newsletter on intellectual freedom

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courts, presidential panel divided on NSA data collection

Within two weeks in December two federal district court judges in differing circuits issued diametrically opposed rulings in cases challenging the National Security Agency's program of "metadata" collection of telephone data, thus setting up a potential Supreme Court consideration of the issue. In November, the Supreme Court declined to hear an unusual challenge to the program by the Electronic Privacy Information Center, which had sought to bypass lower courts (see page 15).

In the meantime a presidential review panel issued a report on the issue with a series of recommendations that would impose new limits on the program.

The decisions, along with the recommendations issued by the presidential review group, illustrate the absence of agreement about the effectiveness and legality of the program, which, one judge said, "vacuums up information about virtually every telephone call to, from or within the United States." That information is "metadata"—the phone numbers involved, when calls were made and how long they lasted.

In the first ruling, issued December 16, Judge Richard J. Leon of the U.S. District Court for the District of Columbia decided that the NSA program most likely violates the Constitution, describing its technology as "almost Orwellian" and suggesting that James Madison would be "aghast" to learn that the government was encroaching on liberty in such a way.

Judge Leon ordered the government to stop collecting data on the personal calls of the two plaintiffs in the case and to destroy the records of their calling history. But Judge Leon, appointed to the bench in 2002 by President George W. Bush, stayed his injunction "in light of the significant national security interests at stake in this case and the novelty of the constitutional issues," allowing the government time to appeal it, which he said could take at least six months.

"I cannot imagine a more 'indiscriminate' and 'arbitrary' invasion than this systematic and high-tech collection and retention of personal data on virtually every single citizen for purposes of querying and analyzing it without prior judicial approval," Judge Leon wrote in a 68-page ruling. "Surely, such a program infringes on 'that degree of privacy' that the founders enshrined in the Fourth Amendment," which prohibits unreasonable searches and seizures.

Andrew Ames, a Justice Department spokesman, said government lawyers were studying the decision, but he added: "We believe the program is constitutional as previous judges have found."

(continued on page 28)

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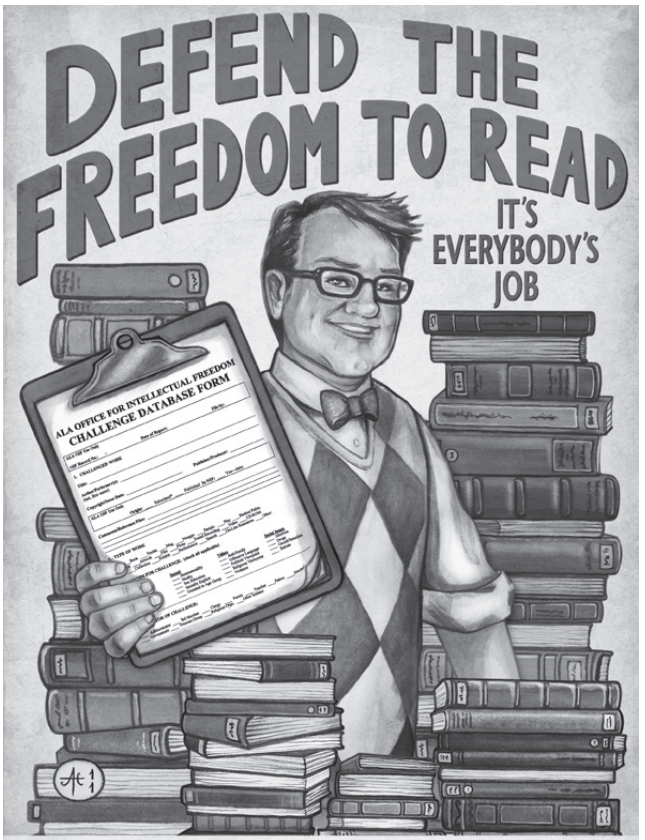
in this issue

targets of the censor

books



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ALA backs legislation to limit NSA

The nation's libraries are backing legislation that would curb the powers of the National Security Agency.

Revelations about NSA surveillance have created a "climate of concern" for libraries, which are seeking to defend the freedom to read and research away from the government's prying eyes. "You need to have some freedom to learn about what you think is important without worrying about whether it ends up in some FBI file," said Alan Inouye, director of the Office for Information Technology Policy at the American Library Association.

Government snooping of libraries has a long history. Under the USA PATRIOT Act, for example, the FBI has the power to compel libraries to hand over user data. But the activities of the NSA seem to go far beyond traditional police work, reflecting an "almost ravenous hunger" for collecting information, according to Lynne Bradley, director of the ALA's Office of Government Relations.

Documents leaked by former NSA contractor Edward Snowden show the NSA has been collecting vast troves of "metadata" on Internet activity and phone calls that shows when communications were made, who was involved and how long it lasted.

That's especially troubling to the ALA, as "libraries are all about metadata," Inouye said. The records that libraries keep—when a user logs on to a library computer, what websites they visit, when books are borrowed and returned—seem to fit the mold of what the NSA is seeking. "We're talking about the information patterns of people. If that's not personal, I don't know what is," Inouye said.

While no libraries are known to have received NSA requests, that doesn't mean they haven't been tapped for data. Just like Internet companies, libraries are prohibited from revealing NSA requests. The ALA is concerned that local libraries are being forced to keep quiet about government snooping. "We don't know what we don't know," Bradley said.

Libraries are right to be concerned about the NSA's activities, according to Greg Nojeim, director of the Center for Democracy and Technology's Project on Freedom, Security and Technology. "There are a variety of legal authorities that the government can use to compel libraries to turn over information," he said. "The concern is certainly legitimate."

"We don't want [library patrons] being surveilled because that will inhibit learning, and reading, and creativity," Inouye said.

ALA is backing legislation from Rep. James Sensenbrenner Jr. (R-WI), known as the USA Freedom Act, cosponsored by 16 senators and more than 70 representatives, and joining with other advocacy groups in pushing it. The bill would require the NSA to show the records it seeks to collect are related to a foreign power, a suspected agent of a foreign power or a person in contact with a suspected agent. The bill, introduced October 29 would require the NSA to get court orders to search U.S. residents' communications obtained without individualized warrants.

Sponsors of the bill include Senator Patrick Leahy, a Vermont Democrat and chairman of the Senate Judiciary Committee, and Representative Jim Sensenbrenner, a Wisconsin Republican, and main author of the USA PATRIOT Act of 2001, the law the NSA points to as authority for the bulk telephone records collection program.

In a column in the online magazine Politico published the day before the bill was introduced, Leahy and Sensenbrenner wrote:

"Since the revelation that the National Security Agency is collecting the details of Americans' phone calls on an unprecedented scale, it has come out that the government searches the content of huge troves of emails, collects in bulk the address books from email accounts and social networking sites, at least temporarily collected geolocation data from our cellphones, committed thousands of privacy violations and made substantial misrepresentations to courts and Congress.

"Not only do many of these programs raise serious legal questions, they have come at a high cost to Americans' privacy rights, business interests and standing in the international community. It is time for a new approach."

Government surveillance programs "are far broader than the American people previously understood," Leahy said in a statement. "It is time for serious and meaningful reforms so we can restore confidence in our intelligence community."

More limited proposals to add transparency and oversight to the NSA process, expected soon from the agency's allies in Congress, are "not enough," he added.

Sensenbrenner defended the original USA PATRIOT Act, passed weeks after terrorists attacked the U.S. on September 11, 2001, by saying the law has helped to keep the U.S. safe. "But somewhere along the way, the balance between security and privacy was lost," he said in a statement. "It's now time for the judiciary committees to again come together in a bipartisan fashion to ensure the law is properly interpreted, past abuses are not repeated and American liberties are protected."

"We do not underestimate the threats that our country faces, and we agree that Congress must equip the intelligence community with the necessary and appropriate tools to keep us safe," Leahy and Sensenbrenner wrote in Politico. "But Congress did not enact FISA and the PATRIOT Act to give the government boundless surveillance powers that could sweep in the data of countless innocent Americans. If all of our phone records are relevant to counterterrorism investigations, what else could be?"

The bill would also sunset the FISA Amendments Act—the law that the NSA has used as authority to conduct mass overseas surveillance—in June 2015, instead of the current

(continued on page 34)

FTRF files brief in lawsuit challenging Arizona's ethnic studies ban

On November 25, the Freedom to Read Foundation (FTRF) joined with several other library, education, and free speech organizations in filing an amicus brief with the U.S. Court of Appeals for the Ninth Circuit in Arce v. Huppenthal, a lawsuit challenging the constitutionality of Arizona Revised Statute § 15-112(A). The brief argues that the statute, which led to the disbanding of Tucson's Mexican American Studies (MAS) program, violates Arizona students' First Amendment rights to receive information and is unconstitutionally overbroad.

Following the law's 2010 passage, the Tucson Unified School District (TUSD) was notified that its MAS program violated the statute. Facing the prospect of losing a significant amount of state funding, TUSD had no real choice other than to dismantle the program. As a result, the MAS program ceased to exist and books were removed from classrooms and banned from use in instruction.

A federal lawsuit, including students from the MAS program, was filed challenging the statute on both First Amendment and Equal Protection grounds. The federal district court rejected the State's claim that curriculum decisions constitute "government speech" over which they have absolute discretion and held that the statute's ban on courses that are "designed primarily for pupils of a particular ethnic group" was unconstitutional. Nonetheless, the court upheld the rest of the statute, finding it did not violate the First Amendment, nor was it overly broad. The student plaintiffs appealed to the Ninth Circuit and invited FTRF to submit an amicus brief.

"In submitting this brief, the Freedom to Read Foundation is standing up for the right of all Arizona students to a curriculum based on educational merit, not political motivation," said Executive Director Barbara M. Jones. "Students in the MAS program improved their educational performance. And there is no evidence that those students learned 'racial resentment' or discovered an interest in 'overthrowing the U.S. government,' as the proponents of Arizona HB 2281 contended. Providing young people with access to a wide range of ideas, including those about different cultures, helps them to think critically, become better citizens, and succeed in family and workplace life. Censoring ideas promotes ignorance and fear."

Joining FTRF in the suit are the American Library Association, American Booksellers Association for Free Expression, Asian/Pacific American Librarians Association, Black Caucus of the American Library Association, Comic Book Legal Defense Fund, National Association for Ethnic Studies, National Coalition Against Censorship, National Council of Teachers of English, and REFORMA: The National Association to Promote Library & Information Services to Latinos and the Spanish Speaking.

Many of these advocates have been monitoring Arizona for years, especially because the new statute "seemed politically and racially motivated," Isabel Espinal, president of REFORMA, said. "This wonderful curriculum," she added, "was addressing a lot of issues within the schools. So finally these students' needs were being addressed and they were succeeding."

In response, REFORMA helped ALA create a resolution during its midwinter meeting in 2012—which focused on intellectual freedom—and passed its own resolution that addressed meeting the needs of Latino students. Both groups' resolutions noted the dramatic rise in the rates of academic success, high school graduation, and college acceptance of students who participated in the MAS program.

Added Jones, "[FTRF has] been watching since they dismantled the program. Librarians in Tucson let us know that it was happening. They were horrified. We knew the students were really being deprived."

ABFFE, meanwhile, is among those supporter groups who have been waiting in the wings for the chance to sign on to an amicus brief to support the cause. "We wanted to do everything that we could to fight this," Chris Finan, ABFFE president, said. "Never have I heard a story like this in which books were removed from the classroom under the eyes of the students and thrown into boxes that actually had the word 'banned' written on them. And I spent a lot of time verifying, in fact, that that's what these people did, and so it was completely shocking."

Several groups are counted as key supporters even though they were not able to join the brief, Jones and Espinal say. Among these are advocacy group Librotraficante, which fights to get Latino books into libraries, and its "fearless leader" Tony Diaz, and Save Ethnic Studies, a Tucson-based advocacy group that offers a host of data and other resources proving the efficacy of such programs with students.

"I was totally inspired by Tony," Jones said, "and he has won awards in the library community for his work on making all of us aware of how desperate this situation is, and how damaged kids get if they don't have access to books about their own culture." This is a key point in FTRF's brief, she says.

"It is important that Latino children have access to books and curriculum about their own heritage and in their own languages," Espinal said. "Without this information they simply cannot thrive as full human beings." In addition, "These students are living in a very oppressive environment. One of the issues around that is how immigrants are viewed, and how immigrants are treated in Arizona. What [MAS] students say is that for the first time in their lives they felt like they mattered, at a very basic level. And

(continued on page 35)

school use of web tools puts data at risk

Public schools around the country are adopting web-based services that collect and analyze personal details about students without adequately safeguarding the information from potential misuse by service providers, according to new research.

A study, released on December 13, by the Center on Law and Information Policy at Fordham Law School in New York, found weaknesses in the protection of student information in the contracts that school districts sign when outsourcing web-based tasks to service companies. Many contracts, the study found, failed to list the type of information collected while others did not prohibit vendors from selling personal details—like names, contact information or health status—or using that information for marketing purposes.

"We found that when school districts are transferring student information to cloud service providers, by and large key privacy protections are absent from those arrangements," said Joel R. Reidenberg, a law professor at Fordham who led the study. "We're worried about the implications for students over time, how their personal information may be used or misused."

Schools have adopted programs like automated student assessment or online homework management systems with the idea that digital, data-driven education could ultimately lead to better test scores, grades and graduation rates. Education technology software for pre-kindergarten to twelfth grade is an estimated $8 billion market, according to the Software and Information Industry Association.

But some privacy specialists, industry executives and district officials say that federal education privacy rules and local district policies are not keeping up with advances like learning apps that can record a child's every keystroke or algorithms that classify academic performance. Without explicit prohibitions on the nonacademic use of the information, specialists warn that unflattering data could hypothetically be shared with colleges or employers, to the detriment of the student.

The Fordham study suggested that some districts might not fully grasp the implications of outsourcing data handling or may lack the negotiating power to insist on contracts that restrict information use.

"The report raises the possibility that abuses could happen with student data if contracting practices don't come up to snuff," said Kathleen Styles, the chief privacy officer of the Department of Education. Although the agency had no evidence of such abuses, she said, it is developing best practices for schools to use in "contracting out for web services and for transparency with parents."

Under the Family Educational Rights and Privacy Act, schools that receive federal funding must generally obtain written permission from parents before sharing students' educational records. An exception allows school districts to share student information with companies, like those providing student information systems, without parental consent. The exception requires school districts to have direct control over such contractors' use of student information; if contractors misuse the data, regulators may ban districts from sharing further data with those companies.

In a statement, the Software and Information Industry Association faulted the Fordham study for examining school contracts and policies, but not actual industry practices. The group said the law had created a business culture that respected student privacy.

The Fordham researchers examined how schools approached student data privacy by first calling officials at a cross-section of small, medium and large school districts in different parts of the country; then they used open-records laws to request copies of each district's Web services contracts and policies for staff technology use. Microsoft provided an unrestricted grant for the research.

The study reported that districts hire online services to monitor individual student progress, analyze aggregate performances of classes and schools, host school data and manage school transportation.

Although the school systems were required to respond to the request for information, only 20 of 54 districts provided full documentation by the deadline, the study said. Researchers said they encountered "significant difficulty reaching any district personnel who were familiar with the district's outsourcing practices."

"When you talk about transparency, the fact that we had to be persistent, I think, is a public policy problem," Reidenberg said.

Among the districts that did provide documents, less than a quarter of the contracts specified the purpose for which student information would be disclosed, the study said; and less than 7 percent restricted companies from selling student data or using it for marketing. Several districts lacked policies governing staff members' computer use—meaning that teachers would potentially be able to sign up for free apps or sites that collected information about students without school officials vetting the programs.

The study suggests that school districts have wildly varying degrees of legal expertise and resources to devote to data protection. Certainly, many districts make an effort to be vigilant. The South Orangetown Central School District in Blauvelt, N.Y., for example, is conducting an audit to examine how its contracts cover sharing or reuse of student data.

"The kinds of applications, software and online resources have changed so much in such a short period of time that it's hard for districts to keep pace," said the district superintendent, Ken Mitchell. "There are so many questions about

(continued on page 36)

DaNae Leu receives 2013 Downs Intellectual Freedom Award

Elementary school librarian DaNae Leu is the recipient of the 2013 Robert B. Downs Intellectual Freedom Award given by the faculty of the Graduate School of Library and Information Science (GSLIS) at the University of Illinois at Urbana-Champaign. Leu is being honored for her efforts to defend the picture book *In Our Mothers' House*, by Patricia Polacco against her school administration's decision to remove the book from the library shelves of the district.

In April 2012, a committee from the Davis School District in Utah voted to place the picture book, which features two lesbian mothers heading a household, on restricted access after concerns were raised about its age appropriateness. The decision to place the book behind the counter—meaning that any child who wanted to access it would need a signed permission slip from a guardian—was based on a state law that bars school curricula from advocating homosexuality.

Leu played an active role in bringing national media attention to the case, which ultimately resulted in involvement by the Utah Library Association's Intellectual Freedom Committee and the American Civil Liberties Union (ACLU). These efforts spurred school officials to return *In Our Mothers' House* to the shelves this past summer. In September, Leu was spotlighted as a Banned Books Week Hero.

"It's not a little overwhelming to be singled out for such an honor," said Leu. "I was but one player in an entire troop of committed actors who stepped up and fought for the idea that the freedom to keep one book on a library shelf protects the very foundation of the basic liberties our country needs to thrive. There is much gratitude to spread around, from the Utah Library Association's Intellectual Freedom Committee, the ACLU, Melinda Roger at the *Salt Lake Tribune* who broke the story, and ultimately to my school district who found a way not only to repair a mistake but to ensure that freedom from censorship is now policy. Thank you to the Robert B. Downs Award Committee for your continued focus on the most cherished truth that our country will only survive when information, thoughts, ideas, and our stories are available to all."

The Robert B. Downs Intellectual Freedom Award is given annually to acknowledge individuals or groups who have furthered the cause of intellectual freedom, particularly as it affects libraries and information centers and the dissemination of ideas. Granted to those who have resisted censorship or efforts to abridge the freedom of individuals to read or view materials of their choice, the award may be given in recognition of a particular action or long-term interest in, and dedication to, the cause of intellectual freedom. One of the earliest of its kind, the award was established in 1969 by the GSLIS faculty to honor Robert Downs, a champion of intellectual freedom, on his twenty-fifth anniversary as director of the school.

Kids Right to Read Project says book challenges increased in 2013

The Kids' Right to Read Project (KRRP) was founded by the National Coalition Against Censorship and the American Booksellers Foundation for Free Expression and is supported by the Association of American Publishers and the Comic Book Legal Defense Fund. In November, the project investigated three times the average number of incidents, adding to an overall rise in cases for the entire year, according to KRRP coordinator Acacia O'Connor. As of mid-December KRRP had confronted 49 incidents in 29 states in 2013, a 53% increase in activity from 2012. During the second half of 2013, the project battled 31 new incidents, compared to only 14 in the same period last year.

"It has been a sprint since the beginning of the school year," O'Connor said. "We would settle one issue and wake up the next morning to find out another book was on the chopping block."

The majority of challengers were parents of district students or library patrons, though a handful were local or state government officials. Of the more than two dozen incidents KRRP faced from September to December, most involved materials used in classroom instruction. Another trend that emerged during the fall was a substantial number of challenges to notable works by well-known minority writers, including Ralph Ellison's *Invisible Man*, Toni Morrison's *The Bluest Eye*, Alice Walker's *The Color Purple*, Sherman Alexie's *The Absolutely True Diary of a Part-Time Indian*, Isabel Allende's *The House of the Spirits* and Rudolfo Anaya's *Bless Me, Ultima*.

