state library policy parallels CIPA’s definition of obscene material substantiated in the *Roth* and *Miller* Supreme Court cases.

Northwest Regional Library System’s policies are particularly noteworthy as they state that the library system does not use filters on their computers at all.²³ Hence, it would appear they also exist outside the impact of CIPA’s requirement that, for libraries to receive federal funds supporting internet access, filtering software must be provided on all public and staff computers to assure that a minor’s access to images that are obscene, child pornography, or harmful to minors, as defined by law, are blocked, along with blocking adult access to obscene images.

In contrast, the Jacksonville Public Library uses filters, but states that the library does not necessarily advocate any

content and affirms the responsibility of guardian to monitor access of a minor. In the West Florida Public Library System, computer access to minors under thirteen is fully denied without parents present, and parents must approve any child’s use up until seventeen.²⁴ This, in part, is in keeping with CIPA and its designation of an adult patron as seventeen or older. However, the policy regarding those under thirteen appears to be local interpretation.

The ability to create library accounts for minors also varies from region to region within Florida. The Collier County Public Library system allows a patron from birth to be able to have a Library account though a guardian must be present to sign for the application. A patron within that system under the age of sixteen is regarded as a minor overall, which is in contrast to CIPA, which states that a child under the age of seventeen is in fact a minor. In comparison, Seminole County’s rules classify a minor as birth to seventeen years of age in full alignment with CIPA.

In Orange County, in contrast to CIPA and state law, online applications are available for patrons who are eighteen and older. Leon County also states in their policy that anyone under the age of eighteen qualifies as a minor, as does the policy of Brevard County. The apparently large exception to this overall rule is the City of Lakeland, which participates in the Polk County Library Cooperative. Lakeland allows any teen with a driver’s license *or* ID to be able to gain a library account without guardian consent. This means that a patron of thirteen with a government ID would be capable of gaining access to library materials unfettered by supervision—a full five-year difference from aforementioned policies of Leon and Brevard.²⁵

Since the passing of Senate Bill No. 770 in 1978, Florida has assured all individuals, including children, will have confidentiality and privacy in public library records. Scores of Florida library and library system websites give mention of their adherence to FS 257.261, and many directly mention the clause pertaining to the privacy of minors. Yet there also appear to be deviations in the application of state law pertaining to protection of minors.

From 1978, there were no exemptions to allow for parents to ask for their child’s circulation records until 2003, when amendments to FS 257.261 occurred. The amendment was specifically designed to assist libraries by making it easier to collect library system totals for fines and lost books. Parents were then allowed to get a list of material their children under sixteen had checked out, but only if money was owed to the library for those books. At the same time, the legislature clearly reaffirmed that the



change to the law was in no way be construed to support parental surveillance of what their children were reading.²⁶ Moreover, for minors sixteen or older, parents had no right whatsoever to surveil by requesting circulation records, even if there was financial liability. And if under sixteen, only the names of parents could be revealed to collection agencies—further protecting confidential records of children, but this time from the collection agency database. Nevertheless, Florida legislative staff analysis recognized that, according to the Department of State (under which the State Library exists), FS 257.261 “is interpreted differently among local communities” in that “some libraries allow parental access to their children’s records and some prohibit this access.²⁷ The varied local interpretation seems to have thrived without incident, even though unlawful provision could result in a misdemeanor charge.²⁸

Recent Occurrences

The FLA IFC has taken action against infringements on the rights of minors in Florida libraries in various ways, most notably within middle and high school libraries and related to parental calls to censor books. In addition, members have observed, analyzed, or played a part in other occurrences statewide, both political and technological. To address new privacy and IF threats, specific examples demonstrate how the FLA IFC should work closely with the FLA Legislative Committee to monitor state direction.

One of the more regular attempts at censorship and FLA IFC response arose in February of 2016, when the FLA president drafted a letter opposing the banning of *This One Summer*—an adolescent coming-of-age story by Mariko and Jillian Tamaki—from three Seminole County High Schools after it was found by a third-grader in an elementary school. Next, in May of 2016, the IFC composed a letter responding to the challenge of Stephen Chbosky’s *The Perks of Being a Wallflower* within Pasco County schools. In both cases, the books were retained at the high school level; and in the case of *Perks*, the book was banned from one middle-school library but retained in the others.

