

newsletter on intellectual freedom



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AASL survey explores filtering in schools

Filtering continues to be an important issue for most schools around the country. That was the message of the American Association of School Librarians (AASL), a division of the American Library Association, national longitudinal survey, School Libraries Count!, conducted between January 24 and March 4, 2012. The annual survey collected data on filtering based on responses to fourteen questions ranging from whether or not their schools use filters, to the specific types of social media blocked at their schools.

The survey data suggests that many schools are going beyond the requirements set forth by the Federal Communications Commission (FCC) in its Child Internet Protection Act (CIPA).

When asked whether their schools or districts filter online content, 98% of the respondents said content is filtered. Specific types of filtering were also listed in the survey, encouraging respondents to check any filtering that applied at their schools. There were 4,299 responses with the following results:

- 94% (4,041) Use filtering software
- 87% (3,740) Have an acceptable use policy (AUP)
- 73% (3,138) Supervise the students while accessing the Internet
- 27% (1,174) Limit access to the Internet
- 8% (343) Allow student access to the Internet on a case-by-case basis

The data indicates that the majority of respondents do use filtering software, but also work through an AUP with students, or supervise student use of online content individually.

The next question identified types of filtering software and asked respondents to select those used at their schools. There were 4,039 total responses. The top three filtering software was:

- 70% (2,827) URL-based
- 60% (2,423) Keyword-based
- 47% (1,898) Blacklists

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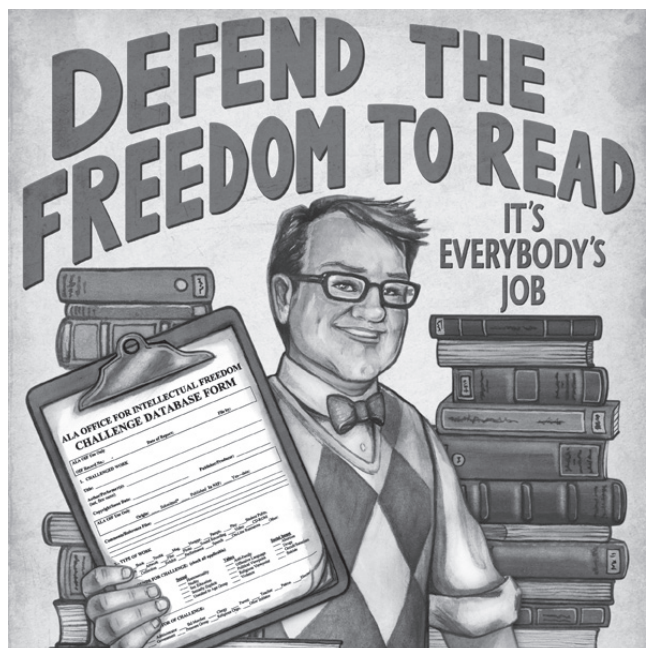
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IFC report to ALA Council

The following is the text of the Intellectual Freedom Committee's report to the ALA Council delivered by IFC Chair Pat Scales at the ALA Midwinter Meeting in Seattle on January 29.

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

INFORMATION

Resolution on Homelessness and Libraries (ALA Council Document No. 45) Update

At the 2012 Annual Conference in Anaheim, Calif., then-IFRT councilor, John Moorman, made a motion to refer ALA Council Document No. 45 to IFC because the "Resolved" clause asked to amend the Library Bill of Rights to include "housing status." IFC discussed CD#45 during its third Committee Meeting and concluded that the term "homeless" is covered under "background" under Article 1 of the Library Bill of Rights. IFC is in the process of reviewing the Library Bill of Rights and its Interpretations in preparation for the ninth edition of the Intellectual Freedom Manual and will insure that the Interpretations make it clear that a person's housing status should not be used to deny access to library services.

OIF Online Learning

ALA's Office for Intellectual Freedom (OIF) is pleased to announce the availability of four free webinars in spring 2013 to improve your "IF IQ." Topics include filtering and CIPA; self-service holds and reader privacy; programming for Choose Privacy Week; and challenge reporting. For more information on these and other OIF online learning events, and to register, visit www.ala.org/offices/oif/oifprograms/webinars.

Sweater Vest Sunday

To help raise awareness about the importance of reporting challenges to library and school materials to OIF, ALA Midwinter Meeting attendees were invited to participate in Sweater Vest Sunday. Hundreds of intellectual freedom advocates wore sweater vests in Seattle to help spread the word about supporting intellectual freedom, and many participated virtually by posting pictures of themselves in sweater vests on various social media sites with the hashtag #sweatervestsunday.

Challenges reported to ALA are kept confidential and used only for statistical purposes. Challenges or removals can be reported online, by phone, or by paper form. Visit www.ala.org/challengereporting for more information on why reporting challenges is so important, and how the reporting process works.

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FTRF report to ALA Council

Following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered on January 28 at the ALA Midwinter Meeting in Seattle by FTRF President Candace Morgan.

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2012 Annual Conference:

CAROLYN FORSMAN

Last week, Carolyn Forsman, an intellectual freedom champion and a recipient of the Freedom to Read Foundation's Roll of Honor Award, died in New York City.

Carolyn began her professional life as a respected librarian and educator who fought tirelessly for social justice within and without the profession, including the library user's right to read freely. When she launched a successful second career as a jewelry designer, she merged her art with her political beliefs by using proceeds from her jewelry sales to support the work of FTRF. To this end, Carolyn became a familiar face (with a familiar purple hairdo) at ALA conferences, selling her fanciful and unique jewelry creations to raise funds for the benefit of the Foundation. Among her creations was the iconic "banned book bracelets," a perfect marriage of her beliefs and her artistic talent. Over the years she raised tens of thousands of dollars for FTRF, helping to build FTRF into the robust First Amendment legal defense organization it is today.

Carolyn was a graduate of Hunter College High School, New York University and the library school at the University of California at Berkeley. As a young librarian, Carolyn worked in youth services and reference while participating in the Congress for Change. She was an ALA Councilor and an early member of the Intellectual Freedom Round Table (IFRT) Executive Board.

Carolyn then became a lecturer at the University of Maryland. In 1979, she founded her jewelry design business after leaving librarianship to, as she put it, "decide what I wanted to be when I grew up." In 2001, Carolyn was named to the Freedom to Read Foundation Roll of Honor.

We grieve her loss with her sister Barbara, her nieces Megan and Rebecca, and her nephew Jason. Contributions in Carolyn's memory may be directed to the Freedom to Read Foundation (www.ftrf.org) and the Cancer Research Institute (www.cancerresearch.org).

LITIGATION ACTIVITIES

The Freedom to Read Foundation's mission to defend free expression and open access to ideas is not limited solely to protecting the freedom to read in libraries and

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Pew report finds libraries still vital

Perhaps the most groundbreaking aspect of “Library Services in the Digital Age,” a report released January 22 by the Pew Research Center’s Internet & American Life Project, was how non-groundbreaking its findings are.

Based on “a survey of 2,252 Americans ages 16 and above” conducted between October 15 and November 10 of last year, the Pew report assures us that, even in the digital age, libraries continue to serve a variety of functions, with nearly 60% of respondents having had some kind of interaction with a library in the previous twelve months, and 91% saying that “public libraries are important to their communities.”

As for the way these numbers break down, the vast majority of patrons (73%) still visit libraries to browse the shelves and borrow print books. In contrast, only 26% use library computers or WiFi connections to go online.

That’s not to say that digital services are insignificant; 77% of those surveyed by Pew said it was “very important” for libraries to provide free access to computers and the Internet, numbers that go up considerably in black (92%) and Latino (86%) communities.

Nor does it suggest that library users are complacent; a big part of the report deals with “public priorities,” with an emphasis on literacy and curriculum.

“In general,” Pew concludes, “Americans are most adamant that libraries should devote resources to services for children; over eight in ten Americans say that libraries should ‘definitely’ coordinate more closely with local schools in providing resources to kids (85%), and a similar number (82%) strongly support libraries offering free early literacy programs to help young children prepare for school.”

So what does this mean? For one thing it puts the lie to the decline of the library, much like that of the print book. It’s been tempting to see, in the rise of digital culture, some element of historical imperative, but the truth, or so the Pew report suggests, is far more complex.

Certainly respondents would like additional access to e-books, but not at the expense of books on the shelves. They want both. In that sense, perhaps, the most astute observations come from library staff members asked by Pew to comment on the survey and its results.

“We attempt to meet the needs of our community,” one said. Because “the needs of the community are very diverse, our services are also diverse. We have made room for many activities at the library such as tutoring, meetings, family gatherings such as wedding showers, study space or just a place to hang out.”

The role of libraries—as it is now and as it has ever been. Certainly, they are repositories for books, even if 20% of respondents think print titles should be moved “out of public locations to free up space for other activities.” But more to the point, they are community centers—not just for neighborhoods but also for the community of ideas.

Libraries are places where readers and writers can come together, where we can have a conversation, where books and literature are not relegated to the margins but exist, as they ought to, at the very center of public life.

“In my opinion,” argues another librarian, “the idea of connection is what is most important. We are here to help people find their place in the community, provide access to information and services, and help people connect through the stories they love.” Reported in: *Los Angeles Times*, January 22. □

digital divide hurts students

Joshua Edwards’s eighth-grade paper about the Black Plague came with a McDouble and fries.

Joshua sometimes does his homework at a McDonald’s restaurant—not because he is drawn by the burgers, but because the fast-food chain is one of the few places in his southern Alabama city of Citronelle, population 4,000, where he can get online access free once the public library closes.

Cheap smartphones and tablets have put Web-ready technology into more hands than ever. But the price of Internet connectivity hasn’t come down nearly as quickly. And in many rural areas, high-speed Internet through traditional phone lines simply isn’t available at any price. The result is a divide between families that have broadband constantly available on their home computers and phones, and those that have to plan their days around visits to free sources of Internet access.

That divide is becoming a bigger problem now that a fast Internet connection has evolved into an essential tool for completing many assignments at public schools. Federal regulators identified the gap in home Internet access as a key challenge for education in a report in 2010. Access to the Web has expanded since then, but roughly a third of households with income of less than \$30,000 a year and teens living at home still don’t have broadband access there, according to the Pew Research Center.

“It is increasingly hard to argue that out-of-school access doesn’t matter,” said Doug Levin, executive director of a national group of state education technology directors. “There’s a degree of frustration about the speed with which we’re moving.”

Moving faster would be expensive. The Federal Communications Commission assesses a fee averaging \$2.50 per household a month on phone bills to pay \$4.5 billion a year for building broadband in rural areas and more than \$2 billion a year to pay for better connectivity in schools and libraries. The commission says it can make broadband available to all Americans by spending \$45 billion over ten years.

Some are wary of deeper government intervention, arguing that many telecommunications companies are already

fast expanding broadband access on their own. “Subsidies should really be targeted narrowly to those that need them,” said Randolph May, president of the Free State Foundation, a think tank that advocates for lighter telecom regulation. “That’s historically not the way we’ve done it in communications.”

School districts are finding it tough to tackle the digital divide on their own. The Pinconning, Michigan, school district worked with Sprint Nextel Corp. to buy smartphones for 100 fifth-graders in 2010 and 2011. Pinconning paid more than \$30 per month per device for the phones’ data plans, which Sprint says were “very competitive rates.” After a year, the cost proved too high for the impoverished rural district, which is a two-hour drive north of Detroit and was hit hard by the auto industry’s decline. Now many of the phones are in storage.

As a result, “we have to shy away a little bit from the Internet” in homework assignments, Superintendent Michael Vieau said.

In Alabama’s Mobile County, which includes Citronelle, educators say they are aware that lack of Internet access at home can put students at a disadvantage. But they also fear leaving kids unprepared for the real world if they don’t emphasize online learning in the curriculum.

David Akridge, the Mobile County Public School System’s technology director, said he plans to map the area’s free Wi-Fi hot spots and will try to convince local businesses to set up more of them. “That’s how we need to do it now,” Akridge said. “But I don’t think it’s a permanent solution to have everyone go to businesses to do that.”

The children and teenagers huddled over their devices at McDonald’s restaurants and Starbucks coffee shops across the country underscore the persistence of the Internet gap in education. McDonald’s has 12,000 Wi-Fi-equipped locations in the U.S., and Starbucks has another 7,000. Together, that is more than the roughly 15,000 Wi-Fi-enabled public libraries in the country.

In Harrison, Michigan, the local library is a lifeline for people without home Internet. But it is usually closed by 6 p.m. Once a week, librarian Mary LaValle meets a friend at the nearby McDonald’s after work. She says she often sees the same teenagers sharing laptops at the restaurant that use the computers at her library. Usually, the kids will only buy a drink, and the free refills keep them going all night, she said.

To be sure, much of what students get on the Internet still comes in books available free at school or the public library. But many school administrators are purposely pushing kids onto the Web. At Burns Middle School in Mobile, Principal John Adams has his teachers assign at least one digital project that requires Internet use per quarter.

The goal, Adams said, is to teach students “21st-century skills.” Teachers typically allot class time for computer use

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Obama calls for study of video game violence

President Obama is calling on Congress to appropriate \$10 million for the Centers for Disease Control and Prevention (CDC) to study gun violence, including possible links to violent video games and media images, according to a White House briefing document.

At an event held at the White House January 16 Obama unveiled his highly anticipated plan for curbing gun violence in the United States, which included 23 executive actions and proposed legislation. The sweeping plan was the administration’s response to a rash of mass shootings in the U.S. over the past year, including December’s shooting at Sandy Hook Elementary School in Newtown, Conn., that took the lives of 20 young children.

In particular, the President highlighted the need for Congress to fund research that studies the effects violent video games “have on young minds.”

“We don’t benefit from ignorance,” Obama said at the White House event. “We don’t benefit from not knowing the science of this epidemic of violence.”

Obama plans to issue a presidential memorandum that will direct the CDC and scientific agencies to study the causes of gun violence and how to reduce it, the briefing document said. In the meantime, the CDC will start reviewing existing strategies to prevent gun violence and crafting questions that will direct its research.

Since the tragic shooting at Sandy Hook, the video game and entertainment industries have come under scrutiny from lawmakers and the National Rifle Association for producing violent content. Administration officials met with top representatives from the video game, motion picture and TV industries—among other stakeholders and business groups—in January to discuss cutting down on gun violence in the U.S.

In a statement issued after the president’s speech, the Entertainment Software Association (ESA) said “tragic levels” of gun violence remain unique to the U.S., but emphasized that scientific research and data have shown that entertainment content is not to blame for violent behavior.

“Scientific research and international and domestic crime data all point toward the same conclusion: Entertainment does not cause violent behavior in the real world,” said the ESA, which represents the video game lobby in Washington. “We will embrace a constructive role in the important national dialogue around gun violence in the United States, and continue to collaborate with the administration and Congress as they examine the facts that inform meaningful solutions.”

Lawmakers and the administration are hamstrung from regulating violent content in media due to a ruling handed down from the Supreme Court last year striking down a California law that restricted the sale or rental of violent video games to minors.

Even with the president's call for the CDC to examine the relationship between violence and video games, communications attorney Andrew Schwartzman warned that "one study would not be enough to change the legal environment" due to this ruling. "It would require a body of research," he said.

Schwartzman noted that the profitable video game industry will be able to build up a war chest to protect itself in the long run, despite the criticism it's faced after the recent spate of shootings in the U.S. "They won't be asleep at the switch," he said.

The President will also direct the attorney general to review existing gun-safety technologies with tech experts and issue a report on the use and availability of that technology.

Following the unveiling of Obama's plan, Sen. Jay Rockefeller (D-W.Va.) said he would reintroduce a bill that would direct the National Academy of Sciences to conduct a study of whether violent video games and programming cause children to act aggressively, or hurt their well-being. Rockefeller first introduced the bill shortly after the Sandy Hook shooting. Reported in: *The Hill*, January 16. □

high school students, teachers report media censorship

Twenty-five years after the Supreme Court limited First Amendment protections for high school student journalists, a survey of students and media advisers attending a national journalism convention suggests that censorship in their schools is a common occurrence.

Of the 4,540 students and teachers who attended the National High School Journalism Convention in San Antonio, Texas, November 15-18, 2012, 500 students and 78 advisers responded to survey questions asking about their experiences with censorship of student media.

Significant numbers of both students (42 percent) and advisers (41 percent) said school officials had told them not to publish or air something. Fifty-four percent of students reported a school official reviews the content of their student news medium before it is published or aired. And 58 percent of advisers said someone other than students had the final authority to determine the content of the student media they advise.

In addition, ten percent of advisers said school officials had threatened their position as adviser or their job at the school based on content decisions their students had made.

Both student and adviser respondents indicated self-censorship was an issue they confronted. Thirty-nine percent of students and 32 percent of advisers said their staff had

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where books go to die

By Marianna Tax Choldin

The following article is reprinted with permission from the website of the Illinois Library Association. Marianna Tax Choldin is Mortenson Distinguished Professor Emerita at the University of Illinois at Urbana-Champaign. She was on the faculty of the University of Illinois-Urbana from 1969 through 2002. She was an adjunct professor in the Graduate School of Library and Information Science, and served as director of the Russian and East European Center and head of the Slavic and East European Library. Professor Choldin studies censorship in Russia, the Soviet Union, and the post-Communist world. In 1995 she was elected president of the American Association for the Advancement of Slavic Studies. In 2005 the American Library Association's International Relations Committee gave her the John Ames Humphry/OCLC/ Forest Press Award for significant contributions to international librarianship. In 2011 Professor Choldin received the Robert B. Downs Intellectual Freedom Award from the Graduate School of Library and Information Science at the University of Illinois at Urbana-Champaign.

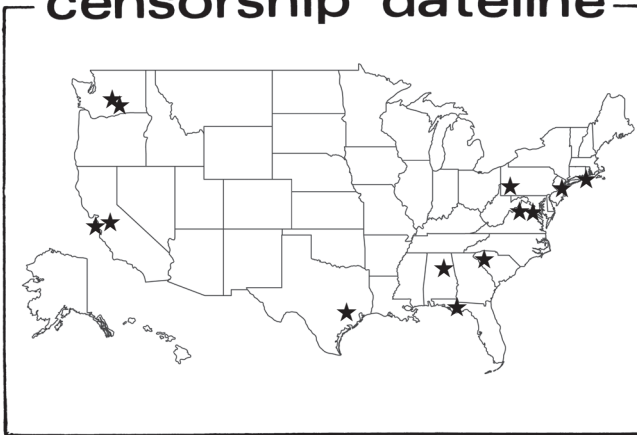
I'm writing a memoir about my more than fifty years of engagement with Russia, nearly forty of which I've devoted to the study of censorship in three eras: imperial Russia, the Soviet Union, and post-Soviet Russia. The Soviet period has been the most difficult to document, because the Soviet authorities always denied that censorship existed in their country. Until the glasnost period, starting in 1986, there was no such thing as Soviet censorship. Period. Of course there was indeed Soviet censorship, a fierce and pervasive censorship, and scholars like myself and others did our best to describe it. We couldn't talk to people involved, or do research in the archives, but we were able to learn quite a bit anyway, from emigres, from some published sources available outside the Soviet Union, and by the time-honored method of reading between the lines.

Starting as a doctoral student, I explored imperial Russian censorship. In the course of my research I often saw physical signs of censorship, especially in foreign works that had entered the empire from other countries. The official censorship evaluated all of these publications for their suitability for Russian audiences. Look at this page, for example, from a German history of the world: the legend under the portrait of Empress Elizabeth I of Russia has been covered over with "caviar," as the imperial censors called the black ink they used, because the text referred to the empress's lovers, and it was illegal to write disrespectfully about Russian rulers.

It was harder to find obvious examples of Soviet censorship. Occasionally we scholars found items like this page

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copyright dateline



libraries

Paterson, New Jersey

City youths looking to hone their “Call of Duty” video game skill can’t do it at Paterson’s libraries anymore. The library’s board voted in January to ban the playing of direct-shooter video games on the computers at its facilities.

“We felt we should do everything we can to prevent our kids from learning these behaviors,” said library board member Irene Sterling.

“We feel a responsibility to the kids of the community,” said the library’s director, Cindy Czesak.

The vote was prompted by a petition from library staff members who had been following an unofficial practice of discouraging youths from playing the games. “They would say, ‘C’mon don’t you have some homework to do instead of playing this,’” said Czesak. “They asked the board to give them something more official. They wanted something more than their own common sense.”

The city’s libraries can’t block the games from the computer. That’s because they’re part of an electronic shared system with about eighteen other libraries. But now library staff can require anyone playing the games to stop, officials said.

At present, the only material blocked from the city’s library computers is child pornography, Czesak said. The computers allow patrons to access adult pornography, but the library’s policy is not to allow folks to watch sex films, officials said. Also, children are not allowed access to chat rooms, the director said.

“Most library policies tend to be very libertarian,” said Sterling. “The whole idea is for the free flow of

information.” Czesak said library officials tried to balance their First Amendment responsibilities with their commitment to do what’s best for Paterson children. Unlike some towns, where children often are supervised by their parents while at the library, Paterson libraries have many youths who come in on their own, she said.

As a result, the library staff takes on more responsibility overseeing what they do with the computers. “We play a different role,” she said. Reported in: *Paterson Press*, January 27.

Mt. Lebanon, Pennsylvania

It was labeled “Innocence.” But the photo of a woman with an exposed breast—from a historic painting hanging in the Mercer County Courthouse—might be construed otherwise, according to Mt. Lebanon Public Library officials, who asked photographer John Flatz to replace it with something else. He refused, and thus began a tug of war that has, so far, ended in a draw.

“Innocence,” a portrait in the classical style of a woman in slight deshabelle, robes flowing off one shoulder, was to remain in the library’s exhibition of Flatz’s architectural photographs through the end of February, but “the possibility exists that it could be challenged,” said Cynthia Landrum, assistant director and spokeswoman for the library. The library’s director, Cynthia Richey, was traveling overseas.

Since 1911, the original “Innocence” mural has occupied one of four corners framing the dome of the Mercer County Courthouse. Flatz photographed it, along with other architectural details of the courthouse, last winter. It was painted, along with three other allegorical murals (“Guilt” “Justice” and “Power of the Law”) by Edward Simmons, an internationally known muralist who also painted nine panels that hang in the Library of Congress.

Tim Hofius, clerk for the Mercer County Courthouse, said the “Innocence” mural is visible in the building’s rotunda, but it’s so high up it’s hard to get a close look. “We’ve never gotten a complaint about it.”

Flatz has been taking architectural photographs for years—and waited for two years to get a chance to exhibit them at the Mt. Lebanon Public Library. “I like contrasting photographs of dilapidated buildings with those that have been restored,” he said. “It isn’t always obvious which one is more beautiful.”

He installed about thirty photographs of his work in the library’s front gallery February 1. Then on February 4 he received a call from a library staffer who told him that the photograph of “Innocence” would have to go.

“She said the problem with the photo of the breast was that it was across from [Mellon] middle school,” he said, “and the kids coming in after school come into the library and might joke about the picture. She sounded real apologetic about it.”

Taken aback, Flatz said he told the gallery manager “I am not going to take it down and do nothing. This is about artistic expression and censorship.”

So he covered up the offending breast with a picture of a bra and an arrow pointing to it saying “Censored by the Mt. Lebanon Public Library.”

Landrum said the image violates the library’s exhibit guidelines. “I would have preferred that Mr. Flatz posted his photographs after reading the guidelines,” she said. “Our position is not to censor as a library. If we’re really going to censor him, we would have taken it down, but we didn’t.”

The photo will remain as is, but “we cannot say that when our director comes back or if a board member comes in that there may not be a concern.” Reported in: *Pittsburgh Post-Gazette*, February 7.

Greenville, South Carolina

There was a reason Alan Moore’s *Neonomicon* was shelved in the adult section of the library in Greenville County, South Carolina: It contains adult content. And it was checked out with an adult library card—but that adult library card was in the hands of a 14-year-old girl. When the girl asked her mother about an unfamiliar word she found in *Neonomicon*, the trouble started. The mother, Carrie Gaske, filed an official challenge against the graphic novel in June. An official decision has now been made to ban it from the library.

Moore, who is the creator of *The Watchmen*, created a dark, fantastic FBI horror story with a strong dose of Lovecraft (think creatures and tentacles) in *Neonomicon*. The graphic novel was illustrated by Jacen Burrows and published by Avatar.

When the book was challenged, it was removed from shelves and went before an internal committee for review. That committee advised the Greenville County Library to retain *Neonomicon* and return it to circulation. However, the head of the library system disagreed and decided to remove the novel from the library’s collection.

“I can override their recommendation,” Library Director Beverly James told television station WSPA. “I’m ultimately responsible.”

The Comic Book Legal Defense Fund and the National Coalition Against Censorship have spoken up for *Neonomicon*. In June, they said its “deliberately disturbing depictions of sexual violence are included as a critical comment on how such subject matter is handled elsewhere within the genre.”

That critical take did not matter to Gaske. She had even been with her daughter at the library and taken the book out for her. “It looked like a murder mystery comic book to me,” Gaske said. “It looked like a child’s book. I flipped through it, and thought it was OK for her to check out.” Later, she took a closer look. “I feel that has the same content of *Hustler* or *Playboy* or things like that,” she told local media. “Maybe even worse.”