"Whether or not patterns like this are the result of coordination between would-be censors across the country is impossible to say," said O'Connor. "But there are moments, when a half-dozen or so challenges regarding race or LGBT content hit within a couple weeks, where you just have to ask, 'What is going on out there?'"

O'Connor also noted a positive trend this year in the notable increase in positive outcomes to book challenges, including two recent victories: *Bless Me, Ultima* was returned to sophomore English classrooms in Driggs, Idaho (see page 26); and *The House of the Spirits* will remain in Watauga County Schools in Boone, N.C. (see page 27). Reported in: shelf-awareness.com, December 18. □

READ BANNED BOOKS

censorship dateline

libraries

Hauppauge, New York

Should taxpayer money be spent on psychic events? That question was at the heart of an issue on Long Island where the Hauppauge Public Library decided to pay a psychic $450 for a 90-minute lecture. Adrienne DeSalvo said her lecture, titled "The Afterlife with Adrienne," is educational.

"My events are becoming more and more popular because more and more people are interested in the nature of the spirit," DeSalvo said, adding that many are seeking answers to the questions, "What are we doing here? What's happening? What happens after death? Is there life after death?" DeSalvo said even skeptics who think it's a scam seek her out after her events and she urges people to "come to the event, just listen."

Matthew Bollerman, the Hauppauge library director, called the event entertainment and pointed out other libraries have booked psychics. "If a program is illegal, of course we wouldn't host it, but we are not here to judge the universe of thought," Bollerman said.

DeSalvo said she spoke the previous week at the Babylon Public Library. "This is my seventh year at Babylon Library," DeSalvo said. "We had a full house. We had 60 people, and people try to get in, so it's becoming more popular."

Despite the event's popularity, some residents want it stopped, calling it a scam and accusing the library of using public money for religion. "A library is not about entertainment, it's about learning, and I don't see any reason why we should have a psychic go in there. That doesn't make any sense at all," one man said.

"There is a big difference between a magician, who the audience is in on the secret and comes to be fooled and a psychic, who pretends to speak to relatives who have passed on," resident Dan Simon said.

Simon contacted the Center for Inquiry, a science and reason organization that calls public funding for a psychic event inappropriate.

"There is no proof of it. If there is something that comes out that it's true, that would be great. I would love to talk to my grandma," said the center's Amy Frushour Kelly.

Others didn't seem to have a problem with the event. "From what I understand they pay $450 for staplers in the government, so I don't care," a man said. Reported in: CBS NewYork, October 24.

Galax, Virginia

School officials, parents and students are joining together in a proactive effort to keep inappropriate reading materials out of the Galax High School library. Schools Superintendent Bill Sturgill, GHS parent Lynn Funk and GHS honor student Maggie Turbyfill—three members of the newly-formed Galax Library Book Committee—explained in a group meeting December 4 that their efforts were not to shield students from difficult topics, but to offer the student body books that deal with these topics the right way.

"We know the tough topics [teenagers face]—sexuality, bullying, drugs, suicide—those are all tough topics," said Sturgill. School officials and the community have expressed their concern about how some of the books that are marketed primarily to high school age students address these topics. Instead of eliminating books that address these topics entirely, the committee wants to find books that address them in a helpful manner, rather than negatively influencing the reader.

"If we have a student that is contemplating suicide, I want a book on our shelves that might save the life of that student," Sturgill said.

After several parents contacted the high school last year with concerns about library books that contained allegedly inappropriate content—such as explicit sex scenes, profanity and substance abuse—Sturgill and other members of the faculty and school board discussed the need for a book committee.

"We're not talking about looking at books that are already on our shelves, so much as creating a matrix to guide us in making selections on the front end before the books even reach our shelves," Sturgill said.

He added that the high school library receives an order of roughly 800 books per year. "Ninety-five percent of those are fine, but the librarian is just one person and she can't catch them all. We have no concerns with [her work], we are just trying to be an advocate to help her."

After some parent meetings, the committee formed as a small group of around six or seven members that will accept suggestions and help from their community.

"We have a few parents, administrators, the librarian, and a student, so we have a good starting point," Sturgill said.

Turbyfill is an honor student in her junior year of high school. She was selected by the committee to give a student's perspective of what is offered at the library. When asked about her experience using the library, she confirmed that the selections there are very different than the "teen" marketed novels she sometimes sees outside of school. "Once in [a bookstore] I saw a book where even the title had a cuss word. I know they wouldn't have something like that in the library," she said.

Funk also noted that, thanks to technological advances, virtually anyone can publish a book. "When you have the opportunity to write without the book being scrubbed through a publishing company, unfortunately some of the best intentions end up in people making money, but not putting what is best in front of minors," she said.

Books with what some consider questionable content, like what Turbyfill noticed in the bookstore, have grown more common as society changes to fit a new standard. However, what works for some people in a changing society doesn't necessarily work for others.

"Public education has always had a responsibility to keep in mind the value of what we are sharing with students. As our society changes, that role may become even more important in offering that guidance," Sturgill said.

The school system has already succeeded in filtering out inappropriate content through other outlets, such as its wireless Internet access, and sectioning off areas of the library from middle school students who share the space with high school students. "My daughter is in the sixth grade, and if she tried to check out one of the 'teen' books, it would be coded and she wouldn't be able to check out that book," Sturgill said.

Sturgill hopes that the efforts of the committee will result in a matrix that will guide them in selecting books with the content they want to offer their students. "We want to create something that's lasting... and something that any division could repeat for themselves," he said.

"But this is a community effort. This is their children coming through this school, so we are looking for ideas from them," Funk added.

One concern that is always present is the fact that no committee can please everyone, as all parents are going to have different moral standards that they teach their children. One book may be perfectly suited for one child, but entirely inappropriate for another.

"This is why we want to lobby for parental involvement," Sturgill said. "I think it's my responsibility to monitor what my child is reading. As a public school, we have to find the balance... which is the most difficult part. The extremes are easy, but where do you draw the line for all those books in the middle?"

That being said, the committee has agreed that it is important to take enough time to find where that line exists. "This could take a lot of time... maybe longer than a year," Sturgill said.

Funk said that she had spoken with representatives of the Galax Public Library, and hopes that the committee could partner with them in the future. "There's a lot of scrubbing that goes on in the local library, as well. We've talked to them several times, and they have a good system in place."

Funk also wants members of the community to voice their own ideas about filtering the library's contents in the future. She gave an example of one idea they have already explored.

"We know of one online resource called CommonSenseMedia.org, that does a good job at rating books, movies, etc. However, many times there are only one or two reviews of a particular book," she said.

The members all shared the same confidence that the committee will be successful in finding a common ground for the student body. "This is really all about the kids. It is our responsibility to put a lot of effort in making certain we do what is right for the students in Galax. I think we are doing a good thing," Sturgill said. Reported in: *Galax Gazette*, December 6.

schools

Tucson, Arizona

The approval for use of seven books previously removed from Tucson Unified School District classrooms has raised red flags in the Arizona Department of Education. The books, which were adopted as supplemental materials October 22 on a 3-2 vote by the TUSD Governing Board, will now be used in English, American history and world history classes at the middle and high school levels.

"Given the prior misuse of the approved texts in TUSD classrooms, the Arizona Department of Education is concerned whether the Governing Board's actions indicate an attempt to return to practices found to have violated Arizona's statutes in 2011," a statement said. "It is the department's intent to monitor how such materials are used as well as all classroom instruction and to take appropriate corrective action if the district is once again violating the law."

TUSD did not inform the Department of Education the books would be on the agenda, said department spokeswoman Mary Marshall.

Despite the department's concerns, the school district is confident the books will be used appropriately, said TUSD Superintendent H.T. Sanchez, adding, "If I thought otherwise, we would be having a different conversation." Sanchez confirmed the district did not check with the state, noting it would not have done so for an algebra book either—but said that TUSD legal counsel researched it.

The Department of Education's statement was a departure from the stamp of approval it issued just weeks earlier after dropping in for unannounced visits at two campuses

to observe the "culturally relevant" courses that have been put in place of the Mexican American Studies classes. After the visit, department officials said they found no specific teaching practice or instructional material that would cause it to take further action to enforce the state law prohibiting classes that promote the overthrow of the U.S. government, promote resentment toward a race or class of people, advocate ethnic solidarity instead of the treatment of pupils as individuals, or are designed primarily for pupils of a particular ethnic group.

The books were requested by teachers from Roskruge Magnet K-8, Sahuaro High School, Rincon High School, Palo Verde Magnet High School and Pueblo Magnet High School.

The text requested for Roskruge, *500 Years of Chicano History in Pictures*, edited by Elizabeth Martinez, will be used for a history class for sixth- through eighth- graders. The other books were requested for use by 9th-, 10th- and 11th-graders.

Two of the requesting teachers—Sally Rusk and Jose Gonzalez—previously taught the Mexican American Studies courses. The others did not. While the requests were from teachers of mainstream classes, the books will also be available for culturally relevant classes.

While the books will again be used in classrooms, they will not be the primary texts. Supplementary materials are designed only to provide additional information for a course or to extend or strengthen the primary textbooks used.

UNIDOS, a youth coalition formed during the Mexican American Studies controversy, called the approval of the seven texts "good news." However, the group, which has been a supporter of the Mexican American Studies program, said TUSD still has more work to do.

"There have been horrendous, shameful abuses on our culture and our community," said UNIDOS member Gabriel M. Schivone. "This has never really been about books. It's the entire curriculum that was targeted, criminalized and outlawed."

Mexican American Studies alum Asiya Mir agreed. "It was a very devastating blow to us when the books were banned," the 2012 Tucson High graduate said. "Although I'm happy these books are going to be read by students who will likely have their lives affected by the literature, I wish our classes weren't compromised. It would be beneficial to the students to have these books taught in the way they were previously taught."

While TUSD Governing Board member Mark Stegeman has reservations about some of the books and the old courses, he did not agree with the decision to disallow the use of the books. He tried twice to present a resolution that would have ended the "special treatment" of the books, but when it came to voting, Stegeman did not support what was presented, saying his resolution was different. He was joined by Michael Hicks, who also voted against the approvals.

Stegeman's intent was that the books be for incidental use, meaning a teacher could bring a copy in and use it in the classroom but would not be able to purchase an entire classroom set.

"Basically, there are two kinds of books—books approved for curriculum by board vote and millions of others that are subject to rules for incidental use," Stegeman said. "When staff said these seven are out of the classroom, it was like a third category of books that could not be brought in. I never agreed with that."

Though Stegeman did not support the return of the books in this fashion, he said that he did not believe the action alone would land the district in hot water. "I always felt that the problems with the state and in the courses mainly had to do with how teachers were teaching the course, not with the books," he said.

The books in question are *Critical Race Theory*, by Richard Delgado; *500 Years of Chicano History in Pictures*, edited by Elizabeth Martinez; *Message to Aztlan*, by Rodolfo "Corky" Gonzales; *Chicano! The History of the Mexican American Civil Rights Movement*, by Arturo Rosales; *Occupied America: A History of Chicanos*, by Rodolfo Acuña; *Pedagogy of the Oppressed*, by Paulo Freire; and *Rethinking Columbus: The Next 500 Years*, by Bill Bigelow. Reported in: *Arizona Daily Star*, October 24

Volusia County, Florida

Protesters who believe Volusia high schools are using a world history textbook to "indoctrinate" students into the Islamic religion rallied November 4 at the School Board's headquarters in DeLand, hoping to see a chapter about Muslim civilizations torn from the book.

"It's not an anti-Muslim issue; it's an anti-indoctrination of our youth regarding a religion that calls for the demise and destruction of America," said Rick Sarmiento, a self-described patriot and political activist from Lake County. He organized the rally through Facebook with help from Volusia County Republican Party Chairman Tony Ledbetter, who predicted at least 100 protesters would be on hand.

School Superintendent Margaret Smith denies Sarmiento's charges, saying: "We do not teach religions; we teach about religions."

State academic standards and Volusia's curriculum present a balanced approach to teaching about Christianity, Judaism and Islam, Smith said, adding, "I want them to understand we are not biased in our teaching."

At issue is the way *World History*, by Elisabeth Gaynor Ellis and Anthony Esler and published by Prentice Hall, portrays major world religions, their followers' beliefs and their role in history. A 32-page chapter on "Muslim Civilizations" that covers the rise of Islam and the building of a Muslim empire is the target of most objections about the 1,000-page book being used in tenth-grade world history classes in Volusia high schools for the first time this year. Multiple references to Christianity and Judaism are

woven into the book as they tie into 5,000 years of world history.

Sarmiento's solution—recruit student volunteers to tear the chapter out of the books.

The book was the target of similar objections last summer in Brevard County schools. A Brevard committee was reviewing the book for gaps in content where supplemental materials might be needed.

Sarmiento got involved when a friend whose daughter attends Deltona High contacted him about the content of the textbook and a class assignment he said required the girl to read sections of the Quran, Islam's holy book.

Smith refused to identify the teacher involved but said she had talked with her and is satisfied she presented the lesson as part of the "continuum of beliefs" students learn about as they study world history.

Stetson University religious studies professor Phillip Lucas said the kinds of objections being raised by Sarmiento and his supporters have grown in the years since the Sept. 11, 2001, terrorist attacks. While not familiar with the textbook or its objectors, Lucas said such protests typically come from "partisans of Christianity who are fine that Christianity is portrayed in a favorable light, but they seem to be unhappy or threatened by presentation of other religions from a neutral, non-hostile standpoint. They are threatened if a course is not taught with an anti-Islam or anti-Hindu slant." Reported in: *Daytona Beach News-Journal*, November 4.

Lexington, Kentucky

It was on the reading list at Lexington's Henry Clay High School, but one parent said the book described as, "deliciously demented," is too violent for teens. Now the Fayette County School System is trying to decide whether the award winning book *I Hunt Killers* should be accessible to students.

"The back of the book is described as deliciously demented and a twisted tale from a teenaged psychopath and it's all about killing," said Kassie Bennet. She was shocked when it was in her 15-year-old's back pack for a school assignment.

"If my child picked up the book out of the library, then your child has the ability to do it too," said Bennet. *I Hunt Killers* was on the Henry Clay High School reading list, along with dozens of other books. Bennett's son chose it from the school library, but she wants to know why it was even an option.

"We would never put anything on our shelves if it wasn't approved by higher powers than the principal at Henry Clay High School," said Henry Clay High School Principal, Greg Quenon. He said, among other things, the book is listed on the Kentucky Bluegrass Awards for 9th through 12th graders. Plus, teachers read and approved the book.

"This is a book that has won multiple awards in multiple states, it wasn't just arbitrary that we put it on our book list," said Quenon.

Now Bennett said the book needs to go, and parents need to be kept in the loop. Therefore, school officials are taking a closer look at the list, but want everyone to remember one thing. "You never can judge a book by its cover," said Quenon. Fayette County Schools said no student is required to read *I Hunt Killers*, it is simply a book they can choose. Reported in: lex18.com, November 18.

Battle Creek, Michigan

Parents in Battle Creek were shocked to learn that students were forbidden from honoring their 12-year-old classmate Caitlyn Jackson, who died of cancer after a four-year battle with leukemia. Students wore T-shirts with Caitlyn's name on them to Lakeview Middle School November 11 but grief counselors told them they had to cover up because of a school policy that forbids student memorials. Students had to turn their shirts inside out or put tape over Caitlyn's name.

Gracie Macphee, a 13-year-old Lakeview student, said she was called down to the office and told the shirt "triggers too much emotion" and that "it's like you're forcing people to mourn." Caitlyn's family was shocked when district leaders said that it could upset students if they see her name on the shirts.

"I said I didn't think my heart could break anymore," said Caitlyn's mother, Melinda Jackson. "Not only did they do that, they tore a piece of my heart out, rolled it up, threw it on the floor and stomped on it."

"Everything changes; we were coming home without our daughter," said Caitlyn's father, Jeff Jackson. "I'm sorry. It changes everything."

Amy Jones, the Lakeview finance director acting as district chief, said the school's decision to ban the shirts was based on the "crisis management plan" which prohibits "permanent memorials" for students. Jones says the plan is "based on a lot of research and expert opinion."

The Lakeview School District released a statement apologizing for their actions and promising a review of their policy. "We sincerely regret that our actions caused additional stress for Caitlyn's family and friends," said the school district's statement. "The Jackson's [sic] spent time with district staff ... and as a result of our conversations, the district has committed to reviewing the crisis management plan that guides us in these situations and students will be allowed to wear clothing bearing Caitlyn's name." Reported in: opposingviews.com, November 12.

Billings, Montana

A group of parents has been trying since May 2, 2013 to get Sherman Alexie's *The Absolutely True Diary of a Part-Time Indian* removed from the 10th-grade required reading

list at Skyview High School in Billings.

Gail Supola says in her request for reconsideration of media to the school that: "This book does nothing to educate our children about the positives in Native American life, culture, traditions, beliefs, abilities or history. I think while reading a 'required book' you should learn something specific about the subject, in this case the Spokane Indians, or what is the point? After reading this book in its entirety, I know nothing more about the Spokane Indians than I did before reading it. The only thing this book accomplished was the reinforce the negative stereotypes of Native Americans."

After her initial request, a Review Committee was organized by the school, which read the book as well as numerous reviews and unanimously agreed that it should remain on the reading list.

"This is a contemporary coming of age novel for young adults, which demonstrates the characters' struggles with many issues that are still relevant today," the review committee said in a May 17 letter. "The style of writing is humorous, sometime irreverent and portrays his own life struggles and trials in a public school setting."

On June 10, 2013, Supola wrote to appeal the decision made by the review committee, declaring: "This book is, shockingly, written by a Native American who reinforces all the negative stereotypes of his people and does it from the crude, obscene and unfiltered viewpoint of a 9th grader growing up on the reservation."

Supola went on to say that she doesn't understand where this book fits into the guidelines for teaching about Native Americans required by the State of Montana. "Having many Native American friends living on and off the reservations in our state, I can emphatically tell you that not all Native Americans are poor, unmotivated, uneducated, alcoholics who are predestined to die in car crashes."

Supola's original request to the school was pages long and included a breakdown of how many times certain words appear in the book like the word "ass," which according to Supola appears twenty times, and the word "boner," which appears fourteen times.

Chad Falls Down, a Crow/Gros Ventre student, has taken up the cause because the book means a lot to him. He explained how some health problems when he was young ended with him in a coma. He woke up and did get better, but Alexie's book was one of the first things he read.

"It woke up my mind again from the coma—helped me learn again," he said "It feels like it had a lot to do with my life—it's made a difference."

Falls Down grew up on the reservation and that is where he learned about his culture, but he left after elementary school to get a better education. "That's when I realized people are racist," he said. "This [Alexie's book] is totally realistic, this isn't sugar coating the past or future, or how government has truly made Native Americans the way they wanted them to be."

He said that while there may be some derogatory things in the book, "it shows realism and shock… He's writing on experience and the true side of Native American life."

"I've seen some of the things this book talks about," Falls Down said. "We all have to see it as it is, truthfully and realistically; the truth must be heard, even if it hurts your ears."

Falls Down has a petition with about 200 signatures and started one on Change.org to collect more. But Supola has a petition of her own, with more than 300 signatures according to the paperwork she submitted to the school.

Skyview High School Principal Debra Black said the ad hoc committee will decide whether the issue will go to the full board. "There will be Native kids that are speaking to the committee Monday night that are in favor of keeping the book," Black said. "This is a choice that we have made [making the book required reading] and it's a good read for that age group." Reported in: *Indian Country Today,* November 7.

Johnson City, New York

When Jeannette Farr saw what her eight-year-old daughter was reading, she was shocked. Illustrations of soldiers bombing villages, and terrorists kidnapping a girl's father were just a few of the details Farr couldn't believe her third-grader was reading.