A more noteworthy challenge occurred in May of 2015. *Beautiful Bastard* (BB), by Christina Lauren, suddenly appeared in the evolving online list after an influx of votes from teen users. It caught the eye of a political activist and web coordinated group Parents ROCK, and one particular parent who, self-described, works to review public school history textbooks for examples of “brain-washing and indoctrination of . . . children,” and creates YouTube videos questioning historical examples of climate change and its impact on societies.

Collier County quickly removed a reading list because of an age inappropriate title (BB was cataloged as adult erotica in the Collier County Public Library). The list was replaced with a link to reading lists on the State of Florida library website. But the event appears to have led to closer scrutiny of the local school library collection. Four other titles were then identified and challenged by the parental organization, including award winning books designed for the school age group.²⁹ The group also challenged reading lists that included Toni Morrison, and notable authors like Kate Chopin and Anthony Burgess.³⁰

The inclusion of BB on a reading list reflected over two million plus online book sales for the title, and considerable social and pop-cultural power. The event also is indicative of an age-spanning online democracy challenging professional assessment of age-appropriate material and educational value. Although the end result was a successful defense of four titles—after the IFC and FLA Board submitted a letter of support for the books—a crowdsourced reading list was censored according to select community standards.

In November of 2015 the IFC discussed that the Collier County School System had developed a new web portal allowing parents to view online any materials checked out by the minors in their charge. If this occurred in a public library instead of a school library—it would be in contradiction to state law allowing parents to only have access to their minors records when parents or guardians are faced with fines or paying for lost material checked out by children 15 and under; and it would violate that portion of state law that completely protects the privacy of minors from 16 to 18. Instead, the action by the school system allows guardians to see materials for any reason attached to the minor’s account and furthermore allows such activity to be done up to adulthood. Although it is unknown if the system has been or will be used to track what students read by adults other than their parents, the capacity is there, legally and technologically.

A response from the FLA IFC was discussed but halted. Later, research revealed the Family Educational Rights and Privacy Act (FERPA) can be interpreted as providing parental access to school library records if they are deemed educational records.³¹ Although it possibly supports parental surveillance of school library reading material, it could protect student circulation records from other prying eyes. For example, unless there is clear “educational interest” at stake, administrators, teachers and staff should not access a student’s circulation records without parental consent or a court order. Hence, it would behoove a school district to clearly define such with local standards, and for the FLA



IFC to amend its IFM with new policy recommendations encouraging school libraries to work toward policy manuals including the federal intent.

ALA OIF staff also expressed concern with the Collier portal. In its *Choose Privacy Week* blog, Helen Adams and Michael Robinson of the ALA IFC Privacy Subcommittee, recognized the “delicate balancing act between the rights of minors and the rights of parents.” They further stated how the Collier portal is a “bad practice that the library profession must strongly advocate against before it becomes a precedent.”³² The potential of precedent gaining traction is reinforced in a 2010 *Florida Libraries* article by Barbara Morse that identified the growing power of internet based groups to foster bulk challenges, which increasingly network with larger audiences and make it harder to broker solutions.³³

Five years after Morse’s observation, a larger web-based Southwest Florida Citizens’ Alliance (now Florida Citizens’ Alliance—covering Collier, Lee, Charlotte, Brevard, Marion, Lake, Okaloosa, and Volusia Counties)—has citizen “watchdog teams” pitted against public school and local government control of learning resources, and the larger state reading list. Core values of the FCA include resisting “an overbearing government safety net,” living the “ideals of liberty . . . characterized by morality and righteousness,” and “affirming private property rights.”³⁴ The organization has actively lobbied legislators, in particular for a Senate Bill (SB) 1018, sponsored by Alan Hays (R-District 11).