Acacia O’Connor, the coordinator of the Kids’ Right to Read Project at the National Coalition Against Censorship in New York City, said James’ action goes against everything a library is supposed to be, which is a place to provide a wide range of information to people of all beliefs and backgrounds.

“When arbitrary objections preclude other people from seeing materials, you are dealing with an impoverished library,” she said.

James said the situation is the polar opposite. She doesn’t—and didn’t—take the situation lightly. Banning a book goes against everything she’s built her reputation on in 36 years working in libraries in Kentucky, North Carolina and Virginia. She’s been the director of the Greenville County Library System, a \$14 million a year, 11-library operation, since 2000.

“It’s not easy,” she said. “Every decision you make, you hope is the right one. You face challenges every day.”

Graphic novels fill twenty shelves in the nonfiction section toward the back of the second floor in the Hughes Main Library in Greenville. Most of the books revolve around superheroes such as Batman, Spiderman, Green Lantern. More than a dozen Moore books are available.

The library collection development department bought two copies of *Neonomicon* in March based on reviews, recommended lists, the reputation of the author and whether the work has won an award, James said. *Neonomicon* passed every marker. “We can’t read every book we buy,” she said.

The library system has a 13-page policy stating how its collection is developed and maintained. Generally, the policy states that the library will provide a wide range of materials and that many new works will come from requests of library patrons.

“The library recognizes that many materials are controversial and that any given item may offend some. Only individuals can determine what is most appropriate for their needs,” the policy states.

It also acknowledges a need to be sensitive when categorizing materials, especially those available to children, but also says the ultimate decision on appropriateness resides with the family.

In the case of *Neonomicon*, a meeting of the committee was scheduled after all members read the book, which took several weeks because the library had only two copies. They decided the book should be kept.

“They fully recognized that I may decide otherwise,” James said.

James then researched the author, the reviews of the book and checked worldcat.org to see how many libraries in the United States had the book. The website indicates about a hundred—public and university—of more than 100,000 libraries in the country. None are in South Carolina. The closest are public libraries in Charlotte and Atlanta.

She read the book. “It was disgusting,” she said,

declining to label it obscene or pornographic. James acknowledged the library has many books that deal in such detail with the very same subject matter—racism, rape, murder, sex—but for her, the pictures gave her pause.

Her decision to pull the book was the first time she had overruled her staff's recommendation and the fifth time she had removed material from the library after a complaint. "I call it de-selection," she said.

Reported in: *Los Angeles Times*, December 6; greenvil-leonline.com, January 3.

Prosser, Washington

A committee of administrators, teachers, parents and a student on February 5 recommended a book challenged for its graphic depiction of child abuse remain available to seventh- and eighth-graders at Housel Middle School. Currently, middle-school students must have parental permission to check out Dave Pelzer's *A Child Called It*. The book is freely available in the Prosser High School library.

Every member of the Prosser School District's nine-member Instructional Materials Committee noted the book's disturbing details and use of strong language. However, a majority said they wanted to keep the book on the shelves, as it depicts something older children need to learn about, can be inspirational and could motivate children to seek help if they need it.

"I would hold onto the hope that if one child could be helped by it, it's worth it," said committee member Gayle Wheeler, who also is a Prosser School Board member.

Superintendent Ray Tolcacher has thirty days to accept or reject the committee's recommendation. If he accepts it, that opens the door for Rich Korb, the Prosser High School teacher who formally challenged the book, to take the matter to the school board.

Korb said he was disappointed by the committee's recommendation and will wait to see what Tolcacher does before deciding his next step. In addition to questioning the committee's rationale for keeping the book in the libraries, he also questioned why the committee is composed entirely of women.

"If we're willing to sacrifice the many for the one, that's a problem," Korb said, referring to Wheeler's statement.

Korb also filed a complaint against Amy Ignatow's *The Popularity Papers*, which has a character with two fathers.

Jennings said Pelzer's book, an autobiography, was brought into the libraries in the early 1990s. It supports current curriculum for middle school students, who learn about memoir and autobiography, and the book is popular at Housel.

"We currently have five copies (at Housel) and there's always a waiting list," Jennings said.

The book was restricted to seventh- and eighth-graders with parental permission in December after a few community members expressed concerns, Jennings said, and

most people who had concerns were satisfied with those measures.

Committee members K.J. Gilbertson, a school librarian, and Peggy Valnes, an elementary school teacher, said they did want the book pulled from the middle school. Valnes is concerned about the ability of students to understand it, she said. Gilbertson said the book's language is sensationalistic and clearly is aimed at high school or college students, as it depicts authority figures in a poor light.

"It makes us seem like we're clueless and ineffective as educators," Gilbertson said.

Audra Distifeno, a sixth-grade teacher, said she's had students use the book in school projects because it moved and inspired them to appreciate their own lives. Tanya Wagner said her two children read the book and took a positive message that someone could survive abuse and still prosper.

Shaelynn Voegelé, a 17-year-old at Prosser High School, said she also read the book and noted that it's up to a student whether they want to read it. "Kids can handle a lot more than adults give us credit for," Shaelynn said. Reported in: *Tri-City Herald*, February 6.

schools

San Francisco, California

A San Francisco high school senior was suspended because of a poem she wrote which dealt with the school shooting in Connecticut. What she wrote has left officials with a dilemma. It was a dark poem and in the wake of the Connecticut tragedy, it raised red flags and triggered a quick response by school officials. Now the student is facing the possibility of being expelled.

"I understand the killings in Connecticut. I know why he pulled the trigger," said Courtnei Webb, the suspended student.

Those words in Webb's poem prompted school officials at the Life Learning Academy on Treasure Island to suspend the 17-year-old senior until further notice. "Why are we oppressed by a dysfunctional community of haters and blamers?" wrote Webb in the poem.

Webb said, "The meaning of the poem is just talking about society and how I understand why things like that incident happened. So it's not like I'm agreeing with it, but that's how the school made it seem."

She says she didn't turn in the poem as an assignment. Instead, she wrote it in a private notebook that she keeps and the teacher discovered it in class and took it to the principal. But Webb says she's turned in dark poems about suicide and sadness in the past with no problem. It's a genre she likes.

"For example, the only person I can think of would be like Stephen King. He writes weird stuff all the time. That doesn't mean he's going to do it or act it out," said Webb.

But the atmosphere changed drastically since the Sandy Hook tragedy and now the school is emphasizing its policy that “Life Learning Academy takes a zero tolerance approach to violence, the threat of violence” and a “violation of any one of these rules can result in dismissal from school.”

“I feel like they’re overreacting,” said Valerie Statham, Webb’s mother. “Because my daughter doesn’t have a history of violence. She didn’t threaten anybody. She didn’t threaten herself. She simply said she understood why.”

Webb says her poems are a therapeutic way of expressing herself, but now it’s up to the San Francisco Unified School District to decide if the poem is a form of art or a genuine threat to the safety of Webb’s fellow students. Reported in: kgo-tv, December 27.

Katy, Texas

Katy Independent School District leadership removed *A Thousand Acres*, by Jane Smiley, *Fight Club*, by Chuck Palaniuk, and a story, “Hills Like White Elephants,” by Ernest Hemingway, from required reading lists for the 2013-2014 school year, following parental complaints over the use of the books during a school board meeting.

“Katy ISD is not an entity that is separate and apart from the community, rather it is an integral part of it, which is why the community’s values are our values,” Superintendent Alton Frailey said in an online statement. “When we are made aware of places where those values do not align, we are open and willing to work with the community in a positive manner to find solutions that are in the best interest of students.”

Besides these changes to school curriculum, the school district has also stated that it will review its book selection process, after parents at the board meeting charged that the books in the current English curriculum could negatively influence their children’s behavior.

“I think the parents jumped the gun on saying that the books teach their children to do the behavior shown in the book,” AP Literature teacher Susan Shank said. “I think that parents ought to trust that the 18 years of guidance that they’ve given their children is enough, and their children will be able to make their decisions based on those values that they already have implanted in them, and not just from reading a book.”

English classes throughout Katy ISD teach *A Thousand Acres*, the summer reading requirement for this year’s AP Literature classes. Only Seven Lakes High School English classes teach *Fight Club*. Community complaints about the two books center on references to sex and violence throughout both novels.

“I support the removal of *A Thousand Acres* from English classes,” senior Jeffrey Lee said. “Some of the themes in the book, like rape and incest, left me and other people reading it in a dark place.”

Fight Club drew many complaints from parents in the Seven Lakes area prior to the school board meeting. The book’s violent nature and explicit undertones prompted some to question its required use in the school’s curriculum.

The controversial removal of the two books from the English curriculum drew accusations of censorship and a lack of understanding of the books that were removed.

“When we choose books for the class, we choose books that College Board has suggested, and *A Thousand Acres* was actually a book that the head reader of the AP Literature exam suggested to us at a Rice University workshop that I attended,” Shank said. “If they threw out every book that had any questionable material, we would have to throw out all of Shakespeare, all of Dickens, probably all of Jane Austen and Charlotte Bronte and Emily Bronte, and those are considered classics.”

Other concerns about the removal of the novels from English curriculum include the concern that the district did not follow previously established Katy ISD policy when removing the books from required reading lists.

“We’ve always had a platform where people could come in and say, ‘I don’t like the book that has been selected,’ and a very specific process has been developed for that,” Wade said. “The process really means that we build a committee with parents and teachers and district personnel. We all look at the book together, and we all make a decision. In this particular situation, it felt a lot like that process was not followed.”

In a letter to KISD Superintendent Alan Frailey leaders of the National Coalition Against Censorship, the Association of American Publishers, and the National Council of Teachers of English decried the removals.

“It is educationally irresponsible and constitutionally questionable to remove curricular materials that are pedagogically suitable because some parents disagree with or are offended by their ideas or content. Students whose parents object to such material may request alternative assignments for their children, but they have no right to insist that the curriculum be altered to reflect their views,” the letter said. Reported in: *County Line*, December 12; ncaac.org, December 14.

Fairfax County, Virginia

The book Laura Murphy wants removed from Fairfax County classrooms is considered a modern American classic. It is a Pulitzer Prize winner and a masterpiece of fiction whose author’s 1993 Nobel Prize in literature citation said that she, “in novels characterized by visionary force and poetic import, gives life to an essential aspect of American reality.”

But Toni Morrison’s *Beloved*, Murphy said, depicts scenes of bestiality, gang rape and an infant’s gruesome murder, content she believes could be too intense for teenage readers.

“It’s not about the author or the awards,” said Murphy, a mother of four whose eldest son had nightmares after reading *Beloved* for his senior-year Advanced Placement English class. “It’s about the content.”

The Fairfax County School Board voted February 7 against hearing Murphy’s challenge, but she vowed to continue her quest. She said she plans to take her complaint to the Virginia Board of Education, where she will lobby for policies that will give parents more control over what their children read in class.

The Murphy case raises complex questions about constitutional rights, academic freedom and the preservation of childhood innocence. It’s mainly for those reasons that book challenges have been the subject of controversy for decades.

A Lake Braddock Secondary School Parent-Teacher-Student Association member, Murphy, 45, has been seeking for six months to have *Beloved* banned until new policies are adopted for books assigned for class that might have objectionable material.

The odds were stacked against Murphy’s challenge from the beginning, and she knew it. Fairfax County schools in certain cases have limited books for distribution only to older students, but it has never banned a book outright. According to records, the School Board has reviewed just 19 books since 1983.

If teachers wish to show excerpts from an R-rated movie in class, such as the 1998 film adaptation of *Beloved*, starring Oprah Winfrey and Danny Glover, they must notify families two weeks ahead and receive written permission from parents. The school system uses content filters to monitor what students can access on the Internet. But for books, teachers don’t need to give notice.

“I’m not some crazy book burner,” Murphy said. “I have great respect and admiration for our Fairfax County educators. The school system is second to none. But I disagree with the administration at a policy level.”

An epic tale of slavery and survival, *Beloved* is told from the point of view of a mother haunted by the death of her child—a 2-year-old girl she kills to save from a life spent in bondage. The bestseller, published in 1987, is one of the most challenged works in the United States, ranking 26th on the American Library Association’s list of top 100 most frequently banned books of the past decade.

Murphy’s campaign began last spring after her son, Blake, then a Lake Braddock senior, told her *Beloved* disturbed him. “I don’t shelter my kids, but I have to be a responsible parent,” said Murphy, who lives in Fairfax Station. “I want to make sure every kid in the county is protected.”

Now a freshman at the University of Florida, Blake Murphy recalled reading the book before bed and having night terrors after he fell asleep. “It was disgusting and gross,” he said. “It was hard for me to handle. I gave up on it.”

School officials point out that AP English is a college-level class that often involves discussions of adult topics.

“To me, mature references means slavery or the Holocaust,” Laura Murphy said. “I’m not thinking my kid is going to be reading a book with bestiality.”

In a letter to parents referencing the challenge, Lake Braddock English department officials wrote that society must address troubles the world faces. “Reading and studying books that expose us, imaginatively and safely, to that trouble steels our souls to pull us through our own hard times and leads us to a greater empathy for the plight of our fellow human beings,” the letter said.

Murphy’s challenge reached the school board in late December. In a 6-2 vote announced February 7, the board decided against hearing Murphy’s case and upheld Superintendent Jack D. Dale’s decision to retain *Beloved*, in the AP English curriculum.

Currently, students can opt out of books assigned in class that they find uncomfortable to read. But the policy should be stricter for books with mature themes, Murphy argues. She said she contacted the state Board of Education and is pursuing a policy similar to what is in place for the state’s Family Life Education curriculum, in which topics such as rape and molestation are discussed. In those classes, state policy allows for parents to receive notice of certain class topics. Parents also can remove their children from the program.

“School policies related to sensitive topics should be the same,” regardless of the class subject, Murphy said. “Clearly a double standard exists, and it should be consistent across all academic disciplines.” Reported in: *Washington Post*, February 7.

Yakima, Washington

A handful of parents in the West Valley School District are seeking to remove an award-winning young adult novel by a Native American author from the reading list of high school English classes, saying the book contains material unsuitable for young readers.

The Absolutely True Diary of a Part-Time Indian, by Sherman Alexie of Seattle, tells the story of Junior, also called Arnold, a teenage boy growing up on the Spokane reservation. The mostly autobiographical book told through Junior displays the endemic alcoholism, poverty and hopelessness he sees on the reservation, as well as the bullies and racism he encounters in school both on “the Rez” and in the nearby white town. The book uses humor and cartoons to show Junior’s lighthearted approach to his often discouraging life.

Some parents found the sexual references and profanity in the novel inappropriate for high school students, and say there are better alternatives that teach the same message without being offensive.

The book was originally approved by the West Valley

district's Instructional Materials Committee for 11th- and 12th-grade classes. Some parents are upset that it was moved down to 10th grade without going through the same approval process. Once the district became aware of the misstep through the parent complaint, the book was put on hold for 10th-grade classrooms.

Tenth-grade English teacher Josh McKimmy started teaching the book with sophomores two years ago when the department decided to pair it with Harper Lee's *To Kill a Mockingbird* in order to examine two very different societies where racism exists, McKimmy said.

"Our job as English teachers is to promote reading and to give kids access to life through reading. If kids are just given the classics all the time—I wasn't a student like that; I wouldn't read classics or anything," said McKimmy, a West Valley graduate. "Then I read some young adult books that I could identify with, and then I've become a reader because of those books."

The book is a gateway for reluctant readers, he said, and more, it deals with issues his students are very familiar with as teenagers. "They really identify with Junior's problems," he said. "One of his main problems is that he exists in the Indian world and the white world. ... Kids struggle with identity; that's kind of what high school is."

But parents said the language in the book goes too far. Alicia Davis, a teacher at Cottonwood Elementary School in West Valley, has a daughter in McKimmy's class. As an African-American family, she said, *To Kill a Mockingbird* was uncomfortable enough, with its discussion of lynching and Jim Crow laws. In *True Diary*, she found a line of dialogue where a bully insults the narrator with a racial slur and a profanity meant to offend both Native Americans and African-Americans. Davis said her daughter was very disturbed by the language.

"West Valley is not very diverse," Davis said. "And I feel like, when you have this kind of language that comes up, it's important to make sure that you're sensitive to other people who are not like you."

Davis read through the book and made a chart of page numbers with offensive language to support her position. She said the school's administrators told her the book was meant to offer a different cultural perspective, which she understands.

"I'm an educator, too, and there are many other ways and other literature out there that you could use in order to prove the same point," she said. She also said they were not offered the "opt-out" option until the class was almost finished with the book. That policy allows students to read a different book for the same credit.

Davis said the book should be reserved for college students. "I just would not want my 12th-grader reading something like this in public school," she said.

Davis's friend, Katie Birley, whose son is in kindergarten in the district, said she joined in the complaint because the teachers didn't follow the approval process. The book was

approved as supplemental reading to be used in literature circles in 11th and 12th grade, not as required core reading. "I want to know that if I put my trust in the administration and the IMC committee, that when they review a book, the administration is actually teaching that book in the grades it was approved for," Birley said.

Assistant Superintendent Peter Finch said the book's move to 10th grade was "an honest mistake," and the teachers didn't know they needed to follow a separate approval process for that. "Once we discovered that it was being used in 10th grade, we stopped using it, and ... the English department is going to request that it be used at 10th grade, and we'll address that request at a later date after the citizens' request (to remove the book entirely) has been heard."

McKimmy said the English department made the decision together, and moved the book to 10th grade in spring 2011. All sophomore English classes have taught the book—without approval—for two years now. "No one in the high school ... knew of this policy; we thought that since it was approved for one class, it was approved for all classes," he said. Many book reviews recommend the novel for eighth to 10th grade, and the department moved it down to "energize" the reading for sophomores.

Finch said the district has received four complaint forms about the book.

For McKimmy, the book is an opportunity to talk about the Yakama Reservation, which most students have had little to no contact with, and they're "shocked" at the contemporary problems facing Native Americans.

"Even though it's so close, it's so far removed from out here," he said. "What I try to bring into my classroom is awareness, and I think this book does a great job with that." Reported in: *Yakima Herald-Republic*, January 9.

student press

Pleasanton, California

A Pleasanton school district is overruling a high school yearbook's decision to reject a senior photo that student editors deemed inappropriate.

Senior Kenton Koos, an independent study student, submitted the photo of himself wearing a nose ring, spiked-up hairstyle and a Mike Tyson-styled facial tattoo along with the required tuxedo to the Amador Valley High School yearbook. The photo was submitted in November to run in the senior photo section, but the student editors rejected the photo because they did not feel it was appropriate for the section, said Principal Jim Hansen.

"This is the senior pictures, the girls wear drapes and the boys wear tuxes," Hansen said. "It's a very formal section. The rest of the yearbook can be very casual. Perhaps this picture could be in another spot in the yearbook."

After the photo was rejected, Koos contacted local media outlets and they publicized the story. This, Hansen said,

prompted the Pleasanton school district administrators to contact Amador Valley in early December and instruct Hansen and the yearbook staff to run the photo in the senior section.

Hansen said the student editors want to be able to make decisions like this themselves. In light of the district's decision though, editors have been talking with Koos about running the photo. Hansen said editors would like to compromise and run the photo elsewhere in the book.

"They feel it is their purview to decide," Hansen said.

Odie Douglas, Pleasanton Unified school district's assistant superintendent of educational services, said it was the district's decision that Koos should be able to have his selected photo run. Douglas said the yearbook staff is welcome to give input on decisions like this, "but their rights cannot trump individual rights."

Frank LoMonte, executive director of the Student Press Law Center, said that under California state law, the editors have the right for themselves to decide whether to run the photo.

"It's actually pretty well established in the law that there's not a constitutional right to have your picture in a yearbook that trumps the editor's discretionary authority," LoMonte said. "California law makes student editors captain of the ship, including deciding whether a photo does or does not meet their stylistic standards."

California's Student Free Expression Law gives student editors the specific right to determine the "news, editorial, and feature content of their publications," with some authority given to advisers in the matter of supervising production and ensuring professional conduct.

"This is a perfect illustration of how a school can minimize its liability exposure by leaving its editorial judgments to the students," LoMonte said. "The student in the photo can't sue the school because of a decision made by a group of individual students." Reported in: splc.org, December 14.

Tallahassee, Florida

The student newspaper at Florida A&M university has been suspended from publishing, its adviser removed and its staff told they must reapply for their positions by the dean of FAMU's School of Journalism and Graphic Communication.

Editor Karl Etters learned of *The Famuan's* suspension January 7, the first day of the spring semester, during a meeting with Dean Ann Kimbrough. A schoolwide email announcement of the suspension was made the next morning.

"We are working to balance students' rights to a free press through this process while also ensuring that *The Famuan* has the proper support from the School of Journalism & Graphic Communication as it serves as a training unit for up and coming journalists," Kimbrough said in the email.

The statement cited a libel lawsuit as one of the things that prompted the publication's suspension. In December,

the paper was sued for defamation for an article it published following the hazing death of FAMU drum major Robert Champion.

The December 2011 article incorrectly stated that Keon Hollis, a fellow drum major, had been suspended in connection with Champion's hazing death. No disciplinary action was taken against Hollis, according to a correction published by the paper in February 2012. The original article was removed from the paper's website.

Kimbrough, who took over as dean last August, said in an interview that she's been told that the reporter who wrote the piece in question was not enrolled at the university, which is a requirement for working on student publications. She said the reporter said the information came from "reliable sources," but that he wouldn't identify who the sources were.

As a new dean, Kimbrough said she was already reviewing all of the student publications that operate through the journalism school when she learned of the lawsuit. She said she did research on the Student Press Law Center's website and concluded that more training would be beneficial for students.

Kimbrough said she didn't believe that pushing back the paper's publication interfered with the students' ability to make their own editorial decisions.

"The students do have the right to publish as they see fit," she said, adding that because the paper is under the umbrella of the school of journalism and "not an independent separate organization," that it was reasonable to ask them to undergo additional training.

Kimbrough said she could not comment on adviser Andrew Skerritt's removal because it was a personnel issue. She said it was unrelated to the lawsuit and that the timing was "just a coincidence." The school's statement didn't address Skerritt's removal, either.

"The adviser's situation was something that happened and occurred long before I arrived," Kimbrough said. "It was something that I inherited. This removal was already to be."

Skerritt, who has advised the paper for four-and-a-half years, remains an assistant professor of journalism at the school. "We want to do whatever we can to prepare our students to be the best journalists they can be," Skerritt said. "I'm glad to have had the chance to do that."

Staff were told they will have to undergo training in media law and ethics, but Etters said most have already taken the journalism school's media law class. In addition, he said they've been told some of the training will focus on more general journalism principles.

"To me it feels redundant," Etters said. "That's what we do every day." Etters said the staff didn't learn they would have to reapply until January 9, in a meeting with Kimbrough to contest the publication suspension. It's not clear whether the requirement that staff reapply is connected with Kimbrough's discovery that some previous staff were ineligible.

The paper hires new editors every semester, and Etters said the spring semester's staff was hired in December just before winter break. He said the staff all plan to reapply.

Kimbrough said this is being required of staff because the hiring process was not properly completed in December. She said that she's seen no paperwork regarding the hiring process and that her decision to have students reapply was made so that there would be a "fair process to all."

Etters said he was not sure whether he or other staff members will contest the suspension further, but said they were considering doing so. Reported in: splc.org, January 9.

publishing

Washington, D.C.

In an illustration of the government's changeable ideas of what should be secret, Pentagon censors have decided that nearly half of more than 400 passages deleted from an Afghan war memoir can be printed without damaging national security.

The January decision by a Defense Department security office was the latest twist in the striking fate of the 2010 book *Operation Dark Heart*, by Anthony Shaffer, a retired Army officer who described his work as an intelligence officer in Afghanistan. The Army initially cleared the book for publication, but then the Defense Intelligence Agency objected, asserting that the manuscript contained classified information.

So the Pentagon spent nearly \$50,000 to buy and destroy the entire 10,000-copy first printing of the book, before allowing a second printing with 433 passages blacked out. Shaffer later filed a lawsuit challenging the deletions.

The new review by the Defense Department concluded that 198 of the supposed secrets were now "properly declassified" and could be printed after all.

In a further complication to the *Operation Dark Heart* case, a small number of review copies of the original uncensored edition had been distributed before the Pentagon bought the 10,000 copies. By examining the unexpurgated copies, it is possible to find out what security officials thought was dangerous, and what they now have decided is safe to print.

For instance, the name of Bagram Air Base, a hub of American operations in Afghanistan, was removed from the first edition, but the censors now say it can be restored. But a reference to the nickname of the National Security Agency, "the Fort"—a name well known for decades to neighbors of the agency at Fort Meade, Maryland—remains classified.

Shaffer, who retired from the Army as a lieutenant colonel in 2011, said the restored passages may be used in a new Turkish-language edition of the book. But he noted that the Defense Department had decided that the official description of activities that won him a Bronze Star—in a document not initially marked as classified and already released at a public Congressional hearing—was now classified and

could not be publicly discussed.