"It's scary. We don't have guns in our house, my kids don't see guns, my kids don't watch the news," Farr said.

The books are part of a list of suggested reading for new learning modules created by the state to help direct districts and schools on creating curriculums according to new Common Core standards. The two books selected in Johnson City were *Nasreen's Secret School* and *The Librarian of Basra*, both of which are based on true stories.

In *Nasreen's Secret School*, the Taliban take control of an Afghan village and prevent girls from going to school. After Nasreen's father is kidnapped and presumed killed, her grandmother smuggles her each day to an underground school where she can learn to read and write.

In *The Librarian of Basra*, a librarian sneaks books out of a library during the U.S. bombings in Iraq. The librarian works with members of the community to keep the books safe until the war is over and a new library can be built.

Although each story has a positive message, Farr says the illustrations are too much. "I was surprised at how graphic the photos were," she said. She even suggested banning the books, at least for elementary school students.

But Liz Rosenberg, a children's author who has written dozens of books and reviewed *The Librarian of Basra*, thinks the books are a good fit. "The book is really about bravery, one woman's heroism," Rosenberg said. "It's about community and the value of books." She said the war is there to set a scene.

"It's a very uplifting and sweet book," Rosenberg said.

"The war is kind of off to the side."

Johnson City superintendent Mary Kay Frys said she didn't know much about the book when it was recommended by New York State this year. The book was part of the suggested lesson plan laid out on Engage New York, a website designed to aid schools in the transition to the Common Core.

"As the first time we were going through it, we decided to go with what was recommended with the module," Frys said. Frys said the recommendations came out very late, making a full review impossible. She only read the book in full after the books were already delivered to the school.

Frys doesn't regret the decision, but said the school will carefully review books in the future. "Now books are more available," she said. "So as books come in, we're reviewing them them beforehand. So we're moving on." Reported in: wbng.com, December 4.

Brunswick County, North Carolina

The monthly school board meeting turned heated November 5 in Brunswick County as several hundred community members showed up to express both support and condemnation for the novel *The Color Purple*, by Alice Walker, and to take part in a "walk-in" sponsored by local teachers.

Recently board member Catherine Cooke expressed concern with the work's content to the media and shared the desires of some parents to remove the novel from the district's Advanced Placement English curriculum at the eleventh grade level.

Following this the board invited members of the public to comment about the issue at the meeting, which saw a large turnout and a series of passionate statements from teachers, parents, students and church members about the book's educational value and its possible removal.

Despite the speeches, board Chairman Charlie Miller made it clear that no action would be taken on the book before a discussion by the board, which had not yet taken place or even been scheduled. Despite the attention the issue has gained, he said, the superintendent's office has not yet received any official complaints about the book.

Language and sexuality or "obscenity" were most often cited as the reason for the majority of the unofficial complaints and criticisms, as was whether or not the book, a Pulitzer Prize winner that deals with issues of racism, violence against women and rape, has literary value that was age appropriate for the students.

"I cannot understand why this is material any parent or administrator would put in front of innocent minds," said Hannah Giordano, an eleventh-grader at West Brunswick High School. "I understand this country was founded on freedom of speech, but with over 200 choices of literature on our reading list, why require us to read this?"

Victor Malo-Juvera, a University of North Carolina Wilmington professor of English education took to the podium to address some of the difficult content in the book that some parents and community members find troubling.

"What we have to remember is that the book itself isn't obscene. Something that exposes obscenity isn't in itself obscene," he said.

Malo-Juvera explained that however terrible, rape and sexual violence are real-world issues that teens face and are frequently victims of or exposed to in popular culture, thus requiring a counter-balancing discussion by a trained teacher in an educational setting to understand.

Not all the parents in attendance agreed. Robert Norton, the father of two in the Brunswick County schools system, said, "There's things here that have slipped by me. We depend on teachers to make decisions on behalf of us with our kids in mind. Who decides when a child is old enough to be exposed to rape and to incest?"

Norton commended the many students present at the meeting for taking a stand and backing or opposing the book but ultimately told them that having a child of your own changes everything and left the board with a clear message: "Please pursue other options for our children here and their well-being."

One of those children was Hannah Caison, a 16-year-old at West Brunswick High School in the eleventh-grade AP English course at the heart of the discussion. She attended the meeting with a half-dozen of her classmates to oppose any potential action against the book in the curriculum.

"Removing this book is insulting to me and my fellow students," Caison said. "We are not children, we are growing into young adults. Have faith in us that we can read this as a piece of literature and discuss it in a mature way."

Caison said that despite the coarse language in the book and the difficult and mature themes, she felt it was important to her education. "Rape is real. It happens in our world," Caison said. "If we can't talk about these subjects, how will we ever find the solutions to the problems of our world?"

Many of the assembled students and teachers cheered her statements, though not all were attending for the discussion of the book but for the "walk-in" sponsored by a group of teachers protesting legislative actions in Raleigh this year.

The walk-in sought to raise awareness of concerns that teachers in North Carolina are being left behind the national curve and, according to Karen Walker, the district's teacher of the year, to show support for the school board and thank them for a recent teacher bonus of $1,000. Reported in: *Wilmington Star-News*, November 5.

Williamson County, Tennessee

At the latest front in the war over Tennessee textbooks, a Williamson County parent whose objections helped spark the entire controversy now says all the books her group has

reviewed have flaws.

Laurie Cardoza-Moore's quest to discard a geography book she claimed was anti-Semitic failed last year. But now as Tennessee school districts prepare to adopt new textbooks for 2014-15, she has broadened her target to include one of the most powerful companies in public education: Pearson, a publishing company that she alleges has a history of bias.

"If they're going to pay for a product, it better not be defective," said Cardoza-Moore, who was among several parents who spoke in November at the state Senate Education Committee's hearings on the role of the state textbook commission.

Her group's complaints have ignited a textbook uproar in the state legislature, arming conservative lawmakers with a litany of passages and excerpts they claim are biased or inaccurate. Battles over textbooks, on display during the recent two-day hearings, have played out elsewhere, most notably in Texas. Here, Republican lawmakers say it began with anecdotes from parents in Williamson, Davidson and Sumner counties, but has now turned into a groundswell across the state.

Sen. Dolores Gresham (R-Somerville), chair of the Education Committee—who called the Williamson County episode the "catalytic event" that began the statewide conversation—plans to introduce legislation that would give more sway to public input in the approval of textbooks. It's one of several bills involving textbooks that could arise next year.

"I'm just looking for accuracy," Gresham said. "I'm just looking for (textbooks) to be correct."

As a part of the textbook adoption cycle in Tennessee, social studies books are now up for review for all grade levels. Local school boards make the final decisions, but they rely heavily on teachers' suggestions from lists approved by the Tennessee Board of Education via the textbook commission, a ten-member group of educators, nine of whom are appointed by the governor. More than seventy social studies books—many flagged by conservatives—were approved for a six-year cycle on October 25.

Top Republican lawmakers have asked that the state board of education take a second look at some of the titles it just approved.

The entire process has come under fire from Cardoza-Moore and others who want more involvement in the review process, an area that Gresham's legislation seeks to address. She said her bill would give public input "more effect" on the commission's approval process. What that looks like is still unclear, though she discussed a new timeline to ensure public input doesn't come at the "eleventh hour," as she believes it did during the recent review of social studies books.

"Public input seemed to be more like an afterthought, or maybe as much of a courtesy, but certainly had no effect on their approval of the books," Gresham said.

Others like Cardoza-Moore believe a law might be in order to hold publishing companies financially and legally responsible for content. She and others believe books produced by Pearson in particular are filled with inaccuracies and bias. Pearson, which has its head office in London, published the book that Cardoza-Moore claimed was anti-Semitic. The same company, one of the largest brands in education today, produces tests associated with new Common Core academic standards and has started to become a target of Common Core critics nationally.

"Pearson is not a U.S.-based company and is not interested in the American way of thinking," she said. "If we're paying millions of dollars for textbooks, should they not be accurate and vetted for bias?"

Pearson spokeswoman Susan Aspey disagreed, saying her company is committed to presenting balanced, unbiased and accurate programs that align with the state's curriculum requirements. "We stand behind the integrity of our content, our authors, and our rigorous editorial process," she said. "Pearson's North American education business is based here, in North America, and the thousands of U.S.-based Pearson employees are honored to serve the American public education system."

Cardoza-Moore filed a complaint in April with Williamson County school officials after speaking out at school board meetings and gathering 700 signatures against the use of a high school Advanced Placement geography textbook. In response to her complaints, a committee reviewed the 500-page book and deemed it not biased. Cardoza-Moore appealed but was again denied by the county school board.

Since then, Cardoza-Moore and about 30-40 parents from Williamson and Rutherford counties have been reviewing textbooks that the state textbook commission has approved. She says the books are riddled with inaccurate dates and events, in addition to anti-Semitic, anti-Christian, pro-Islamic, pro-Marxist, anti-American and anti-Western content. At issue during recent Senate hearings were complaints on textbooks that Gresham's office has contained in a bulky folder.

Claudia Henneberry, a retired teacher from Franklin and activist in the Tea Party-affiliated 9.12 Project, zeroed in on a book called *American Government and Politics Today*, among others. A few of her issues with it:

- The book says "early colonists were intolerant of religious beliefs that did not quite conform to (their own)." She says the early colonists risked their lives to come to the new world for religious freedom and tolerance.
- She claims that capitalism is portrayed as unfair and the wealthy as greedy.
- She alleges that white, Protestant, conservative and

> Southern people are described negatively, pointing to the phrase "The White South" to describe the South and objecting to this passage: "The Democratic Party (after the 1950s) … advocated racial integration and other civil rights policies that drove white, Protestant, Southern voters who opposed these initiatives away."

Mike Bell (R-Riceville), who also has made the case against allegedly biased books, said the review process should be more transparent and user-friendly for parents. He also referenced potential changes to the composition of the state textbook commission. Those leading the textbook complaints have asked that parent representatives be included on the panel.

Gov. Bill Haslam has urged his fellow Republicans to "look carefully" when making such changes, especially in light of the state's recent gains on the National Assessment of Educational Progress. But he seemed open to the idea of allowing non-educators such as parents to sit on the commission.

"I think some laypeople on it would be fine," Haslam said. "The important thing is to have people who truly are committed to the idea that in Tennessee, every child can learn."

The state is considering an online method of review, but for now the textbooks are held for review at ten locations throughout the state. Rep. Glen Casada (R-Franklin) plans to propose legislation to create an online site for parents, community members and educators to submit textbook reviews and analyses. He said volunteers could review the texts, filling in where the textbook commission falls short, and no tax dollars would be used.

Unlikely bedfellows, neither Cardoza-Moore nor Williamson County Schools Director Mike Looney believes Casada's proposal will work. She says it's creating a separate entity that is unnecessary, and Looney agrees that a new law isn't needed. He believes there should be more public inclusion, and he says his staff is developing strategies to invite input. "We want to do right by the public, obviously, but we want the whole public and not people with a slant on political, social and religious topics."

Looney said publishers write for their clients, their biggest customers being public school systems in California and Texas. Often textbooks are better aligned with these states' guidelines, he said. Also, choices are limited because few vendors provide high-quality texts for schools, he added. But Looney believes eventually electronic books and the Common Core standards will have a hand in improving things.

"There is not a perfect textbook," he said. "If you end up adopting a textbook that has an issue, we wouldn't teach children something wrong. At the end of the day, the teachers are going to do the right thing." Reported in: *Nashville Tennessean*, December 2.

Charles Town, West Virginia

Jefferson County Schools has discontinued the use of a controversial book being read by about 120 students at Harpers Ferry Middle School, said Pat Blanc, an assistant superintendent who oversees curriculum and instruction. As a result, students are no longer reading *The Absolutely True Diary of a Part-Time Indian*, by Native American author Sherman Alexie.

"We checked and it was not on the state-approved list of books, so it should have gone through the process for approval in the county. But that didn't happen," Blanc said.

Attention was drawn to the book after a parent, Misty Frank, objected to her eighth-grade son having received the reading assignment from teacher Dawn Welsh. Frank raised concerns about the use of profanity in the book, as well as its sexual content. She also objected to it having been assigned to a whole class and parents not having been forewarned about its graphic nature.

A winner in 2007 of the National Book Award for young people's literature, the semi-autobiographical novel focuses on a 14-year-old teenage boy, a Spokane Indian, who is living on a reservation but contemplating leaving to attend an all-white school in hopes of a better future. It also details the pain he experiences while being in two different worlds, as well as his ultimate successes.

After hearing her concerns, school principal Joseph Spurgas provided Frank's son with an alternate reading assignment. He also said that was an option for other parents or students who were concerned about the book's content.

That will happen now with all students because the book has been pulled, Blanc said, adding that it won't be a problem to provide an alternate reading assignment.

"She is a very resourceful teacher, so she'll do another assignment with the same learning content standards and objectives—just through a different book," he said.

It's also an opportunity to remind county teachers "about the appropriate procedures to follow in a case like this, because we have to adhere to that," Blanc said.

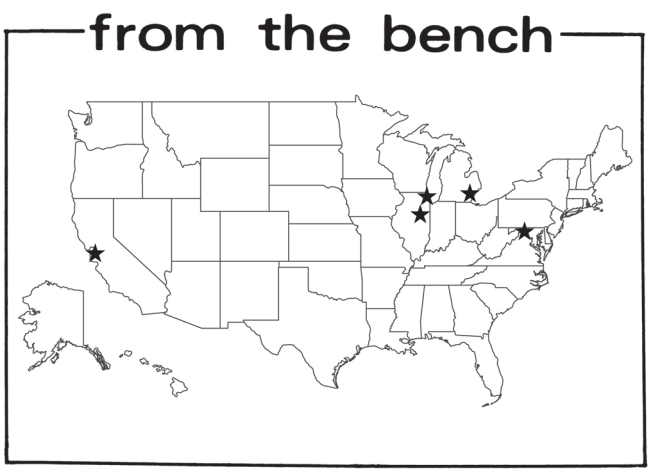
The book has been controversial nationwide, with some school districts and libraries banning it due to concerns about language, racism and sexual content. Supporters, however, maintain that the book's central themes—bullying, poverty, domestic violence, alcohol and drug abuse—mirror what many young people are already experiencing in their own lives. It offers a hopeful message about not giving up, supporters maintain. Reported in: *Martinsburg Journal-News*, November 26.

colleges and universities

Chicago, Illinois

A blog written by Chicago State University faculty members that has criticized the institution's administration

(continued on page 36)



U.S. Supreme Court

The Supreme Court rejected a challenge November 18 to the National Security Agency's once-secret telephone metadata spying program. The justices, without comment, declined to entertain a challenge from the Electronic Privacy Information Center seeking to halt the program that was disclosed in June by NSA leaker Edward Snowden. The court's inaction means that the there isn't likely to be any court resolution to constitutional challenges to the metadata program for years. Legislation, however, is pending to gut the program.

What's more, several cases challenging the snooping are pending in federal courts across the country (see page 1). EPIC's petition was unusual in that it went directly to the Supreme Court without first being litigated in the lower courts.

The Washington, D.C. based non-profit privacy group went straight to the justices after Snowden's leak because of the gravity of the phone spying, which includes telephone companies having to provide the NSA the phone numbers of both parties involved in all calls, the International Mobile Subscriber Identity (IMSI) number for mobile callers, calling card numbers used in the call, and the time and duration of the calls.

In its briefs, EPIC claimed that all calling records cannot be relevant to an investigation. "The ongoing collection of the domestic telephone records of millions of Americans by the NSA, untethered to any particular investigation, is beyond the authority granted by Congress to the FISC …" according to EPIC's petition.

The government has said that the spying program has been ongoing since at least 2006, and has repeatedly been authorized by the Foreign Intelligence Surveillance Court. "As of October 1, 2013, fourteen different judges of the FISC, on thirty-four separate occasions, have approved Section 1861 orders directing telecommunications service providers to produce records in connection with the Telephony Records Program," the government told the justices in its filing while urging the court to reject the case.

The justices gave no reason for rejecting the group's petition, but the unusual procedure of bypassing the lower courts probably played a role. Other, more conventional challenges to government surveillance programs are pending.

In urging the justices not to hear the case, the federal government said "the proper way" to mount a challenge "is to file an action in Federal District Court to enjoin the program, as other parties have done." It cautioned, though, that "the government may assert certain threshold defenses to such a suit." The case was *In re: Electronic Privacy Information Center, No. 13-58*.

The government told a New York federal judge presiding over a case brought by the American Civil Liberties Union that the wholesale vacuuming up of all phone-call metadata in the United States is in the "public interest," does not breach the constitutional rights of Americans and cannot be challenged in a court of law. Reported in: wired.com, November 18; *New York Times*, November 18.

The Supreme Court, which begins its sessions with an invocation to God, considered on November 6 whether a town in upstate New York had crossed a constitutional line in opening its Town Board meetings with mostly Christian prayers. The justices seemed to find the issue unusually difficult, with several of them suggesting there was no satisfactory principled answer.

Justice Elena Kagan, asking the first question, wanted to know whether the Supreme Court could open its sessions with an explicitly Christian prayer from a minister, one acknowledging, for instance, "the saving sacrifice of Jesus Christ on the cross." Such prayers were offered before Town Board meetings in Greece, N.Y., near Rochester.

Thomas G. Hungar, a lawyer for the town, said a 1983 Supreme Court decision allowed Christian prayers in legislative settings, though perhaps not in judicial ones. The decision, *Marsh v. Chambers*, upheld the Nebraska Legislature's practice of opening its sessions with an invocation from a paid Presbyterian minister, saying such ceremonies were "deeply embedded in the history and tradition of this country."

Justice Anthony M. Kennedy seemed frustrated with Hungar's argument, which relied almost exclusively on the Marsh decision and the history it reflected. "The essence of the argument is that we've always done it this way, which has some force to it," Justice Kennedy said. "But it seems to me that your argument begins and ends there."

At the same time, Justice Kennedy appeared reluctant to have judges or other government officials decide what

prayers are acceptable. Such a practice. he said, "involves the state very heavily in the censorship and the approval or disapproval of prayer."

Justice Antonin Scalia said prayers in a legislative setting were different from the hypothetical ones in court that Justice Kagan had asked about. "People who have religious beliefs," he said, "ought to be able to invoke the deity when they are acting as citizens and not as judges."

Douglas Laycock, representing two women who challenged the prayers in New York as a violation of the First Amendment's ban on government establishment of religion, said there were important differences between the Nebraska case and the new one. The prayers in New York were often explicitly sectarian, he said, and town residents were forced to listen to them in order to participate in local government.

Justice Samuel A. Alito Jr. asked Laycock for an example of a prayer that would be acceptable to people of all faiths. Laycock said "prayers to the Almighty" and "prayers to the Creator" would be all right.

"What about devil worshipers?" Justice Scalia asked.

Laycock said that "if devil worshipers believe the devil is the almighty, they might be O.K."

Justice Kagan said the wide-ranging discussion, which included questions about polytheism and atheism, missed the key point. "Isn't the question mostly here in most communities," she said, "whether the kind of language that I began with, which refers repeatedly to Jesus Christ, which is language that is accepted and admired and incredibly important to the majority members of a community, but is not accepted by a minority, whether that language will be allowed in a public town session like this one?"

But Chief Justice John G. Roberts Jr., like several of the justices, seemed wary of the government distinguishing acceptable prayers from unacceptable ones. "Who was supposed to make these determinations?" he asked.

Laycock said town officials could simply tell those offering prayers to avoid discussing "points on which believers are known to disagree."

Ian H. Gershengorn, a deputy solicitor general, argued on behalf of the federal government in support of the town, saying the prayers there were permitted by "our nation's long history of opening legislative sessions not only with a prayer, but a prayer given in the prayer giver's own religious idiom."