In February of 2016 the FLA IFC referenced SB 1018 and its equivalent House Bill 899. On initial review, it appeared that the two bills fell outside the scope of the IFC as a result that library books were thought not to be included in the definition of educational material. A close reading of the bills revealed potential impact on intellectual freedom in general, within and without school classrooms and related to text book choice.

The bills stated in particular that “parents and taxpayers shall have full access to all school library media services.”³⁵ Notwithstanding the logistical and security issues for school libraries, the intent of the wording appears to align fully with the desires of the activist parent. The result would have been an increase in access for reviewing and challenging the content of text books, and, in this apparent case, material in school libraries—for items they would censor.

The bills sought to remove, at the budgetary level, any obligation for a school library to purchase “instructional materials, including library and reference books and nonprint materials” included on the state-adopted list.³⁶

Section 1006.40, for example provided wording supporting allocation of up to 100 percent of funds to purchase material not on the state approved list. This would have opened the door to allow a singular focus on creationist material, if a school board was so inclined. The impact also would have allowed for local battles for control and hence censorship of material teaching students about evolution and climate change, in part by inserting wording that allowed for local standards that are “equivalent to or better than state standards,” and by restricting materials to those that are “noninflammatory, objective and balanced viewpoint on issues.”³⁷

Perhaps as disconcerting, the bill, if passed into law would have allowed not just parents to object to material, but all taxpayers; and would have established processes by which organizations could sue and be reimbursed for legal and court costs for challenging text books and school board decisions. The parallels in the broad effects of *Citizen’s United v. FEC* (2010)—and its application of the construct of “corporate personhood” that undermined campaign finance reform—should also be considered; and possibly juxtaposed with *United States v. Sorapas and Crest Beverage Company* (1975), where corporate attorneys used the word “taxpayer” to claim Fifth Amendment rights regarding self-incrimination.³⁸ Either way, the recent Florida bills portend reactionary forces using the courts to shore up mechanisms that challenge and undermine the longstanding Constitutional concept and rights of individuals.

Privacy Law and Minors

Like that of adults, a Florida child’s right to privacy emerges in part from the Fourth Amendment of the U.S. Constitution. Restrictions on unreasonable searches and seizures apply to circulation records and related personally identifiable information (PII). Every state (except Hawaii) also has statutes that protect library records from prying eyes. For the most part, these rights extend fully to minors, with only fifteen states allowing parental access to otherwise protected children’s circulation records.

Along with Wisconsin, Florida has the most protection for children from parental surveillance within those fifteen states, and only allows parental access to a minor’s public library records when there is the financial impact through overdue or lost books—and only for material checked out by children fifteen years old or younger. If sixteen or older, parents have no legal right to surveil circulation records of their children. Hence, if an IF grade was given to both Florida and Wisconsin for public library records, they would get a “B.”



Where Florida is deficient is in lack of law supporting the privacy of minors in school libraries. Maine, Connecticut, and Massachusetts also have no privacy protections regarding school library circulation records. In these four states there is no state law impeding teachers, counselors, administrators, and other school officials from surveilling school library records by physical or digital access. In contrast, forty-six states and the District of Columbia provide no exceptions in their privacy statutes to allow school teachers and officials such access—and it is hence illegal to do so.

Florida's privacy law was first crafted in 1978, in close proximity to the revelations of the 1976 government report, "Intelligence Activities and the Rights of Americans, Book II." The Congressional analysis, also called the Church Committee report, detailed FBI focus on civilians and families for political reasons. Privately owned bookstores thought to contain "subversive or seditious publications" were surveilled, and there was significant attention to "Afro-American type bookstores" and civil rights groups. Alongside traditional surveillance of the KKK, there was rapid escalation of government surveillance of progressive groups, including antiwar and women's rights groups, and the ACLU.