"They continue to trample on my First Amendment rights," he said.

Steven Aftergood of the Federation of American Scientists, who published the new Defense Department letter on his blog *Secrecy News*, said the government's revision "illustrates the thoroughly subjective character of the classification system."

"To inquire into the logic of the process is to go down a bottomless rabbit hole," he said. Reported in: *New York Times*, January 25.

colleges and universities

Talladega, Alabama

An art show at an Alabama museum that was meant to feature the work of Troy University faculty members has been called off after the museum's board deemed some of the images submitted by one of the artists to be offensive.

Nine artists had contributed pieces to the show, which was given the theme "A Sense of Place." A Troy art professor submitted pieces that were designed to comment on the state's controversial anti-immigration law. One showed relabeled containers of a cleaning product with swastikas on the tops of the cans.

"We wanted to take that one out, and they got into a huff and said we had to show the whole thing or none of it," the museum board's president said. "We had seven people unloading them, and they were all offended."

The professor who submitted the controversial piece said faculty members had agreed to withdraw the whole show "in solidarity," and added that it was "unfortunate" that the board found the work offensive. He called the immigration law itself offensive, and said that "preventing an artist from presenting his work by stifling and censorship is offensive, archaic, and barbaric." Reported in: *Chronicle of Higher Education* online, January 23.

Kingston, Rhode Island

Erik Loomis, an assistant professor of history at the University of Rhode Island, has come under fire for his comments on Twitter about the National Rifle Association in the wake of December's mass shooting at a Connecticut elementary school. One of his tweets said that he wanted to see the National Rifle Association chief executive's "head on a stick." Conservatives denounced his choice of words, but Loomis later wrote in a blog post that it would be "completely absurd" for anyone to take his metaphor literally. He added that he had become the latest subject of what he called the "right-wing Two-Minute Hate."

The university's president, David M. Dooley, said in a written statement that the institution "does not condone acts or threats of violence" and added that the professor's

remarks “do not reflect the views of the institution.”

The professor said he had been visited by the state police as a result of the controversy and told the Associated Press the authorities were concerned about his safety. Loomis’s Twitter account has been deactivated. Reported in: *Chronicle of Higher Education* online, December 19.

broadcasting

Washington, D.C.

The Parents Television Council urged the Federal Communications Commission (FCC) on February 4 to take action against CBS for airing a curse word during its coverage of the previous day’s Super Bowl.

Immediately after the game ended, an exuberant Joe Flacco, the Baltimore Ravens’s quarterback, could be heard saying “f---ing awesome” to one of his teammates.

“Despite empty assurance after empty assurance from the broadcast networks that they would never air indecent material, especially during the Super Bowl, it has happened again,” Tim Winter, the Parents Television Council’s president, said in a statement.

“No one should be surprised that a jubilant quarterback might use profane language while celebrating a career-defining win, but that is precisely the reason why CBS should have taken precautions,” he said. “Joe Flacco’s use of the f-word, while understandable, does not absolve CBS of its legal obligation to prevent profane language from being broadcast—especially during something as uniquely pervasive as the Super Bowl.”

CBS has been involved in years of legal battles after it aired a split-second view of singer Janet Jackson’s partially exposed breast following a “wardrobe malfunction” during the 2004 Super Bowl halftime show.

“Now nine years after the infamous Janet Jackson incident, the broadcast networks continue to have ‘malfunctions’ during the most-watched television event of the year, and enough is enough,” Winter said.

A CBS official said that to silence any possible curse words the network delays its pre-game coverage, halftime show and post-game coverage, but not the game itself. Flacco cursed immediately after his team defeated the San Francisco 49ers and before CBS was able to switch into delayed post-game coverage.

It is illegal to air indecent or profane programming before 10 p.m. on broadcast television. Winter noted that the incident occurred before 10 p.m. except on the East Coast.

For several years, the FCC declined to issue any indecency fines, noting that its authority was in legal limbo. The broadcasters argued that the fines violated their constitutional right to free speech. The Supreme Court upheld the constitutionality of the indecency ban seven months ago.

At the time, FCC Chair Julius Genachowski said that,

consistent with constitutional protections, “the FCC will carry out Congress’s directive to protect young TV viewers.”

The FCC has yet to issue any fines or draft any rules on the issue since the court decision.

Hundreds of thousands of complaints, many of them filed by the Parents Television Council, have accumulated at the FCC. “After more than four years of inaction on broadcast decency enforcement, the FCC must step up to its legal obligation to enforce the law, or families will continue to be blindsided,” Winter said. Reported in: *The Hill*, February 4.

foreign

Beijing, China

Hundreds of people gathered outside the headquarters of a newspaper company in southern China January 7, intensifying a battle over media censorship that poses a test of the willingness of China’s new leadership to tolerate calls for change.

The demonstration was an outpouring of support for journalists at the relatively liberal newspaper *Southern Weekend*, who erupted in fury the previous week over what they called overbearing interference by local propaganda officials. At the same time, the embattled newsroom received backing on the Internet from celebrities and other prominent commentators that turned what began as a local censorship dispute into a national display of solidarity.

“Hoping for a spring in this harsh winter,” Li Bingbing, an actress, said to her 19 million followers on a microblog account. Yao Chen, an actress with more than 31 million followers, quoted Aleksandr Solzhenitsyn, the Russian dissident: “One word of truth outweighs the whole world.”

Disputes between media organizations and local party leaders over the limits of reporting and expressions of opinion are common in China, but rarely emerge into public view. This time, calls to support the frustrated journalists spread quickly in Chinese online forums and those who showed up outside the media offices in Guangzhou, the capital of Guangdong Province, ran the gamut from high school and university students to retirees.

Many carried banners scrawled with slogans and white and yellow chrysanthemums, a flower that symbolizes mourning. One banner read: “Get rid of censorship. The Chinese people want freedom.” Police officers watched, but did not interfere.

The journalists at *Southern Weekend* have been calling for the ouster of Tuo Zhen, the top propaganda official in Guangdong Province, who took up his post last May. They blame him for overseeing a change in a New Year’s editorial that originally called for greater respect for constitutional rights under the headline “China’s Dream, the Dream of Constitutionalism.”

The editorial went through layers of changes and

ultimately became one praising the direction of the current political system, in which the Communist Party continues to exercise authority over all aspects of governance.

A well-known entrepreneur, Hung Huang, said online that the actions of Tuo had “destroyed, overnight, all the credibility the country’s top leadership had labored to re-establish since the 18th Party Congress,” the November gathering in Beijing that was the climax of the leadership transition installing Xi Jinping as Communist Party chief. Xi, who is also scheduled to assume the nation’s presidency in March, has raised expectations that he might pursue a more open-minded approach to molding China’s economic and political models during his planned decade-long tenure.

But more recently, he has said China must respect its socialist roots, which appeared to be a move to placate conservatives in the party.

One journalist for *Southern Weekend* said that talks between the various parties had taken place, but there were no results to announce. “The negotiations did not go well at all,” the journalist said.

Signs had emerged earlier that central propaganda officials were moving to dismantle support for the protest. A fiery editorial by *Global Times*, a populist newspaper, attacked the rebels at *Southern Weekend* and essentially accused them of conspiring against the government. Xinhua, the state news agency, and other prominent news sites published the editorial online, apparently at the orders of propaganda officials.

But by the next morning, the news portals run by large Internet companies like Sina and Sohu rather than by the state had posted disclaimers of the *Global Times* editorial, saying the opinions did not reflect those of the companies.

It was on the Internet where the campaign to support the beleaguered journalists was reaching full bloom. Bloggers with large readerships, Han Han and Li Chengpeng, urged defiance of press censorship, and calls spread on microblogs for more rallies outside the newspaper offices.

It was unclear how many employees in the *Southern Weekend* newsroom had heeded calls by reporters for a strike to display their determination to resist censorship. A local journalist who went by the newspaper’s Beijing office January 7 said the building appeared to be open, but quiet. One employee at the site, where about thirty people work, told the journalist that the office was not on strike.

Besides being a weather vane that could reveal the direction of Xi and the new party leadership, the tensions at *Southern Weekend* could pose a serious test for Hu Chunhua, Guangdong’s new party chief and a potential candidate to succeed Xi as China’s leader in a decade.

Hu’s predecessor, Wang Yang, was labeled a “reformer” by many Western political analysts, but he presided over a tightening of media freedoms in the province, and specifically over the Nanfang Media Group, the parent company of *Southern Weekend* and other publications. Hu is a rising star in the party who got a Politburo seat in November and is a protégé of Hu Jintao, Xi’s conservative predecessor.

In Washington, the State Department said that media censorship is incompatible with China’s aspirations to build a modern information-based economy and society. A department spokeswoman, Victoria Nuland, said the Chinese were now strongly taking up their right to freedom of speech. “We hope the government is taking notice,” she told a news briefing. Reported in: *New York Times*, January 7.

Beijing, China

Google has reluctantly conceded defeat in its latest effort to combat online censorship in China, after a year of behind-the-scenes brinkmanship over sensitive search terms banned by authorities. The search company has quietly dropped a warning message shown to Chinese users when they search for politically sensitive phrases, after Beijing found new ways to cut them off from the web.

Google and Chinese authorities have been involved in a tense game of cat-and-mouse over the issue since May last year, when the feature was unveiled by the US company in an attempt to improve search for Chinese citizens. The standoff came to a head in December, when Google finally decided to drop the feature because users were still being disconnected by Chinese authorities. A source in China said Google decided it was “counterproductive” to continue the technical dispute, despite several attempts to get around it. Reported in: benton.org, January 4.

Paris, France

A French court on January 24 told Twitter to identify people who had posted anti-Semitic and racist entries on the social network. Twitter is not sure it will comply.

The court order came in a lawsuit brought by French groups who said the Twitter postings, which were made under pseudonyms, broke French law against racist speech. Twitter has said that under its own rules, it does not divulge the identity of users except in response to a valid court order in the United States, where its data is stored. Twitter has already removed some of the content at issue from its site in France, in keeping with company policy to remove posts in countries where they violate the law.

Twitter said in a brief statement that it would review its legal options after the French ruling.

It remains unclear whether French prosecutors will press their case across the Atlantic and force Twitter’s hand in an American court under a time-consuming process detailed in a so-called mutual legal assistance treaty.

The case revolves around the broad question of which country’s laws have jurisdiction over content on the Internet. This question has become increasingly complicated as vast piles of information are stored in sprawling data centers, known as the cloud, that are accessible over the Internet anywhere, anytime.

“It is a big deal because it shows the conflict between

laws in France and laws in the U.S., and how difficult it can be for companies doing business around the world,” said Françoise Gilbert, a French lawyer who represents Silicon Valley companies in courts on both continents.

In this case, the jurisdictional issue has an additional wrinkle because Twitter does not have an office in France and does not face the prosecution of its employees there, a problem that other Web companies, like Facebook and Google, have faced elsewhere. Twitter is popular in France, nonetheless. It is available to anyone with an Internet connection and sells ads on its French site here. This could embolden French authorities to try to apply its laws to the service.

With 200 million users, most of them outside the United States, Twitter has confronted these conundrums over hate speech and free expression before, especially in Europe.

In October, at the request of the German government, Twitter blocked users in Germany from access to the account of a neo-Nazi group banned there. It was the first time Twitter acted on a policy known as “country-withheld content,” announced last January, in which it agreed to block an account at the request of a government.

In 2011, British authorities went to court in California to extract information about a Twitter user who went by the pseudonym Mr. Monkey and was accused of defaming members of a British town council. The company complied.

Twitter says in its online help center that foreign law enforcement agencies can seek user data through what is known as a “mutual legal assistance treaty.” “It is our policy to respond to such U.S. court-ordered requests when properly served,” the company says on the site.

But Twitter is not the only Web company facing government requests for personal data. Google said this week that it received more than 21,000 requests in the last six months; more than 8,000 from the United States, which was followed by India, France, Germany and Britain.

Twitter, though, has sought to cast itself as a special defender of free speech, sometimes describing it as a competitive advantage. On occasion, it has fought unsuccessful battles with prosecutors in the United States seeking to extract data on Twitter users.

The French case is also part of a brewing fight between the United States and Europe over the data controlled by American Web companies and stored in the cloud. European lawmakers worry about American companies sharing data about Europeans with the United States government under American laws that authorize surveillance on foreign citizens. This case flips that objection on its head, with European authorities seeking information on its citizens from an American company.

Chris Wolf, an American lawyer expert in European data protection laws, said it was proving difficult to interpret jurisdiction laws in the digital age. He offered a paper analogy. If French authorities sought access to files stored in an American company’s offices in Paris, they could physically

get their hands on the material and use it in a court of law.

“The physical presence of a thing or a person have always been major factors in determining which government has the right to have its rules applied,” Wolf said. “The power to access data makes physical location of evidence irrelevant.”

The French case was prompted by a spate of anti-Semitic writing on Twitter late last year, including hashtags, or topical themes, like “a good Jew is a dead Jew.” There were also jokes about the Holocaust and comments denigrating Muslims. Holocaust denial is a crime in France, and the country has strict laws against hate speech.

Organizations like the French Union of Jewish Students and SOS Racisme filed the suit, seeking to identify those responsible for the accounts.

The court said Twitter should provide “data in its possession that could permit the identification of anyone who has contributed to the creation of manifestly illegal tweets.” The court stopped short of recommending screening, but said that Twitter should “set up, within the framework of its French platform, an easily accessible and visible system enabling anyone to bring to its attention illegal content, especially that which falls within the scope of the apology of crimes against humanity and incitement to racial hatred.”

The court order was hailed by the Jewish student group. “The French justice system has made a historic decision today,” said Jonathan Hayoun, its president, in a statement. “It reminds victims of racism and anti-Semitism that they are not alone, and that French law, which protects them, should apply everywhere, including Twitter.”

The sensitivity of the issue in France was heightened by the killing of seven people, including four Jews, in southern France last March by Mohammed Merah, who claimed to be acting for Al Qaeda. Since then, Jewish groups say, anti-Semitic material, including Twitter feeds appearing to be tributes to Merah, have proliferated. Reported in: *New York Times*, January 24.

Ankara, Turkey

In three letters sent to Turkey’s prime minister, Recep Tayyip Erdogan, December 12, the Middle East Studies Association (MESA) raised serious concerns about alleged violations of academic freedom in Turkey, including the detention of students and scholars on the basis of their research into Kurdish issues.

Collectively, the incidents described in the letters seem to point to “a systematic policy of denying the right to do research and writing and publishing on the subject of Kurdish rights,” said Asli Bâli, an assistant professor of law at the University of California at Los Angeles who conducted research on the legal proceedings against Turkish students and scholars on behalf of MESA and its Committee on Academic Freedom.

“In a way, that is related to a broader campaign to prevent civil society organizing and civil and political action on the part of Kurdish communities and pro-Kurdish communities and scholars in general, whether they be Turkish or foreign,” Bâli said. She added that while Kurdish scholarship has been especially targeted, leftist scholarship in general—on issues such as the environment, gender and race—has come under increased scrutiny in Turkey.

One letter expressed concerns about seven students at Turkish universities—representative of hundreds, Bâli said—who have been detained and accused of membership in the Union of Kurdish Communities (KCK) by virtue of their academic work. According to the letter, undergraduate and graduate students alike have been accused of membership in the KCK—a prohibited organization in Turkey—on the basis of such evidence as attending or lecturing at an academic forum on Kurdish rights and civil society, and traveling to Iraqi Kurdistan for field research.

A second letter detailed dismay regarding the ongoing trials of Pinar Selek, a Ph.D. candidate in political science at the University of Strasbourg, in France, who has, since her arrest in 1998, been thrice acquitted of the charge of membership in the Kurdistan Workers’ Party (PKK), a designated terrorist organization. Three times those acquittals have been reversed, forcing a retrial. The letter states that evidence linking Selek to a bombing at Istanbul Spice Market is “extremely weak”—a claim echoed by Human Rights Watch, which notes that experts think a gas leak was the source of the explosion—and asserts that the only evidence connecting Selek to the PKK is her own academic research on the group.

The final letter detailed concerns about a broad array of alleged academic freedom violations on the part of government-appointed university administrators, including the alleged censorship of an article on racism and the cancellation of two academic conferences, on gender equality and prisons, reportedly due to the participation of members of the pro-Kurdish (and legal) Peace and Democracy Party (BDP).

Taken together with the detentions, “actions such as the intervention of government-appointed university administrators to prevent academic publications or events concerning issues deemed sensitive by the government make it appear that the Turkish government has undertaken a campaign to inhibit the dissemination of knowledge, the conduct of academic research and even the right to an education where any of these protected activities overlap with criticism of the government or a focus on issues deemed politically sensitive, such as Kurdish rights,” the letter stated. Reported in: *insidehighered.com*, December 13.

Hanoi, Vietnam

Vietnamese authorities have arrested a blogger critical of the government and thrown him into a mental institution in the latest move to curtail dissent in the one-party Communist state, a rights group said January 26.

Le Anh Hung was taken away from his workplace by security officials and his friends later discovered that he was interned in a mental institution in the capital Hanoi, according to the Paris-based Vietnam Committee on Human Rights.

The 40-year-old blogger had in the past been subjected to repeated interrogations, threats, and harassment by the police over his writings denouncing instances of corruption and power abuse among top-level ruling Communist Party and government officials.

“Six secret security agents held Le Anh Hung at his workplace in [northern] Hung Yen [city] on Thursday morning and told his boss they needed to see him about ‘matters concerning temporary residence papers,’” a statement by the Vietnam Committee on Human Rights said.

“They then forced him into their car and took him away without any explanation. He was later found to be interned in the ‘Social Support Center No. 2’ in Ung Hoa, Hanoi, a center for mentally ill.”

When his friends tried to visit him, the head of the center confirmed that he was there, but refused to let them meet him, the statement said. The center’s head also claimed that Hung’s mother had demanded his internment, and that she specifically told them that no one should be allowed to see him other than herself.

But Hung’s mother denied making such a demand, the statement said.

“Detaining critics and dissidents in mental hospitals is a despicable tactic reminiscent of the Soviet Union era,” said Vo Van Ai, president of the Vietnam Committee on Human Rights, the international arm of Action for Democracy in Vietnam which is campaigning for human rights and democracy in Vietnam.

“Vietnam will clearly stop at nothing to stifle the voices of this young generation. The international community should condemn his kidnapping and detention and call on Vietnam to immediately set him free,” he said.

Hung has filed seventy complaints against leading figures such as Prime Minister Nguyen Tan Dung and former Communist Party secretary-general Nong Duc Manh, accusing them of corruption, drug dealing, arms trafficking and other crimes. He had also participated in anti-China demonstrations in Hanoi.

In December, Vietnamese police detained a prominent lawyer and blogger Le Quoc Quan as he dropped his daughter off at school and has held him incommunicado since then in a case which the United Nations says “exemplify the limited space for critical voices in Vietnam.”

In mid-January Vietnam sent more than a dozen peaceful activists, including bloggers, to jail in the largest trial of its kind in the country. They were sentenced to up to thirteen years for “subversion of the administration” in a verdict criticized by the United Nations, the United States, France, and several other governments. Reported in: *Radio Free Asia*, January 26. □

from the bench



U.S. Supreme Court

The Supreme Court on January 12 agreed to decide cases on the First Amendment rights of groups fighting AIDS. The case arose from a 2003 law that requires private groups that receive federal money to combat AIDS abroad to have “a policy explicitly opposing prostitution.” The restriction does not apply to other recipients, including the World Health Organization.

The Supreme Court has said the government may not attach strings to money it provides to some people and groups if those conditions infringe on constitutional rights—even though the government has no obligation to spend the money in the first place.

In 2011, a divided three-judge panel of the United States Court of Appeals for the Second Circuit, in New York, blocked the law, saying it “compels grantees to espouse the government’s position on a controversial issue.” The full appeals court declined to rehear the case. Dissenting from that ruling, Judge José A. Cabranes wrote that the measure was “an uncomplicated and common-sensical condition of federal funding.”

In 2007, considering an earlier version of the program, the United States Court of Appeals for the District of Columbia Circuit upheld it. The federal government asked the Supreme Court to hear the case from New York to resolve the conflict.

In urging the Supreme Court not to hear the case, the groups challenging the law said it interfered with their work. They said they “generally avoid taking policy positions or making statements that are likely to offend” the nations they work in and the people they seek to help. “Adopting a policy that explicitly opposes prostitution” would do harm to the groups’ “effectiveness in working with high-risk

groups to fight HIV/AIDS,” their brief said.

Justice Elena Kagan recused herself from the case, *United States Agency for International Development v. Alliance for Open Society International*, presumably because she had worked on it as United States solicitor general. Reported in: *New York Times*, January 12.

More than a dozen social scientists have joined news-media advocacy groups in urging the U.S. Supreme Court to take up a case involving government efforts to force Boston College to hand over confidential interviews with former members of the Irish Republican Army.

In an *amicus curiae*, or “friend of the court,” brief filed on December 21, fourteen social-science scholars, all from universities in Indiana, argue that their ability to carry out sensitive research has been undermined by a federal appeals court’s ruling requiring Boston College to give British authorities records of confidential IRA interviews that are housed at an archive there.

The researchers who had conducted the interviews as part of an oral-history project had assured their subjects that their identities would be shielded and access to the records restricted until the interview subjects’ deaths, unless the subjects requested otherwise.

In a ruling handed down in July, however, a three-judge panel of the U.S. Court of Appeals for the First Circuit held that Boston College could not refuse U.S. Justice Department subpoenas seeking the records on behalf of the British government, which wants them as part of its investigation of past IRA activity.

The case has triggered alarm among oral historians and other researchers over the possibility that their pledges of confidentiality to subjects might carry little weight in court.

The social scientists argue in their brief that the First Circuit’s decision affects research well beyond that at issue in the case, in that it “jeopardizes the long-term ability of scholars to gain information regarding profoundly sensitive and controversial subjects.”

In a separate *amicus brief* urging the Supreme Court to take up the case, the Reporters Committee for Freedom of the Press, an advocacy group based in Arlington, Virginia, argues that the First Circuit erred in denying the academic researchers a chance to defend their interests solely because the records at issue were held by a third party, Boston College.

The Reporters Committee also argues that the Supreme Court needs to resolve discrepancies among the federal courts on the question of whether courts need to decide, on a case-by-case basis, whether the government’s interest in obtaining confidential records outweighs First Amendment concerns.

A brief filed by an international organization of journalists, Article 19: Global Campaign for Free Expression, argues that the First Circuit’s decision conflicts with the legal protections of journalists’ sources enshrined in the

laws of other nations and most states in the United States.

Three prominent organizations of Irish-Americans—the Ancient Order of Hibernians, the Brehon Law Society, and the Irish American Unity Conference—submitted a brief arguing that the First Circuit’s decision creates the possibility that the interview subjects will suffer reprisals, and potentially threatens the accord that has brought Ireland peace. Reported in: *Chronicle of Higher Education* online, December 21.

The Supreme Court was set to hear in February a major genetic-privacy case testing whether authorities may take DNA samples from anybody arrested for serious crimes.

The case has wide-ranging implications, because at least 27 states and the federal government have regulations requiring suspects to give a DNA sample upon some type of arrest, regardless of conviction. In all the states with such laws, DNA saliva samples are cataloged in state and federal crime-fighting databases.

The justices are reviewing a 2012 decision from Maryland’s top court, which said it was a breach of the Fourth Amendment right against unreasonable search and seizure to take, without warrants, DNA samples from suspects who have not been convicted.

The hearing, slated for February 26, has drawn a huge following from civil rights groups, crime victims, federal and state prosecutors and police associations—each arguing their party lines.

The Obama administration told the justices in a filing that “DNA fingerprinting is a minimal incursion on an arrestee’s privacy interests. Those interests are already much diminished in light of an arrestee’s status and the various intrusions and restrictions to which he is subject—and that is particularly true of any interest in preventing law enforcement from obtaining his identifying information.”

On the other side, the Electronic Privacy Information Center said the indefinite retention of DNA samples raises unforeseen privacy issues. “As our knowledge of genetics and its capabilities continues to expand, it brings with it new challenges to privacy. Once an individual’s DNA sample is in a government database, protecting that information from future exploitation becomes more difficult,” the group told the justices in a filing.

DNA testing in the United States was first used to convict a suspected Florida rapist in 1987, and has been a routine tool to solve old or so-called cold cases. It has also exonerated convicts, even those on death row.

At issue before the justices is a Maryland Court of Appeals ruling that arrestees have a “weighty and reasonable expectation of privacy against warrantless, suspicionless searches” and that expectation is not outweighed by the state’s “purported interest in assuring proper identification” of a suspect.

The case involves Alonzo King, who was arrested in 2009 on assault charges. A DNA sample he provided linked him to an unsolved 2003 rape case, and he was

later convicted of the sex crime. But the Maryland Court of Appeals reversed, saying his Fourth Amendment rights were breached.

Maryland prosecutors argued that mouth swabs were no more intrusive than fingerprinting, but the state’s high court said that it “could not turn a blind eye” to what it called a “vast genetic treasure map” that exists in the DNA samples retained by the state.