That position seemed to trouble Justice Kagan. A resident attending a town meeting was, she said, "forced to identify whether she believes in the things that most of the people in the room believe in."

Gershengorn acknowledged that "the strongest argument for the other side" was "that there is an element of coercion."

The case, *Town of Greece v. Galloway*, arose from the Town Board's practice of starting its public meetings with a prayer from a "chaplain of the month." Town officials said that members of all faiths and atheists were welcome to give the opening prayer. In practice, the federal appeals court in New York said in ruling against the town that almost all of the chaplains were Christian.

"A substantial majority of the prayers in the record contained uniquely Christian language," Judge Guido Calabresi wrote for a unanimous three-judge panel of the court, the United States Court of Appeals for the Second Circuit. "Roughly two-thirds contained references to 'Jesus Christ,' 'Jesus,' 'Your Son' or the 'Holy Spirit.'"

"The town's prayer practice must be viewed as an endorsement of a particular religious viewpoint," Judge Calabresi wrote.

Justice Stephen G. Breyer suggested ways in which the conflicting interests in the case might be accommodated, including with an effort to invite chaplains of many faiths. He said the House of Representatives, which starts its sessions with a prayer, told chaplains to bear in mind that the House was "comprised of members of many different faith traditions."

Justice Kennedy suggested that the court might make such suggestions but in a nonbinding way. "Should we write that in a concurring opinion?" he asked.

Some justices worried that any ruling from the court could do more harm than good. "It's hard," Justice Kagan said, "because the court lays down these rules and everybody thinks that the court is being hostile to religion and people get unhappy and angry and agitated in various kinds of ways."

Justice Scalia wondered where a ruling from the court would leave nonbelievers. "What is the equivalent of prayer for somebody who is not religious?" he asked Hungar, who had no answer.

But Justice Breyer suggested he might have one, though he did not give it. "Perhaps he's asking me that question," he said of his colleague, "and I can answer it later." Reported in: *New York Times*, November 6.

Renewing its recent fascination with the kinds of inventions that can be patented, the Supreme Court on December 6 agreed to clarify when an analytical method implemented by a computer or by a link on the Internet is eligible for monopoly protection. The Court will be reviewing a widely splintered decision by the U.S. Court of Appeals for the Federal Circuit, in the case of *Alice Corporation Pty. Ltd. v. CLS Bank International.* The en banc Federal Circuit found the method at issue ineligible for a patent, but a majority could not agree on a standard for making such decisions.

The case will provide a new test of the Patent Act's most basic provision—Section 101, which broadly outlines what kinds of inventions are patentable. One of the long-standing exceptions to the types of inventions mentioned in that section is that an abstract idea can never be patented. That issue arises frequently these days, especially with rapidly developing technology in computer software. The Justices have dealt with that issue several times in recent years.

Alice International, an Australian company that is

half-owned by the National Australia Bank Ltd., obtained patent protection on a method invented by its founder, Ian Shepherd, for exchanging financial instruments, with the aim of assuring that, when two parties have agreed to an exchange of currency or other financial goods, they actually deliver on the deal. Because such agreements are often delayed at least a few days in implementation, there is a risk that one side won't live up to the agreement. The invented program works out a settlement arrangement to determine which side is obliged to deliver. It generates instructions to the institutions involved to carry out their agreement.

In May 2007, Alice was sued by CLS Bank International and an affiliated firm, claiming that the patent on this system was invalid and unenforceable. Alice answered with a lawsuit of its own, claiming infringement of its patent rights. A federal district judge nullified the patent, finding that none of its claims satisfied the Patent Act criteria.

When the case went to the specialized federal appeals court that handles patent cases, the Federal Circuit, a panel reversed the judge, finding that the computer implementation steps for that method were sufficient to justify granting a patent. The full court of appeals granted review at CLS Bank's request, and assigned itself the task of issuing clarifying standards on computer-implemented inventions—the task at which it ultimately failed because it could not assemble a majority for a single approach. The controlling opinion, though, did rule that Alice's patent was not valid. Reported in: Scotus Blog, December 6.

A Pennsylvania school district is asking the U.S. Supreme Court to overturn a lower court decision that upheld the right of students to wear the popular "I ♥ Boobies" breast-cancer awareness bracelets.

The Easton Area School District filed its appeal in early December in a closely watched student free-speech case. There was some question about whether the district would take the case to the high court because of the expense of such an appeal and the fact that the district has had to lay off personnel recently.

The district is appealing an August 5 decision by the full U.S. Court of Appeals for the Third Circuit, in Philadelphia, that the "I ♥ Boobies" bracelets worn by middle school students were not plainly lewd and were a form of commentary on a social issue that did not disrupt school.

Administrators at Easton Area Middle School believed the reference to "boobies" on the breast-cancer bracelets was vulgar and inappropriate for middle school students. Two students who were suspended for defying the prohibition challenged it in court through their parents as a violation of their First Amendment free-speech rights. The students are Brianna Hawk and Kayla Martinez, who are now in high school.

The Third Circuit court ruled 9-5 to uphold an injunction blocking the school district from barring the bracelets, which are sponsored by the Keep a Breast Foundation of Carlsbad, California. In its Supreme Court appeal, the school district argues that the Third Circuit ruling undermines the high court's 1986 decision in *Bethel School District v. Fraser*, which upheld a school's discipline of a high school student's lewd speech before a student assembly.

"The Third Circuit's decision undermines Fraser's basic premise that vulgar, lewd, profane, or obscene expression can be constitutionally prohibited in the public school environment, even if the same expression by adults might be protected by the First Amendment," said the district's brief in *Easton Area School District v. B.H.*

"There is no suggestion in Fraser, or its progeny, that student speech full of sexual innuendo or scatological implications must be tolerated by the Constitution just because an argument can be made to connect them with some political or social cause," adds the brief, filed by Bethlehem, Pa.-lawyer John E. Freund III.

The district also argues that the Third Circuit court mistakenly concluded that a concurring opinion by Justice Samuel A. Alito Jr. in a 2007 student speech case, *Morse v. Frederick*, was a binding part of the court majority's decision in that case, which upheld the discipline of a student who displayed a banner that read "Bong Hits 4 Jesus" at a school event.

Justice Alito said in his Morse concurrence that he joined the majority opinion on the understanding that "it provides no support for any restriction of speech that can plausibly be interpreted as commenting on any political or social issue." The Third Circuit court said in the Easton case that the Alito concurrence means that speech plausibly interpreted as political or social commentary is protected from categorical regulation in schools.

The school district notes in its brief that most other lower courts to interpret the Morse decision have not treated Justice Alito's concurrence as binding. "This court should grant certiorari to determine whether the First Amendment protects student speech, reasonably deemed lewd, even though that contains a political or social message," the district brief concludes.

A response to the appeal from the two students and their parents, who are represented by the American Civil Liberties Union of Pennsylvania, was due by January 6. Reported in: *Education Week*, December 7.

National Security Agency

Washington, D.C.

The Foreign Intelligence Surveillance Court released a new legal opinion October 18 that reauthorized the once-secret National Security Agency program that keeps records of every American's phone calls. The opinion also sought to plug a hole in a similar ruling made public in September.

In the six-page opinion, which was signed on October 11, Judge Mary A. McLaughlin said she was personally

approving for the first time the extension of the call log metadata program, which must be approved every ninety days. But she wrote that she endorsed a lengthy legal opinion written by a colleague, Judge Claire V. Eagan, who was the previous judge to approve extending it.

Judge Eagan's opinion, which was made public in September, held that the NSA could lawfully collect the bulk data about all Americans' calls without warrants, in part because of a 1979 case, *Smith v. Maryland*. In that matter, the Supreme Court held that call records were not protected by the Fourth Amendment because suspects had exposed that metadata to their phone companies and had no reasonable expectation of privacy.

Judge Eagan's opinion has been criticized, in part, because she made no mention of a landmark privacy case decided by the Supreme Court in 2012. That case, *United States v. Jones*, held that it was unconstitutional for the police to use a G.P.S. tracking device to monitor a suspect's movements without a warrant.

Although the Supreme Court decided the case on narrow grounds—citing that the police had to trespass on the suspect's property when installing the device—five of the nine justices separately called into question whether the 1979 precedent was valid in an era of modern technology. They suggested that the automated long-term collection of data about someone's location might raise Fourth Amendment issues even though each individual movement is disclosed to other people.

In her new opinion, Judge McLaughlin acknowledged the existence of the 2012 case but explained why she did not think it was relevant. First, she said, that case involved physical location, not communication links. And second, she said, the Supreme Court had decided the case on different grounds and did not fully consider the broader issue.

"The Supreme Court may someday revisit the third-party disclosure principle in the context of 21st-century communications technology, but that day has not arrived," so the 1979 precedent remains the controlling legal precedent, she wrote.

Brett Max Kaufman, a lawyer at the American Civil Liberties Union, criticized Judge McLaughlin for distinguishing aggregated location tracking from aggregated call records, saying that both types of data "reveal intimate details of our lives" and that the Fourth Amendment should be interpreted as protecting "against all unreasonable intrusions into Americans' privacy, however they are accomplished."

Following disclosures prompted by leaks from the former NSA contractor Edward J. Snowden about the scope of NSA data collection about Americans, the Foreign Intelligence Surveillance Court has been making more information public about why it approved such programs and safeguards it put in place.

The court also made public a letter to the Senate Judiciary Committee by Judge Reggie B. Walton, the surveillance court's presiding judge, that sought to counter critics who have portrayed it as a rubber stamp because it hears only from the government and approves more than 99 percent of the government's requests for surveillance powers.

Judge Walton wrote that the 99 percent statistic does not reflect "substantial" interventions by the court at earlier stages; in a recent three-month period, he wrote, 24.4 percent of applications involved changes to the authority sought or requests for greater information. Reported in: *New York Times*, October 18.

copyright

Mountain View, California

Google's idea to scan millions of books and make them searchable online seemed audacious when it was announced in 2004. But fast-forward to today, when people expect to find almost anything they want online, and the plan seems like an unsurprising and unavoidable part of today's Internet.

So when a judge dismissed a lawsuit November 14 that authors had filed against Google after countless delays, it had the whiff of inevitability. Even the judge, Denny Chin of the United States Court of Appeals for the Second Circuit, said during a September hearing on the case that his law clerks used Google Books for research.

"It advances the progress of the arts and sciences, while maintaining respectful consideration for the rights of authors and other creative individuals, and without adversely impacting the rights of copyright holders," Judge Chin wrote in his ruling. "Indeed, all society benefits." (Judge Chin handled the case in district court because he was a judge there when it began.)

The Authors Guild said it disagreed with the decision and planned to appeal. Google said it was "delighted" with the outcome.

Google began its book-scanning project in 2004, without obtaining permission from copyright holders. The next year, groups representing authors and publishers sued Google claiming copyright violations, beginning an eight-year court battle. In the meantime, Google has continued to scan more than twenty million books, the majority of which are out of print, without compensating copyright holders. They are searchable on the Google Books website, which returns snippets but not entire texts. For example, a search for Cormac McCarthy's *No Country for Old Men* brings up a fully digital copy of the book, although chunks of pages have been replaced with the message that they are "not part of this book preview."

Some full books are for sale on Google Play through partnerships with publishers. Google also has certain agreements to give libraries and publishers digital copies of their books that it scans.

Google and other technology companies often push the limits of regulation and law, and hope that eventually the rest of the world—and the law—will catch up.

"What seemed insanely ambitious and this huge effort that seemed very dangerous in 2004 now seems ordinary," said James Grimmelmann, a law professor at the University of Maryland who has followed the case closely. "Technology and media have moved on so much that it's just not a big deal."

The ruling examined whether Google's use of copyrighted works counted as so-called fair use under copyright law, which Judge Chin determined it did. The decision opened the door for other companies to also scan books.

The fair use doctrine creates an important limitation to copyright enforcement, allowing for the use of copyrighted material in scholarship and criticism, among other uses. In the end, it was Google's use of "snippets"—a term mentioned 25 times in the ruling—that played a decisive role in the legal proceedings.

"The display of snippets of text for search is similar to the display of thumbnail images of photographs for search or small images of concert posters for reference to past events, as the snippets help users locate books and determine whether they may be of interest," Judge Chin wrote in the ruling. "Google Books thus uses words for a different purpose—it uses snippets of text to act as pointers directing users to a broad selection of books."

That point, coupled with the wealth of works in the database, has made Google Books "an essential research tool," Chin concluded.

Google's book search is transformative, he wrote, because "words in books are being used in a way they have not been used before." It does not replace books, he wrote, because Google does not allow people to read entire books online. It takes security measures, like not showing one out of every ten pages in each book, to prevent people from trying to do so.

One potential problem for Google was the notion that using copyrighted material for moneymaking purposes weighs against a finding of fair use. Though the company does not sell the books and stopped running ads alongside them in 2011, it benefits commercially because people are drawn to Google websites to search the books, Judge Chin wrote. But, he added, "Even assuming Google's principal motivation is profit, the fact is that Google Books serves several important educational purposes."

He cited the benefits for librarians, researchers, students, teachers, scholars, data scientists and underserved populations like disabled people who cannot read print books or those in remote places without libraries. He said it also helped authors and publishers by creating new audiences and sources of income.

"In this day and age of online shopping, there can be no doubt that Google Books improves book sales," he wrote.

The case had been in limbo since 2011, when Judge Chin rejected a $125 million settlement proposed by the two sides. The publishers' group later split from that of the authors and reached its own agreement with Google that was not subject to court approval, while the authors continued with their lawsuit.

Paul N. Courant, a former university librarian and dean of libraries at the University of Michigan, has been closely involved in Google's library-partnership program from the beginning. A professor of economics and public policy on the university's Ann Arbor campus, he is also acting director of the University of Michigan Press.

"It's a great outcome," Courant said of Chin's ruling. "The notion that search is a transformative use is extremely important."

It's significant, Courant said, that Judge Chin invoked a ruling handed down in another important fair-use case, also brought by the Authors Guild, against the HathiTrust Digital Library, which is based at the University of Michigan and counts some 60 other academic institutions as members. The HathiTrust libraries have been important partners in Google's book-scanning efforts, receiving digital copies of books they allow Google to scan.

In 2012, Judge Harold Baer Jr. of the same U.S. District Court in Manhattan found that the HathiTrust libraries' use of Google Books scans amounted to fair use. The Authors Guild also appealed that decision; oral arguments were heard in October.

Judge Chin wrote that Judge Baer's fair-use conclusion "applies here as well to the libraries' use of their scans, and if there is no liability for copyright infringement on the libraries' part, there can be no liability on Google's part."

According to Grimmelmann, the Chin ruling is a much better deal for researchers, for the public, and for the cause of fair use. "This is good for anybody else making technological uses of copyrighted works. I have to think they are smiling at Georgia State," Grimmelmann said, referring to a university that has been embroiled in its own long-running fair-use lawsuit with publishers over its posting of copyrighted material in e-reserves. (The judge in that case found mostly for the university in a decision handed down in September 2012; the plaintiffs said they would appeal.)

"I have to think that the HathiTrust libraries are thinking about other uses they could make of their works," he continued. "I have to think that big-data start-ups are wondering what they can learn by mass-processing millions of copyrighted works."

The American Library Association cheered the decision. "ALA applauds the decision to dismiss the long running Google Books case," said Barbara Stripling, ALA president. "This ruling furthers the purpose of copyright by recognizing that Google's Book search is a transformative fair use that advances research and learning."

"This decision, along with the decision by Judge Baer in *Authors Guild v. HathiTrust*, makes clear that fair use permits mass digitization of books for purposes that advance

the arts and sciences, such as search, preservation and access for the print-disabled," said Carol Pitts Diedrichs, president of the Association of Research Libraries.

"I echo the comments of my colleagues that this ruling, that strongly supports fair use principles, enables the discovery of a wealth of resources by researchers and scholars," said Trevor A. Dawes, president of the Association of College & Research Libraries. "Google Book search also makes searchable literally millions of books by students and others with visual disabilities. This is a tremendous opportunity for all our communities."

The ruling also drew praise from supporters of open educational resources (OER). Dean Florez, president of the 20 Million Minds Foundation, described it as a "ray of hope" for the OER movement. "This Judge Chin position is going to completely push our movement into hyperdrive," Florez said. "For us, I think the next step is them saying [OER is] not just a public benefit, but a public utility."

Paul Aiken, the executive director of the Authors Guild, said in an interview that the result was "obviously disappointing" and that the authors would appeal. "Google created unauthorized digital versions of most of the world's copyright-protected books—certainly most of the valuable copyright-protected books in the world," he said.

Google issued a statement that said, "Google Books is in compliance with copyright law and acts like a card catalog for the digital age—giving users the ability to find books to buy or borrow."

The long time that it took for the case to be decided may have helped Google significantly, because it effectively resolved many of the concerns about the scanning project, said Nancy Sims, a copyright program librarian at the University of Minnesota. "Seeing it in action may have had an influence on the strength of the fair use ruling here," Sims said.

Case law has changed during that time, but so has the attitude toward digital texts, said Jonathan Band, a copyright lawyer for the Library Copyright Alliance, which filed an amicus brief in support of Google.

"There's an understanding that the way this technology works, there's going to be copying," he said. "And that there's a sensibility in the courts that as long as the whole work is not displayed, and as long as the rights-holder isn't harmed, then this copying that goes on behind the curtain just doesn't matter." Reported in: *New York Times*, November 14; *Chronicle of Higher Education* online, November 14; insidehighered.com, November 15.

Chicago, Illinois

Sherlock Holmes fanfic authors: You're now free to write your hearts out. The characters, settings and other elements of the detective franchise are officially in the public domain, a federal judge has ruled.

Given that Holmes first appeared in print more than 125 years ago, you'd think that would be obvious. Not according to Sir Arthur Conan Doyle's estate, which argues that so long as ten of his stories remain under copyright, all of the elements therein must also be under copyright, and anyone who uses Holmes, Watson or 221B Baker Street has to pay the estate a licensing fee.

When the editors of a collection of new Holmes-related short stories wanted to avoid paying the fee, the estate threatened to prevent the book from being sold on Amazon and Barnes and Noble. As a character, Holmes was developed over the course of Conan Doyle's entire writing career, not laid out in a single book, the estate claimed.

Chicago-born author and Holmes expert Leslie Klinger—who now lives in Malibu—filed the lawsuit in the Northern District of Illinois because he edited the compilation of new Holmes fiction and because Conan Doyle's estate is represented in the U.S. by Evanston literary agent Jon Lellenberg.

But Judge Rubén Castillo ruled otherwise, saying that every Holmes story that followed the first ought to be considered a derivative based on the original. As far as the court is concerned, Holmes and Watson were fully formed characters by the last page of *A Study in Scarlet*. Since anything published before January 1, 1923, is considered public-domain by law—a fact that covers fifty of Conan Doyle's tales of Sherlock—the editors of the Holmes-derived compendium titled *In the Company of Sherlock Holmes* don't need to pay up.

The caveat, of course, is that anything Holmes published in or after 1923 still enjoys protection, meaning that any element that appears exclusively in those stories can't be used.

Klinger's attorney Scott Gilbert said it's possible that other writers will now take advantage of the lapsed copyright, given the resurgent interest in Holmes, fuelled by recent Hollywood movies starring Robert Downey Jr., and a new BBC Holmes series. But the estate plans to appeal, according to William Zieske, who represented it in court.