It would be in keeping with the Church Committee's recognition of an abuse of power that Florida and many other states sought ways to protect residents using libraries.³⁹ In the following decade, the 1978 Florida statute protecting adults and minors equally stayed in force, and likely was bolstered after revelations from the 1987 *New York Times* story of the Library Awareness Program, otherwise named DECAL (Development of Counterintelligence Among Librarians), which was used by the FBI to discern the reading habits of library users.⁴⁰

Another portent of a possible new legislative direction regarding privacy for minors in Florida was received in December, 2015, when the IFC received related statutory information vis-à-vis memo from the chair of the FLA Legislative Committee (LC) to the FLA Board. In it, the LC iterated what it believed was common practice in public libraries of telling patrons what they have checked out regardless of whether for the purpose of collecting fines or recovering overdue materials, and this was not legal under FS 257.261. The LC recommended that the issue be fully discussed with the library community "prior to . . . a [needed] change in the law." The LC also addressed the need to amend state statute to limit private companies working with libraries by anonymizing and encrypting personal identifiable information (PII) of patrons.⁴¹

The memo included mention of the September 2015 LC meeting, whereby committee members discussed an appropriate age after which parents "would not have the ability to access their children's records." Suggestions ran the gamut from thirteen to eighteen. Although clearly not statistical sampling, the diversity of opinion reflects what could be the larger difficulty of amending the law—without the possibility of decreasing the current intellectual freedom-privacy status of minors in Florida—as the bill runs the gauntlet in Tallahassee.

It followed that an FLA virtual web presentation for library directors and over 80 online attendees was held on June 17, 2016. ALA IFC Deputy Director and attorney Deborah Caldwell-Stone presented on a number of issues, including a "mature minor" concept of privacy and confidentiality, possibly beginning at age twelve or thirteen—after which children would receive full privacy and confidentiality rights based on evolving jurisprudence. She also mentioned an oddity of K-12 school student library records being excluded from Florida privacy/confidentiality law, and that FLA might want to try to extend protection to this category of minors.

Caldwell-Stone also referenced existing Florida privacy law pertaining to minors, holding it up as an example of a successful balance—where all children have a key to their own privacy. In other words, minors under sixteen can maintain their public library privacy in Florida as long as they are responsible and return their books on time and do not lose library material. She also stated that bringing mature minor constructs to Florida and fixing it at thirteen "was not ideal," largely because setting it could mean that parents of children twelve and under would then have unfettered ability to surveil their children in concert with participating libraries, legally and without restriction.⁴²

The mature minor concept grows out of the recognition that minors clearly have First Amendment rights, but that these rights grow and expand as they age. Catherine Ross, a legal scholar at George Washington University, states that "an emerging right for mature minors to receive information" can include both public schools and libraries, when she identified a government option and shift of common presumptions that would allow minors to access information opposed by parents. Court decisions also demonstrate that government cannot be responsible for enforcing what parents would desire about limiting minor's access, and a recognition that teens should be protected against an overreach of parental oversight.⁴³

The June 2016 FLA webinar also included reference to two recently revised state statutes in Missouri and California—which the ALA OIF consulted on. Those states



include specific wording that appears to protect both children and adults equally, but each provides apparent local loopholes by which decisions to limit privacy for minors could be implemented. For example, the California law allows the dissemination of circulation record data through “written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library.” Hence, it might be possible for a library, at the point a card is provided, to have the card-holder stipulate that records be released according to the local expectations. This could possibly include children, who might, along with the parent responsible for fines and replacement costs, sign and agree that release of records to parents be included before a card is issued.⁴⁴

In Missouri, comparable language exists, in that an individual can authorize, in writing, a person who can inspect the records. Again, this could be a parent who is authorized at the point that a child signs up for his or her library card. But it is uncertain what local permutations could legally exist. Library forms might provide the child a choice, as to if he or she would allow parental access to the records. But it is uncertain if such could be a legally binding contract, given other clear legal limits of a minor to enter into contractual relationships.

Either way, as revisions to FS 257.264 are considered in Florida, attention can continue on those political groups reflected in HB 899 and SB 1018. Although the two bills ended up dying in committees, twenty Florida representatives signed on to the House version of the bill. The larger political efforts arose from aspirations of groups under the Florida Citizen's Alliance and Better Collier Public Schools, who could seek to leverage FLA LC proposals toward a view opposing any idea of a mature minor, or continuance of existing confidentiality and privacy rights for children. Such threats correspond with an even earlier recognition of a growing “privacy problem” for minors, as identified by Helen Adams in 2011.⁴⁵

Conclusion

At times, history reveals a cutting edge of progressive thought and defense of intellectual freedom. It was especially so in June 2005, when FLA leadership passed a resolution opposing the removal of a Gay and Lesbian Pride Month exhibit from the lobby of a Hillsborough County (HC) library—an exhibit that was challenged and taken down because it exposed minors to the reality of ideas and other lifestyles. Under counterprotest, the removed exhibit was reassembled. Yet it was hidden away in the “adult fiction” section.