The Maryland court was noting that DNA sampling is much different from compulsory fingerprinting. A fingerprint, for example, reveals nothing more than a person’s identity. But much more can be learned from a DNA sample, which codes a person’s family ties, some health risks and, according to some, can predict a propensity for violence.

The issue before the justices does not contest the long-held practice of taking DNA samples from convicts. The courts have already upheld DNA sampling of convicted felons, based on the theory that those who are convicted of crimes have fewer privacy rights.

Maryland’s law, requiring DNA samples for those arrested for burglary and crimes of violence, is not nearly as harsh as California’s, among the nation’s strictest requiring samples for any felony arrest.

The outcome of the hearing is likely already decided, however. Chief Justice John Roberts in July stayed the Maryland decision. In the process, he said there was a “fair prospect” the Supreme Court would reverse the decision.

The high court has previously ruled that when conducting intrusions of the body during an investigation, the police need so-called “exigent circumstances” or a warrant. For example, the fact that alcohol evaporates in the body is an exigent circumstance that provides authorities the right to draw blood from a suspected drunken driver without a warrant.

That said, the justices last month heard arguments on that “exigent circumstances” concept in another closely watched case from Missouri concerning genetic privacy. That case tests whether the police should obtain a warrant to draw blood against the will of suspected drunken drivers. A decision in that case is pending. Reported in: *wired.com*, February 6.

libraries

Redding, California

The City of Redding wrongfully prohibited the Tea Party and the American Civil Liberties Union from distributing leaflets in front of its public library, the Third District Court of Appeal has held.

Justice Elena Duarte, writing for the panel December 13 agreed with Shasta Superior Court Judge Monica Marlow that restrictions imposed by the city, including a requirement that leaflets be distributed only in a small “free speech” area, violate the First Amendment.

The panel agreed with the city, however, that the judge abused her discretion by extending the injunction to a ban on leafletting in the parking lot, saying she should have considered the city's asserted safety interest.

In 2006 the city opened the present library building, which borders public parks on three sides. Across the street from the library is a large softball field and next to that a city hall complex.

The library's entrance area covers approximately 765 square feet and contains two cement columns, a sculpture, several benches, and a newspaper rack. A parking lot in front of the entrance wraps around much of the building, with walkways connecting it to the library. The library receives about 750 visitors a day.

In 2010 the Boston Tea Party, a member of the North State Tea Party Alliance, celebrated Constitution Day, September 17, by placing along the west wall of the Library breezeway a table displaying pocket-sized constitutions, the group's newspaper, and other items including labels with quotations from various founding fathers.

Two days later, three women from the Daughters of the American Revolution set up their own table near the east wall. In response Kimberly Niemer, the library's director of community services, demanded that they move their table to the same area where the Tea Party had set up its table.

The DAR complied with the request, but Suann Prigmore, the chair of the Boston Tea Party's constitution week committee, took issue with it and instigated a dispute, which ended with the Library Board of Trustees, composed of the five members of the Redding City Council, adopting, over opposition, an official policy "to recognize limited leafletting activity while exercising necessary control and supervision" on the library campus.

A diagram attached to the policy showed that leafletting was limited to an area of about 42 square feet south of the entry doors. Tables had to be at least four feet from the doors and could cover no more than 30 square feet of the area.

Violations of the library's policy were deemed violations of the Redding Municipal Code, subjecting leafletters to possible criminal sanctions.

In April 2011 Prigmore and other Tea Party members distributed leaflets in front of the library and put them on cars in the parking lot. During that same period, members of the ACLU also handed out leaflets in front of the library. Upon receiving a warning from Niemer that they were violating the library's new policy, the leafletters stopped their activities, citing concerns about being arrested.

Shortly thereafter the ACLU of Northern California filed suit alleging that certain provisions of the policy were unconstitutional under both the United States and California constitutions, and seeking declaratory relief and both permanent and preliminary injunctions.

On the same day, the Boston Tea Party and the North State Tea Party Alliance filed their own complaint for

declaratory and injunctive relief, challenging the same portions of the policy as the ACLU, as well as various provisions of the Redding Municipal Code's ban on handbills.

In both cases, upon *ex parte* applications, the court granted temporary restraining orders prohibiting enforcement of the policy "directly or indirectly, by any means whatsoever."

After issuance of the TRO, members of the Tea Party and ACLU resumed leafletting outside the library. This time, Jan Erickson, the director of library services, accused some of them of violating the library's code of conduct, which had been in place before the library had adopted the anti-leafletting policy. That code prohibited leafletting "except in accordance with reasonable time, place and manner restrictions imposed by library staff." Erickson said that she understood that to mean, as explained to her by the city attorney, that the TRO was intended to preserve the status quo prior to adoption of the policy, i.e., that the code of conduct still applied.

Marlow disagreed and granted the preliminary injunctions, finding that the bans on leafletting were unconstitutional as the area outside the library was a public forum. On appeal, the panel largely affirmed, disagreeing with the city's view that the library was only a limited public forum and, therefore, subject to reasonable viewpoint-neutral restrictions.

The panel agreed with Marlow's definition of the forum at issue as: "(1) the public open space on the entry side of the Library, (2) the entry and exit door area to the Library, and (3) the adjacent parking lot."

Using the state Supreme Court's approach to identify public forums, which has been to analyze the similarity of the area at issue to areas that have traditionally been deemed public forums, Duarte concluded that since there is complete unrestricted public access to those areas, characterizing them as a public forum is consistent with the role of a library as a resource for ideas.

She noted that: "The Library is located adjacent to public parks and near other public buildings. The entrance is larger than the typical sidewalk and includes several benches and a newspaper rack. It is an area where people can rest or congregate for lengthy conversation. These physical characteristics distinguish ... [it from] stand alone retail establishments that do not invite people to congregate, to meet friends, rest, or be entertained, and are not public forums."

Accordingly, she said, leafletting on the walkways and entrance of the Library must be permitted.

Furthermore, the panel found, applying intermediate scrutiny, the city's ban on any leafletting which "involve[s] the solicitation of funds" was not narrowly tailored to serve the government's interest in banning on-site or immediate solicitations."

Duarte said: "While such a ban may have been the City's intent, the Policy ... simply does not say what the

City now claims it meant. Rather, the Policy bans all leafletting involving the solicitation of funds, future as well as immediate. We will not rewrite the Policy to make it constitutional.”

The city’s limitation of leafletting to a “free speech area” near the library’s doors was also not narrowly tailored “because it is substantially broader than necessary to achieve the City’s interest.”

“While the possibility of congestion is certainly a legitimate concern, and we acknowledge some restriction on the tables’ placement may be appropriate, here we see no showing by the City that its restriction . . . is tailored to address the City’s interest,” Duarte explained.

Nor was the panel convinced by the city’s argument that Marlow erred in failing to consider the captive audience doctrine, which protects unwilling listeners from certain speech.

“As in the case of any pedestrian on any sidewalk, Library patrons can continue to enter or exit the Library to avoid unwanted leaflets . . . [they] are not members of a captive audience,” the panel wrote.

In addition, although the city provided declarations in which people expressed “the understandable desire to not be approached by strangers . . . such desires . . . are not a legitimate basis for curtailing free speech.”

The panel did find, however, that the trial court had not resolved the factual issue of whether a concern for safety supported by an expert declaration was a sufficient governmental interest to justify the ban on leafletting in the parking lot. “[I]ts ruling on this issue was arbitrary, based on the wrong law, and thus . . . because the trial court answered the wrong question and applied the wrong law, we conclude the trial court abused its discretion in granting the preliminary injunction as to the ban on leafletting in the parking lot.”

The panel also found that certain provisions in the preliminary injunctions dealing with soliciting and offensive language were overly broad and, therefore, ordered the improper language stricken from the injunctions.

Presiding Justice Vance Raye and Justice Harry Hull Jr. concurred in the opinion. The case is *Prigmore v. City of Redding*. Reported in: metnews.com, December 17.

schools

Tucson, Arizona

A federal judge has ordered the Tucson Unified School District to end segregation and implement culturally relevant courses such as the ones taught in the Mexican American Studies Program that were recently banned by an Arizona law.

In his ruling announced February 6, Judge David C. Bury ordered that the courses reflect the history, experience and culture of Mexican American and African American communities. The courses could be offered to students

starting this upcoming school year.

Nancy Ramirez, a lead attorney in the case, applauded Judge Bury’s order, saying culturally relevant courses have been proven to “engage students and helps them do better academically.”

Arizona banned such courses in 2010 when the state legislature passed and Gov. Jan Brewer signed into law HB 2281. Efforts to pass the law were led by former Superintendent of Public Instruction Tom Horne, who is now the state’s attorney general.

The law, which targeted the Mexican American Studies Program, prohibits schools from teaching classes that promote the overthrow of the U.S. government, promote racial resentment, encourage ethnic solidarity and are designed for students of a particular ethnic race.

In 2011, Superintendent of Public Instruction John Huppenthal declared that the courses taught under Tucson’s Mexican American Studies Program violated the new state law and forced the program to shut down. As part of the shutdown seven books were removed from classroom libraries. Last July, the program changed its name and no longer taught culturally relevant courses.

But Judge Bury ruled that the courses could be reinstated and that Arizona could not intervene in the case to litigate the issue, because the ruling doesn’t override the Arizona law banning these courses.

“Even if it did, the Supreme Court has held that state laws cannot be allowed to impede a desegregation order,” the court order reads.

In a statement Huppenthal responded to Judge Bury’s ruling saying, “We anticipated that the Tucson school district would respond to the previous administrative law judge findings by building a culturally relevant curriculum that complies with state law.”

“We have two roles going forward, first to review this curriculum they develop to ensure it complies with state standards and state law; and secondly to ensure what they teach in the classroom does not violate state law,” Huppenthal added.

The culturally relevant courses are among a long list of provisions in a plan that aims to eliminate vestiges of past discrimination against Latino and African American Students in the Tucson Unified School District.

For nearly forty years, the Mexican American Legal Defense and Education Fund (MALDEF) has been battling in court to have the school district end segregation and improve educational outcomes for Latino and African American students. Doing so would bring the school district to a unitary status. A school district attains unitary status once it proves that it has eliminated segregation.

In 1974, MALDEF filed a desegregation lawsuit against the Tucson Unified School District on the behalf of Latino students. Four years later, the court approved a settlement and identified steps the district needed to take over a five-year period to eliminate desegregation.

But court documents show that never happened.

Judge Bury said in his ruling that the school district “had not acted in good faith because over those 25 years the District had not addressed ongoing segregation and discrimination in TUSD, both physical segregation and unequal academic opportunities for Black and Hispanic minority students.”

The Tucson Unified School District is now being ordered to implement a court-approved plan dubbed Unitary Status Plan to help it eliminate segregation and attain unitary status. Willis Hawley, an expert on race relations and academic achievement, drafted the plan.

Ramirez said the plan lists a number of provisions that “will help equalize the educational opportunities for Latino students and African American students.” Besides the culturally relevant courses, the plan includes a district-wide professional development plan for all educators working with English Language Learners (ELL). It also calls on the school district to ensure Latino and African American students have equal access to advance learning programs and courses.

Thomas A. Saenz, president and general counsel of MALDEF, applauded Judge Bury’s order saying it “promises to dramatically improve educational opportunities for Latino students in Tucson.”

“The plan addresses critical issues, such as the education of English learners, discriminatory disparities in access to critical programs, and the restoration of culturally relevant courses to the curriculum,” Saenz added. Reported in: huffingtonpost.com, February 6.

colleges and universities

Valdosta, Georgia

On February 1, a federal jury in Atlanta sent a powerful message to university administrators across the nation: you cannot violate students’ free speech and due process rights with impunity. The jury found Valdosta State University president Ronald Zaccari personally liable for \$50,000 in damages for expelling former VSU student Hayden Barnes, who peacefully protested a planned \$30-million campus parking garage.

The trial and award followed a ruling last year by the U.S. Court of Appeals for the Eleventh Circuit that Zaccari could not claim the immunity given to public officials acting in their official capacities because he should have known that Barnes was entitled to notice and a hearing before being expelled.

Barnes’s saga began in 2007, when Zaccari announced, and Barnes protested, the proposed garage construction. Barnes’s activities included sending emails to student and faculty governing bodies, writing letters to the editor of the VSU student newspaper, and composing a satirical collage on Facebook. In retaliation for these acts, Zaccari ordered

that Barnes be “administratively withdrawn” from VSU, without any hearing before his expulsion in May 2007.

Barnes sued Zaccari in 2010, and the federal district court quickly ruled that that Zaccari had violated Barnes’ constitutional right to due process and that the administrator could not avail himself of qualified immunity because he had ignored “clearly established” law.

As stated in an *amicus brief* filed by a variety of First Amendment and academic organizations, the “desire of some administrators to censor unwanted, unpopular, or merely inconvenient speech on campus is matched by a willingness to seize upon developments in the law that grant them greater leeway to do so.” The immense importance of constitutional rights on public university campus is due in no small part to the reluctance of school administrators to abide by clearly established law protecting student rights.

Qualified immunity is intended to protect public officials who sincerely believe their actions are reasonable and constitutional, not those who willfully and maliciously ignore well known law in a determined effort to deprive another of constitutional rights. In this case, Zaccari even rejected the advice of in-house counsel concerning the process required before Barnes could be deprived of his enrollment at VSU and neglected to abide by the procedures set forth in the *VSU Student Handbook*. Reported in: cato.org, February 4.

Toledo, Ohio

A federal appeals court has upheld the University of Toledo’s decision to fire a high-level human-resources administrator who wrote a newspaper opinion column challenging the idea that gay people deserve the same civil-rights protections as members of racial minority groups.

In a December 17 ruling a three-judge panel of the U.S. Court of Appeals for the Sixth Circuit held that the administrator’s column “contradicted the very policies she was charged with creating, promoting, and enforcing,” and cannot be excused as merely a statement of her own views as a private citizen. The panel affirmed a lower court’s decision to dismiss the administrator’s lawsuit accusing the public university of violating her constitutional rights by firing her.

At the center of the case was an opinion essay that Crystal Dixon, who had been the university’s interim associate vice president for human resources, published in the *Toledo Free Press* in April 2008. In it, she wrote that she takes “great umbrage at the notion that those choosing the homosexual lifestyle are ‘civil-rights victims.’” She argued that she “cannot wake up tomorrow and not be a black woman” because she is biologically and genetically such “as my creator intended.” But, she said, “daily, thousands of homosexuals make a life decision to leave the gay lifestyle” with the help of groups such as Exodus International, which claim to be able to help people overcome homosexual desires.

Although Dixon had not identified her university position in the op-ed, the university's president, Lloyd A. Jacobs, wrote his own *Toledo Free Press* column distancing his institution from her comments. She was fired after a hearing in which she stood by her views but argued that they did not affect her performance as a human-resources administrator, citing her recent decisions to hire "one, possibly two practicing homosexuals" in her own department.

Dixon responded to her termination by suing Jacobs and William Logie, who was the university's vice president for human resources and campus safety at the time. Her lawsuit accused the administrators of violating her First Amendment rights by retaliating against her for her speech. It also accused the administrators of violating her Fourteenth Amendment right to equal protection under the law by punishing her for expressing her views on homosexuality while other university employees were allowed to state views on homosexuality that the administration favored.

In upholding the dismissal of Dixon's lawsuit, the federal appeals court said she differed from other employees cited in her equal-protection claim in that her speech, and not theirs, contradicted university policies. The appeals panel said her essay "spoke on policy issues related directly to her position at the university," and the government's interests as an employer outweighed her free-speech interests in the dispute. Reported in: *Chronicle of Higher Education* online, December 17.

Corvallis, Oregon

A federal appeals court has declined a request from Oregon State University administrators to reconsider an October 2012 ruling that kept alive a First Amendment challenge brought by publishers of a conservative newspaper whose distribution racks were seized.

In a brief order issued January 25 the U.S. Court of Appeals for the Ninth Circuit declared that neither the three-judge panel that issued the opinion nor the entire ("en banc") Ninth Circuit will rehear the case.

Unless OSU attorneys convince the U.S. Supreme Court to take the case, and there is no indication whether the university will even try, the decision means that the case can proceed toward trial. Supreme Court review is highly unlikely, as the case, although more than three years old, is still at the preliminary motions phase.

A conservative student organization, the OSU Students Alliance, sued OSU President Edward J. Ray and three other administrators in September 2009. The students claim their First Amendment rights were violated when—acting under an unwritten policy that was enforced only against their newspaper, *The Liberty*—maintenance workers removed all seven of the paper's distribution bins and threw them in a trash dump.

Attorneys for the administrators sought to have the case dismissed, arguing that none of the administrators could be

held liable because the Students Alliance had no concrete evidence that any of them personally gave the order to remove the boxes.

A federal district court agreed and threw out the students' case. But in a 2-1 ruling issued October 23, the Ninth Circuit reinstated the case, saying that the students should have a chance during the discovery phase to gather evidence identifying the source of the unlawful directive.

Although only at a preliminary stage of the case, the ruling is significant because it establishes that government policymakers—even as high up as a university president—can be subject to suit for unconstitutional policies that they supervise and fail to correct, regardless of whether there is proof of personal involvement. The ruling makes the legal path easier for those victimized by unconstitutional policy decisions, who often will lack the inside knowledge to prove who was in the room when the decision was made. Reported in: splc.org, January 27.

military courts

Fort Meade, Maryland

The military judge overseeing the prosecution of Khalid Shaikh Mohammed and four other detainees accused of aiding the September 11 terrorist attacks ordered the government January 31 to disconnect the technology that allows offstage censors—apparently including the Central Intelligence Agency—to block a public feed of the courtroom proceedings at Guantánamo Bay, Cuba.

The order by the judge, Col. James L. Pohl of the Army, followed an interruption five days earlier of a feed from the military tribunal courtroom during a hearing on a pretrial motion. The episode brought to light that unidentified security officials outside the courtroom could censor a feed of the proceedings that the public and the news media receive on a 40-second delay.

"This is the last time," Colonel Pohl said, that any party other than a security officer inside the courtroom who works for the military commission "will be permitted to unilaterally decide that the broadcast will be suspended."

He said that while some legal rules and precedents governing the tribunals might be unclear, there was no doubt that only the judge has the authority to close the courtroom. Colonel Pohl made clear he would not tolerate anyone having control over a censorship button in the case other than his courtroom security officer.

Separately Colonel Pohl ordered the Pentagon official in charge of the tribunals—Vice Adm. Bruce MacDonald, retired—to testify at a hearing next month. Defense lawyers are seeking to scuttle the charges and reboot the case, asserting that his original decision to refer the capital charges to the tribunal was flawed.

One of several relatives of victims who traveled to Guantánamo to watch the hearing, Phyllis Rodriguez, whose son Gregory Rodriguez was killed at the World Trade Center, said she was disturbed by the limits on the openness of the proceedings and difficulties that defense lawyers had in gathering information that could mitigate against death sentences. Rodriguez said she opposed death sentences on principle and was opposed to prosecuting the case in a tribunal.

But Matthew Sellitto, whose son—also named Matthew—was also killed in the attacks, called the process fair, saying the defendants would have already been executed by now in most countries. His wife, Loreen Sellitto, urged defense lawyers not to delay the proceedings, while describing the emotional experience of seeing the defendants in the courtroom.

“I didn’t expect them to look normal and have normal faces,” Sellitto said. “That scared me.”

In a related development, the Pentagon disclosed that earlier in the week, Admiral MacDonald withdrew tribunal charges against three other detainees at Guantánamo. Accused of conspiracy and of providing material support to terrorism in connection with accusations related to explosives training, the three were among those arrested in a March 2002 raid in Pakistan that also captured a more prominent terrorism suspect, Abu Zubaydah.

The validity of bringing charges of material support and conspiracy in a tribunal—at least for actions before October 2006, when Congress approved them as triable offenses in a military commission—has been a point of sharp contention inside the Obama administration. A federal appeals court recently vacated two such verdicts from tribunal cases because such offenses were not recognized as international war crimes.

The chief tribunal prosecutor, Brig. Gen. Mark S. Martins, had asked Admiral MacDonald to withdraw conspiracy as one of the charges pending against the September 11 defendants and focus on classic war crimes, like attacking civilians. But Admiral MacDonald refused, saying it would be “premature” to do so since the Justice Department—over General Martins’s objections—is still arguing in court that conspiracy is a valid tribunal offense.

Most of the attention, however, was focused on continuing fallout from the revelation that there were offstage censors—something that even Colonel Pohl apparently had not known—and his order to “disconnect whatever wires need to be unconnected.”

Defense lawyers used the incident as new ammunition in their assertions that the tribunals were unfair. They asked Colonel Pohl to stop any further consideration of motions in the case until they all could learn more about what kind of technology is in place in meeting rooms and in the courtroom, and whether their confidential conversations with their clients and one another are private. Reported in: *New York Times*, January 31.

Internet

San Francisco, California

A federal judge on January 11 blocked enforcement of a California voter-approved measure that would have dramatically curtailed the online, First Amendment rights of registered sex offenders.

Proposition 35, which passed with 81 percent of the vote in November, would have required anyone who is a registered sex offender—including people with misdemeanor offenses such as indecent exposure and whose offenses were not related to activity on the Internet—to turn over to law enforcement a list of all identifiers they use online as well as a list of service providers they use.

U.S. District Court Judge Thelton Henderson of San Francisco also said the measure was overbroad.

“The challenged provisions have some nexus with the government’s legitimate purpose of combating online sex offenses and human trafficking, but the government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals,” he wrote.

The Californians Against Sexual Exploitation Act would also have forced sex offenders to fork over to law enforcement their e-mail addresses, user and screen names, or any other identifier they used for instant messaging, for social networking sites or online forums and in internet chat rooms.

The American Civil Liberties Union and the Electronic Frontier Foundation immediately filed suit after its passage. The measure would currently affect some 75,000 sex offenders registered in California, but the law also requires those convicted of human trafficking to register as sex offenders, thus widening the pool of people affected. The measure carries three-year prison penalties.

Henderson had tentatively blocked enforcement of the measure immediately after it passed. His January decision was in the form of a preliminary injunction. Next up is a trial on the lawsuit’s merits, if it gets that far. Reported in: *wired.com*, January 12.

Indianapolis, Indiana

An Indiana law barring most registered sex offenders from using social networking sites such as Facebook and Twitter is unconstitutional, a federal appeals court ruled January 23. The law that bans sex offenders from using sites they know allow access to youths under the age of 18 is too broad, a three-judge panel determined, and “prohibits substantial protected speech.” To be upheld, the appeals court found, such a law needs to be more specifically tailored to target “the evil of improper communication to minors.”

The ruling from the U.S. Court of Appeals for the Seventh Circuit in Chicago overturned a decision by U.S. District Judge Tanya Walton Pratt in Indianapolis. In June,

Pratt upheld the law enacted by the legislature in 2008.

The American Civil Liberties Union of Indiana filed the class-action suit challenging the law on behalf of sex offenders, including a man identified only as John Doe who served three years for child exploitation. The offenders were all restricted by the ban even though they had served their sentences and were no longer on probation.

“We reverse the district court and hold that the law as drafted is unconstitutional,” Judges Joel M. Flaum, John D. Tinder and John J. Tharp Jr. wrote in the ruling.

Sen. John Waterman (R-Shelburn), who authored the 2008 law, responded with a pledge to look for a new way to protect children from online predators that will pass constitutional muster.

“We now know we must take the steps necessary to narrow our law,” Waterman said in a statement issued jointly with Sen. Jim Merritt (R-Indianapolis). “In defense of vulnerable Hoosier children, we will study this issue again and make a new proposal. Then, it will be up to the courts once more to decide whether it’s narrow enough.”

It was unclear how many people may have been charged under the law over the past four years and what their immediate recourse might be. Larry Landis, executive director of the Indiana Public Defender Council, said one thing is clear: convictions will not automatically be vacated.

“There is no self-correction,” he said, “in our criminal justice system.” Instead, those charged under the law will have to ask a court to vacate their conviction. “It takes the person with a wrong conviction to initiate an action,” Landis explained.

Landis said he spoke out against the law when it was being discussed in the legislature “for the obvious reasons that it was overly broad and might interfere with employment opportunities.” But he said it was a hard sell because lawmakers have little sympathy for sex offenders—even when they have paid for their crimes.

“Often, with these kind of bills, your only success in killing them is to convince the committee chairman to not give it a hearing because you know everyone will vote for it when it comes up on the floor,” he said.

That was the case with Waterman’s bill. It sailed through the House and Senate without a single opposing vote. Former Gov. Mitch Daniels signed the legislation into law March 24, 2008.

Pratt upheld the law in June, ruling the state has a strong interest in protecting children and found that social networking has created a “virtual playground for sexual predators.” She acknowledged the law’s reach was broad and “captures considerable conduct that has nothing to do” with the state’s goal of protecting children from predators, but found offenders have “ample alternative channels of communication.”

The law made a first violation a Class A misdemeanor, punishable by up to one year in jail. However, any subsequent, unrelated violation would be a Class D felony,

carrying a penalty of up to three years in jail.