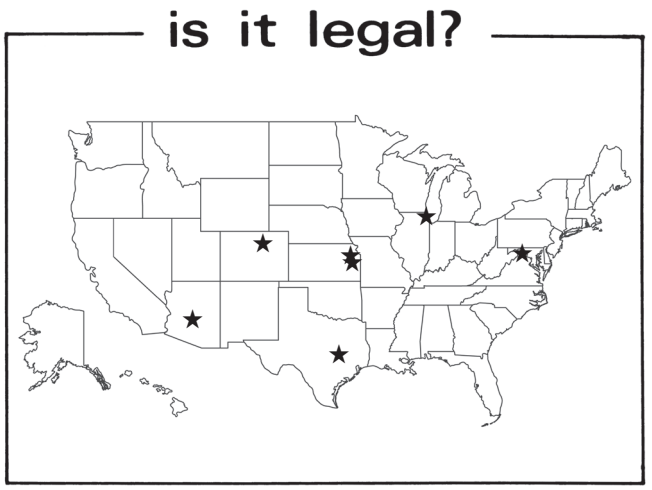
Perhaps mindful that Conan Doyle once wrote that "it is a great thing to start life with a small number of really good books which are your very own," Zieske argued that Conan Doyle's family should retain the copyright.

Since Holmes' personality continued to "mellow" and develop in ten stories published after 1922, the entire character should remain protected for another decade, he said.

Castillo—Chicago's top district court judge, who more commonly deals with real-world crime cases—called that a "novel legal argument," writing in a 22-page legal opinion that the case was "so one-sided" that he had to rule in Klinger's favor.

"Where an author has used the same character in a series of works, some of which are in the public domain, the public is free to copy story elements from the public

(continued on page 37)



library

Morton Grove, Illinois

After a fiery debate that pitted Morton Grove library trustees against one another, the board voted 5-2 December 19 not to accept a donation of about $3,000 from an atheist blogger. The money was part of a controversy that has embroiled the Morton Grove Park District, the blogger and most recently the community's public library.

Hemant Mehta, a Naperville teacher who writes a blog called the Friendly Atheist, launched a fundraising campaign after a local veterans group, American Legion Post 134, pulled funding and volunteer resources from the Park District because of a park board member's refusal to stand for the Pledge of Allegiance.

Mehta said he was surprised. "I'm in shock right now," he said. "I figured at least the library would take it."

Library Board Treasurer Catherine Peters said she stopped library staff from depositing the check, calling it a matter that should be voted on by the board. Board President Mark Albers, who voted to accept the donation, said he had no idea whether the money was from Mehta's fundraising campaign or Mehta himself.

But many board members were more alarmed by the nature of Mehta's blog and the ethical implications posed by accepting money from him. Peters referred to the blog as a "hate group." Reported in: *Chicago Tribune*, December 20.

schools

Goodyear, Arizona

Some call it a symbol of hate from an era that preached segregation among Americans. But the Confederate flag is at the center of a fight in Goodyear. The flag sparked a fight at a high school and the district suspended both boys involved. The student who displayed the flag is now banned from doing so on campus and he says it's his right to be able to fly that flag.

The Confederate flag has remained a controversial symbol since the Civil War and to this day still incites a lot of emotion. Historically, the flag has been known to symbolize a time of oppression and racism, but an Eleventh grader at Millennium High School says he has a different view of the flag.

"I'm not a racist person," said Jacob Green. Green has driven his truck to school for the past six months with the flag flying on it. He says it wasn't a problem until a couple of weeks ago when he and another kid got into a fight at school. "I've done nothing wrong. I've flown a flag on my truck . . . somebody fought me because of it. I didn't fight him. I was walking around like a normal person. He confronted me, he hit me first . . . I was defending myself," explained Green.

The school sent an e-mail to parents; suspending both kids for five days. Jacob was told he couldn't bring his flag on campus.

"Basically, they're taking away my First Amendment right of freedom of speech," he said.

The school district says it can limit students' rights while they're here on campus, especially when it comes to safety of the students and past court cases about this same subject—the Confederate flag on school campuses, backs that up.

"Open display . . . bringing it in . . . it has been proven to be patently offensive to certain groups and the courts recognize that," said Agua Fria Unified School District Superintendent Dennis Runyan.

But Jacob says he researched the history of the Confederate flag and didn't find it offensive. "Well, the flag means basically more independence, less government. It didn't mean racism, it didn't mean slavery, it didn't mean any of that. It basically meant what they were fighting for was their right to be independent and not have the government control them."

Regardless of what Jacob or other students believe, the school sees the flag as a source of trouble. "Obviously there was some event that took place it was related to reaction to the flag and it did create an environment where it was disruptive," said Runyan.

And Jacob is learning a lesson about competing points of view.

"I'm not gonna take the flag off my truck for somebody telling me to do it. I believe in independence. That's something I want to do independently." Reported in: foxphoenix.com, November 20.

Garnett, Kansas

A 13-year-old Kansas eighth-grader says he was suspended from school November 6 because he refused to take off his Vera Bradley purse. His furious mother says it is discrimination because girls are allowed to have purses with no repercussions.

"I don't think everyone should be treated differently," Skyler Davis said. "Everyone should have the same privileges."

Anderson County School District Superintendent Don Blome said that he could not discuss the specific case because of privacy concerns. However, he said all students, whether female or male, are prevented from having bags, purses, satchels and backpacks in the core classrooms like English and math. The bags must be stored in lockers during class time, he said.

"We strive to make sure we treat every kid alike and there are classroom rules we expect kids to follow," he said. "They can bring (bags and purses) to school. There's no policy against that. But the classroom rules are that they can't bring it to the classroom."

Skyler is a student at Anderson County Senior-Junior School. He said he has been carrying the colorful fabric Vera Bradley bag over his shoulder for some time with no issues. "It expresses myself and I think everyone else can wear it, so I wear it as well," Skyler explained.

He was summoned to Assistant Principal Don Hillard's office after he wouldn't take it off. "I went to the office and I refused to take it off, and they suspended me," the teen recounted. School personnel then called his mother, Leslie Willis, to come get her son.

"I was a little furious, and I called the school [and spoke to Hillard] to reverify the story, and yeah, he refused to take off his Vera Bradley bag, nothing more to it," Willis said. She said she reviewed the student handbook but did not see a mention to bags or purses. She questions the suspension and the timing.

"Skyler has been going to school since August with that same Vera Bradley bag on, hasn't taken it off. What is the problem?" she asked.

In response to Blome's comments Willis said that the bag rule should be a formal part of the student handbook so that there is no confusion. She said she supports her son and his choices. She said if he wants to carry a Vera Bradley purse or any other type of bag that he should be able to do so without being punished.

She said that her son went back to school at 1:30 p.m. the next day with the bag in tow. "He was pulled into an office, behind closed doors to tell him that he was never suspended for refusing to take off his purse, he got suspended for foul language," she wrote. "That's not the story that Mr. Hillard told me yesterday. Skyler is only 13 years old. He's just a child. And if this isn't bullying, I don't know what is."

"I think it is pretty cool that Skyler is making a stand and it's causing somebody to listen," she said.

Blome insists that the district does not discriminate based on gender. "We are not going out there to discriminate against anybody," he said. He said he has been superintendent for six years and that even before his arrival that junior high students couldn't bring bags into the core classes. "That's been a long-standing rule," he said, adding he believes it dates back at least ten years.

He explained that if a student refused to abide by the rule that a teacher would send the student to the office. If the student again refused to comply, then Blome said the student could be suspended.

Willis said her son was criticized by school personnel for going public. "Skyler can speak freely about what's bothering him. I have taught him this. Now the school is upset because he spoke out," she said.

Blome said he hasn't spoken with the teen or his mother. He said he didn't know whether any staff member would have criticized the student for speaking publicly, but said the district certainly cannot stop the student or his mother from doing so.

The district has mailed to Willis a formal notification of the disciplinary action and the reasoning behind it. Blome said he cannot release it without Willis' permission. Willis said she was told that the suspension wouldn't be lifted until Skyler stops wearing the purse, which he had said that he wouldn't do.

"We're going to have to find some compromise in this," his mother said. She didn't detail what that could be.

Word of Skyler's story has reached the purse maker. "Vera Bradley creates products that allow all of us to express our individual style. We encourage self-expression through color and design," the company said in a statement when asked about Skyler's situation. Reported in: kctv5.com, November 6, December 6.

Austin, Texas

The Texas Board of Education has delayed final approval of a widely used biology textbook because of concerns raised by one reviewer that it presents evolution as fact rather than theory. The months-long textbook review process in Texas has been controversial because a number of people selected this year to evaluate publishers' submissions do not accept evolution or climate change as scientific truth.

On November 22, the state board, which includes several members who hold creationist views, voted to recommend fourteen textbooks in biology and environmental science. But its approval of *Biology*, a highly regarded textbook by Kenneth R. Miller, a biologist at Brown University, and Joseph S. Levine, a science journalist, and published by Pearson Education, was contingent upon an expert panel determining whether any corrections are warranted. Until the panel rules on the alleged errors, Pearson will not be able to market its book as approved by the board to school

districts in Texas.

"It's just a shame that quality textbooks still have to jump through ridiculous hoops that have no basis in science," said Kathy Miller, president of the Texas Freedom Network, which monitors the activities of far-right organizations.

Miller (no relation to the Pearson textbook author) said she nevertheless gave the vote "two opposable thumbs up" because the board "adopted all of the science books and the publishers made no effort to water down evolution or climate science in those books."

Three members of the state school board—Barbara Cargill, the Republican chairwoman appointed by Gov. Rick Perry; Martha Dominguez, a Democrat from El Paso; and Sue Melton-Malone, a Republican from Waco—will select experts for the final review panel for the Pearson textbook. The board voted that the experts must have at least a Ph.D. in a "related field of study" and could not have served on the original review panel for the book.

The alleged errors that will be reviewed by the new expert panel were cited by Ide P. Trotter, a chemical engineer and financial adviser who is listed as a "Darwin Skeptic" on the website of the Creation Science Hall of Fame and was on a textbook review panel that evaluated Miller and Levine's *Biology* last summer. Trotter raised numerous questions about the book's sections on evolution.

"I think I did a pretty good review, modestly speaking," said Trotter, speaking from his home in Duncanville, a suburb of Dallas. He said Miller and Levine's textbook "gives a misleading impression that we have a fairly close understanding of how random processes could lead to us." He added, "If it were honest, it would say this is how we are looking at it, and these are the complexities that we don't understand."

Susan M. Aspey, a spokeswoman for Pearson, said that the publisher "is proud of the work we've done with educators and scientists to create effective materials for the state of Texas."

Ronald Wetherington, a professor of evolutionary anthropology at Southern Methodist University who has already looked over Trotter's complaints, described them as "non sequiturs and irrelevant."

"It was simply a morass of pseudoscientific objections," Wetherington said.

Joshua Rosenau, programs and policy director at the National Center for Science Education, a nonprofit group that defends the teaching of evolution and climate change, said he hoped the Texas school board members would select scientists with mainstream views.

"Tomorrow morning, you could walk five minutes up to campus and knock on any five doors in the biology department," Rosenau said, referring to the University of Texas at Austin. "And in five minutes they would say these aren't errors," he said of Trotter's list.

Separately, the board also directed Houghton Mifflin Harcourt, the publisher of an environmental science textbook, to make minor changes to its sections on climate change. A spokeswoman for Houghton Mifflin said the publisher had already responded to the change requests.

"We stood by the integrity of our content," the company said in an emailed statement, "and made no material changes to instruction or point of view." Reported in: *New York Times*, November 22.

colleges and universities

Boulder, Colorado; Lawrence, Kansas

Having witnessed social media's potential to carry professors' statements far and wide, higher-education officials in Colorado and Kansas recently have moved to limit what messages take such a journey. They have argued that they are simply trying to protect their institutions, but their actions have raised the question of whether risk-averse definitions of academic freedom really offer much freedom at all.

The broadest, and most striking, effort to limit social media came at the hands of the Kansas Board of Regents, which on December 19 shocked faculty leaders throughout the state by adopting a policy that grants public colleges' chief executive officers the authority to discipline their institutions' employees for a wide range of controversial statements aired online. Although some of the types of speech that the policy restricts, such as incitations of violence or disclosures of confidential student information, have long been seen as unworthy of First Amendment protection, several of its other prohibitions are being denounced as threats to the essence of shared governance and academic freedom.

While requiring the top official of each public college to conduct a "balancing analysis" that weighs the institution's interests "against the employee's right as a citizen to speak on matters of public concern," the Kansas policy subjects a long list of employee utterances to placement on the scale. They include any communication that "impairs discipline by superiors or harmony among co-workers," hurts "close working relationships for which personal loyalty and confidence are necessary," impedes "the performance of the speaker's official duties," or otherwise interferes with the university's operation and ability to efficiently provide services.

What happened in Colorado was simply a single institution's decision to discipline a single tenured sociology professor, over concerns raised by her staging of a student-performed skit on prostitution in a class on social deviance. But along with provoking outcries that it had denied the professor, Patricia A. Adler, due process by cracking down on her in the absence of a formal investigation or complaint, the University of Colorado at Boulder invoked an entirely new social-media threat to academic freedom.

At a news conference December 19, Steven R. Leigh,

dean of the university's College of Arts and Sciences, expressed concern that students in the skit were subject to being videotaped on cellphones without their consent.

The Boulder Faculty Assembly, a campuswide faculty governance body, held an emergency meeting on Adler's case. It announced that it and the representative faculty body for Boulder's College of Arts and Sciences planned to establish a joint committee to examine how her case had been handled.

Adler said that the university's administration had made no mention of concerns about students' being taped until after it came under widespread public criticism for telling her she could not teach the class and, she alleges, pressuring her to resign.

Colorado's fears were hardly imaginary, however. Shaky footage of the skit appeared on a local news broadcast by NBC's Denver affiliate, which says it obtained the footage from a source other than the university's administration. Anyone with Internet access could see one of Adler's student teaching assistants portraying a "sex slave," although the setting—a crowded auditorium—left little doubt all was make-believe.

Even the staunchest advocates of academic freedom acknowledge that the Internet has transported colleges to a strange new place where changes in communication have left administrators needing courage, faculty members needing to use their brains, and aroused mobs often showing little heart.

"We have heard now too many instances" of faculty members caught up in controversies over statements "they never thought anyone but one or two people would hear," said Henry Reichman, a professor emeritus of history at California State University-East Bay and chair of the American Association of University Professors' Committee A on Academic Freedom and Tenure.

In a draft report on academic freedom and electronic communications issued in December that committee urged faculty members to exercise caution in their utterances, especially when communicating online.

Reichman also argued, however, that "too many administrators seem to have abandoned their backbone" when defending faculty members who come under attack for their speech. "If there is any place in our society where people should be allowed to push the envelope, it is academia," he said. He argued that the way to avoid controversies over professors' being photographed or videotaped is not to restrict their speech but to adopt policies prohibiting students from disseminating such images and recordings without the faculty members' formal consent.

Few institutions have had a rougher landing in the new environment for academic speech than the University of Colorado at Boulder, the focus of one of the biggest academic-freedom controversies in recent decades.

Ward Churchill remained securely employed at Boulder as an ethnic-studies professor for more than three years after publishing his incendiary 2001 essay arguing that people who had died in the September 11 attacks on the World Trade Center were not innocent civilians but "little Eichmanns," part of an oppressive empire. Then, in late 2004 an ideologically unsympathetic Hamilton College professor discovered the previously little-discussed essay online and used it to ignite a public controversy that quickly spread via conservative blogs and cable-television talk shows.

The besieged Boulder campus ended up firing Churchill on charges of research misconduct and was caught up in a legal battle over his academic-freedom and due-process rights until last spring.

The University of Kansas has recently weathered its own storm, involving David W. Guth, an associate professor of journalism who reacted to the September 16 shootings at the Washington Navy Yard with a tweet that said, "The blood is on the hands of the #NRA. Next time, let it be YOUR sons and daughters. Shame on you. May God damn you." The backlash in social media, and resulting threats to him and others, led the university to condemn his statement and place him on leave. He has been allowed to work only on administrative duties.

The nine-member, gubernatorially appointed Kansas Board of Regents, which serves as the coordinating board for the state's 32 public higher-education institutions and governs the six state universities, did little to publicize or solicit input on the policy it passed December 18.

"We were completely blindsided," said Ron Barrett-Gonzalez, an associate professor of aerospace engineering at the University of Kansas and president of the AAUP's Kansas conference. "My email box lit up" with dozens of messages, he said, many from prospective hires of Kansas colleges who now had concerns about going there.

Barrett-Gonzalez called the new policy "an affront to First Amendment freedom of speech and academic freedom," and expressed disbelief at its language dealing with the preservation of harmony within the institution. "A healthy body of faculty will be a deliberative structure, and they will not always agree," he said.

A background statement introducing the policy characterized it as intended to provide guidance to administrators and employees on the acceptable use of social media that can be misused and can damage universities. The policy defines social media as including but not limited to blogs, wikis, Twitter, YouTube, and social-networking sites such as Facebook and LinkedIn. The balancing analysis that it proposes calls for colleges' chief executive officers to consider whether employees purported to speak on behalf of their institutions or made the statements at issue using their employer's resources or during work hours.

Julene Miller, the board's general counsel, said the policy does not eliminate academic freedom and whistle-blowers'

(continued on page 39)

libraries

Geneva, Illinois

A muscular guy with a Darth Vader-esque facial contraption is being pursued by an equally muscular Batman —but are these images too scary for young readers? One mother thought so and asked the Geneva Public Library to move the 24-page picture book, *The Dark Knight Rises: I Am Bane*, from its section for preschool children to a section for an older age group.

Acting library director Peggy Carlson said three staff members reviewed the parent's request and determined that it should stay. "We want to leave it where it is because it fits with the content," Carlson said. She said the request was based "on a potential situation not an actual occurrence."

"What might be scary to one might not be scary to another," Carlson said. "The title is age-appropriate."

Geneva Library Board President Esther Steel said in the ten years she has been on the library board, it has never acted contrary to a staff recommendation. "What I have seen us do, is move it from one section to another, but never taken one out of circulation," Steel said.

According to its publicher the book, written by Lucy Rosen and illustrated by Scott Cohn, is recommended for children ages 4 to 8. Reported in: *Kane County Chronicle,* December 13.

Anoka, Minnesota

Powerful, realistic and honest, but not profane. That was the conclusion of a nine-person panel of Anoka High School parents, faculty and a student who deliberated the fate of the acclaimed young adult novel *Eleanor & Park*. The parents of a high school freshman, partnering with the conservative Parents Action League, challenged the book's place in school libraries, calling it "vile profanity." They cited 227 instances of coarse language and sexuality.

But the novel about first love, bullying and poverty will stay on library shelves at Anoka High. Anoka-Hennepin librarians chose the book for the district's high school summer "Rock the Book" voluntary reading program. The ensuing controversy drew national attention when the school district and Anoka County Library withdrew an invitation to Omaha author Rainbow Rowell to speak about the book. It spurred a bit of a backlash in the Twin Cities. St. Paul Library staff chose *Eleanor & Park* for its 2014 Read Brave program for teens and adults as the controversy simmered. The St. Paul library increased the number of copies in circulation from seven to 39 as demand spiked.

Anoka High Principal Mike Farley selected and chaired the book review committee, per district policy. Farley announced their decision November 22.

"The group liked the book. They felt the writing was skillful. We talked a lot about the key themes in the book: bullying, poverty, abuse, love, body image and the power of language," Farley said. "They felt the high school students would relate to the themes and be familiar with the language. We did acknowledge some of the language is rough, but it fits the situation and the characters," he said. "If you did remove that, it wouldn't be the same."

Anoka-Hennepin Schools have never removed a book from library shelves, but several books have been challenged. A parent challenged the "Goosebumps" series as being too frightening for elementary students. *Go Ask Alice*, a story of teenage drug addiction, was challenged in the 1970s.