The HC Commission next banned any and all future gay pride displays and any county recognition of gay pride by a vote of 6–1. In turn, the FLA Board resolved not to hold official meetings in the county until rescension of the policy. Eight years would pass before repeal of the municipal ban, 7–0, in June 2013. It would be another two years before the U.S. Supreme Court upheld the right to same-sex marriage.⁴⁶ Hence, it took at least a decade (and in reality much longer) to traverse a long road to protecting intellectual and related lifestyle freedoms.

Reviewing IF, LGBT, privacy and other historical contexts, an awareness of the past for shaping progressive movement forward is essential, as George Santayana understood. Yet John F. Kennedy shifted Santayana's ideal and focused hindsight by speaking about Goethe's notion of losing one's soul by trying to hang on to the present, instead of adapting to change and preparing for the future.⁴⁷ Touchpoints from other eras, including the rise of reactionary forces and librarianship's past alignment, cannot be forgotten. Yet librarians also can envision a future that serves as counter force to philosophical and practical retrenchment.

At the national level, ALA IFC committee and roundtable members can continue to play a strong role in future amendments suggested for ALA documents, and seek to uphold the full intent of IF standards. Equally, state IFCs can work more closely with their legislative committee counterparts to track, assess, and defend against statutory developments. FLA IFC members can work to defend current state protections for preteens of ten, eleven, or twelve and their ability to freely explore solutions for family alcoholism, sexual abuse, or other topics at hand. Likewise, they can recognize and spread word how IF values stretching back to the 1970s might be profoundly altered in Florida, with long-term negative impact on kids growing up with less awareness of privacy rights and needs.

IF committees could network with and encourage individuals outside the library profession to help chart new censorship forces related to library service. Library-hosted crowd-sourced reporting systems could augment traditional state-wide reporting from library associations, and build bridges by involving a progressive public. Such could balance against internet based reactionary forces, allowing the library profession to better discern, for example, how filtering is being used to censor material beyond what was intended by the Supreme Court, and defend against known blacklisting of LGBTQ websites and whitelisting of sites advocating against gay rights.⁴⁸

Librarians can of course continue to support IF work in terms of our older alliance with the publishing industry and



banned and challenged books. Yet a new focus could identify and analyze the other elements that fall off the radar, such as when Yahoo was banned by one library in Florida in 2015—impacting the on-average 13 percent of internet users who use the search engine plus users of YahooU Mail because the site was deemed less compatible with filtering software. IF advocates might also ask how, as library professionals, they might have addressed what was revealed by the press in 2015 about the governor's office influence on banning the term climate change from Florida websites.⁴⁹

The FLA IFM, like other state IFM manuals, could be updated and amended. There is appropriate detail in some older IFM policy recommendations—such as material-selection approaches assuring intellectual freedom. But internet use and filtering policies could evolve with more suggestions for impactful policy, especially following the ALA ten-year report on the clear and negative impact of over filtering in our libraries.⁵⁰ Since the last IFM amendment in 2014, the USA PATRIOT Act has been replaced by the Freedom Act. A new proviso allows libraries, if served with a National Security Letter with a gag order, to appeal by asking for judicial review.⁵¹ The IFM could mention this possibility, and detail the possible use of “warrant canaries” on future library websites as legal response to gag orders.