“This law is overly broad,” said Ken Falk, legal director for the ACLU of Indiana. “It would even bar someone who was convicted forty years ago from participating in a Twitter feed with the Pope.”

Falk said Indiana already has laws that prohibit anyone from soliciting or engaging in inappropriate contact with children—and they include enhanced penalties if the act is done on the Internet.

The broad prohibition in the 2008 law hinders legitimate, constitutionally protected online interactions with other adults, Falk said, at a time when that form of communication is as common and necessary as the telephone was just a few years ago.

Indiana Attorney General Greg Zoeller said in a statement that he is reviewing the decision to assess the state’s options.

“The Indiana legislature made a policy decision in 2008 that the state’s reasonable interests in protecting children from predators outweighed the interest of allowing convicted sex offenders to troll social media for information,” Zoeller said. “We have worked with county sheriffs and prosecutors in our defense of the legal challenges to these protections of our children, and we will need to review this Seventh Circuit ruling to determine the state’s next steps.”

Waterman and Merritt said in their statement they will continue to pursue their goal of protecting children from online predators.

“When it came to writing a statute on restricting sex offenders from having access to social media sites, we had to ask ourselves if it was in the best interest of public safety for the policy to be too broad rather than too narrow,” they said. “We chose the broader route, thinking it was the best step forward to protect our children.” Reported in: *Indianapolis Star*, January 23.

public nudity

San Francisco, California

Nudity isn’t speech.

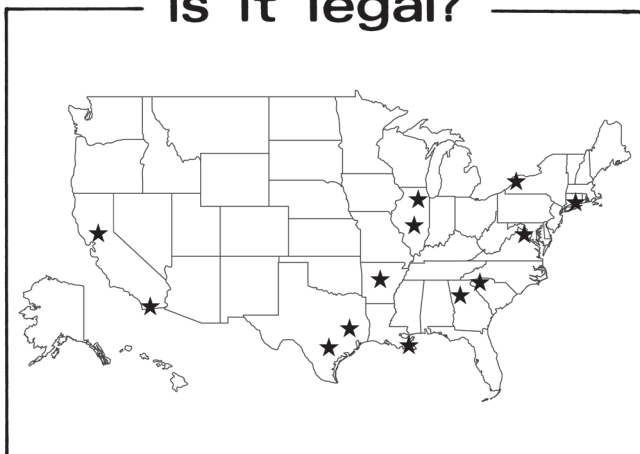
A suit by a group of naked activists challenging an impending city ordinance that bans exposing one’s genitals in public was dismissed January 29 by U.S. District Court Judge Edward Chen, who said requiring people to wear at least some clothing doesn’t violate the First Amendment.

“Nudity is not inherently expressive,” Chen wrote. “The ordinance’s general ban on public nudity for the most part regulates conduct only.”

He left the door open, however, for a future lawsuit if the city should enforce the ban against unclad political protesters in a way that stifles their message. That just might

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is it legal?



libraries

Atlanta, Georgia

Fair use and electronic course reserves are back in court. A keenly watched copyright case that pitted three academic publishers against Georgia State University has entered the appeals phase, with a flurry of filings and motions in late January and more expected.

One surprise motion came from the U.S. Department of Justice, which requested more time to consider filing an *amicus* brief either in support of the publishers or in support of neither party. The possibility that the government might weigh in triggered speculation and anxiety among some observers, including academic librarians worried that the Justice Department could sabotage educational fair use if it sides with the publishers against the university.

The case in question is *Cambridge U. Press et al. v. Mark P. Becker et al.* In 2008, Cambridge, Oxford University Press, and SAGE Publishers sued Georgia State, asserting it had committed widespread copyright violations when it allowed some of their content to be used, uncensored, in e-reserves. The Association of American Publishers and the Copyright Clearance Center, which specializes in licensing content to universities, bankrolled the legal action.

Last May the presiding judge, Orinda Evans of the U.S. District Court in Atlanta, handed the university a significant victory in the case. Judge Evans ruled that Georgia State had committed copyright violations in only five of the 99 instances the publishers put forward, and she ordered the plaintiffs to pay the defendants' legal costs. Fair-use advocates mostly celebrated the judge's verdict.

The publishers decided to appeal. The case will be heard by the U.S. Court of Appeals for the Eleventh Circuit, which is no stranger to high-profile copyright cases. In 2001 it heard

a dispute between the estate of Margaret Mitchell and the publisher of *The Wind Done Gone*, a novel by Alice Randall that parodied Mitchell's *Gone With the Wind*. The court vacated an injunction against the publisher, and the estate dropped the lawsuit in exchange for certain concessions.

In their brief, filed January 28, the publishers argue that, if the lower court's ruling stands, it will have implications that go far beyond Georgia State's practices. The publishers play up the idea that e-reserves amount to course packs or anthologies of reading material. Judge Evans's decision "invites universities nationwide to accelerate the migration of course-pack creation from paper to electronic format" and to sidestep legal permission to use copyrighted content, the brief states.

That pattern of behavior could undercut "the efficient licensing markets that have evolved to serve the needs of academic users." That, in turn, "would threaten the ongoing ability of academic publishers to continue to create works of scholarship," the publishers argue.

The Association of American University Presses planned to file an *amicus* brief on behalf of publishers on February 4. In it, the association argues that the outcome of the case will directly affect its members, who publish much of the content professors use in their courses.

The brief echoes Cambridge, Oxford, and SAGE's concerns that the spread of e-reserves means more uncompensated use of copyrighted works and leads to smaller permissions revenues. The association notes the importance of the fair-use doctrine in encouraging research and scholarship. What's objectionable, it says, is using large amounts of in-copyright material without paying for it.

But Brandon Butler, director of public-policy initiatives for the Association of Research Libraries, took issue with the argument that e-reserves put publishers at great risk.

"I'm baffled that the publishers continue to claim that course reserves pose some kind of existential threat to their business," he said. "It was established at trial that GSU's practices are in the mainstream, so libraries are basically already doing what the publishers claim will put them out of business, and yet Oxford University Press reported \$1 billion in sales last year, \$180 million in profits. Is that what a publisher on the verge of collapse looks like?"

Butler's group belongs to the Library Copyright Alliance, along with the American Library Association and the Association of College and Research Libraries. The alliance has supported Georgia State throughout and expects to file an *amicus* brief on its behalf no later than March.

Georgia State University has not yet filed its brief in the appeal. Filings on the publishers' side were originally due on February 4. The Justice Department's request asked the court to extend that deadline.

Librarians who track copyright and intellectual-property issues are paying close attention to the appeal. The possibility that the government might side with the publishers has them concerned.

“I think a lot of faculty and researchers will be shocked to hear that the U.S. government might actually weigh in on the side of publishers instead of its public universities,” said Katie Fortney, copyright-management officer at the University of California’s California Digital Library. “The district court’s opinion was thorough and well reasoned, and I would hope and expect that the Eleventh Circuit will also decide in favor of fair use, whatever the DOJ decides to file. They really ought to be filing an *amicus* brief in support of Georgia State.”

Fortney has heard a lot of course-pack jokes—a nod to the publishers’ brief—from fellow copyright librarians. The humor belies what’s at stake. Librarians take copyright seriously and “were really heartened by the Georgia State case, just to see a court case come out that supports the kind of educational fair use that we’ve all been doing,” she said.

“We’re public universities, many of us, educating the nation’s youth,” Fortney added. “We feel like we’re fulfilling our mission. I think people would just be crushed and confused to see the administration come out and say we are not.” Reported in: *Chronicle of Higher Education* online, February 1.

Lewiston, New York

In September 2010, Dale Askey, now a librarian at McMaster University, in Ontario, published a blog post titled “The Curious Case of Edwin Mellen Press,” in which he called the Edwin Mellen Press “a dubious publisher.” For a few months afterward, several people chimed in in the blog’s comments section, some agreeing with Askey, some arguing in support of the Lewiston-based publisher.

In June 2012, Edwin Mellen Press’s founder, Herbert Richardson, issued a notice of action to Askey, suing him for more than \$1 million. That same day, the press issued a similar notice of action to Askey and McMaster University, telling them that they were being sued for libel and seeking damages of \$3 million.

The lawsuit, filed in the Ontario Superior Court of Justice, came to light when Leslie Green, a philosophy-of-law professor at the University of Oxford, mentioned the case when responding to a blog post about a list that gave Edwin Mellen Press a low ranking among philosophy publishers.

“My own view is this is intolerable,” Green said in an e-mail interview. “McMaster University should vigorously defend its librarians, and academic freedom. In my opinion, there is no merit whatever in Mellen’s lawsuit against the university: It is a bullying tactic.”

Other professors have also come to Askey’s defense. Martha J. Reineke, a professor of religion at the University of Northern Iowa, started an online petition asking for an end to the lawsuit. In its first hours online, it drew more than fifty signatures.

In a copy of the press’s notice of action the publisher

alleges that Askey accused the press of “accepting second-class authors” and urged “university libraries not to buy the Press’s titles because they are of poor quality and poor scholarship.”

Edwin Mellen Press also charges that because McMaster University employs Askey and did not require him to remove the blog post or the comments, then the university “adopted the defamatory statements as their own.”

Altogether, Edwin Mellen Press is asking for \$3 million in damages for libel and \$500,000 in aggravated and exemplary damages. Richardson is asking for \$750,000 in damages for libel and \$300,000 in aggravated and exemplary damages. The press also asserts that the defendants are liable for statements made by others in the comments section of the blog post, including one scholar’s claim that Edwin Mellen officials “practically enslave their authors to a contract that NO ONE should ever sign.”

James Turk, executive director of the Canadian Association of University Teachers, said that while it may seem odd that someone can be sued for statements they didn’t even make, user comments are “not a completely clear area of law.”

“The more monitored user comments are, the more I may be liable for it,” Turk said. “If I leave up comments that have been asked to be taken down, then I can be sued, and probably successfully.”

The notice goes on to allege that the press asked McMaster to remove the post and for an apology, but that the university did not oblige and then “pursued an Internet campaign to put the Press out of business.”

The blog post was removed in March 2012, but a copy of the post, including the comments section, was attached to the notice of action. The post and several comments alleged that Edwin Mellen Press, while occasionally publishing “a worthy title,” mostly publishes “second-class scholarship” at “egregiously high prices.”

“Given how closely Mellen guards its reputation against all critics, perhaps I should just put on my flameproof suit now,” Askey added at the end of the post.

Edwin Mellen Press does have a history of being combative toward critics. The publisher once sued *Lingua Franca* for libel when, in a 1993 article, the now-defunct magazine criticized the company. Edwin Mellen did not win, but it did later publish a book about the lawsuit, which can be purchased for \$119.95.

In an October 2012 newsletter, the publisher urged its authors to fight “false and malicious comments” being published on the Internet, including in a *Chronicle of Higher Education* forum thread. “We do not know why the criticism persists, but this problem has gone on for some time and has done a great deal of damage,” the newsletter read.

The lawsuit is “a classic SLAPP suit,” Turk said. “It has the effect of simply trying to silence somebody,” he said. “The lawsuit itself seems to be one without merit in the sense that what Askey was saying seemed to be fair

comment dealing with a public-policy consideration that's highly relevant to academic librarians. What academic librarians do is assess what books libraries should and shouldn't acquire."

The Canadian faculty association and will now be working with Askey. Turk said he felt as if the university should be doing more to defend its librarian, the same way a newspaper might defend one of its reporters. Askey is paying all of his own legal expenses.

Askey said he was "shocked and dismayed" by the lawsuit, as he feels he was just doing his job. "At the time I wrote the post, the work I was doing in libraries was directly related to assessing materials for potential inclusion in the library collection," Askey said. "It was, as such, my job to assess the quality of books, and I did so based on many years of experience in the field."

Further complicating the matter, Askey was not even a librarian at McMaster when he posted on the blog. He was still an associate professor at Kansas State University, working in Hale Library, he said. He started working at McMaster in February 2011.

McMaster released a statement February 8 saying the university strongly "supports the exercise of free speech as a critical social good."

"For this reason, McMaster University has for more than eighteen months rejected all demands and considerable pressure from the Edwin Mellen Press to repudiate the professional opinions of university librarian Dale Askey, notwithstanding the fact that those opinions were published on his personal blog several months before he joined McMaster," the university stated. "Because of our respect for individual freedom of speech, the University finds itself today a co-defendant with Mr. Askey in a legal action brought by the Edwin Mellen Press."

Turk said the statement does not offer enough support for Askey.

"They didn't repudiate him, but they aren't supporting him," Turk said. "What they're ducking here is the central thing that they are being asked to do. They are dodging it. They're being silent on their actual tangible support, covering the legal costs." Reported in: *Chronicle of Higher Education* online, February 8.

schools

Conway, Arkansas

The church and state debate rages on in Arkansas, this time over a Conway school that reportedly allowed a pastor from a local church to visit with students on school property during their lunch period.

In a letter dated October 26, 2012, from the Wisconsin-based Freedom From Religion Foundation, the group wrote: "It is inappropriate and unconstitutional for Conway Public Schools to offer Christian ministers unique access to

befriend and proselytize students during the school day on school property."

According to one newspaper report, "About sixteen representatives from area churches and religious organizations met in a closed-door meeting between them and superintendent Greg Murry. . ."

Murry did not respond to a local radio station's email questions. Among them: Why did they meet behind closed doors? Instead, he sent the station a news release from the Texas-based Liberty Institute, a nonprofit group that defends schools and faith groups when those entities are embroiled in lawsuits over the separation of church and state.

Murry is quoted in the news release as stating: "The District respects the religious liberty of all students and citizens and we will work diligently to follow the Constitution and take appropriate steps necessary to investigate this issue further and follow the law."

The Liberty Institute was expected to make its report and recommendation to the school district on or before February 12, according to the news release. The school district has since suspended its policy of allowing pastors to visit schools.

This latest conflict marks the fifth time in seven months the church and state debate has made news in Arkansas. The other conflicts include:

The ACLU of Arkansas in January announced it opposes a proposed \$300,000 contract between the cities of Little Rock and North Little Rock with the Union Rescue Mission. The Mission wants to operate a taxpayer funded resource center for homeless people. At issue: The Mission wants to hire only practicing evangelical Christians to manage the resource center's programs. The ACLU chapter said the Mission's hiring policy amounts to discrimination and is unconstitutional.

A state law dating back to the nineteenth century that forbids atheists from holding political office or testifying in court drew the attention of the Freedom From Religion Foundation in 2012.

In December 2012, a Little Rock parent complained about Terry Elementary School's arrangement to bus kids during the school day to a church production of "A Charlie Brown Christmas." The stage production, put on by Agape Church, had religious themes. The parent who raised issue was concerned her daughter could be subject to ridicule if she opted not to attend the production. The church instead canceled its Friday show and added a show on the weekend.

In the Summer of 2012, the Governor's Mansion denied a Methodist minister's request to hold a ceremony honoring retiring military chaplains. Administrators with the Governor's Mansion stated they are routinely overwhelmed by requests to use the facility and did not want to give the appearance of favoring any particular denomination. Reported in: arkansasmatters.com, January 18.

Encinitas, California

By 9:30 a.m. at Paul Ecke Central Elementary School, tiny feet were shifting from downward dog pose to chair pose to warrior pose in surprisingly swift, accurate movements. A circle of 6- and 7-year-olds contorted their frames, making monkey noises and repeating confidence-boosting mantras. Jackie Bergeron's first-grade yoga class was in full swing.

Though the yoga class had a notably calming effect on the children, things were far from placid outside the gymnasium. A small but vocal group of parents, spurred on by the head of a local conservative advocacy group, has likened these 30-minute yoga classes to religious indoctrination. They say the classes—part of a comprehensive program offered to all public school students in this affluent suburb north of San Diego—represent a violation of the First Amendment.

After the classes prompted discussion in local evangelical churches, parents said they were concerned that the exercises might nudge their children closer to ancient Hindu beliefs.

Mary Eady, the parent of a first grader, said the classes were rooted in the deeply religious practice of Ashtanga yoga, in which physical actions are inextricable from the spiritual beliefs underlying them.

"They're not just teaching physical poses, they're teaching children how to think and how to make decisions," Eady said. "They're teaching children how to meditate and how to look within for peace and for comfort. They're using this as a tool for many things beyond just stretching."

Eady and a few dozen other parents say a public school system should not be leading students down any particular religious path. Teaching children how to engage in spiritual exercises like meditation familiarizes young minds with certain religious viewpoints and practices, they say, and a public classroom is no place for that.

Underlying the controversy is the source of the program's financing. The pilot project is supported by the Jois Foundation, a nonprofit organization founded in memory of Krishna Pattabhi Jois, who is considered the father of Ashtanga yoga.

Dean Broyles, the president and chief counsel of the National Center for Law and Policy, a nonprofit law firm that champions religious freedom and traditional marriage, according to its Web site, has dug up quotes from Jois Foundation leaders, who talk about the inseparability of the physical act of yoga from a broader spiritual quest. Broyles argued that such quotes betrayed the group's broader evangelical purpose.

"There is a transparent promotion of Hindu religious beliefs and practices in the public schools through this Ashtanga yoga program," he said. "The analog would be if we substituted for this program a charismatic Christian praise and worship physical education program," he said.

The battle over yoga in schools has been raging for

years across the country but has typically focused on charter schools, which receive public financing but set their own curriculums. The move by the Encinitas Union School District to mandate yoga classes for all students who do not opt out has elevated the discussion. And it has split an already divided community.

The district serves the liberal beach neighborhoods of Encinitas, including Leucadia, where Paul Ecke Central Elementary is, as well as more conservative inland communities. On the coast, bumper stickers reading "Keep Leucadia Funky" are borne proudly. Farther inland, cars are more likely to feature the Christian fish symbol, and large evangelical congregations play an important role in shaping local philosophy.

Opponents of the yoga classes have started an online petition to remove the course from the district's curriculum. They have shown up at school board meetings to denounce the program, and Broyles has threatened to sue if the board does not address their concerns.

The district has stood firm. Tim Baird, the schools superintendent, has defended the yoga classes as merely another element of a broader program designed to promote children's physical and mental well-being. The notion that yoga teachers have designs on converting tender young minds to Hinduism is incorrect, he said.

"That's why we have an opt-out clause," Baird said. "If your faith is such that you believe that simply by doing the gorilla pose, you're invoking the Hindu gods, then by all means your child can be doing something else."

Eady is not convinced. "Yoga poses are representative of Hindu deities and Hindu stories about the actions and interactions of those deities with humans," she said. "There's content even in the movement, just as with baptism there's content in the movement."

Russell Case, a representative of the Jois Foundation, said the parents' fears were misguided. "They're concerned that we're putting our God before their God," Case said. "They're worried about competition. But we're much closer to them than they think. We're good Christians that just like to do yoga because it helps us to be better people." Reported in: *New York Times*, December 15.

Naperville, Illinois

A plan to track middle school students' weight has some Naperville, parents up in arms. Part of the physical education program in Naperville District 203 asks junior high school students to weigh in and record the results, prompting objections from parents who say the choice to opt out of the decade-old program is not enough.

"I said, 'You are creating a generation of eating disorders. You should focus on wellness, not weight,'" Karen Smith, the mother of a sixth-grade student, said. "Here's the problem with optional: You create that drama with weighing."

School officials say students can weigh themselves at home, or simply leave the weight space blank on the fitness card, which factors in other measures, including strength, endurance, flexibility and cardiovascular health. John Fiore, instructional coordinator for the district's physical education program, said that schools don't focus on a single data point "because fitness isn't defined one way."

Still, concerned Naperville parents say children independently direct their focus to the weight measurement because it's prominently discussed among peers and on social media—and because they live in a society that values being thin.

Naperville was once lauded as a district at the forefront of physical education, leading the nation as an example for fostering fitter, healthier children who perform better in academic courses. Its programs had inspired other districts to adopt more comprehensive fitness programs over the years. States like Arkansas and Michigan, for example, have adopted similar weight-tracking programs and body mass index report cards.

In the U.S., 17 percent—or 12.5 million—of children aged 2 to 19 are obese, according to figures from the Centers for Disease Control and Prevention. Another 16 percent or so are overweight and at risk of becoming obese.

A recent report from the CDC revealed that more than one-third of high school students were eating vegetables less than once a day—"considerably below" recommended levels of intake for a healthy lifestyle. Reported in: huffingtonpost.com, December 10.

New Orleans, Louisiana

Louisiana anti-creationism advocate Zack Kopplin has launched a national database of 300 schools that are partly publicly funded and teach creationism, the belief that all living organisms originate from divine creation, as in the biblical account. The site, creationistvouchers.com, lists twenty such schools in Louisiana.

Kopplin, a college student, runs the state's most prominent anti-creationism group, Repeal the Louisiana Science Education Act. The Louisiana voucher program allows students in low-performing schools to enroll in private or parochial school at public expense. Its funding method is currently tied up in court. However, state Education Superintendent John White has repeatedly said he expects the state to win its case, and applications for 2013-14 voucher spots in New Orleans opened in January.

Kopplin put schools on the list based largely on whether they use curriculum or textbooks that are known to teach creationism. He partnered with MSNBC's "Melissa Harris-Perry" show for the project.

The Orleans Parish School Board made headlines in December when it prohibited the teaching of creationism in the six public schools it runs directly.

Kopplin is the son of Andy Kopplin, former chief

of staff to two Louisiana governors and current deputy mayor of New Orleans. Reported in: New Orleans Times-Picayune, January 16.

Prince George's County, Maryland

A proposal by the Prince George's County Board of Education to copyright work created by staff and students for school could mean that a picture drawn by a first-grader, a lesson plan developed by a teacher or an app created by a teen would belong to the school system, not the individual.

The measure has some worried that by the system claiming ownership to the work of others, creativity could be stifled and there would be little incentive to come up with innovative ways to educate students. Some have questioned the legality of the proposal as it relates to students.

"There is something inherently wrong with that," David Cahn, an education activist who regularly attends county school board meetings, said before the board's vote to consider the policy. "There are better ways to do this than to take away a person's rights."

If the policy is approved, the county would become the only jurisdiction in the Washington region where the school board assumes ownership of work done by the school system's staff and students.

David Rein, a lawyer and adjunct law professor who teaches intellectual property at the University of Missouri in Kansas City, said he had never heard of a local school board enacting a policy allowing it to hold the copyright for a student's work.

Universities generally have "sharing agreements" for work created by professors and college students, Rein said. Under those agreements, a university, professor and student typically would benefit from a project, he said. "The way this policy is written, it essentially says if a student writes a paper, goes home and polishes it up and expands it, the school district can knock on the door and say, 'We want a piece of that,'" Rein said. "I can't imagine that."

The proposal is part of a broader policy the board is reviewing that would provide guidelines for the "use and creation" of materials developed by employees and students. The board's staff recommended the policy largely to address the increased use of technology in the classroom.

Board Chair Verjeana M. Jacobs said she and Vice Chair Carolyn M. Boston attended an Apple presentation and learned how teachers can use apps to create new curricula. The proposal was designed to make it clear who owns teacher-developed curricula created while using apps on iPads that are school property, Jacobs said.

It's not unusual for a company to hold the rights to an employee's work, copyright policy experts said. But the Prince George's policy goes a step further by saying that work created for the school by employees during their own time and using their own materials is the school system's property.

Kevin Welner, a professor and director of the National

Education Policy Center at the University of Colorado in Boulder, said the proposal appears to be revenue-driven. There is a growing secondary online market for teacher lesson plans, he said.

“I think it’s just the district saying, ‘If there is some brilliant idea that one of our teachers comes up with, we want to be in on that. Not only be in on that, but to have it all,’” he said.

Welner said teachers have always looked for ways to develop materials to reach their students, but “in the brave new world of software development, there might be more opportunity to be creative in ways that could reach beyond that specific teacher’s classroom.”

Still, Welner said he doesn’t see the policy affecting teacher behavior. “Within a large district, there might be some who would invest a lot of time into something that might be marketable, but most teachers invest their time in teaching for the immediate need of their students and this wouldn’t change that,” he said.

But it is the broad sweep of the proposed policy that has raised concerns. “Works created by employees and/or students specifically for use by the Prince George’s County Public Schools or a specific school or department within PGCPs, are properties of the Board of Education even if created on the employee’s or student’s time and with the use of their materials,” the policy reads. “Further, works created during school/work hours, with the use of school system materials, and within the scope of an employee’s position or student’s classroom work assignment(s) are the properties of the Board of Education.”

Questioned about the policy after it was introduced, Jacobs said it was never the board’s “intention to declare ownership” of students’ work.

“Counsel needs to restructure the language,” Jacobs said. “We want the district to get the recognition . . . not take their work.”

Jacobs said that it was possible amendments could be made to the policy at the board’s next meeting. The board approved the policy for consideration by a vote of 8 to 1 in January but removed the item from its next agenda.

Peter Jaszi, a law professor with the Glushko-Samuelson Intellectual Property Law Clinic at American University, called the proposal in Prince George’s “sufficiently extreme.” Jaszi said the policy sends the wrong message to students about respecting copyright. He also questioned whether the policy, as it applies to students, would be legal.