District leaders stressed the importance of following the process laid out in district policy. They said it's about giving parents a voice in their children's education. "As superintendent, I am always very aware that our parents want to be informed in areas that may be controversial," said Anoka-Hennepin Superintendent Dennis Carlson. "I know they want to be able to make informed choices for their children in areas of health, safety and curriculum."

The book review committee, whose members' names were not made public, included one father, two mothers, two teachers, a retired teacher, a high school sophomore, the school librarian and the principal. Under district policy, the parent can appeal the committee's decision to the district office. So far, that has not happened, said district spokeswoman Mary Olson.

Parent Troy Cooper, who identified himself as the complaining parent in September, outlined his objections to the book in a 13-page document. He cited 227 uses of profanity or using the Lord's name in vain, including 60 instances of the "F" word.

"It's is the most profane and obscene work we have ever read in our lives," Cooper said during a September

interview. "We are not looking to completely shelter our children but we are looking to preserve their innocence as long as possible."

The conservative Parents Action League took up the cause, calling for the book to be removed from schools and for librarians to be disciplined. "There has been no discipline," Olson said.

Set in 1986, *Eleanor & Park* concerns two high school students who fall in love on the school bus. They bond over mixed music tapes and comics. The novel, set in a poor Omaha neighborhood, explores poverty, bullying, abuse, racism and budding sexuality. The young lovers are honor students but misfits in the high school hierarchy. Eleanor is targeted by bullies and struggles with an unhappy and unsafe home life. The young couple kiss and caress. They do not have sex.

Rowell, the book's author, got teary as she discussed the controversy at a panel about "suppression of young adult literature" at Metropolitan State University in St. Paul on October 29. Rowell, who also grew up poor, said she set out to explore first love.

"I was thinking about how, when you are 16 and fall in love, you fall in love with every cell of your body," she said in an earlier interview. "I didn't plan to write about poverty, bullying, domestic abuse and racism but they're in the book. It just happens. … Everything I wrote about was something I experienced or I saw happening around me."

"If this book is too obscene to read, what is it saying to the kids going through that?" Rowell said. "The book is about rising above. It's about two people who were not defined by this garbage."

Farley said he plans to continue the voluntary summer reading program. The principal said he'd allow his high school-aged son to read the book. "I did enjoy the book. I deal with this stuff every day working in the school with students. Did I think the language was rough? Yes," Farley said. "There is some tough stuff in there, but a lot of the stuff our kids are dealing with is tough." Reported in: *Minneapolis Star-Tribune*, November 22.

schools

Driggs, Idaho

What began as a Facebook post from a disgruntled parent escalated into a community wide conversation aimed to pull the novel *Bless Me, Ultima*, by Rodolfo Anaya, from the Teton High School sophomore English class required reading list. After meeting fierce opposition over the novel's mature content, Superintendent Monte Woolstenhulme responded by suspending the novel.

For four passionate hours December 9, the school board addressed these concerns in a crowded elementary school auditorium. The evening culminated in an emotional apology from Woolstenhulme, who admitted to acting hastily in suspending *Bless Me, Ultima* from the curriculum without following the proper procedures dictated by district policy 4120. He said he breeched the trust of the high school staff and the administration under his supervision.

"It's very important to build trust in our community and in our school district, and I take responsibility for times this year when either my actions or decisions I think have broken down that trust," said Woolstenhulme in his final recommendation and closing statement to those in attendance. "I recognize that I acted hastily on this, and I see the concern and the issue that the teachers have…[Policy 4120] is the guide that I recognize, I admit and I apologize, I should have been following very specifically. The teachers were working through it, Mr. Mello was working through it and I'm the one that failed and did not follow this policy. That being said, I would recommend that we do allow the English department to use this book. We can go through this grievance policy with those people that have these concerns."

The focus of the meeting was to discuss district policy as it relates to teaching controversial units, although the policies discussed were most recently revised on August 13, 2012. Although policy 2340 allows "for parents to have their child excused from a topic which may be contrary to their religious or moral values. This shall be done in writing by the parent and include an explanation of the conflict," no written complaints were received by the English department, Teton High School Principal Frank Mello or Superintendent Woolstenhulme.

It was offered that a committee be formed to handle potentially objectionable material, as allowed by policy 2520, and that policy 2340 be amended so that informal, verbal complaints are enough to demand action. However, Board Member Bonnie Etchemendy said she could not support such a change as it could easily take away freedoms. The audience erupted in applause.

Etchemendy did note that the formation of a grievance committee would be beneficial. It was ultimately decided that policy amendments be postponed until the January meeting.

Attention was then turned to a prepared testimony over the value of guiding youths through controversial subject matter from the English teachers who assigned *Bless Me, Ultima*. In the 51 combined years of teaching experience between Susan Pence, Jason Ruff and Diane Green, they had never been confronted with the prospect of censorship, although within the Teton School District they had taught units that use similar and more vulgar profanity.

"The practice of challenging books like *Bless Me, Ultima*, by isolating words and fragmented scenes, disposes of context as it relates to specific uses of profanity," said Pence to the school board. "It ignores the author's intent; it fuels ignorance; it serves to create shock value; and it denigrates the spirit of the novel."

Ruff followed her by listing *Huck Finn*, *To Kill a Mockingbird*, *Oedipus Rex*, and many others that use racial

slurs, discuss incest, challenge authority and use profanity that, "have fallen prey to ignorance elsewhere, but have been included as literature units at Teton High School."

Although the English department had not received any written complaints, an alternative piece of literature and corresponding assignment were offered. Regardless, the school board questioned the teachers, over their definition of appropriateness, following policy and where the breakdown occurred.

"On this policy it talks about relative maturity of the students, we want to prepare our students to be ready for college, but at fifteen years old in a sophomore class, do they really need to be prepared for college?" said school board member Carol Dansie in response. "It talks about community standards and values. Have you considered the standards, morals and values of this community when you're selecting this book?"

Diane Green addressed each of the points noting that each teacher was intimately familiar with the text and did not find the novel controversial.

Dansie then admitted to having only begun reading the text, but she responded to Green by saying, "You don't know my kids. My son will come home and tell me every time his coach swears. So, I'm saying you don't know all students. There are some students that do have sensitivities to more mature material…. Did you follow the policy about letting the parents know beforehand?"

Behind red eyes, Woolstenhulme addressed the teachers with an apology and admission that it was he, not the teachers, who acted out of policy procedure. He said that never in his career had he acted so swiftly or severely and that the distraction in the classroom was not because of the novel but caused by his decision.

The meeting then opened to public statements from concerned parents and community members on the implications of the school board's impending decision over reinstating the novel.

Janine Jolley addressed the board as a longtime librarian, a mother, an educator and someone who had read the entire novel. "As some of the teachers said, the book is more, perhaps, than just the swear words . . . the masturbation scene . . . the extreme, close-range violence as experienced through the eyes of a tiny child, but when I look at all of those things as a parent I'm glad that my child was one that did not want to read it. I'm proud of him," said Jolley. "Just because we hear the f-word in society does not make it right."

Chris Warburn also addressed the language and sexual content, but further expanded that the number of parents and students who have publicly condemned the novel should denote its inappropriateness. "If we take this piece of literature and I read it from front to back, word for word right here at this meeting, I'm very confident someone on the board would ask me to stop."

Others publicly condemned what they saw as a hypocrisy in following district policy.

"Since Carol brought this up, if we know of coaches, you know we don't tolerate the 'f-word,' right? Well, if we're going to suspend a book because it has it in there, then those coaches need to be suspended immediately, and I expect them to be brought up at the next board meeting … Carol knows their names. If they're swearing in front of the kids, you guys won't tolerate it, you get rid of them," said David Heinemann. "I don't agree with that personally, but that's what's been said here."

A student, Emma Hodgson, also addressed the board. She asserted that certain obscenities in this society could be representative of another culture. Hodgson agreed that no one should be forced to read the novel, but she questioned how someone else's parents were justified to take away her right to read the novel.

The novel was reinstated, and Woolstenhulme was applauded by the school board for his humility.

"The decision that Monte just made was made at the correct level," said Board Member Delwyn Jensen through the microphone. "That's why I would like to focus on the policy here rather than the book. Monte can make the decision about the book, and I commend him for the decision he just made." Reported in: *Teton Valley News*, December 11.

Boone, North Carolina

A second review committee voted 5-0 December 12 to retain *The House of the Spirits*, by Isabel Allende, in Watauga County Schools curriculum.

As a part of the ongoing book challenge at Watauga High School, the second review committee, comprising Supt. David Fonseca, educators and a community member, heard from Chastity Lesesne, the parent appealing the book, and Mary-Kent Whitaker, the Watauga High School teacher who teaches the book in her tenth grade honors English class.

Each participant had 30 minutes to state the case for either retaining the book or removing the book. Lesesne opted for Whitaker to speak first. During Whitaker's time, she cited her credentials as a teacher and the process of choosing *The House of the Spirits*. The department chose five books out of 25 in the spring of 2012 because of the new standards implemented for the 2012-2013 school year, Whitaker said.

Whitaker also defended *Moby Dick*, the alternative to the book.

She also explained the exercises based around *The House of the Spirits*, which uses historical examples to help students cope with the unsavory sections of the book, Whitaker added.

Whitaker finished her thirty minutes by reading from statements by different students who read the book last year. "I implore you to make the right decision to keep the book," Whitaker concluded. "Form an opinion on the work as a whole, not the excerpts."

Lesesne spoke next and explained that her argument for removing the book has stretched beyond her original intentions, and expanded into issues like censorship which she does not agree with.

"I represent my son, my husband and my family," Lesesne added. "There may be other parents who agree with me, but I am not with an organization. It's just me."

Lesesne then questioned why *Moby Dick* was the appropriate alternative to *The House of the Spirits* if it has no relation to Latin-American literature. Lesesne also brought up her concern about what the book can do to a student who has experienced sexual abuse. "We don't know what baggage a student brings into the classroom," Lesesne added.

She then read four excerpts from the book to illustrate its graphic nature – a section about the rape of a 15-year-old girl, a section about a character talking about losing her virginity to rape, a section about sex with a prostitute and a section about a man molesting a 6-year-old – and mentioned that parents from last year were unaware that their children were reading such content.

"This process puts us on the offensive side and the defensive side," Lesesne said. "There has been no place for that. It is not one person's fault." She added that she feels ostracized by the current version of the Board of Education policy. "There is no place for parents," Lesesne said. "It's shut out. What part do we play in this? That's what concerns me. And I have been very specific about those concerns. According to this [Board of Education policy] I am not going to be heard."

After hearing from both Lesesne and Whitaker, the committee spoke citing Board of Education policy. "The book fits everything," Partick Sukow, committee member and principal at Blowing Rock, said. "It fits the criteria in the Board of Education policy." Amy Hiatt, media specialist and committee member, agreed with Sukow.

Clint Zimmerman, Ph.D. and community representative on the committee, thanked Lesesne for bringing the issue to the attention of the committee. However, the issue of regulating a child's media diet is very prevalent in our society now, Zimmerman said, citing an article from the American Academy of Pediatrics.

Klay Anderson, a mathematics teacher and 2013-2014 Teacher of the Year at WHS, said that the book was a fantastic novel about how one decision can affect an entire person's life. Anderson said he would not allow his child to read the book because of the adult nature of the content but said that shouldn't stop anyone else's child from reading the book.

"The fact of the matter is public education is about choice," Anderson said. "The argument is about the book, but the policy has been followed whether we agree with it or not."

As an alternative to *The House of the Spirits* being taught in the classroom, Sukow asked Whitaker if the book could be used as a summer reading assignment. However, Whitaker said she would not pick a book like *The House of the Spirits* for a summer reading program because it is a book that needs guidance due to its sensitive subject matter.

Before the committee voted, Fonseca noted the similarities between Whitaker and Lesesne. How both of them did not expect the stress, dilemma and community pressure that would ensue from the challenge.

"The reality is we do have a process and a policy," Fonseca said. "The reality is that it was a difficult topic and decision."

Lesesne can appeal the book for the third and final time. The next appeal would be reviewed by the Board of Education.

The Media and Technology Advisory Committee at Watauga High School had voted unanimously October 25 to uphold the use of the book. Reported in: *Watauga Democrat*, October 26; *High Country Press*, December 13.

art

San Bernardino, California

The National Coalition Against Censorship (NCAC) and the ACLU of Southern California on December 13 announced a final court settlement that extended the exhibition time of three recently restored paintings at the San Bernardino County Government Center. The extended display period was to compensate for the time during which the works, by artists Armando Aleman and Efren Montiel Jimenez, had been removed.

The paintings, which were part of an exhibit celebrating Hispanic Heritage Month, were removed in September after a visitor complained they were "offensive." NCAC and the ACLU-SC sent a public letter opposing the removal, reminding government officials of their First Amendment obligations, but there was no response.

The ACLU-SC eventually filed a lawsuit and, on December 4, the County of San Bernardino conceded and restored the paintings. The final settlement guaranteed the county would display the paintings until January 17 to make up for the time during which they were barred from the exhibit, which was originally scheduled to close on November 30. Reported in: ncacblog, December 13. □

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courts, presidential panel divided. . . . from page 1

The case was the first in which a federal judge who is not on the Foreign Intelligence Surveillance Court, which authorized the once-secret program, has examined the bulk data collection on behalf of someone who is not a criminal defendant. The Justice Department has said that 15 separate judges on the surveillance court have held on 35 occasions that the calling data program is legal.

It also marked the first successful legal challenge brought against the program since it was revealed in June after leaks

by the former NSA contractor Edward J. Snowden.

The case was brought by several plaintiffs led by Larry Klayman, a conservative legal activist. Klayman, who represented himself and the other plaintiffs, said that he was seeking to turn the case into a class action on behalf of all Americans. "I'm extremely gratified that Judge Leon had the courage to make this ruling," he said. "He is an American hero."

Klayman argued that he had legal standing to challenge the program in part because, he contended, the government had sent inexplicable text messages to his clients on his behalf; at a hearing, he told the judge, "I think they are messing with me."

The judge portrayed that claim as "unusual" but looked past it, saying Klayman and his co-plaintiff instead had standing because it was highly likely, based on the government's own description of the program as a "comprehensive metadata database," that the NSA collected data about their phone calls along with everyone else's.

Though long and detailed, Judge Leon's ruling was not a final judgment on the program, but rather a preliminary injunction to stop the collection of data about the plaintiffs while they pursued their case. He also wrote that he had "serious doubts about the efficacy" of the program, saying that the government had failed to cite "a single instance in which analysis of the NSA's bulk metadata collection actually stopped an imminent attack, or otherwise aided the government in achieving any objective that was time-sensitive."

Judge Leon rejected the Obama administration's argument that a 1979 case, Smith v. Maryland, had established there are no Fourth Amendment protections for call metadata—information like the numbers dialed and the date, time and duration of calls, but not their content. The 1979 case, which involved collecting information about a criminal defendant's calls, helped establish the principle that people do not have a reasonable expectation of privacy for information they have exposed to a third party, like the phone company, which knows about their calls.

The surveillance court, which issues secret rulings after hearing arguments from only the Justice Department and without opposing lawyers, has maintained that the 1979 decision is a controlling precedent that shields the NSA call data program from Fourth Amendment review. But Judge Leon, citing the scope of the program and the evolving role of phones and technology, distinguished the bulk collection from the 34-year-old case.

In November, a federal judge declined to grant a new trial to several San Diego men convicted of sending money to a terrorist group in Somalia. Government officials have since acknowledged that investigators became interested in them because of the call records program. Citing Smith v. Maryland, the judge said the defendants had "no legitimate expectation of privacy" over their call data.

David Rivkin, a White House lawyer in the administration of the elder President George Bush, criticized Judge Leon's reasoning. "Smith v. Maryland is the law of the land," Rivkin said. "It is not for a District Court judge to question the continuing validity of a Supreme Court precedent that is exactly on point."

Judge Leon also pointed to a landmark privacy case decided by the Supreme Court in 2012 that held it was unconstitutional for the police to use a GPS tracking device to monitor a suspect's public movements without a warrant. Although the court decided the case on narrow grounds, five of the nine justices separately questioned whether the 1979 precedent was still valid in an era of modern technology, which enables long-term, automated collection of information.

The second decision, from Judge William H. Pauley III in New York, could not have been more different from the one issued by Judge Leon in Washington. The decision on December 27 was "the exact opposite of Judge Leon's in every way, substantively and rhetorically," said Orin S. Kerr, a law professor at George Washington University. "It's matter and antimatter."

The case in New York was brought by the American Civil Liberties Union, which said it would appeal. "We are extremely disappointed with this decision, which misinterprets the relevant statutes, understates the privacy implications of the government's surveillance and misapplies a narrow and outdated precedent to read away core constitutional protections," said Jameel Jaffer, a lawyer with the group.

A spokesman for the Justice Department said, "We are pleased the court found the NSA's bulk telephony metadata collection program to be lawful."

The next stops for the parallel cases are the appeals courts in New York and Washington. Should the split endure, the Supreme Court is likely to step in.

The two judges had starkly differing understandings on how valuable the NSA program is. Judge Pauley, whose courtroom is just blocks from where the World Trade Center towers stood, endorsed arguments made in recent months by senior government officials—including the former FBI director Robert S. Mueller III—that the program might have caught the September 11, 2001, hijackers had it been in place before the attacks.

Judge Pauley began his opinion with an anecdote. In the months before September 11, he said, the NSA intercepted seven calls made to an Al Qaeda safe house in Yemen from the United States. They were from Khalid al-Mihdhar, who was living in San Diego and would become one of the hijackers.

But the security agency "could not capture al-Mihdhar's telephone number," the judge wrote, and "NSA analysts concluded mistakenly that al-Mihdhar was overseas and not in the United States."

"Telephony metadata would have furnished the missing information and might have permitted the NSA to notify the

Federal Bureau of Investigation of the fact that al-Mihdhar was calling the Yemeni safe house from inside the United States," Judge Pauley wrote.

Judge Leon, in Washington, took the opposite view, saying the government had failed to make the case that the program is needed to protect the nation. "The government does not cite a single instance in which analysis of the NSA's bulk metadata collection actually stopped an imminent attack, or otherwise aided the government in achieving any objective that was time-sensitive in nature," he wrote.

The presidential review group took a middle ground, though it seemed to lean toward Judge Leon's position. It said the security agency "believes that on at least a few occasions" the program "has contributed to its efforts to prevent possible terrorist attacks, either in the United States or somewhere else in the world." But it added that its own review suggested that the program "was not essential to preventing attacks," and that less intrusive measures would work.

The group recommended that bulk storage of telephone records by the government be halted in favor of "a system in which such metadata is held instead either by private providers or by a private third party." Access to the data, it said, should require a court order.

The two judges did not limit their disagreements to how well the program worked. They also drew different conclusions about its constitutionality. "While robust discussions are underway across the nation, in Congress and at the White House, the question for this court is whether the government's bulk telephony metadata program is lawful," Judge Pauley. "This court finds it is."

The main dispute between the judges was over how to interpret a the 1979 Supreme Court decision in Smith v. Maryland, in which the court said a robbery suspect had no reasonable expectation that his right to privacy extended to the numbers dialed from his phone. "Smith's bedrock holding is that an individual has no legitimate expectation of privacy in information provided to third parties," Judge Pauley wrote.

But Judge Leon said that advances in technology and suggestions in concurring opinions in later Supreme Court decisions had undermined the Smith ruling. The government's ability to construct a mosaic of information from countless records, he said, called for a new analysis of how to apply the Fourth Amendment's prohibition of unreasonable government searches.