States face decisions related to big and local data, and the role libraries can play in improving collections and customer service by researching user and use information while protecting anonymity. Privacy best-practices for public and academic libraries could align with NISO consensus statements. Florida academic libraries in particular face new metrics to measure institutional and student success across the state. In past years, library circulation data has been scrubbed in support of defending possible future incursions undermining privacy. Such data could have been anonymized and aggregated with institutional academic program data to discern longitudinal correlations between library use and student retention and success. Future IFM sections could address a needed balance, while helping define the boundaries of analysis, and assuring proper data-based communication with stakeholders and entities that ultimately impact our budgets and continued existence.

In short, there is much that the FLA IFC and IF advocates can do to engage the future of intellectual freedom in Florida, and beyond. But librarians might be careful to not step into old shoes of a century or more ago. Equally, they might always ponder in the present if future generations will be able to say, or at least freely question, if they have come a long way in expanding intellectual freedom.

Notes

1. American Library Association, “Core Values of Librarianship,” accessed June 6, 2016, <http://www.ala.org/advocacy/intfreedom/statementspols/corevalues>; “Intellectual Freedom,” Wikipedia, accessed June 7, 2016, https://en.wikipedia.org/wiki/Intellectual_freedom.
2. Estimates range from three to five million. David M. Chalmers, *Hooded Americanism: The History of the Ku Klux Klan*, (Durham, NC: Duke University Press, 1987), 291; New Georgia Encyclopedia, “Ku Klux Klan in the Twentieth Century,” July 18, 2016, as quoted in “Ku Klux Klan,” Wikipedia, March 13, 2017, https://en.wikipedia.org/w/index.php?title=Ku_Klux_Klan&oldid=770125492.
3. Evelyn Geller, *Forbidden Books in American Public Libraries, 1876–1939: A Study in Cultural Change*, Contributions in Librarianship and Information Science 46 (Westport, CT; London: Greenwood, 1984), xv, 86–88, 112, 124.
4. “List of Carnegie Libraries in Florida,” Wikipedia, accessed June 7, 2016, https://en.wikipedia.org/wiki/List_of_Carnegie_libraries_in_Florida.
5. Geller, *Forbidden Books in American Public Libraries, 1876–1939*.
6. “Pedagogues at Petersburg,” *St. Petersburg Independent*, reprinted in *Ocala Evening Star*, January 3, 1908, sec. page 4, image 4, Library of Congress, *Chronicling America: Historic American Newspapers*, <http://chroniclingamerica.loc.gov/lccn/sn84027621/1908-01-03/ed-1/seq-4/>.
7. Roberta W. Francis, “The Equal Rights Amendment: Unfinished Business for the Constitution,” accessed May 4, 2017, <http://www.equalrightsamendment.org>.
8. Richard Fitzsimmons, “Censorship, Intellectual Freedom, Librarianship and the Democratic State” (paper presented at Libraries, Books, Ideology During the Second World War [1939–1945], National Library of Latvia, Riga, Latvia, 1996), <http://www.ifla.org/files/assets/faife/lectures-papers/fitz96.pdf>.
9. Florida Library Association, “Florida Library Association Intellectual Freedom Manual,” 2014, http://www.flalib.org/intellectual_freedom_files/2014/FLA%20Intellectual%20Freedom%20Manual_Final%20May%202014%20revision.pdf.
10. The famous cigarette ad for women historicized then current perceptions of feminism and women's liberation, often against what was portrayed as a more repressive 1920s backdrop.