He said there would have to be an agreement between the student and the board to allow the copyright of his or her work. A company or organization cannot impose copyright on “someone by saying it is so,” Jaszi said. “That seems to be the fundamental difficulty with this.”

Cahn said he understands the board’s move regarding an employee’s work, but he called the policy affecting the students “immoral.”

“It’s like they are exploiting the kids,” he said.

For Adrienne Paul and her sister, Abigail Schiavello, who wrote a 28-page book more than a decade ago in elementary school for a project that landed them a national television interview with Rosie O’Donnell and a \$10,000 check from the American Cancer Society, the policy—had it been in effect—would have meant they would not have been able to sell the rights to “Our Mom Has Cancer.”

Dawn Ackerman, their mother, said she would have obtained legal advice if there had been a policy like the one being considered when her daughters wrote their book about her fight against cancer fourteen years ago. “I really would have objected to that,” Ackerman said.

Paul agreed, saying the policy seems to be ill-conceived. It could stifle a child’s creativity and strip students and their families of what is rightfully theirs, she said. “I think if you paint a picture, publish a book or create an invention as a kid, your family—certainly not the school board—should have the rights to that,” she said. Reported in: *Washington Post*, February 2.

Charlotte, North Carolina

If North Carolina high school students bully a teacher online, they will pay the price. On December 1, a law went into effect that expands the state’s anti-cyberbullying statute to protect the state’s educators.

Under the School Violence Prevention Act of 2012, students will be reprimanded if they make any statement—true or false—that could provoke others to stalk or harass teachers or school employees. Students will also be severely punished if they target school administration by building a fake online profile or website, tamper with their online data or accounts, sign them up to a pornographic website or post private, personal, or sexual information.

The penalties aren’t a slap on the wrist either. If caught, a student could face criminal charges, stay up to 60 days in jail, and face a \$1,000 fine.

While it may seek to protect teachers from harassment, critics have called the first-of-its-kind law vague and draconian. The North Carolina ACLU opposes the law and says that it creates a dangerous precedent.

“This law is so vague that it could easily result in a student being arrested simply for posting something on the Internet that a school official finds offensive,” said North Carolina ACLU Policy Director Sarah Preston in a statement on their website. “Young people should not be taught that they will be punished for telling the truth, speaking freely, or questioning authority—yet that is exactly what could happen under this law.”

The ACLU points out that a student could be charged under the law for objecting to a decision by school administrators or simply by posting on a message board that says they are “tired” of a certain teacher.

The bill was sponsored by Republican state Senator Tommy Tucker at the urging of the Classroom Teachers

Association of North Carolina. Tucker said at the time of the bill's passage that teachers need protection too.

"On the Internet, if it's in print, a lot of times people accept it as the truth," Tucker said. "Certainly if you put something in print that could damage the reputation and character of a teacher then there should be some sort of penalty."

But that penalty may be too strong. Billie Murray, an assistant professor of communication at Villanova University who specializes in free speech issues, said that while cyberbullying is a serious problem, addressing the issue requires careful balance.

"Concerns about free speech complicate this issue, and justifiably so," she said in an interview. "Laws that limit people's ability to speak freely, and truthfully, must be carefully considered, with the costs of these limitations paramount in the considerations."

Murray said that her biggest concern with the law as it currently stands is that "it seems to be unfairly directed to students or young people."

Julie Hilden, a columnist for the website *Justia*, wrote that "teachers have recourse to solutions and resources that are out of the reach of students, and for that reasons, the law should not treat them in the same way."

The bill's vagueness combined with the fact that a student can't make a truthful albeit provocative statement about a teacher means that the state is on shaky ground under the First Amendment. It could end up challenged in court by the ACLU.

"If it is okay to criminalize students who criticize teachers online, what is to stop the government from making it illegal for any one of us to criticize some other government official, like the city council or state legislature, whether the comments are made online or not?" the ACLU's Preston said. "We urge any student charged under this misguided law to contact our office immediately." Reported in: *Yahoo! News*, December 10.

San Antonio, Texas

A Texas public school district's controversial pilot program to keep track of its students on campus with Radio Frequency Identification (RFID) chips has survived a legal challenge in federal court. On January 8, U.S. District Court Judge Orlando Garcia dismissed a request for a preliminary injunction from Andrea Hernandez, a sophomore at John Jay High School in San Antonio who refused to wear the school's ID cards on religious grounds.

The girl's evangelical Christian father, Steven Hernandez, had equated the badges to the Biblical "mark of the beast." Northside Independent School District officials told Andrea last fall she would have to either wear the card or transfer from John Jay, a magnet school, to her local campus, which is not part of the RFID pilot program. Lawyers from the nonprofit Rutherford Institute took the

girl's case, seeking an injunction to block the school from enforcing its policy.

Tech blogs, civil rights groups, and even Anonymous joined the fray on the family's side, calling the RFID badges an egregious invasion of privacy. But the outrage overlooked a crucial fact: The district had offered Hernandez a compromise, allowing her to wear the ID card with the chip removed. She and her father refused, saying that would amount to showing support for a program that violates their religious convictions.

The judge disagreed. In a 25-page ruling, he wrote that Hernandez's refusal to wear the badge even without the tracking chip undermined her claims that the district was violating her religious freedom. "Plaintiff's objection to wearing the Smart ID badge without a chip is clearly a secular choice, rather than a religious concern," Garcia wrote.

Some claims of religious discrimination are subject to heightened scrutiny in court, but Garcia opined that the school's policy didn't qualify, because it applied equally to all students. And the program "easily passes" the less-stringent "rational basis" test, he went on, because the district has "a legitimate need to easily identify its students for purposes of safety, security, attendance, and funding." Requiring all students to carry a Smart ID badge is "certainly a rational means to meet such needs," he added. For example, he wrote:

"Very recently, a parent of a special needs student was concerned that the child did not get on the bus after school, and the school staff was able to pull the sensor readings to determine when the student was on campus and when he left, thus reassuring the parent. On another occasion, a building was evacuated and campus administrators were able to quickly identify and locate students' badges that had been left in the building during the evacuation."

Garcia also dismissed a separate claim that requiring Hernandez to wear the ID card without the chip would violate her freedom of speech. While students in public schools "do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," he wrote, they don't automatically have all the same rights as adults would in other settings.

The judge concluded that the student must either accept the school's compromise and wear the badge without the chip, or return to her home school next semester.

The Rutherford Institute said in a statement that it will appeal the decision. "The Supreme Court has made clear that government officials may not scrutinize or question the validity of an individual's religious beliefs," said John Whitehead, president of the nonprofit civil rights law group. "By declaring Andrea Hernandez's objections to be a secular choice and not grounded in her religious beliefs, the district court is placing itself as an arbiter of what is and is not religious. This is simply not permissible under our constitutional scheme, and we plan to appeal this immediately." Reported in: *slate.com*, January 8.

college

Boston, Massachusetts

Boston College wants a federal appeals court to throw out a ruling that orders the college to turn over audiotaped interviews with former members of the Irish Republican Army, citing the death of a key figure in the legal battle.

In a motion filed January 28 with the U.S. Court of Appeals for the First Circuit, lawyers for Boston College said the death the previous week of IRA veteran Dolours Price means that she can no longer be the subject of any prosecution by police in Northern Ireland. The college is asking that a ruling last year by U.S. District Judge William Young ordering the college to turn over interviews with seven other former IRA members be tossed out. The college is also asking that its own appeal of Young's ruling be dismissed as moot because of Price's death.

Since 2011, Northern Ireland's police have been waging a battle with Boston College to get audiotaped interviews of Price describing her IRA career. Authorities want to see if the tapes contain evidence relating to unsolved crimes, particularly the 1972 kidnapping and murder of a Belfast widow, Jean McConville. The interviews were conducted as part of the "Belfast Project," an oral history project by Boston College.

In a statement, Boston College spokesperson Jack Dunn said Price's death "should bring a close to the pending case regarding the subpoenas for the confidential oral history materials from the Belfast Project." Dunn said the Mutual Legal Assistance Treaty on Criminal Matters invoked by the governments of the United States and the United Kingdom "provides that the treaty does not pertain to matters in which the government anticipates that no prosecution will take place."

"Given that Dolours Price has died, the University believes that the case should be dismissed," Dunn said.

Christina DiIorio-Sterling, a spokeswoman for U.S. Attorney Carmen Ortiz, declined to comment. She said prosecutors plan to file a response with the court. Reported in: *Boston Globe*, January 29.

social media

Sacramento, California and Springfield, Illinois

Six states have officially made it illegal for employers to ask their workers for passwords to their social media accounts. As of 2013, California and Illinois have joined the ranks of Michigan, New Jersey, Maryland, and Delaware in passing state laws against the practice.

With Congress unable to agree on the Password Protection Act of 2012, individual states have taken the law into their own hands. Both California and Illinois agreed on password protection laws in 2012, but the laws didn't go into effect until January 1.

The laws are designed to prohibit employers from requiring employees or job applicants to provide their username and password for social media accounts, such as Facebook, Twitter, or Instagram. Assemblymember Nora Campos, who authored the California bill, called the law a "preemptive measure" that will offer guidelines to the accessibility of private information behind what she calls the "social media wall."

It's unclear how many employers have actually demanded access to workers' online accounts, but some cases have surfaced publicly and inspired lively debate over the past year. In one instance last April, a teacher's aide in Michigan was suspended after refusing to provide access to her Facebook account following complaints over a picture she posted.

According to Campos' office, more than 100 cases before the National Labor Relations Board in September involved employer workplace policies around social media. Facebook has also said it has experienced an increase in reports of employers seeking to gain "inappropriate access" to people's Facebook profiles or private information this past year.

While these six states now ban employer snooping on private information, all public information posted on social media accounts is still fair game. Reported in: *cnet.com*, January 2.

Washington, D.C.

As Facebook and Twitter become as central to workplace conversation as the company cafeteria, federal regulators are ordering employers to scale back policies that limit what workers can say online.

Employers often seek to discourage comments that paint them in a negative light. Don't discuss company matters publicly, a typical social media policy will say, and don't disparage managers, co-workers or the company itself. Violations can be a firing offense.

But in a series of recent rulings and advisories, labor regulators have declared many such blanket restrictions illegal. The National Labor Relations Board says workers have a right to discuss work conditions freely and without fear of retribution, whether the discussion takes place at the office or on Facebook.

In addition to ordering the reinstatement of various workers fired for their posts on social networks, the agency has pushed companies nationwide, including giants like General Motors, Target and Costco, to rewrite their social media rules.

"Many view social media as the new water cooler," said Mark G. Pearce, the board's chairman, noting that federal law has long protected the right of employees to discuss work-related matters. "All we're doing is applying traditional rules to a new technology."

The decisions come amid a broader debate over what

constitutes appropriate discussion on Facebook and other social networks. Schools and universities are wrestling with online bullying and student disclosures about drug use. Governments worry about what police officers and teachers say and do online on their own time. Even corporate chieftains are finding that their online comments can run afoul of securities regulators.

The labor board's rulings, which apply to virtually all private sector employers, generally tell companies that it is illegal to adopt broad social media policies—like bans on “disrespectful” comments or posts that criticize the employer—if those policies discourage workers from exercising their right to communicate with one another with the aim of improving wages, benefits or working conditions.

But the agency has also found that it is permissible for employers to act against a lone worker ranting on the Internet.

Several cases illustrate the differing standards.

At Hispanics United of Buffalo, a nonprofit social services provider in upstate New York, a caseworker threatened to complain to the boss that others were not working hard enough. Another worker, Mariana Cole-Rivera, posted a Facebook message asking, “My fellow co-workers, how do you feel?”

Several of her colleagues posted angry, sometimes expletive-laden, responses. “Try doing my job. I have five programs,” wrote one. “What the hell, we don't have a life as is,” wrote another.

Hispanics United fired Cole-Rivera and four other caseworkers who responded to her, saying they had violated the company's harassment policies by going after the caseworker who complained.

In a 3-to-1 decision the labor board concluded that the caseworkers had been unlawfully terminated. It found that the posts in 2010 were the type of “concerted activity” for “mutual aid” that is expressly protected by the National Labor Relations Act.

“The board's decision felt like vindication,” said Cole-Rivera, who has since found another social work job.

The NLRB had far less sympathy for a police reporter at *The Arizona Daily Star*. Frustrated by a lack of news, the reporter posted several Twitter comments. One said, “What?!?!?! No overnight homicide. ... You're slacking, Tucson.” Another began, “You stay homicidal, Tucson.”

The newspaper fired the reporter, and board officials found the dismissal legal, saying the posts were offensive, not concerted activity and not about working conditions.

The agency also affirmed the firing of a bartender in Illinois. Unhappy about not receiving a raise for five years, the bartender posted on Facebook, calling his customers “rednecks” and saying he hoped they choked on glass as they drove home drunk. Labor board officials found that his comments were personal venting, not the “concerted activity” aimed at improving wages and working conditions that is protected by federal law.

The board's moves have upset some companies,

particularly because it is taking a law enacted in the industrial era, principally to protect workers' right to unionize, and applying it to the digital activities of nearly all private-sector workers, union and nonunion alike.

Brian E. Hayes, the lone dissenter in the Hispanics United case, wrote that “the five employees were simply venting,” not engaged in concerted activity, and therefore were not protected from termination. Rafael O. Gomez, Hispanics United's lawyer, said the nonprofit would appeal the board's decision, maintaining that the Facebook posts were harassment.

Some corporate officials say the NLRB is intervening in the social media scene in an effort to remain relevant as private-sector unions dwindle in size and power.

“The board is using new legal theories to expand its power in the workplace,” said Randel K. Johnson, senior vice president for labor policy at the United States Chamber of Commerce. “It's causing concern and confusion.”

But board officials say they are merely adapting the provisions of the National Labor Relations Act, enacted in 1935, to the 21st century workplace.

Lewis L. Maltby, president of the National Workrights Institute, said social media rights were looming larger in the workplace. He said he was disturbed by a case in which a Michigan advertising agency fired a Web site trainer who also wrote fiction after several employees voiced discomfort about racy short stories he had posted on the Web.

“No one should be fired for anything they post that's legal, off-duty and not job-related,” Maltby said.

As part of the labor board's stepped-up role, its general counsel has issued three reports concluding that many companies' social media policies illegally hinder workers' exercise of their rights. The general counsel's office gave high marks to Wal-Mart's social policy, which had been revised after consultations with the agency. It approved Wal-Mart's prohibition of “inappropriate postings that may include discriminatory remarks, harassment and threats of violence or similar inappropriate or unlawful conduct.”

But in assessing General Motors's policy, the office wrote, “We found unlawful the instruction that ‘offensive, demeaning, abusive or inappropriate remarks are as out of place online as they are offline.’” It added, “This provision proscribes a broad spectrum of communications that would include protected criticisms of the employer's labor policies or treatment of employees.” A GM official said the company has asked the board to reconsider.

In a ruling last September, the board also rejected as overly broad Costco's blanket prohibition against employees' posting things that “damage the company” or “any person's reputation.”

Denise M. Keyser, a labor lawyer who advises many companies, said employers should adopt social media policies that are specific rather than impose across-the-board prohibitions. Do not just tell workers not to post confidential information, Keyser said. Instead, tell them not to

disclose, for example, trade secrets, product introduction dates or private health details.

But placing clear limits on social media posts without crossing the legal line remains difficult, said Steven M. Swirsky, another labor lawyer. “Even when you review the NLRB rules and think you’re following the mandates,” he said, “there’s still a good deal of uncertainty.” Reported in: *New York Times*, January 21.

online privacy

Washington, D.C.

Aiming to prevent companies from exploiting online information about children under 13, the Obama administration on December 19 imposed sweeping changes in regulations designed to protect a young generation with easy access to the web. But some critics of the changes worry they could stifle innovation in the market for educational apps.

Two years in the making, the amended rules to the decade-old Children’s Online Privacy Protection Act go into effect in July. Internet privacy advocates said the changes were long overdue in an era of cell phones, tablets, social networking services, and online stores with cell-phone apps aimed at kids for as little as 99 cents.

Siphoning details of children’s personal lives—their physical location, contact information, names of friends, and more—from their Internet activities can be highly valuable to advertisers, marketers, and data brokers.

The Obama administration has largely refrained from issuing regulations that might stifle growth in the technology industry, one of the U.S. economy’s brightest spots. Yet the Federal Trade Commission pressed ahead with the new kids’ Internet privacy guidelines, despite loud complaints—particularly from small businesses and developers of educational apps—that the revisions would be too costly to comply with and would cause responsible companies to abandon the children’s app marketplace.

As evidence of Internet privacy risks, the FTC said it was investigating an unspecified number of software developers that might have gathered information illegally without the consent of parents.

Under the changes to the law, known as COPPA, information about children that cannot be collected unless a parent first gives permission now includes the location data that a cell phone generates, as well as photos, videos, and audio files containing a human image or voice.

The Congressional Bipartisan Privacy Caucus commended the FTC for writing the new rules. “Keeping kids safe on the Internet is as important as ensuring their safety in schools, in homes, in cars,” caucus co-chairman Rep. Edward Markey (D-MA) said at a news conference.

Data known as “persistent identifiers,” which allow a person to be tracked over time and across websites, are also considered personal data and covered by the rules, the

agency said. But parental consent is not required when a website operator collects this information solely to support its internal operations, which can include advertising, site analysis, and network communications.

The rules offer several new methods for verifying a parent’s consent, including electronically scanned consent forms, video conferencing, and eMail.

The FTC sought to achieve a balance between protecting kids and spurring innovation in the technology industry, said Jon Leibowitz, the agency’s chairman. The final rules expand the definition of a website or online service directed at children to include plug-ins and advertising networks that collect personal information from kids. But the rules were also tightened in a way favorable to some Internet heavyweights, Google and Apple. Their online app stores, which dominate the marketplace for mobile applications, won’t be held liable for violations because they “merely offer the public access to child-directed apps,” the FTC said.

Google and Apple had warned that if the rule were written to include their stores, they would jettison many apps specifically intended for kids. They said that would hurt the nation’s classrooms, where new, educational apps are used by teachers and students.

A Washington, D.C., trade group that represents independent apps developers criticized the agency for addressing the concerns of large businesses while doing too little for the startups that make educational apps parents and teachers want. The FTC’s belief that the apps industry will figure out how to thrive under the new rules is akin to jumping off a cliff, then building a parachute, said Morgan Reed, executive director of the Association for Competitive Technology.

“While that may work for big companies, small companies lack the silk and line to build that parachute before they hit the ground,” Reed said.

Companies are not excluded from advertising on websites directed at children, allowing business models that rely on advertising to continue, Leibowitz said. But behavioral marketing techniques that target children are prohibited unless a parent agrees. “You may not track children to build massive profiles,” he said.

The agency included in the rules new methods for securing verifiable consent after the software industry and internet companies raised concerns over how to confirm that the permission actually came from a parent. Electronic scans of signed consent forms are acceptable, as is video teleconferencing between the website operator or online service and the parent, according to the agency.

The FTC also said it is encouraging technology companies to recommend additional verification methods. Leibowitz said he expects this will “unleash innovation around consent mechanisms.” Emailed consent is also acceptable, as long as the business confirms it by sending an eMail back to the parent or calling or sending a letter. In cases of email confirmation, the information collected can only be used for internal use by that company and not

shared with third parties, the agency said.

The FTC's investigation of app developers came after the agency examined 400 kids' apps that it purchased from Apple's iTunes store and Google's apps store, Google Play. It determined that 60 percent of them transmitted the user's unique device identification to the software maker or, more frequently, to advertising networks and companies that compile, analyze, and sell consumer information for marketing campaigns. Reported in: eSchool News, December 20.

Houston, Texas

When a friend told Hollie Toups that topless photos of her had been posted on an Internet pornography site, she felt horrified, but she didn't feel alone: She recognized more than a dozen other South Texas women on the website, she said.

Hollie Toups and sixteen other women filed a civil lawsuit in Texas state court against Texxxan.com, alleging that intimate photos were posted illegally and made the women easy to identify. They are seeking damages and to have the site closed down.

Legal experts say they are seeing an increasing number of such lawsuits targeting so-called revenge porn, in which intimate images are posted online, often by jilted former lovers but also by computer repairmen or hackers who gain access to private photos. Some sites feature pornographic images alongside links to a subject's social-media accounts and other identifying information.

"I'm not saying I'm perfect, but I've been exploited," said Toups, a 32-year-old graduate student in criminal justice, who lives outside Houston. She said she had sent the photos years earlier to a former boyfriend, wasn't sure how they had ended up on the Internet, and hasn't sued the former boyfriend. She said the photos appeared on the website alongside a link to her Twitter account and clothed photos she had taken of herself and never distributed.

The suit also names GoDaddy.com as a defendant, claiming it hosts Texxxan.com.

The lead lawyer for the Texas plaintiffs, John Morgan of Beaumont, Texas, said he plans to sue the owners and operators of the porn site once he learns their identities.

"None of these women consented to having their photos used," Morgan said, adding that all of his clients subsequently suffered bouts of depression. "This site has to be shut down."

Finding the operators of porn sites can be difficult, as is persuading the police to investigate, legal experts said. Federal law offers broad protection to sites that merely publish pornographic images taken by others.

"I wish we had more robust legal protection," said Danielle Citron, a University of Maryland law school professor who is working on a book about online harassment. She added that civil suits can be prohibitively expensive and victims often don't want further publicity by bringing litigation. "If you have to sue in your own name, the privacy invasion can be worse," she said.

Still, there are many legal options available to victims, according to lawyers across the country, who say people can sue for copyright infringement if they snapped the photos that later end up online without their consent.

Other potential claims include invasion of privacy and infliction of emotional distress, lawyers said. "I have never even had to file a suit" to get porn sites shut down, said Kyle Bristow, a lawyer in Toledo, Ohio, adding that he has represented about a half-dozen clients, of both sexes, in such cases. "Just by putting people on notice that I'm coming after them has sufficed."

Erica Johnstone, a San Francisco lawyer who has represented about a half-dozen victims of revenge porn sites, said that "the emotional toll on women can be devastating," and includes depression and anxiety.

Toups said she at first became reclusive last summer, when she learned that her revealing photos had landed online. "I shut everyone off but my mom," she said, adding that when people greeted her in public, she wondered, "Is it because they are polite or have seen me topless?"

Texxxan.com, she said, allows subscribers to search for images of women according to regions of the state where they have lived. When she searched southeastern Texas, she found many other women she knew.

"I felt it was my duty to reach out to them and ask if they knew they were being harassed," Toups said. Reported in: *Wall Street Journal*, January 23.

counterterrorism

Washington, D.C.

Top U.S. intelligence officials gathered in the White House Situation Room last March to debate a controversial proposal. Counterterrorism officials wanted to create a government dragnet, sweeping up millions of records about U.S. citizens—even people suspected of no crime.

Not everyone was on board. "This is a sea change in the way that the government interacts with the general public," Mary Ellen Callahan, chief privacy officer of the Department of Homeland Security, argued in the meeting, according to people familiar with the discussions.

A week later, the attorney general signed the changes into effect.

Through Freedom of Information Act requests and interviews with officials at numerous agencies, *The Wall Street Journal* reconstructed the clash over the counterterrorism program within the administration of President Barack Obama. The debate was a confrontation between some who viewed it as a matter of efficiency—how long to keep data, for instance, or where it should be stored—and others who saw it as granting authority for unprecedented government surveillance of U.S. citizens.

The rules now allow the little-known National Counterterrorism Center to examine the government files

of U.S. citizens for possible criminal behavior, even if there is no reason to suspect them. That is a departure from past practice, which barred the agency from storing information about ordinary Americans unless a person was a terror suspect or related to an investigation.

Now, NCTC can copy entire government databases—flight records, casino-employee lists, the names of Americans hosting foreign-exchange students and many others. The agency has new authority to keep data about innocent U.S. citizens for up to five years, and to analyze it for suspicious patterns of behavior. Previously, both were prohibited.

The changes also allow databases of U.S. civilian information to be given to foreign governments for analysis of their own. In effect, U.S. and foreign governments would be using the information to look for clues that people might commit future crimes.

“It’s breathtaking” in its scope, said a former senior administration official familiar with the White House debate.

Counterterrorism officials say they will be circumspect with the data. “The guidelines provide rigorous oversight to protect the information that we have, for authorized and narrow purposes,” said Alexander Joel, Civil Liberties Protection Officer for the Office of the Director of National Intelligence, the parent agency for the National Counterterrorism Center.

The Fourth Amendment of the Constitution says that searches of “persons, houses, papers and effects” shouldn’t be conducted without “probable cause” that a crime has been committed. But that doesn’t cover records the government creates in the normal course of business with citizens.

Congress specifically sought to prevent government agents from rifling through government files indiscriminately when it passed the Federal Privacy Act in 1974. The act prohibits government agencies from sharing data with each other for purposes that aren’t “compatible” with the reason the data were originally collected.