Judge Pauley disagreed. "The collection of breathtaking amounts of information unprotected by the Fourth Amendment does not transform that sweep into a Fourth Amendment search," he wrote.

He acknowledged that "five justices appeared to be grappling with how the Fourth Amendment applies to technological advances" in a pair of 2012 concurrences in United States v. Jones. In that decision, the court unanimously rejected the use of a GPS device to track the movements of a drug suspect over a month. The majority said that attaching the device violated the defendant's property rights.

In one of the concurrences, Justice Sonia Sotomayor wrote that "it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties."

The presidential review group said statements like that raised questions about whether the 1979 decision was "still good law." But it said its job was "not to interpret the Fourth Amendment, but to make recommendations about sound public policy."

Judge Pauley also said it was not for him to say where the law was heading, but for a different reason. "The Supreme Court," he said, "has instructed lower courts not to predict whether it would overrule a precedent even if its reasoning has been supplanted by later cases."

As for changes in technology, he wrote, customers' "relationship with their telecommunications providers has not changed" since 1979 "and is just as frustrating."

The presidential panel urged President Obama on December 18 to impose major oversight and some restrictions on the NSA, arguing that in the past dozen years its powers had been enhanced at the expense of personal privacy.

The panel recommended changes in the way the agency collects the telephone data of Americans, spies on foreign leaders and prepares for cyberattacks abroad.

But the most significant recommendation of the panel of five intelligence and legal experts was that Obama restructure the program in which the NSA systematically collects logs of all American phone calls and a small group of agency officials have the power to authorize the search of an individual's telephone contacts. Instead, the panel said, the data should remain in the hands of telecommunications companies or a private consortium, and a court order should be necessary each time analysts want to access the information of any individual "for queries and data mining."

The experts briefed President Obama on their 46 recommendations, and a senior administration official said the president was "open to many" of the changes, though he has already rejected one that called for separate leaders for the NSA and its Pentagon cousin, the United States Cyber Command.

If Obama adopts the majority of the recommendations, it would mark the first major restrictions on the unilateral powers that the NSA has acquired since the September 11 terrorist attacks. They would require far more specific approvals from the courts, far more oversight from the Congress and specific presidential approval for spying on national leaders, especially allies. The agency would also have to give up one of its most potent weapons in cyberconflicts: the ability to insert "back doors" in American hardware or software, a secret way into them to manipulate computers, or to purchase previously unknown flaws in software that it can use to conduct cyberattacks.

"We have identified a series of reforms that are designed to safeguard the privacy and dignity of American citizens, and to promote public trust, while also allowing the intelligence community to do what must be done to respond to genuine threats," said the report, which Obama commissioned in August in response to the mounting furor over revelations by Edward J. Snowden, a former NSA contractor, of the agency's surveillance practices.

It adds, "Free nations must protect themselves, and nations that protect themselves must remain free."

White House officials said they expected significant resistance to some of the report's conclusions from the NSA and other intelligence agencies, which have argued that imposing rules that could slow the search for terror suspects could pave the way for another attack. But those intelligence leaders were not present in the Situation Room when Obama met the authors of the report.

The report's authors made clear that they were weighing the NSA's surveillance requirements against other priorities like constitutional protections for privacy and economic considerations for American businesses. The report came a day after Silicon Valley executives complained to Obama that the NSA programs were undermining American competitiveness in offering cloud services or selling American-made hardware, which is now viewed as tainted.

The report was praised by privacy advocates in Congress and civil liberties groups as a surprisingly aggressive call for reform.

Senator Ron Wyden, an Oregon Democrat who has been an outspoken critic of NSA surveillance, said it echoed the arguments of the NSA's skeptics in significant ways, noting that it flatly declared that the phone-logging program had not been necessary in stopping terrorist attacks. "This has been a big week for the cause of intelligence reform," he said.

Greg Nojeim of the Center for Democracy and Technology called the report "remarkably strong," and singled out its call to sharply limit the FBI's power to obtain business records about someone through a so-called national security letter, which does not involve court oversight.

Anthony Romero, the executive director of the American Civil Liberties Union, while praising the report's recommendations, questioned "whether the president will have the courage to implement the changes."

Members of the advisory group said some of the recommendations were intended to provide greater public reassurances about privacy protections rather than to result in any wholesale dismantling of the NSA's surveillance powers. Richard A. Clarke, a cyberexpert and former national security official under Presidents Bill Clinton and George W. Bush, said the report would give "more reason for the skeptics in the public to believe their civil liberties are being protected."

Other members included Michael J. Morell, a former deputy director of the CIA; Cass Sunstein, a Harvard Law School professor who ran the office of Information and Regulatory Affairs in the Obama White House; Peter Swire, a privacy law specialist at the Georgia Institute of Technology; and Geoffrey R. Stone, a constitutional law specialist at the University of Chicago Law School, where Obama once taught.

Obama was expected to take the report to Hawaii on his December vacation and announce decisions when he returns in early January. Some of the report's proposals could be ordered by the president alone, while others would require legislation from Congress, including changes to how judges are appointed to the Foreign Intelligence Surveillance Court.

Senator Rand Paul, Republican of Kentucky, said he was skeptical that any changes passed by Congress would go far enough. "It gives me optimism that it won't be completely brushed under the rug," he said. "However, I've been here long enough to know that in all likelihood when there's a problem, you get window dressing."

The FISA court, which oversees national security surveillance inside the United States, has been criticized because it hears arguments only from the Justice Department without adversarial lawyers to raise opposing views, and because Chief Justice John G. Roberts Jr. has unilateral power to select its members. Echoing proposals already floated in congressional hearings and elsewhere, the advisory group backs the view that there should be a "public interest advocate to represent the interests of privacy and civil liberties" in classified arguments before the court. It also says the power to select judges for the surveillance court should be distributed among all the Supreme Court justices.

In backing a restructuring of the NSA's program that is systematically collecting and storing logs of all Americans' phone calls, the advisers went further than some of the agency's backers in Congress, who would make only cosmetic changes to it, but stopped short of calling for the program to be shut down, as its critics have urged. The NSA uses the telephone data to search for links between people in an effort to identify hidden associates of terrorism suspects, but the report says it "was not essential to preventing attacks."

Currently, the government obtains orders from the surveillance court every ninety days that require all the phone companies to give their customers' data to the NSA, which commingles the records from every company and stores it for five years. A small group of analysts may query the database—examining records of everyone who is linked by up to three degrees of separation from a suspect—if the analyst has "reasonable, articulable suspicion" that the original person being examined is linked to terrorism.

Under the new system proposed by the review group, such records would stay in private hands—either scattered among the phone companies or pooled into some kind of private consortium. The NSA would need to make the case

to the surveillance court that it has met the standard of suspicion—and get a judge's order—every time it wanted to perform such "link analysis."

"In our view, the current storage by the government of bulk metadata creates potential risks to public trust, personal privacy, and civil liberty," the report said.

The report recommended new privacy protections for the disclosure of personal information about non-Americans among agencies or to the public. The change would extend to foreigners essentially the same protections that citizens have under the Privacy Act of 1974—a way of assuring foreign countries that their own citizens, if targeted for surveillance, will enjoy at least some protections under American law.

It also said the United States should get out of the business of secretly buying or searching for flaws in common computer programs and using them for mounting cyberattacks. That technique, using what are called zero-day flaws, so named because they are used with zero days of warning that the flaw exists, were crucial to the cyberattacks that the United States and Israel launched on Iran in an effort to slow its nuclear program. The advisers said that the information should be turned over to software manufacturers to have the mistakes fixed, rather than exploited.

Regarding spying on foreign leaders, the report urged that the issue be taken out the hands of the intelligence agencies and put into the hands of policy makers.

A day after the panel's report was made public, U.S. officials said its findings had stunned senior officials at the White House as well as at U.S. intelligence services, prompting a scramble to assess the potential effect of its proposals as well as to calculate its political fallout.

The president is "faced with a program that has intelligence value but also has political liabilities," said Mark M. Lowenthal, a former senior CIA official. "Now that he has a set of recommendations from a panel he appointed, if he doesn't follow them people are going to say, 'are they just for show?' Or if he does follow them, he scales back a program that he supported."

"Obama didn't say, we accept this on the spot," Clarke said. "But we didn't get a lot of negative feedback. They're going to talk to the agencies and see what the agencies' objections are and then make their decisions."

White House press secretary Jay Carney signaled that the administration remains reluctant to dismantle the data-collection program. "The program is an important tool in our efforts to combat threats against the United States and the American people," Carney said.

Several current and former U.S. officials sought to downplay the impact of the Leon decision and the review panel, saying that their influence is likely to be offset by the work of an internal White House group made up of national security officials who are regular consumers of NSA intercepts and may be more cautious about curtailing the agency's capabilities.

The controversial program to amass the call records of millions of Americans also continues to have influential supporters on Capitol Hill, including Sen. Dianne Feinstein (D-Calif.), chairman of the Senate Intelligence Committee.

"It's just an advisory report," said former acting CIA director John E. McLaughlin. Obama "can take credit for having turned some smart people loose to independently look at this issue. And he can say at the end of the day, . . . 'I'm the president. I'm responsible for the security of this country. Here's where I come out.' "

However, the developments this week were a reminder that the outcome may be beyond Obama's control. Leon's ruling set in motion a legal battle that may culminate in a ruling by the Supreme Court. The panel's findings gave new momentum to lawmakers who have introduced legislation that would bring an end to the NSA's bulk collection of phone records.

As part of their initial research, members of the review panel spent a day at NSA headquarters in Fort Meade, Md. But officials said that neither the NSA chief, Gen. Keith B. Alexander, nor Director of National Intelligence James R. Clapper was given a copy of the report in advance or a chance to comment on its findings.

Officials said U.S. intelligence officials would evaluate the panel's proposals and prepare material for the White House on the potential effects of implementing its recommendations. That effort will likely focus on the panel's push for new legislation that "terminates the storage of bulk telephony metadata by the government," requiring those records to be held by phone and Internet companies, and searched only when the government has a court order.

The proposal to no longer allow the NSA to store domestic records, one of the panel's 46 recommendations, would end an arrangement that has enabled the agency to stockpile call "metadata": billions of records on virtually every phone customer in the United States, including records of the numbers dialed and durations of calls, but not their contents.

The NSA is allowed to retain those records for five years, and officials have repeatedly described the program as a critical safeguard against terror plots, allowing the NSA and FBI to establish links between terrorism suspects overseas and potential accomplices in the United States.

In congressional testimony, NSA Chief Gen. Keith Alexander has credited the program with helping to detect dozens of plots both in the United States and overseas. But Leon's opinion said that the government had failed to "cite a single instance in which analysis of the NSA's bulk metadata collection actually stopped an imminent attack."

And the review panel concluded the program "was not essential to preventing attacks and could readily have been obtained in a timely manner using conventional [court] orders."

After months of merely calling for the government to be more transparent about its surveillance requests, tech leaders have begun demanding substantive new restraints

on how the NSA collects and uses the vast quantities of information it scoops up around the globe, much of it from the data streams of U.S. companies.

The pivot marked an aggressive new posture for an industry that often has trod carefully in Washington—devoting more attention to blunting potentially damaging actions than to pushing initiatives that might prove controversial and alienate users from its lucrative services.

Six leading technology companies—Facebook, Google, Apple, Yahoo, Microsoft and AOL—sent a letter to two senators and two congressmen October 31 reflecting the sharpening industry strategy. The letter praised a bill the lawmakers have sponsored that would end the bulk collection of phone records of millions of Americans and create a privacy advocate to represent civil liberties interests within the secretive court that oversees the NSA (see page 3).

"Transparency is a critical first step to an informed public debate, but it is clear that more needs to be done," said the letter, which was sent to Sen. Patrick J. Leahy (D-VT), chairman of the Senate Judiciary Committee; Sen. Michael S. Lee (R-UT), a judiciary committee member; and Reps. John Conyers Jr. (D-MI) and F. James Sensenbrenner Jr. (R-WI), who are on the House Judiciary Committee.

"Our companies believe that government surveillance practices should also be reformed to include substantial enhancements to privacy protections and appropriate oversight and accountability mechanisms for those programs."

Although historically wary of Washington, the technology industry has been bulking up its political operations in the nation's capital for several years. It took a public stand against the Stop Online Piracy Act, commonly known as SOPA, with a massive Internet protest last year. More recently, tech leaders made a high-profile push in the immigration debate, calling for more visas for foreign-born workers.

The tone of industry reaction to the NSA revelations has grown more aggressive since the first stories appeared in the *Washington Post* and Britain's *Guardian* newspaper in June. Companies that initially were focused on defending their reputations gradually began criticizing the government and challenging it in court. Some companies also have worked to harden their networks against infiltration.

A turning point came with the revelation an NSA program that collects user information from Google and Yahoo as it moves among data centers overseas. To some, this amounted to a degree of intrusiveness that, though speculated about by privacy activists, was beyond what many in the industry thought possible.

"Clearly, this is something new and different," said Joseph Lorenzo Hall, the chief technologist at the Center for Democracy and Technology, a Washington-based think tank that receives substantial industry support. Hall said technology leaders are weary of the revelations. "Right now, it's like, 'Please make it stop!' "

Although Google's general counsel, David Drummond, issued a statement expressing "outrage" and "the need for urgent reform," a longtime security engineer for the company better captured the industry's sentiment in a post on Google Plus, a social networking service.

"Even though we suspected this was happening, it still makes me terribly sad. It makes me sad because I believe in America," wrote engineer Brandon Downey, after cautioning that he was speaking personally and not for Google.

National security officials took issue with the report, particularly any suggestion that the agency had scooped up data under presidential authorities to avoid the greater oversight required by the Foreign Intelligence Surveillance Act.

"NSA conducts all of its activities in accordance with applicable laws, regulations, and policies—and assertions to the contrary do a grave disservice to the nation, its allies and partners, and the men and women who make up the National Security Agency," said a statement issued by the agency.

Speaking at an American Bar Association conference in Washington, NSA General Counsel Rajesh De defended the agency's practices. "The implication, the insinuation, suggestion or the outright statement that an agency like NSA would use authority under Executive Order 12333 to evade, skirt or go around FISA is simply inaccurate," De said. "There is no scandal about the lawfulness of NSA's activities under current law."

For all the mounting frustration within the tech industry, the path ahead is murky. Most of the surveillance bills getting wide circulation on Capitol Hill would not address NSA collection operations in other countries.

"To reform this is going to require passing a law that regulates NSA's operations overseas, and none of the bills do that now," said Jennifer Granick, director of civil liberties at Stanford Law School's Center for Internet and Society.

There also are unanswered legal questions. Some scholars say that the NSA's collection of data from Google, Yahoo and their users might violate the Fourth Amendment's prohibition on illegal search and seizure, even if it happens in foreign countries. Some privacy activists said technology companies share at least some of the blame for the extent of the government surveillance program. They collect the detailed user data—much of it used to target the advertising that generates company profits—that NSA covets. The companies also have lobbied against laws that would limit data collection in Europe and elsewhere.

"Their business model ultimately makes state surveillance not only possible but more far-reaching," said Jeffrey Chester, executive director of the Center for Digital Democracy, a Washington-based consumer rights group. "It's not just the NSA and the national security apparatus that's responsible for this."

In early November, government officials told a privacy oversight board that the government is open to some changes to how it conducts its phone and Internet

surveillance programs as long as they do not undermine the programs' effectiveness.

How exactly the U.S. phone and online data-gathering programs could strike such a balance—helping thwart terrorist plots while also protecting Americans' privacy—was under review by the Privacy and Civil Liberties Oversight Board. Established at the recommendation of the 9/11 Commission in 2004, the five-member board is an independent watchdog within the government's executive branch. It is studying U.S. intelligence surveillance programs in light of recent disclosures that have raised concerns about lax privacy protections.

No timeline has been set for the board's work, but ultimately it will also issue a report to President Obama and Congress on the legal standards now used for online and phone spying by U.S. intelligence agencies and what reforms may best ensure Americans' privacy is protected.

"I think we've learned a lot about some potential reforms that the government was amenable to," the board's Chairman David Medine said after a public hearing with officials from the National Security Agency, FBI, Office of the Director of National Intelligence (DNI) and Justice Department.

Medine said he saw some openness from government officials about updating some privacy protections for foreigners and changing how long the government keeps the records it collects.

"We are open to consideration of a variety of possible reforms to the program so long as they don't eliminate its utility," said DNI General Counsel Robert Litt. That caveat, of course, poses a complex challenge for any proposed reform as national security leaders say NSA's data gathering is a vital tool for protecting the nation.

Litt said Snowden's disclosures about NSA programs have made the programs "at least potentially less useful," and putting new heavy restrictions on collection of records could threaten the success of intelligence gathering.

Without easy access to telephone records and the ability to quickly see patterns, for instance, "We'd be less agile, we'd be less informed, we'd be less focused," FBI Acting General Counsel Patrick Kelley told the board. "We think that as a result, we'd be a lot less effective at preventing the attacks that the American people would want us to prevent."

Officials reiterated reassurances that the collection of so-called metadata about who called whom means there is no analysis of actual content and that the level of multi-agency oversight that involves a court is "extraordinary" compared to other countries.

But Medine noted that the officials showed some openness to several changes, such as changing the length of time that the government keeps metadata to three years from five. Another was changing from three to two the maximum number of so-called "hops" from one person's telephone record to another's in order to track down a potential target. Third was extending more privacy protections to foreign citizens.

However, the officials pushed back against a proposal to require warrants for accessing the collected database of records, calling it a "novel approach" to restricting access to lawfully obtained data.

Litt also said the U.S. government has expressed openness to changing the operation of the Foreign Intelligence Surveillance Court that oversees NSA eavesdropping procedures to allow some type of involvement of a third party, or amicus, but said practical and legal concerns remained.

Administration officials repeated their opposition to disclosures of how many requests of a particular kind the government issues to specific companies, saying they would help foreign adversaries to adapt their methods and avoid being caught.

"I think you're seeing an effort by the executive branch to be as transparent as possible under the circumstances," said NSA General Counsel Rajesh De. Reported in: *New York Times*, December 16, 18, 27; *Washington Post*, November 1, December 19; reuters.com, November 4. □

ALA backs legislation to limit NSA . . . from page 3

December 2017. After the sunset, Congress would have to pass a bill again to reauthorize the overseas surveillance programs under the law.

The bill would create a new office of special advocate to argue in favor of privacy interests at the U.S. Foreign Intelligence Surveillance Court, the court that reviews and approves the NSA surveillance requests, and it would allow Internet and telecom companies to report on the number of surveillance requests they receive from the U.S. government. Those companies are currently barred from disclosing that information.

The USA Freedom Act is one of more than twenty bills introduced by U.S. lawmakers since press reports on NSA surveillance, based on leaks from former NSA contractor Edward Snowden, began appearing in June. The new bill incorporates pieces of several other bills previously introduced.

The bill is largely focused on the NSA's domestic data collection and surveillance programs, not as much on its massive overseas efforts. The agency's overseas surveillance programs have raised the ire of many U.S. allies, with the Guardian newspaper reporting that the U.S. has monitored the phone conversations of 35 world leaders, including German Chancellor Angela Merkel's mobile phone.

Among the groups voicing support for the USA Freedom Act were digital rights groups Public Knowledge and Demand Progress and tech trade groups the Information Technology Industry Council and the Computer and Communications Industry Association.

The bill represents a growing realization in Congress that the NSA needs to be reined in, said David Segal, Demand

Progress' executive director. "When the Snowden leaks first emerged in June—and after years of disregard for our civil liberties by our own government—it was unclear whether our efforts to rein in the NSA would even find more than a handful of strong allies in Congress," he said. With the introduction of the bill, "it is increasingly clear that many in the halls of power are listening to the tens of millions across this country who know that the NSA must be restrained."