11. Geller, *Forbidden Books in American Public Libraries, 1876-1939*.
12. American Library Association, "Free Access to Libraries for Minors (1972) | Ethics Codes Collection," June 30, 1972, <http://ethics.iit.edu/ecodes/node/3750>.
13. Trina Magi and Martin Garnar, eds., *A History of ALA Policy on Intellectual Freedom: A Supplement to the Intellectual Freedom Manual, Ninth Edition* (Chicago: ALA Editions, 2015), 124–26.
14. Marjorie Heins, *Not in Front of Children* (New Brunswick, NJ: Rutgers University Press, 2007), 85, <http://fiu.catalog.fcla.edu/>.
15. *Ibid.*, 88.
16. American Library Association, "Libraries: An American Value," June 30, 2006, <http://www.ala.org/advocacy/intfreedom/statementspols/librariesamerican>.
17. American Library Association, "Free Access to Libraries for Minors," June 30, 2004, <http://www.ala.org/Template.cfm?Section=interpretations&Template=/ContentManagement/ContentDisplay.cfm&ContentID=8639>; American Library Association, "Access to Library Resources and Services for Minors," July 1, 2014, <http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/access-library-resources-for-minors>.
18. Eliza T. Dresang, "Intellectual Freedom and Libraries: Complexity and Change in the Twenty First Century Digital Environment," *Library Quarterly* 76, no. 2 (2006): 169–92, <https://doi.org/10.1086/506576>.
19. "Communications Decency Act," Wikipedia, June 1, 2016, https://en.wikipedia.org/w/index.php?title=Communications_Decency_Act&oldid=723234199.
20. Florida Department of State, Division of Library and Information Services, "Library Data and Statistics," accessed July 25, 2016, <http://dos.myflorida.com/library-archives/services-for-libraries/more-programs/library-data-and-statistics/>.
21. Trina Magi and Martin Garnar, eds., *Intellectual Freedom Manual, Ninth Edition* (Chicago: ALA Editions, 2015). "Free access" for minors is diminished in 2nd sentence, LAV, where free access is generalized.
22. Division of Library and Information Services, "Internet Use Policy," Florida Department of State, 2016, <http://dos.myflorida.com/library-archives/about-us/about-the-state-library-of-florida/library-policies-and-fees/internet-use-policy/>.
23. Northwest Regional Library System, "Library Card Registration," accessed June 16, 2016, http://www.nwrls.lib.fl.us/online_library_card_registration.html.
24. West Florida Public Libraries, "Internet Use Policy," January 1, 2015, <http://mywfpl.com/about-the-library/policies-and-library-use/internet-use-policy/>; Jacksonville Public Library, "Internet & Computer Use Policy," 2016, <http://jpl.coj.net/lib/interpol.html>.
25. Collier County Public Library, "Policies for Cardholders: FAQs," <http://www.collierlibrary.org/card-policies/>; Seminole County Public Library, "Library Cards," <http://www.seminolecountyfl.gov/departments-services/leisure-services/seminole-county-library/library-information/library-cards/>; Orange County Library System, "Internet Safety Policy," October 9, 2002, <https://www.ocls.info/sites/default/files/InternetAccessPolicyRevisedSept2015.pdf>; Leroy Collins Leon County Public Library, "Eligibility for Library Cards," April 8, 2014, <http://cms.leoncountyfl.gov/Library/Library-Card>; Brevard County Public Library, "Computers/Internet," accessed June 16, 2016, <http://www.brevardcounty.us/publiclibraries/computers>; Public Libraries of Lakeland, "Lakeland Public Library Internet Use Policy," November 21, 2014, <http://www.lakelandgov.net/Portals/Library/Lakeland%20Internet%20Policy%2011-2014.pdf>.
26. "Florida Staff Analysis, S.B. 192, 3/11/2003" (Westlaw, March 11, 2003), 5.
27. "Florida Staff Analysis, S.B. 1434, 4/22/2003" (Westlaw, n.d.), 6.
28. "Florida Staff Analysis, S.B. 192, 3/11/2003" (Westlaw, n.d.), 4.
29. *The Bluest Eye, Beloved: A Novel, Killing Mr. Griffin, and Dreaming In Cuban*.
30. Deirdre Clemons, "Stop Common Core Florida.com—Timeline/Facebook," January 26, 2015, https://www.facebook.com/permalink.php?story_fbid=421890611300747&id=278560542300422.
31. American Library Association, "Questions and Answers on Privacy and Confidentiality," section 33: "How Does the Family Educational Rights and Privacy Act (FERPA) Affect Minors' Library Records in K-12 Schools?," May 29, 2007, <http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/qa-privacy>.
32. Helen Adams and Michael Robinson, "Watching What Students Read in the School Library | Choose Privacy Week," *Choose Privacy Week*, October 19, 2015, <https://chooseprivacyweek.org/watching-what-students-read-in-the-school-library/>.
33. Barbara J. Morse, "Handling a Book Challenge in Today's World," *Florida Libraries: The Official Journal of Florida Library Association* 53, no. 1 (Spring 2010): 10–11.
34. "Florida Citizens Alliance," Florida Citizens Alliance—Liberty, accessed July 25, 2016, <http://floridacitizensalliance.com/liberty>.
35. "Senate Bill 1018 (2016)—The Florida Senate," 1. 180–81., accessed July 26, 2016, <http://www.flsenate.gov/Session/Bill/2016/1018/>.
36. *Ibid.*, ll. 377–83.