But the Federal Privacy Act allows agencies to exempt themselves from many requirements by placing notices in the Federal Register, the government’s daily publication of proposed rules. In practice, these privacy-act notices are rarely contested by government watchdogs or members of the public. “All you have to do is publish a notice in the Federal Register and you can do whatever you want,” says Robert Gellman, a privacy consultant who advises agencies on how to comply with the Privacy Act.

As a result, the National Counterterrorism Center program’s opponents within the administration—led by Callahan of Homeland Security—couldn’t argue that the program would violate the law. Instead, they were left to question whether the rules were good policy.

Under the new rules issued in March, the National Counterterrorism Center, known as NCTC, can obtain almost any database the government collects that it says is “reasonably believed” to contain “terrorism information.” The list could potentially include almost any government

database, from financial forms submitted by people seeking federally backed mortgages to the health records of people who sought treatment at Veterans Administration hospitals.

Previous government proposals to scrutinize massive amounts of data about innocent people have caused an uproar. In 2002, the Pentagon’s research arm proposed a program called Total Information Awareness that sought to analyze both public and private databases for terror clues. It would have been far broader than the NCTC’s current program, examining many nongovernmental pools of data as well.

“If terrorist organizations are going to plan and execute attacks against the United States, their people must engage in transactions and they will leave signatures,” the program’s promoter, Admiral John Poindexter, said at the time. “We must be able to pick this signal out of the noise.”

Poindexter’s plans drew fire from across the political spectrum over the privacy implications of sorting through every single document available about U.S. citizens. Congress eventually defunded the program.

The National Counterterrorism Center’s ideas faced no similar public resistance. For one thing, the debate happened behind closed doors. In addition, unlike the Pentagon, the NCTC was created in 2004 specifically to use data to connect the dots in the fight against terrorism.

Even after eight years in existence, the agency isn’t well known. “We’re still a bit of a startup and still having to prove ourselves,” said director Matthew Olsen in a rare public appearance this summer at the Aspen Institute, a leadership think tank.

The agency’s best-known product is a database called TIDE, which stands for the Terrorist Identities Datamart Environment. TIDE contains more than 500,000 identities suspected of terror links.

TIDE files are important because they are used by the Federal Bureau of Investigation to compile terrorist “watchlists.” These are lists that can block a person from boarding an airplane or obtaining a visa.

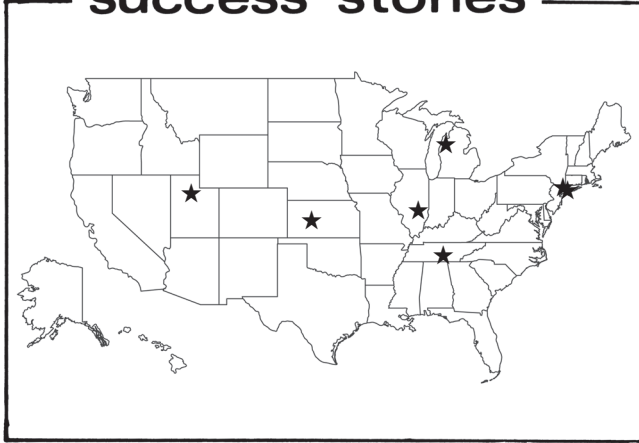
The watchlist system failed spectacularly on Christmas Day 2009 when Umar Farouk Abdulmutallab, a 23-year-old Nigerian man, boarded a flight to Detroit from Amsterdam wearing explosives sewn into his undergarments. He wasn’t on the watchlist. He eventually pleaded guilty to terror-related charges and is imprisoned. His bomb didn’t properly detonate.

However, Abdulmutallab and his underwear did alter U.S. intelligence-gathering. A Senate investigation revealed that NCTC had received information about him but had failed to query other government databases about him. In a scathing finding, the Senate report said, “the NCTC was not organized adequately to fulfill its missions.”

“This was not a failure to collect or share intelligence,” said John Brennan, the president’s chief counterterrorism adviser, at a White House press conference in January 2010.

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success stories



libraries

Effingham, Illinois

A book challenged at the January Helen Matthes Library board meeting will not be moved out of the teen section. Rosina Esker of Teutopolis requested that *When It Happens*, by Susane Colastani, be moved out of the teen section of the library for content that is too explicit for the age group after her 14-year-old daughter read a few pages and asked to send it back.

“She said, ‘This book is not for me,’” Esker said. “I really feel this is an adult book.” She summarized the novel for the board, explaining the heavy lust and sex themes. The book also touches on birth control, pornography and how to prepare for sex. Esker didn’t feel there were enough good behaviors in the characters.

“Kids are looking for role models,” she said. “The kids I worry about picking this up are the ones with a terrible home life.”

Library policy states that it strives to provide materials covering controversial issues. Library Director Amanda McKay said a variety of factors lead to placement in the teen section.

“We do look at reading level,” she said. “We also look at the characters in the book, look at their ages and the subject matter they’re dealing with, who they’re targeted for. This one, based on those criteria, fell soundly in the teen area.”

She added all the library’s sections are open to every age, meaning if the book were moved to the adult section, teenagers would still be allowed to check it out. Although the ultimate decision was to leave the book in the teen section, the board commended Esker for keeping track of what her children are reading.

“Obviously, your daughter has taken on your values,” said Secretary Jane Wise. Reported in: *Effingham Daily News*, January 15.

Newark, New Jersey

A painting that caused a ruckus at the Newark Public Library is uncovered again, viewable by all, and the controversy around it gone.

Several library staff members had complained that the art was inappropriate. They made such a fuss that it was covered up a day after being hung in the second-floor reference room.

The huge drawing was done by Kara Walker, a renowned African-American artist whose themes deal with race, gender, sexuality and violence. The piece shows the horrors of reconstruction, 20th-century Jim Crowism and hooded figures of the Ku Klux Klan. The controversial part depicts a white man holding the head of a naked black woman to his groin, her back to the viewer.

Library director Wilma Grey didn’t think displaying the drawing was a problem, but she covered it with fabric after people complained—so all could take a breath and think this over. Walker wasn’t happy about doing it, neither was Scott London, a longtime art collector who loaned the piece to the library.

“I thought we were past that,” he said. “I was surprised.”

Kendell Willis, an employee, said he had a better understanding of the library’s position after the meeting with officials. “They said there are a lot of things in art-work we don’t want to talk about, and that made absolute sense,” he said.

That’s what they’ll do now. Grey and library trustees plan to invite Walker to talk about the work, artistic freedom and the role of black artists in society.

“The library should be a safe harbor for controversies of all types, and those controversies can be dealt with in the context of what is known about art, about literature, democracy and freedom,” said Clement A. Price, a library trustee and Rutgers history professor. “There’s no better venue in Newark where such a powerful and potential controversial drawing should be mounted.”

The irony is the Newark Public Library in the 1950s covered a giant mural that was considered offensive. It showed male nudity in a painting by R.H. Ives Gammell. The painting, “The Fountain of Knowledge,” stayed hidden for 35 years until it was uncovered in the 1980s. It’s still there now, on the second floor.

Just as that mural rubbed folks the wrong way, Price said, the portrayal of the black American experience is a sensitive issue as well.

“Should we be depicted sentimentally, romantically?” he said. “Should some of the grotesque realities be depicted in art or movies?”

Walker, a recipient of the prestigious John D. and

Catherine T. MacArthur Foundation’s “genius” grant, used large black-paper silhouettes to get her point across when she debuted in 1994. Her work, some of it set in the antebellum South, has graphic racial stereotypes of atrocities African-Americans have suffered.

The piece at the library, however, may not have received such notoriety if Newark City Hall had space to hang it. London, a New York City resident, said an art consultant he works with offered the drawing to the mayor’s office first. He said the city wanted to display it, but officials told them they didn’t have room.

Enter the Newark Public Library, the next best place London felt was suited for such a piece. When it was covered, he couldn’t believe it. But now that things have changed, London said it’s the best outcome, especially if Walker comes to talk about her work.

“Moreover, libraries have a view to the future; their custodians recognize that ideas that may be unpopular today may have influence tomorrow,” London said. “It is reassuring that the Newark Public Library chose to maintain and uphold this principle by unshrouding and continuing to showcase Ms. Walker’s drawing. It was not the easy thing to do.” Reported in: nj.com, January 20.

Davis, Utah

Last year, Davis School District in Utah removed a children’s book about a family with two moms from its elementary school library shelves after receiving complaints from some parents that the book “normalized a lifestyle we don’t agree with.”

In Our Mothers’ House, by Patricia Polacco, was restricted behind the librarians’ desk, and students had to obtain written permission from their parents in advance before they could even hold a copy of the book. In addition to making the book harder to read as a practical matter, the school district’s action imposed a stigma on the book and anyone who wanted to read it. It also imposed a stigma on children in the district who have same-sex parents by sending a message that – unlike all the other families from diverse backgrounds that are depicted in the schools’ library books – their families are something shameful and dirty.

When the school district refused to reconsider its decision, the ACLU filed a lawsuit on behalf of a mother with two children in one of the schools where *In Our Mothers’ House* was restricted. Tina Weber explained that she filed the suit because “nobody should be able to tell other people’s kids what they can and can’t read.”

In January, the school district reversed its decision and put the book back on the library shelves where it can be checked out on the same terms as any other children’s book. A final settlement agreement with the school district ensures that this mistake won’t happen again.

When it restricted access to *In Our Mothers’ House*, the school district claimed that the book violated Utah’s sex

education law prohibiting schools from having instructional materials containing “advocacy of homosexuality.” The ACLU argued the statute does not apply to library materials and that books about LGBT families do not constitute “advocacy of homosexuality” in any event. In the settlement agreement, the school agreed that it will no longer try to remove any library books based on the statute. The settlement agreement also provides that if the school district breaks its promises, any student in Davis School District elementary schools can go to court to have the agreement enforced.

According to the ACLU, “This is a fantastic victory for the students in Davis School District but we could not have done it on our own. We received invaluable assistance from the Freedom to Read Foundation, which helped provide resources for challenging the restriction and identifying expert witnesses who could testify about how *In Our Mothers’ House* was well within the mainstream of children’s literature and that the school’s decision to restrict access to the book violated bedrock principles of school library science.”

In a statement the Freedom to Read Foundation welcomed “the news that author Patricia Polacco’s *In Our Mothers’ House* is back on the shelves of the Davis County Public School system libraries without restrictions. As the only organization whose main purpose is to defend the freedom to access information in libraries, FTRF sees incidents such as this one – in which access to information is blocked due to viewpoints expressed therein – as particularly troublesome.

“While not directly involved in this suit, FTRF provided ACLU attorneys with expert advice and resources as they worked to develop the case. FTRF appreciates the work of the ACLU of Utah and the ACLU’s Lesbian Gay Bisexual and Transgender Project on the case and we send particular thanks to the plaintiff who made the difficult decision to stand up for reading, the open exchange of ideas, and the First Amendment. We strongly encourage the Davis County School Board to continue to make *In Our Mothers’ House* and similar works freely available to the students of the Davis County Schools.” Reported in: aclu.org, January 31.

schools

McPherson, Kansas

A committee recently determined a book taught in a McPherson High School freshman class is indeed appropriate. *The Glass Castle*, a memoir by Jeanette Walls, was being taught to 95 students in Cindy Marion’s pre-AP English course. It is an account of Walls’ years growing up in poverty with a dysfunctional family. This is the second year Marion has used the book in her course.

Parents spoke to the USD 418 Board of Education in early December with concerns the book might be inappropriate for 14- and 15-year-old students, due to foul language and implicit and explicit sexual references. Anti-religious statements also were listed as a concern.

The district policy states a book can be reviewed by a committee to determine if it needs to be removed from the curriculum. The committee consisted of Bret McClendon, McPherson High School principal; Diane Marshall, McPherson High School library and media specialist; Gentry Nixon, McPherson High School teacher; Alice Toews, McPherson High School teacher; Rhonda Wince and Amy Worm, parents from the Curriculum Coordinating Counsel; and chairwoman Angie McDonald, director of instruction.

The committee unanimously determined the book was appropriately placed in the curriculum and recommended it remain in the freshman level pre-AP English curriculum. This was because of the district's opt-out policy, which allows all families to opt their children out of any assignment, and ask for an alternate one. The parents of four students made this choice.

"I believe all parents have a right to help guide the education of their children," McDonald said. "We truly want to partner with parents, so I absolutely respect the opinions of the parents who had concerns about this book or any other parents who question any matter involving their children. This is exactly why USD 418 has an opt-out policy in place."

Although the language was strong at times and there were anti-religious references, the committee stated in its recommendation that the content was pertinent to the story and its characterization. They also stated the sexual situations were not beyond the maturity level of the students.

The committee also made three other recommendations.

The first was that the book only be taught during the school year so a teacher could guide conversation around the book. The committee found that many school districts put this book on a summer reading list and the committee did not find this appropriate for students.

The second recommendation was that the English department compile a list of books to be read each school year with information regarding which books have been challenged in schools throughout the country. The committee thought this would give parents an opportunity to research books they may feel their child should not read.

Third, the reading list should contain a reference to the board opt-out policy so parents have a formal reminder of the possibility.

After the committee sent its recommendations to Superintendent Randy Watson January 4, he sent a letter to the parents who asked for the review. If any of the parents who made the formal request desired to appeal the decision of the committee and Watson, they had the right to go to the board within thirty days of the decision. No one appealed.

McDonald said she has found nowhere where the book has been banned in her research. The book will remain an option for teachers to use in curriculum next year.

"I believe in and support our teachers," McDonald said. "Our teachers are masterful at making books come alive and guiding students toward true learning experiences through

books. I believe there is a lesson in each and every book, especially in the hands of a gifted teacher." Reported in: *McPherson Sentinel*, February 8.

Traverse City, Michigan

The Traverse City Public School board voted in December to keep a controversial book on the ninth grade summer reading list, regardless of complaints from parents. The move came after parents of a Traverse City West High School student voiced complaints regarding *The Glass Castle*, by Jeannette Walls.

Jeff and Heather Campbell said their ninth grade daughter was assigned to read *The Glass Castle* as part of her Freshman Honors English Course. Once they got a look at the content, they immediately wanted it banned. Jeff Campbell said, "I was shocked. I thought about myself as a 14 year-old and I just don't remember ever hearing those words at 14 years old."

After hearing his daughter use words like "creepy" and "disturbing" to describe *The Glass Castle*, Jeff Campbell picked up the book himself. He said, "About thirty pages into the book, the amount of profanity, sexual assault, molestation, incest, it was bad."

The Campbells took their complaints to school officials. Superintendent Steve Cousins said, "Anytime there is a sensitive material it is legitimate to ask, is this appropriate for a certain grade level? But I believe it is appropriate to read in school, I believe it is appropriate for ninth graders to read in school."

Regardless of Cousin's personal outlook, the Campbells' concerns went through a series of committees. The Board's Curriculum Committee came up with a recommendation to remove *The Glass Castle* from the ninth grade required summer reading list. But that recommendation did not get approved.

Jeff Campbell was disappointed by the decision. "We're not purist by any means but we're parents," he said, "and we're here to look after our children. It's really what this is all about. I'm going to keep my eye out as my kids progress through the grades. I'm going to make sure their reads are appropriate for them."

Campbell said he did not plan to pursue any further action. Reported in: upnorthlive.com, December 10.

university

Brooklyn, New York

Tensions were evident everywhere as two pro-Palestinian speakers arrived February 7 at Brooklyn College. Protesters began gathering across the street from the student center, where the college-sponsored talk was scheduled, more than an hour before the event was to start. And police officers were stationed at the entrance to the building, searching

bags and checking attendees' names and identifications against an approved list.

Controversy had grown over the previous week at the Midwood college, where nearly a fifth of the undergraduate population is Jewish, over the event organized by a student group, Students for Justice in Palestine. The college's political science department agreed to co-sponsor the speakers along with more than two dozen other groups.

Jewish leaders on and off campus criticized the college and its president, Karen L. Gould, for sponsoring the talk, which they said helped legitimize the BDS movement, which refers to Boycott, Divestment and Sanctions. Its goal is to pressure Israel to restore disputed territories and grant equal rights to Palestinians.

Throughout the week, the right to academic freedom served as the backbone to arguments in favor of the college's sponsorship of the event.

And inside the student center, a crowd of hundreds—faculty and community members, as well as students—clapped as a speaker thanked those who supported the event, which drew so much attention a waiting list was required.

“Your being here this evening confirms your right to form and communicate an autonomous judgment to determine why you think something is true or not. And you should be free to do this without coercion and fear,” said the speaker, Judith Butler, a philosopher teaching at Columbia University.

Butler called the attendees' participation in the discussion their right to education and free speech.

The other speaker, Omar Barghouti, a commentator and activist, began his lecture by calling on the group to celebrate their victory against “racist, hate-mongering, bullying attempts to shut down this event.” Invoking the South African anti-apartheid movement, he went on to compare the Palestinian struggle to that of colonially oppressed people throughout history and to urge listeners to fight the racism he said was rising within Israel—similar, he said, to the anti-Semitism in Europe in the 1930s. He garnered a standing ovation.

Butler spoke more directly to the criticisms they had faced, pointing out that many Jews—including herself—opposed Israel's policies. BDS could only be seen as anti-Semitic if Israel represented all Jewish people, she said. “Honestly, what can really be said about the Jewish people as a whole?”

With a wry smile, she noted the crowd outside the building. Some Jews are, she acknowledged, “as you can hear, unconditional supporters of Israel.” The sound of chanting was faintly audible in the room as she paused.

Outside, about 150 protesters waved signs and chanted behind a police barricade. They ranged from a few who came in solidarity with the speakers to staunch supporters of Israel.

David Haies, 33, a social worker from Brooklyn, came

to protest the speech and said the experience was so invigorating he didn't need to zip his jacket in the freezing cold. “Jews should be able to live wherever they want to live,” he said. “This feels good.”

Barghouti is no stranger to protests. He has been one of the most public faces of the BDS movement, traveling from campus to campus to spread his message in the United States. Over the past few years, he has spoken at Rutgers, New York University and Harvard. In the three days before arriving at Brooklyn College, he appeared at the University of California, Irvine, the University of Pennsylvania and Yale.

At several of those campuses, Barghouti's arrival was preceded by complaints from Jewish leaders and students. But most of his previous appearances were not sponsored by the university, and few attracted the kind of controversy that Brooklyn College's event did.

Several prominent New York political leaders joined the call for the college to cancel or drop its sponsorship of the event. “You do not have a right, and should not put the name of Brooklyn College on hate,” said William C. Thompson Jr., the former city comptroller, who is running for mayor, at a news conference with more than a dozen elected officials, students and BDS opponents outside the campus. “They should be heard, but not with the official stamp of this college.”

Brooklyn College President Karen Gould has said she does not personally agree with BDS's views, but believed the speakers had a right to speak on campus. In a January 28 statement she declared that her administration would “uphold the tenets of academic freedom” at Brooklyn College. She added that “it is incumbent upon us to...allow our students and faculty to engage in dialogue and debate on topics they may choose, even those with which members of our campus and broader community may vehemently disagree.” Gould also announced that the college would host future events featuring other views on the Israeli-Palestinian conflict.

Gould's stance won her support and praise from others in the academic community. In an open letter to Gould, Barbara Bowen, president of the Professional Staff Congress, which represents faculty at all campuses of the City University of New York, endorsed the president's position that “the Brooklyn College Political Science Department's co-sponsorship of the BDS forum is not an endorsement of the views expressed by this movement. Departmental co-sponsorship of programs and forums is quite common and does not imply support.”

“Academic freedom is a hallmark of a great university and a necessary condition for the intellectual growth of its students and its promotion of democratic values,” Bowen continued. “Not only do the students benefit when academic freedom is protected, but the whole community gains valuable insights into controversial issues. The production of new knowledge, an important objective of universities, often occurs at the margins of what is generally accepted

and is often controversial. The entire society gains when ideas—both good and bad—are exposed to the light of public discourse. In this sense, protecting academic freedom is upholding a public good. It is, in part, for these reasons that the PSC-CUNY Collective Bargaining Agreement makes academic freedom a contractual right.”

Rudy Fichtenbaum, President of the American Association of University Professors, also wrote Gould “to commend your courageous defense of the principles of academic freedom at Brooklyn College.”

“Because academic freedom requires the liberty to learn as well as to teach, colleges and universities should respect the prerogatives of campus organizations to select outside speakers whom they wish to hear,” added Fichtenbaum, an economics professor at Wright State University. “The AAUP firmly believes that there can be no more appropriate site for the discussion of controversial ideas than a college or university campus.”

In a statement released on February 6, the National Coalition Against Censorship took particular aim at the role played by those New York political leaders who had called on the College to disassociate itself from the event.

“We strongly condemn the misguided effort of a group of city, state and federal officials, including Congressman Jerrold Nadler, Councilman Brad Lander, City Council Speaker Christine Quinn, NYC Comptroller John Liu, NYC Public Advocate Bill de Blasio, Borough President Marty Markowitz, and other congress- and assembly-members, to pressure Brooklyn College to cancel or alter a planned panel discussion about the Boycott, Divestment and Sanctions campaign. Some public officials are going so far as to threaten the college with defunding if it does not accede to their demands,” the statement said.

“This attempt to control public discussion and debate about Israel and Palestine reveals a deep disregard for freedom of speech and the constitutional obligations of public officials. We applaud Brooklyn College President Karen Gould and City University of New York Chancellor Matthew Goldstein for standing firmly behind the principle of academic freedom and respecting the rights of faculty, students, and invited guests.”

Support for the college’s position came as well from New York’s most prominent political figure, Mayor Michael Bloomberg.

“I couldn’t disagree more violently with BDS,” Bloomberg told a February 6 press conference called to discuss Hurricane Sandy relief. “As you know, I’m a big supporter of Israel—as big of a one as I think you can find in the city. But I could also not agree more strongly with an academic department’s right to sponsor a forum on any topic that they choose. If you want to go to a university where the government decides what kind of subjects are fit for discussion, I suggest you apply to a school in North Korea.”

Bloomberg further argued that any funding decision made based on this controversy would set a dangerous

precedent, ultimately leading to the destruction of the public university system.

“The last thing we need is for members of our City Council or State Legislature to be micromanaging the kinds of programs that our public universities run and base funding decisions on the political views of professors. I can’t think of anything that would be more destructive to a university and its students,” he said. “The freedom to discuss ideas—including ideas that people find repugnant—lies really at the heart of the university system. Take that away and the higher education in this country would certainly die.”

Bloomberg also claimed the pro-Israel advocates had actually undermined their own cause by giving so much attention to the forum.

“If you want to promote views that you find abhorrent, this is exactly the way to do it. What the protesters have done is given a lot of attention to the very idea they keep saying they don’t want people to talk about!” he exclaimed. “They just don’t think before they open their mouths. The best way to popularize an idea or book or a movie is just to get someone to ban it. All you have to do is take a look at the history of communism and see that. If they just shut up, it would have gone away! It would be a bunch of kids on a campus. Nobody would have gone to listen to them and nobody [would have] seen it. Now they’ve created the very monster that they say they’re opposed to.” Reported in: *New York Times*, January 31, February 7; ncac.org, February 6; aaup.org, February 6; politicker.com, February 6.

foreign

Ankara, Turkey

From communist works to a comic book, thousands of titles banned by Turkey over the decades have been taken off the restricted list, thanks to a government reform.

In July, the parliament adopted a bill stipulating that any decision taken before 2012 to block the sale and distribution of published work would be voided if no court chose to confirm the ruling within six months. The deadline came and went January 5 and no such judicial decisions were recorded, said the head of Turkey’s TYB publisher’s union, Metin Celal Zeynioglu.

“All bans ordered by (the courts in the capital) Ankara will be lifted on January 5,” city prosecutor Kursat Kayral said.

Kayral had announced in December that he would let lapse every ban in his jurisdiction, a decision that cleared 453 books and 645 periodicals in that area alone. Among them were several communist works such as the *Communist Manifesto*, by Karl Marx and Friedrich Engels, as well as writings by the Soviet Union’s Joseph Stalin and Russia’s revolutionary leader Vladimir Lenin. Others included a comic book, an atlas, a report on the state of human rights

in Turkey and an essay on the Kurds.

But the books under Kayral's jurisdiction make up only a fraction of all the titles affected, a total of up to 23,000 works, according to Zeynioglu, who said he learnt the number from the justice ministry. The ministry did not immediately confirm the total, a number that Zeynioglu said was hard to nail down.

"These bans weren't implemented in a centralized fashion; they were ordered by different institutions in different cities at different times," he said. "Besides, most have been forgotten over the years and publishers have resumed printing the banned books."

As an example, the complete works of Turkish poet Nazim Hikmet, who died in exile in Moscow in 1963, had already been stocked in libraries for years despite the ban.

The reform is thus largely symbolic, and some are skeptical of whether it reflects any true change within the Turkish state. "The mindset hasn't changed and people (in the administration) will continue to do whatever they think is right," said Omer Faruk, a former head of the Ayrinti publishing house. He cited as an example the fate of one of his published books: the erotic *Philosophy in the Bedroom*, by French writer Marquis de Sade.

Deemed licentious, the text was banned, but the Supreme Court overturned the decision. Yet "despite the ruling, the book continues to be seized", Faruk said.