The ALA's involvement in the surveillance debate is part of a broader expansion of the group's advocacy in Washington. In November, the association received a $1 million grant from the Bill and Melinda Gates Foundation to increase its advocacy presence in Washington.

Traditionally, libraries have been active in the policy world when responding to things that have already happened. Thanks to the grant funding, the ALA says that's about to change. "One of the central tenets of this initiative is to be more proactive," Inouye said.

A top concern is copyright policy and the rise of e-books, which they say could create a financial strain for library systems. While libraries pay a set price for physical books, they have to pay higher licensing fees on a recurring basis to loan out electronic copies.

Inouye said the Department of Commerce's recent green paper on copyright policy was "very heavy on copyright protection," but gave little attention to how that might affect public access. Libraries are "concerned that this enforcement goes too far," Inouye said. As with surveillance for national security concerns, "we need a balance."

Another major policy issue for libraries is increasing funding for Internet access. Larra Clark, program director of ALA's America's Libraries for the 21st Century project, pointed to the Federal Communications Commission's E-Rate program, which provides funding to help libraries and schools provide Internet access to their constituents.

President Obama has called on the Federal Communications Commission to increase E-Rate funding, and the FCC is considering changes to the program in response. As libraries become places where community members not only access websites but download and upload data heavy material, libraries need more funding for broadband, Clark said. "The need for this influx is pretty immediate," she said. Reported in: *The Hill*, December 4; *PC World*, October 29; politico.com, October 28. □

FTRF files brief . . . from page 4

it just shows the oppressive atmosphere that they've often had to live under."

The 42-page brief argues: "For partisan and political reasons, the statute was aimed at and launched to dismantle Tucson's MAS program. Moreover, the statute is so broad that Arizona teachers and school districts must skirt a wide swath of protected instruction and material to avoid the possibility of serious penalties. Thus, the statute will chill a substantial amount of instruction that is beyond the purported purpose of the statute. This banning of books and courses from the classroom – both by direct application and by chilling effect – violates the First Amendment rights of students."

The brief also argues that there is no evidence that students in the MAS program learned "racial resentment" or discovered an interest in "overthrowing the U.S. government," as supporters of the statute have contended, Jones said. "Providing young people with access to a wide range of ideas, including those about different cultures, helps them to think critically, become better citizens, and succeed in family and workplace life. Censoring ideas promotes ignorance and fear."

Non-Latino students also benefited from the program in many ways, Espinal and Jones added. "In the Tucson classes, there were kids of all different ethnic backgrounds," Jones said. "This argument that the state of Arizona is making that somehow ethnic studies make kids hate each other is just nuts. It makes you understand one another's point of view and makes you want to ask questions."

Ethnic studies are important for all students, noted Espinal, because "resentment and damage are created when there is exclusion of our history and our stories."

The advocates said they expect the Ninth Circuit decision to take many months, and a court date had not yet been scheduled. In that long interim, it is the students who lose out, Finan noted. Even if the appeals court rules in favor of restoring the MAS program, "there will be students for whom this can't be remediated," he says.

Finan also called the TUSD's recent decision to bring back into the classrooms as supplementary materials several books that were formerly part of the MAS program (see page 8) "too little, too late in terms of trying to undo the damage that has been done." He added, "That's really what's at the heart of this case, whether the state can apply these narrow partisan and political goals in shaping the curriculum of the schools…and committing pretty gross acts of censorship in the process."

Sadly, "I think it's very hard to get around that law," Jones said. "If [districts] need state money, they have to be really careful. They have to toe the line. And I think that that fear is in the minds of a lot of well-meaning administrators who would say, 'This is a crazy law, but we've got to really be careful.'"

But FTRF will not be deterred. The organization plans to host events around the country with its affiliate partners to create awareness and "keep the ball rolling regardless of how the court decides," she says. "We will continue to educate people about the importance of Latino studies." Reported in: *School Library Journal*, December 3. □

schools use of web tools. . . from page 5

the data sharing between primary and secondary vendors that, until we have that fully understood, we need to slow this thing down."

The Fordham study urged that contracts specify the type of services a company provides, list the types of information collected and limit the redisclosure of students' details. The researchers also recommended that education officials notify parents about the nature of information disclosed to third parties and post information about privacy protections on district websites.

Some industry experts envision a national approach to protecting student information. Steve Mutkoski, the government policy director for Microsoft's worldwide public sector business, recommended that the technology industry voluntarily agree not to use student data for advertising, marketing or profiling students, as his company has done for schools that use certain Microsoft software.

"At a bare minimum, if that is not going to reach an industry consensus," Mutkoski said, "there should at least be greater transparency about the use that vendors plan to make of the data." Reported in: *New York Times*, December 12.

censorship dateline. . . from page 14

was sent a "cease and desist" letter by the university's lawyer November 11, deepening a rift between a group of professors and administrators.

Philip A. Beverly, an associate professor of political science, said he had founded the site to "shine the light of day" on administrators' policy making and to "put into the public sphere what is happening in the name of the citizens of Illinois." About eight faculty members contribute to the site, he said, some under pseudonyms.

The cease-and-desist letter came from Patrick B. Cage, the university's general counsel and vice president for labor and legal affairs. Cage said the site had used university "trade names and marks" without permission and violated policies "requiring civility and professionalism of all university faculty members." He demanded that site administrators "immediately disable" the blog and provide written confirmation of that no later than November 15 to "avoid legal action."

The website had featured a picture of a campus sign and "CSU" hedge sculpture. But Beverly changed the site's title to "Crony State University" and replaced its main image with a building from another campus. He also said he was consulting a lawyer.

In a previous clash over image and trademark issues, Chicago State told faculty and staff members in 2012 that employees needed to get prior approval for any news-media interviews, opinion pieces, newsletters, social media, or other types of communications. The university later suspended that policy, pending further review. Reported in: *Chronicle of Higher Education* online, November 11; Academe blog, November 12.

Providence, Rhode Island

In 2001, *The Brown Daily Herald* accepted an advertisement questioning the idea that black people in the United States are owed reparations. Students called the ad racist, and responded by trashing 4,000 copies of the newspaper. Brown University was accused of fostering an intolerant environment, where protest of controversial ideas turns into the squelching of some views altogether.

In October, Brown was slated to have a lecture by Ray Kelly, the New York City police commissioner and architect of the controversial "stop and frisk" approach to policing, which many see as racist. Kelly showed up, but he was interrupted so many times that he couldn't speak and the event was called off.

The students who blocked him from speaking said his views were racist and didn't deserve a forum. Many others were outraged that he couldn't give a public lecture. Brown was, once again, accused of intolerance.

One might conclude that Brown has a problem with free speech. But it's also worth noting that, both in 2001 and 2013, many students said that the protesters didn't in fact represent the majority view on campus. In 2001, many said that the anti-reparations ad was offensive, but no excuse to block distribution of a newspaper. This year, many students say that they find Ray Kelly's policing philosophy offensive, but that he was entitled to speak. *The Brown Daily Herald* published a poll suggesting that the vast majority of students feel that way, and that only 13 percent of students endorsed the idea of shutting down the lecture.

So does Brown have a problem with free speech?

On November 6, Brown's new president, Christina H. Paxson announced that she was appointing a committee to review what happened at the Kelly lecture, and to consider its broader implications. In a letter to students and faculty members, Paxson said that she has learned how personally affected many students have been by the "stop and frisk" policy that is associated with Kelly. But she said that there can be no compromise on the principle that people are entitled to express their views.

Paxson wrote: "The central mission of Brown is to discover, communicate and preserve knowledge and understanding in a spirit of free inquiry. Ideas, expressed in writing and in speech, are the basic currency of the university's work.

Impeding the flow of ideas undermines Brown's ability to fulfill its mission. Making an exception to the principle of open expression jeopardizes the right of every person on this campus to speak freely and engage in open discussion. We must develop and adhere to norms of behavior that recognize the value of protest and acknowledge the imperative of the free exchange of ideas within a university."

She said that, once the facts are known, the university will consider whether those involved should face sanctions. She noted that the university's conduct code states, "Protest is a necessary and acceptable means of expression within the Brown community. However, protest becomes unacceptable when it obstructs the basic exchange of ideas. Such obstruction is a form of censorship, no matter who initiates it or for what reasons."

And Paxson wrote that the committee should look more broadly at the university. "[T]he committee will address the broader issues of campus climate, free expression, and dialogue across difference that have been the context for much of the discussion and activity of the last week," she wrote. "Specifically, the committee will make recommendations regarding how the university community can maintain an inclusive and supportive environment for all of our students while upholding our deep commitment to the free exchange of ideas."

Paxson won't be the first Brown president to promote discussion on the issue. In 2005, Brown's then-president, Ruth Simmons, gave a talk to kick off the spring semester in which she said she was concerned about reports she heard from students, parents and alumni about "the lack of diversity of opinion on campus." Students had told her of a "chilling effect caused by the dominance of certain voices on the spectrum of moral and political thought," she said at the time.

Simmons not only spoke out but supported the growth of the Political Theory Project, a research center known as a home to scholars to the right of the norm at Brown, and the sponsor of lectures and events that feature a range of political views.

Many at Brown are praising Paxson (who condemned how Kelly was denied a chance to speak on the day it happened) for giving the issue of political tolerance more attention.

Iris Bahar, professor of engineering and chair of the Faculty Executive Committee, said that she was very concerned when she heard about the Kelly lecture. "Not in my almost 18 years here do I remember something where someone was not allowed to speak," she said. "I think we need to address this as a community—and ask what we can do to make sure that this never happens again."

But Bahar does not believe that those who blocked Kelly from speaking reflect the views of most students or faculty members. "Conservative institutions love to glom on to stories like this as it shows how off the mark Brown is," but that misses the point, she said. "Brown has a liberal student body—there is no denying that, and Brown has a liberal-leaning faculty. We can't pretend otherwise." But Bahar said that, "by and large, we want to hear different opinions." She said that most of the people she knows do not support Kelly, but believe strongly that he should have been given the right to speak.

Will Creeley, director of legal and political advocacy for the Foundation for Individual Rights in Education, said that the "heckler's veto" is a problem that extends beyond Brown and needs to be forcefully opposed. He said he was pleased to see Paxson talking about the university's code of conduct.

Creeley said that "President Paxson has sent a strong and necessary message to those who would simply shut down speakers with whom they disagree. As President Paxson notes, Brown policy plainly prohibits this type of censorship. No matter how noble some students imagine their decision to censor may be, preventing a speaker from being heard violates core civil liberties principles and has no place on a university campus or in our liberal democracy."

The issue of punishing the students who blocked the talk is likely to be controversial. A Brown spokesman said that there are a "range of options" on sanctions, but that the committee needs to do its work first.

Robert M. O'Neil, professor of law emeritus at the University of Virginia and an authority on First Amendment and academic freedom issues, said that he is not certain punishments help in these situations. "It's likely to be counterproductive," he said.

More important is—if at all possible—to get a speaker who was blocked from speaking back on campus and show that the institution is committed to free speech. That would send more of a message, he said, than punishing students. The emphasis needs to be on promoting the free exchange of ideas, he said. College leaders "need creativity," he added. Reported in: insidehighered.com, November 7. □

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from the bench. . . from page 20

domain works," he wrote. Reported in: *Washington Post*, December 27; *Chicago Sun-Times*, December 30.

schools

Olympia Fields, Illinois

A federal appeals court has upheld the dismissal of an Illinois high school guidance counselor over his self-publication of a purported relationship-advice book for women with sexually frank passages and indications that the counselor had a "tendency to objectify" women.

The case concerns Bryan Craig, a tenured guidance counselor and girls' basketball coach at Rich Central High School in the Chicago suburbs of Olympia Fields. In 2012, Craig self-published a book titled *It's Her Fault*, a 60-page

collection of relationship advice aimed at women, which court papers say was inspired by his years of counseling and interaction with women, including from his school counseling job.

Along with what the court called "garden-variety" advice, the book has sexually explicit passages advising women on how they could use "sex appeal" to gain power in their relationships with men. The book encourages women to engage in "a certain level of promiscuity before marriage," but not to "go hoeing [sic] around the world."

Craig describes himself in the book as "beyond the highest caliber of men," but still confesses "a weakness for cleavage" and other parts of the female anatomy. Significantly for the case, Craig references his employment as a school counselor throughout the book, writing that his dealings with females in his school office, in counseling sessions, and in coaching the girls' basketball teams helped inform his views.

When administrators in Rich Township High School District 227 learned of the book, they told Craig they had heard concerns from the community. They recommended him for discharge on three grounds: that the book had caused disruption in the community, that it created a hostile educational environment, and that Craig failed to present himself as a positive role model.

In September 2012, the Rich Township school board voted to discharge Craig. The counselor sued the district, alleging that he was retaliated against for the protected exercise of the First Amendment free speech rights.

A federal district court ruled against Craig on the basis that his book did not deserve First Amendment protection because it was not on a matter of public concern. In its December 3 decision in Craig v. Rich Township High School District 227, a three-judge panel of the U.S. Court of Appeals for the Seventh Circuit, in Chicago, unanimously ruled against the counselor as well, though on different grounds.

The court said that "viewed as a whole, *It's Her Fault* addresses adult relationship dynamics, a subject that interests a significant segment of the public. ... The fact that Craig's book dealt with a subject of general interest to the public was enough to establish prima facie First Amendment protection."

However, the appeals court went on to rule that the school district was still justified in discharging Craig because its interests in restricting his speech outweighed his free speech interests. The school district's "assessment of how Craig's students, and particularly his female students, would respond upon reading or hearing about the hypersexualized content of his book looms large in our analysis," the Seventh Circuit court said. "The fact that Craig works closely with students at a public school as a counselor confers upon him an inordinate amount of trust and authority."

"We can easily see how female students may feel uncomfortable seeking advice from Craig given his professed inability to refrain from sexualizing females," the court added. "Knowing Craig's tendency to objectify women, [the district] could reasonably anticipate that some female students would feel uncomfortable reaching out to Craig for advice . . . Defendants had an interest in terminating Craig's employment in order to ensure effective delivery of counseling services to female students at Rich Central." Reported in: *Education Week*, December 4.

press freedom

Detroit, Michigan

For a third time, a federal judge has ruled against a former federal prosecutor's attempt to unearth the identity of a source in a 2004 *Detroit Free Press* article.

U.S. District Court Judge Robert Cleland said in a written order November 25 that former *Free Press* reporter David Ashenfelter can claim Fifth Amendment protection against divulging the name of his source in an article about former assistant U.S. Attorney Richard Convertino. Ashenfelter reported in 2004 that Convertino, who worked in Detroit, was under internal investigation for his handling of a discredited terrorism trial.

Convertino sued his former employer, the U.S. Department of Justice, for what he said was an illegal leak of information to Ashenfelter. The underlying lawsuit is pending in Washington, D.C.

In a 2009 deposition, Ashenfelter declined to answer questions about his source, claiming the Fifth Amendment right against self-incrimination. *Free Press* editors said Ashenfelter did nothing wrong, but had to invoke the Fifth Amendment because Convertino claimed the leak of information was illegal.

Convertino has contended Ashenfelter cannot claim the Fifth Amendment, but has failed to convince Cleland. The latest filing from Convertino followed a public comment by U.S. Attorney General Eric Holder, who told Congress in June that he will not prosecute reporters who are doing their jobs.

Convertino said that comment made baseless Ashenfelter's invoking of the Fifth Amendment. Cleland disagreed, saying Holder's statement isn't law.

The Fifth Amendment defense is not a substitute for a strong federal shield law or evidentiary privilege. It may not be available, for example, to journalists caught up in a leak investigation or federal prosecution for leaks of classified information. Prosecutors in those cases typically will have the option of granting a journalist immunity for testimony about sources. And immunity removes the "incrimination" threat.

But the Fifth Amendment defense can be used in nearly any civil litigation involving leaked information in which the source, by providing the information to a journalist, may have acted illegally—in which case the journalist could, in theory, be subject to prosecution on a conspiracy, solicitation or aiding and abetting theory. This is so regardless of

whether such a prosecution could succeed. Reported in: *Detroit Free Press*, November 25; huffingtonpost.com, December 16. □

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is it legal?. . . from page 24

rights, and merely "gives the university CEO's a tool and some guidance to use in determining whether discipline is appropriate" based on fact-based analyses of given cases. "It is up to them how they utilize it," she said.

Both the introduction to the policy as it was put before the board and a press release issued by the board after the policy's adoption say that its language was cleared by the state attorney general, Derek Schmidt, as complying with U.S. Supreme Court precedents dealing with free speech and due process. But Joan E. Bertin, executive director of the National Coalition Against Censorship, called the policy overly vague and said it "is in all likelihood unconstitutional, if it is applied the way it could be applied."

"Since when are we telling university professors they cannot send provocative personal opinions out into the world?" Bertin asked. "If we are doing that, we are going to change the whole nature of the academic enterprise, and not for the better."

Anita Levy, an associate secretary of the AAUP, similarly said the policy "raises significant issues about academic freedom and due process," in part because it gives administrators too much power to subjectively decide what speech crosses the line.

Barrett-Gonzalez, of the state AAUP, said, "It remains to be seen how much of this will be adopted by institutions. Wise institutions will reject it completely."

On December 21, the national AAUP issued separate statements criticizing both the Colorado and Kansas actions. The association's Colorado statement acknowledged that all the facts in the Adler case have not been made public. "Whatever took place between university officials and Prof. Adler in private, however, the university's justifications for its actions have shifted daily," the statement noted.

"To cancel a controversial classroom exercise merely because it might possibly be photographed surreptitiously would in itself amount to an egregious violation of academic freedom and deprive students and faculty alike of an important learning experience," the statement continued. The statement concluded "that the university has been inconsistent in its rationale and hasty in its judgments. Therefore, we strongly urge the University of Colorado-Boulder administration to make a clear statement affirming that Professor Adler has not been forced to resign over the skit on prostitution that took place in her class and that she will be allowed to teach the course in the future."

The AAUP's statement on the Kansas social media rules called the policy "a gross violation of the fundamental principles of academic freedom that have been a cornerstone of American higher education for nearly a century," noting that the policy "was developed without faculty participation—indeed, in apparent defiance of faculty appeals for consultation—and makes a mockery of faculty members' rights to speak as public citizens on matters of public concern." The Association urged "the Regents to revisit this decision, to repeal this ill-advised policy, and to work with elected faculty representatives to develop a social media policy that protects both the legitimate interest of the university in security and efficiency as well as the paramount interest of faculty and students in the unfettered exchange of ideas and information." Reported in: *Chronicle of Higher Education* online, December 20.

copyright

Washington, D.C.

The last time the United States Copyright Office examined the issue of whether visual artists should receive a share of the profits when their work is resold, in 1992, it concluded that resale royalties—known internationally by the French term *droit de suite*—were not a good idea. Now, after a recent re-examination of the issue, the Copyright Office has reversed itself.

In a report issued December 13 it recommended that painters, illustrators, sculptors, photographers and the like deserve a royalty when their work is resold at a profit. Acknowledging that the current system leaves visual artists at a practical disadvantage relative to other creators such as writers or composers, the office urged Congress to "consider ways to rectify the problem" and give artists a financial interest in the future sale of their work.

The office noted that in the past two decades, resale royalties have become more common around the globe, with more than seventy countries adopting some version of the *droit de suite* rule. A bill to institute a resale royalty was introduced in 2011 by New York Representative Jerrold Nadler, but it failed to gain support. Rep. Nadler is supporting a revised version of his bill, named the Equity for Visual Artists Act. The only state to have a resale royalty law was California, but in 2012, a federal judge struck down the law as unconstitutional. Reported in: *New York Times*, December 16. □

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