37. National Center for Science Education (NCES), "Antiscience Bills in Florida," NCSE News, December 29, 2015, <http://ncse.com/news/2015/12/antiscience-bills-florida-0016838>.
38. "Corporate Personhood," Wikipedia, July 8, 2016, https://en.wikipedia.org/w/index.php?title=Corporate_personhood&oldid=728871018.
39. 94th Congress, 2nd Session, *Intelligence Activities and the Rights of Americans, Book II* (Washington, DC: U.S. Government Printing Office, April 26, 1976), 178–79, 263., https://www.andrew.cmu.edu/user/rp3h/lansberry/Church_Committee_II.pdf.
40. "Library Awareness Program," Wikipedia, February 19, 2016, https://en.wikipedia.org/w/index.php?title=Library_Awareness_Program&oldid=705689838.
41. Charlie Parker, memorandum, December 21, 2015, "Memorandum to the FLA Board; Florida Confidentiality of Library Records Law Changes."
42. Florida Library Association, "Discussion on the Possible Revision to Florida Confidentiality of Library Records Law, Section 257.261," June 17, 2016, <https://attendee.gotowebinar.com/register/1181577351372683778>.
43. Catherine J. Ross, "An Emerging Right for Mature Minors to Receive Information," *Journal of Constitutional Law* 2, no. 1 (December 1999): 53, 223–75, [https://www.law.upenn.edu/journals/conlaw/articles/volume2/issue1/Ross2U.Pa.J.Const.L.223\(1999\).pdf](https://www.law.upenn.edu/journals/conlaw/articles/volume2/issue1/Ross2U.Pa.J.Const.L.223(1999).pdf).
44. American Library Association, "State Privacy Laws Regarding Library Records," May 29, 2007, <http://www.ala.org/advocacy/privacyconfidentiality/privacy/stateprivacy>.
45. Helen R. Adams, "The Privacy Problem," *School Library Journal*, April 1, 2011, <http://www.slj.com/2011/sljarchives/the-privacy-problem/>.
46. Kathleen McCook, email, FLA Listserv, "FLA and Gay Pride," March 14, 2016; Linda Alexander, "Gay Display Controversy: A Threat to Intellectual Freedom," *Florida Libraries: The Official Journal of Florida Library Association* (Fall 2005): 24–27.
47. "John F. Kennedy Quotations—John F. Kennedy Presidential Library & Museum," accessed July 26, 2016, <http://www.jfklibrary.org/Research/Research-Aids/Ready-Reference/JFK-Quotations.aspx>.
48. Deborah Caldwell-Stone, "Filtering and the First Amendment," *American Libraries Magazine*, April 2, 2013, <https://americanlibrariesmagazine.org/2013/04/02/filtering-and-the-first-amendment/>.
49. Union of Concerned Scientists, "The Truth about Florida's Attempt to Censor Climate Change," Union of Concerned Scientists, April 2015, <http://www.ucsusa.org/publications/got-science/2015/got-science-april-2015>.
50. Jazzy Wright, "Over-Filtering in Schools and Libraries Harms Education, New ALA Report Finds," press release, June 11, 2014, <http://www.ala.org/news/press-releases/2014/06/over-filtering-schools-and-libraries-harms-education-new-ala-report-finds>.
51. Mike Masnick, "Court Says National Security Letters Are Now Constitutional Under USA Freedom Act," *Techdirt*, April 22, 2016, <https://www.techdirt.com/articles/20160421/16473934241/court-says-national-security-letters-are-now-constitutional-under-usa-freedom-act.shtml>.