This skepticism is reinforced by the ruling Islamic-rooted Justice and Development Party's record in matters of freedom of speech. The Committee to Protect Journalists said in December that Turkey had, at 49 people, the highest number of journalists behind bars, with most of them Kurds.

In late November, Prime Minister Recep Tayyip Erdogan himself took the directors of a television series to task, saying their script was in conflict with history and Muslim morals. "Those who toy with the people's values must be taught a lesson," Erdogan said.

But despite his reservations, Zeynioglu said there would be at least one concrete result of letting the bans lapse. "Many of the students arrested in demonstrations are kept in prison because they're carrying banned books," he said. "From now on, we won't be able to use that as an excuse." Reported in: *The Australian*, January 7. □

AASL survey explores filtering in schools...from page 41)

When respondents were asked if content for students is filtered by their school or by the district, 100% of the 4,299 respondents answered "Yes." Respondents also indicated that in 73% of schools, all students are filtered at the same level.

When asked if the filters affect both students and staff, 88% of 3,783 respondents said filters are used for staff, and 56% of 2,119 respondents said the same level of filtering is applied to students and staff alike.

The top four filtered content areas in schools surveyed include:

- Social networking sites (88%)
- IM/online chatting (74%)
- Gaming (69%)
- Video Services (66%)

Additional filtered content includes personal e-mail accounts, peer-to-peer file sharing and FTP sites. However, when asked if they could request sites be unblocked, 92% of the 3,961 respondents indicated they could in the following ways:

- 27% (1,069) Have the site unblocked in a few hours
- 35% (1,386) Have the block removed in within one to two days
- 17% (673) Wait more than two days but less than a week
- 20% (792) Wait one week or more

The survey found that 68% of the decisions to unblock a site are made at the District level and only 17% of the decisions are made at the building level.

The School Libraries Count! survey also asked which types of portable electronic devices students are allowed to bring to school. Respondents were able to select all that apply. The 4,299 responses revealed the following percentages for devices allowed:

- E-readers (53%)
- Cell phones (49%)
- Laptops (39%)
- MP3 Players (36%)
- Netbooks (32%)

When students bring these items to school, 51% of 2,981 responses indicated there is a filter mechanism used for these devices.

When answering how students' personal devices were filtered, the top five answers from 1,520 respondents were:

- Through the use of the AUP (48%)
- Logging on through the school network (47%)
- Not having Internet connectivity (29%)
- Using the discretion of the classroom teacher (28%)
- Logging into a "guest" network (26%)

The last filtering question discussed the impact that filtering has on the individual programs. Respondents were asked to select all that applied. Of the 4,299 responses

52% indicated that filtering impedes student research when completing key word searches, 42% indicated that filtering discounts the social aspects of learning, and 25% stated that filtering impeded continued collaboration outside of person-to-person opportunities.

On the other hand, 50% indicated filtering decreased the number of potential distractions, 34% indicated filtering decreased the need for direct supervision, and 23% indicated that filtering allowed research curriculum to yield more appropriate results.

One trend revealed in the survey was that students are increasingly allowed to bring their own devices to school, but those devices are still subject to the filters. Many school librarians are reporting that true student research is being hindered by school filters, making this an issue that AASL will continue to address in the future. □

IFC report to ALA Council... from page 43)

Newsletter on Intellectual Freedom

This fall, OIF and ALA Publications successfully finished transitioning the *Newsletter on Intellectual Freedom* to an all-digital format. The *Newsletter* is now hosted on MetaPress and is available as a digital edition that provides a print-on-demand option for those who wish to have a physical copy.

The IFC is now moving to the second phase of revitalizing and renewing the *Newsletter on Intellectual Freedom*. A group of IFC members will work over the next six months to initiate a redesign of the *Newsletter* and consider how to enrich its content to provide greater value to librarians and researchers who rely on it for information and news about intellectual freedom.

PROJECTS

Banned Books Week: Celebrating 30 Years of Liberating Literature

Banned Books Week 2012 (Sept. 30–Oct. 6) marked the 30th anniversary of the national book community’s annual celebration of the freedom to read. Award-winning broadcast journalists Bill Moyers and Judith Davidson Moyers were named the first ever Honorary Co-Chairs for the 30th anniversary of Banned Books Week. To honor this milestone anniversary, Bill Moyers produced a video essay entitled “The Bane of Banned Books,” which was featured as part of the Banned Books Virtual Read-Out.

Over 500 readers joined Moyers in the Virtual Read-Out, including critically acclaimed banned author Stephen Chbosky of *The Perks of Being A Wallflower*; Chicago-based author Sara Paretsky of V.I. Warshawski fame; and San Antonio’s Poet Laureate, Carmen Tafolla. The videos

are posted at www.youtube.com/bannedbooksweek.

In addition to the Banned Books Virtual Read-Out, OIF coordinated the 50 State Salute to Banned Books Week. The 50 State Salute formed the core of ALA’s participation in the Virtual Read-Out and consisted of videos from each state demonstrating how they celebrate the freedom to read. Check out the 50 State Salute map to find out if your state created one: www.ala.org/advocacy/banned/bannedbooksweek/celebrating-banned-books-week/50statesalutevideos. OIF also created a timeline of banned/challenged books, which features a prominent banned or challenged book a year since 1982. To view the timeline, visit www.ala.org/advocacy/banned/frequently-challenged/timeline30-years-liberating-literature.

BBW merchandise, including posters, bookmarks, t-shirts, and tote bags, are sold and marketed through the ALA Store (www.alastore.ala.org/). More information on Banned Books Week can be found at www.ala.org/bbooks. You also can become a fan at www.facebook.com/banned-booksweek or follow @OIF on Twitter—the hashtag is #BannedBooksWeek. Banned Books Week 2013 will take place September 22–28.

Choose Privacy Week

Choose Privacy Week will take place May 1–7, 2013 and features the theme “Who’s Tracking You?” which is reflected in the bold graphics used for the posters and buttons available for the 2013 event. Also available for premiums and giveaways this year is a unique item—an Radio Frequency Identification Technology (RFID) blocker sleeve for bank cards and ID cards that prevents unauthorized access to the card’s chip. Current activities planned for Choose Privacy Week include a youth video contest and a programming webinar for librarians.

This marks the fifth and final year of the Open Society Foundation grant that has funded the OIF privacy initiative. In addition to Choose Privacy Week, the grant has funded two other projects. The first is a new survey measuring librarians’ attitudes about privacy; the second is outreach to libraries serving immigrant communities to help us understand how libraries can assist immigrants in learning about their privacy rights. We are now exploring grant opportunities with our research team that will enable OIF to create programming materials to achieve this goal.

In June 2012, Consumer Action, the non-profit consumer rights organization based in Washington, D.C., recognized the Office for Intellectual Freedom’s advocacy on behalf of privacy rights by awarding OIF its 2012 Consumer Excellence Award. In presenting the award, Consumer Action cited OIF’s ongoing efforts to educate consumers on their privacy rights via Choose Privacy Week, the privacyrevolution.org website, and its short videos on privacy, including the 2012 Choose Privacy Week video, “Vanishing Liberties.” Consumer Action formally presented the award to OIF on October 2, 2012.

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

FTRF report to ALA Council...from page 43)

schools. Often, the Foundation initiates or joins lawsuits that are intended to vindicate broader First Amendment freedoms, with the understanding that such cases provide a deep and expansive foundation for the individual's right to read free from official censorship or interference.

One such case is *United States v. Alvarez*, a lawsuit that challenged the constitutionality of the Stolen Valor Act, a law that made it a federal crime to lie about having received military honors. It was certainly a difficult case—Alvarez, the defendant, was a pathological liar who did not scruple at telling falsehoods to achieve his ends. At a public meeting of the water district board in California to which he had just been elected, he told the crowd many false statements about his life, including the lie that he had been awarded the Congressional Medal of Honor. He was then charged and convicted of violating the Stolen Valor Act. After he was convicted, he challenged the law on First Amendment grounds, arguing that while his speech may have been a lie, it was entitled to First Amendment protection.

FTRF filed a friend of the court brief in support of Alvarez's claims before the U.S. Supreme Court. The brief did not defend Alvarez' lies, but instead challenged the government's assertion that mere falsehood was sufficient grounds to criminalize an individual's speech. FTRF argued that all speech is presumptively protected by the First Amendment, subject only to specific traditional historic exceptions for obscenity.

I am pleased to report that the Supreme Court agreed with our argument. Last summer, it issued a decision that overturned the Stolen Valor Act, holding that the law as written violates the First Amendment. Justice Kennedy eloquently summarized the court's holding:

The Nation well knows that one of the costs of the First Amendment is that it protects the speech we detest as well as the speech we embrace. Though few might find respondent's statements anything but contemptible, his right to make those statements is protected by the Constitution's guarantee of freedom of speech and expression. The Stolen Valor Act infringes upon speech protected by the First Amendment.

Even as it works to defend universal First Amendment principles, FTRF looks to its core mission by constantly

monitoring book challenges and other attempts to infringe upon the library user's freedom to read.

Last fall, FTRF closely followed the news reports about requests to the Davis County, Utah school board to remove all copies of *In Our Mothers' House* from school library shelves. The requests to remove the book complained that it "normalizes a lifestyle we don't agree with." The book, written by award-winning children's author Patricia Polacco, depicts a family headed by two mothers.

Despite a finding by the reconsideration committee that the book should be retained in the library, the school district ordered its librarians to remove all copies of the book from the open shelves at the district's elementary school libraries and to place them on restricted shelves that could only be accessed with written parental permission.

FTRF welcomed the news when the ACLU of Utah filed a lawsuit in November 2012 on behalf of two students in the school district and their mother. The complaint alleged that the "primary justification for removing the book from the shelves is that, by telling the story of children raised by same-sex parents, the book constitutes 'advocacy of homosexuality,' in purported violation of Utah's sex-education laws." The plaintiffs asked the court to issue an order requiring the school board to return the book to school library shelves without restrictions and prohibiting the school district from restricting access to books in the library on the grounds that the books contain "homosexual themes" or "advocacy of homosexuality."

FTRF consulted with the ACLU attorneys and provided expert advice regarding libraries and the intellectual freedom issues at stake in the lawsuit, resolving to support the plaintiffs and the ACLU until the case's conclusion. With the parties, we waited to read the school district's response to the lawsuit. But prior to answering the complaint, the Utah Attorney General's office—the counsel that had entered an appearance on behalf of the school district— informed the ACLU that the book would be returned to the open shelves. The book now has been returned to all school libraries, where it is available without restriction. The case remains pending as the ACLU engages in discussions with the school district regarding standards to be used in future challenges to library materials.

Finally, I would like to report on two lawsuits filed in the California state courts that challenged an "Outdoor Public Forum Policy" adopted by the Redding Public Library to regulate the distribution of leaflets at the library's entranceway and in its parking lot. The policy limited leafleting to a specific "free speech area," prohibited leafleting that solicited donations, banned leafleting of cars in the parking lot, and prohibited the use of coarse language and gestures. The library argued that the policy was necessary for public safety and to prevent harassment of library patrons.

Both the trial court and the appeals courts disagreed and issued orders overturning the library's policy. The final

opinion issued by the appeals court upheld the trial court's determination that the public square in front of the library and the parking area constituted traditional public fora, rather than a limited public forum as the City of Redding claimed. The court concluded that the policies did not constitute reasonable time, place and manner restrictions, and with regard to the prohibition against "coarse" language, the court held that it was content-based, unconstitutionally vague, and did not pass the strict scrutiny test. With respect to leafleting in the parking lot, the appeals court did agree that the safety issues that the library had raised through an expert declaration from the city traffic operations manager constituted a reasonable justification for the prohibition against placing leaflets on car windshields.

FTRF was not a party to this lawsuit.

JUDITH F. KRUG MEMORIAL FUND

FTRF's founding executive director, Judith F. Krug, was passionate about the need to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely. The Judith F. Krug Memorial Fund, created by donations made by Judith's family, friends, colleagues, and admirers, funds projects and programs that assure that her life's work will continue far into the future.

Last summer, we reported that FTRF made eight \$1,000 grants to libraries, schools and other organizations in support of Banned Books Week activities via the Krug Fund. This past fall, the recipients of those grants used the funds to stage wonderfully diverse and creative programs and projects in celebration of Banned Books Week's 30th Anniversary. The projects included a banned books talk by author Stephen Chbosky at the California Polytechnic State University; a Read-Out and "roadside wave" staged by the Simon Sanchez High School in Guam; a banned book flash mob at Lehigh University sponsored by Judith's Reading Room; and a "Battle of the Banned Books" competition sponsored by the Friends of the Talkeetna, Alaska Public Library despite flooding that forced the cancellation of its Book Festival.

By far the most viral of the projects funded by the Krug Fund was the Lawrence, Kansas Public Library's "Banned Book Trading Cards." Each day of Banned Books Week, the library gave away a new trading card depicting local artists' renditions of banned and challenged books with "statistics" about the challenges on the reverse of the card. A news story about the card was featured on the front page of the local paper and was distributed nationally by the Associated Press, reaching the Huffington Post. The library has since sold more than 500 sets of the trading cards around the country and internationally.

In addition to the Banned Books Week grants, the Judith F. Krug Fund is funding the development of various initiatives to provide intellectual freedom curricula and training

for LIS students. This week, Barbara Jones and Jonathan Kelley of the OIF met with members of the Association for Library and Information Science Education (ALISE) to continue discussions about the best means of accomplishing this goal.

DEVELOPING ISSUES

The FTRF Developing Issues Committee provided information and led discussions about three emerging issues that could impact intellectual freedom in libraries and give rise to future litigation. The first issue discussed was the near universal use of Internet filters in school libraries and the impact the practice has on student learning outcomes. The second discussion considered claims raised by a Michigan lawsuit filed on behalf of students who claimed that their school district had failed to teach them to read in violation of their right to a public education. The third discussion considered the First Amendment and privacy issues raised by the decision of a Westchester County, New York newspaper to publish the names and addresses of all the gun permit owners in the region in the wake of the Newtown, Conn. tragedy.

Finally, in a special session, the FTRF Board discussed the intellectual freedom and privacy issues raised by libraries' move to e-books and the refusal of major publishers to sell e-books to public and school libraries. Pat Losinski, director of the Columbus, Ohio Metropolitan Library, and Kent Oliver, director of the Nashville Public Library and a past president of FTRF, presented their concerns about a growing "content divide" between those library users who can afford e-readers and tablets and those without the funds or resources to acquire e-books. Both urged the FTRF to become a voice and advocate for those library users who are being denied access to all the content available in our democratic society because of publishers' refusal to sell their most desirable materials to libraries.

STRATEGIC PLAN INITIATIVE

This past fall, FTRF took a major step forward in achieving portions of its new strategic plan when we launched our redesigned newsletter and website. The newsletter has a more readable and attractive graphic design and its content will be written to be more engaging. The new website features a clean, contemporary look and includes a gallery of FTRF's Roll of Honor winners, a detailed history of the Foundation, and incorporates FTRF's social media presence. In addition, the site integrates FTRF's member database. As a result, it is easier to become a member of the Foundation and FTRF members are able to update their contact information as well as renew their membership online. It's our hope that these new online tools will improve our members' experience and enhance FTRF's public outreach.

FTRF also is pursuing efforts to build our organizational

capacity to achieve our litigation, education, and awareness building objectives and to increase our membership by reaching out to both librarians and the general public via social media, direct mail, and other avenues.

I want to thank John Chrastka of AssociaDirect and Jonathan Kelley, FTRF's program coordinator, for the hard work and long hours they put in (many of them uncompensated) to implement the redesigned newsletter and website and to increase FTRF's membership.

FTRF MEMBERSHIP

FTRF membership is the critical foundation for FTRF's work defending First Amendment freedoms in the library and in the larger world. I strongly encourage all ALA Councilors to join me in becoming a personal member of the Freedom to Read Foundation, and to have your libraries and other institutions become organizational members. Please visit www.ftrf.org and join today. Alternatively, you can call the FTRF office at 800-545-2433 x4226 and join by phone, or send a check (\$35.00+ for personal members, \$100.00+ for organizations, \$10.00+ for students) to:

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

digital divide hurts students...from page 45)

when they require kids to get online, but Adams acknowledged that those students who have home Internet have the advantage of "unlimited time to pull in more information and fine-tune their digital projects."

McDonald's began rolling out Wi-Fi in its U.S. restaurants years ago. In 2010, McDonald's made it free even for those not buying food, a move soon followed by Starbucks.

Jonah Sigel, who oversees Starbucks's Wi-Fi program, said there is no need to require that Internet users purchase anything. "Before I started working here I always felt guilty not at least buying a bottle of water" when using the Starbucks Wi-Fi, Sigel said. "I hope people act similarly."

Many McDonald's franchisees have a similar view. "It's hard to sit there and watch people eat McDonald's french fries and not go buy your own," says Ted Lezotte, a McDonald's franchisee in northern Michigan who owns four restaurants.

In Citronelle, located about thirty miles north of the city of Mobile, tenth-grader Dustin Williams works on social-studies reports and Facebook posts at a McDonald's across the street from the high school. "For research and stuff, a book ain't enough," he said.

Joshua Edwards made multiple visits to the same McDonald's to work on papers this school year. His mother, Linda Edwards, says she already pays a large portion of her monthly budget for telecommunications: more than \$150 for cellphones for herself and an older son, and \$55 for satellite television, out of a \$1,200 Social Security check. She said she couldn't afford the \$250 deposit she would need to get satellite Internet for her trailer home off a dirt road about fifteen minutes outside Citronelle.

Edwards came up with a stopgap measure: for an extra \$10 per month, she was able to use an AT&T feature that lets her use her smartphone as a Wi-Fi hot spot. The feature gets her some connectivity, though users doing bandwidth-heavy tasks like watching video over the cellular network can end up with hefty data charges. Edwards plans to move closer to town and to try to get a landline Internet connection when she does.

For now, she has been taking her children to McDonald's. "If I had a little money I would go buy something [there], but most of the time I didn't," she said.

She has little choice. The local public school system has encouraged teachers to put assignments online and students to use their own devices for school work. Teachers post extra-credit problems and links to educational videos and other resources.

In a Citronelle High School history class recently, five juniors were huddled around laptops and browsing the Web. They were working on a research project their teacher Megan Wiggins had assigned: Create a simulated Facebook profile for a U.S. president. Some students were racing to get their work done before class ended. If they didn't, they said, they would have to find time to use the Internet later at school or finish up at the library or McDonald's. Other students were sitting at their desks reading or doing pencil-and-paper homework. They were the kids who had Internet access at home.

The U.S. government has been concerned about the digital divide since the Internet came into wide use two decades ago. In 1996, Congress as part of landmark telecom legislation created a program called E-Rate that provided about \$2 billion a year to connect schools and libraries to the Internet. But E-Rate didn't cover Internet access at home. In recent years regulators debated whether or not to change that—but settled only on a \$10 million pilot program that education leaders don't expect to be expanded without more E-Rate funding being made available.

More recently, regulators under President Barack Obama have made expanding broadband access a priority. But the advanced wireless networks and high-speed Internet connections built by companies like AT&T, Verizon, and Sprint aren't subject to rules such as the ones that required carriers to make traditional telephone service available to everyone.

Carriers argue that requiring service to all doesn't make sense in a world in which many more options for getting connected—from cable connections to cellphones to

satellite dishes—exist than ever before. Regulators agree that old rules need to change but say some regulation is still necessary. The process of updating old rules is just beginning, and fights over how closely the government should regulate new networks are likely later this year.

Industry groups say that companies are doing their part to ensure that more Americans can get online. Several cable companies have started offering Internet service for \$9.95 a month to some poor families with children in school.

Larry Irving, a former telecommunications policy official in the Clinton administration who is now a consultant to nonprofits and telecom companies, says that the industry has expanded access across the U.S. in a way that was hard to imagine in the 1990s.

“No one disagrees with the concept of 100% connectivity,” he says. “The rub is how do you get there in a way that doesn’t distort the market.”

Karen Cator, director of the office of educational technology at the U.S. Department of Education, said the department is trying to encourage school districts to band together in their negotiations with phone and cable companies in order to get the best price for Internet connections—including purchasing wireless broadband for students who don’t have Internet at home. She is also looking for Washington to invest more in building out broadband infrastructure, as it did as part of the federal stimulus of 2009.

Without more action from the federal government, Cator said, the effort of broadening Internet access for poor and rural students “would be like building the highways but expecting every community to build their own piece.”

That is what some school districts are effectively doing. Baldwin County, Alabama, is spending \$2.5 million a year to lease Apple laptops for each of its 10,000 high-school students. To make the investment pay off, Superintendent Alan Lee said he is looking into building a wireless network to be run by the school district, a project that has included mapping his county’s geography and cell-tower locations.

Lee applied for a \$3.7 million grant from a foundation to install Wi-Fi networks on school buses and in three cities in the district, but the grant funding has been whittled down to \$500,000—only enough to try the program in one city.

In Pinconning, population 1,300, Lezotte, who owns the McDonald’s there, said he can tell when exams are coming up by how many kids are gathered at his restaurant using their laptops. Other Internet users stay in the parking lot, where they can take advantage of the McDonald’s Wi-Fi guilt-free and purchase-free.

Jennifer LaBrenz, a single mother who has take-home income of roughly \$2,000 a month, a year ago was paying close to \$300 a month for home phone and Internet, satellite television and smartphones for herself and her oldest daughter.

To cut costs, she canceled home phone and Internet service. That is why she parked her Suzuki outside Lezotte’s restaurant one evening this fall. While her daughter Olivia

was balancing her computer on her lap in the passenger seat, LaBrenz tapped out a Facebook post on her phone: “Sitting McDonald’s parking lot so Olivia can use Wi-Fi to do homework and email her teacher. I love the poor life.” Reported in: *Wall Street Journal*, January 29. □

high school students...from page 46)

decided not to publish something based on the belief that school officials would censor it.

The survey was administered by the Student Press Law Center and the convention sponsors, the National Scholastic Press Association and the Journalism Education Association. The survey was formulated and the results tabulated by the Center for Scholastic Journalism at Kent State University. The results are not intended to represent a random sampling of students and advisers nationwide, but are an anecdotal indication of their experiences.

The respondents to the survey represented students and teachers from 31 states and included those working with newspapers and newsmagazines, yearbooks, websites and television broadcast programs. The majority of the respondents were from schools with more than 2,000 students, but 5 percent were from schools with fewer than 500 students.

“These conventions attract the best high school student media staffs in the country, the ones that win national awards for their excellent work,” said Professor Mark Goodman, Knight Chair in Scholastic Journalism at Kent State. “If over 40 percent of these students are experiencing censorship, it’s a reasonable assumption that the number for all high school student publications in the country is much higher.”

On January 13, 1988, the U.S. Supreme Court handed down a ruling in the case *Hazelwood School District v. Kuhlmeier* limiting the First Amendment protections for public high school student journalists. However, the ruling did not require school officials to censor and some legal protections against censorship remain. Journalism education organizations have condemned the ruling and endorsed the educational value of protecting student press freedom.

“As we take stock of how the Hazelwood decision has impacted a generation of young learners, it’s important for the public to understand that censorship is not something that happens in isolated backwaters. It’s a reality in every type of school and in every state, and a problem that afflicts more than journalism,” said Frank D. LoMonte, executive director of the Student Press Law Center, a nonprofit legal information and advocacy organization based in Arlington, Virginia.

“With the school-reform community focused on helping students become more civically literate and ridding schools of bullying, ending heavy-handed censorship must be part of that discussion and part of a complete solution. Schools will continue to be disempowering places where no

meaningful discussion of civic issues takes place so long as Hazelwood censorship is practiced,” LoMonte said.

The SPLC recently launched a website and outreach campaign, www.curehazelwood.org, timed to coincide with the 25th anniversary of the landmark Supreme Court ruling. The site includes information about the case, stories of how Hazelwood censorship has affected young people, and tips to help students work to improve the state of their own rights. Reported in: splc.org, January 9. □

where books go to die...from page 46)

in an issue of the 1949 national bibliography with black ink obliterating a name. The unfortunate author, one Ivanov, had probably been declared a “non-person” in 1949, one of the worst years of Stalin’s rule, and his name had to be removed from the bibliography. His book, no doubt, was ordered to be removed from library shelves. He himself was, very likely, sent to the gulag or shot in an unknown cellar somewhere.

What happened to Ivanov’s book after it disappeared from the libraries? Librarians reading this who worked in libraries in the former Soviet Union will be familiar with the term *spetskhran*, short for *spetsial’noe khranilische*, “special repository.” An innocent enough term, unless you understand its real Soviet meaning, which is “the place where books go to die.” I expect Ivanov’s book ended up in a *spetskhran*, along with countless others—millions and millions of volumes.

I had first heard the term *spetskhran* in the late 1970s, from someone, perhaps an emigre librarian friend, but I didn’t have any idea of what it really meant. In the summer of 1978 I visited a librarian, scholar, and teacher of librarians in what was then Leningrad (now St. Petersburg again). This woman, with whom I had corresponded for a couple of years, became my close friend. She was horrified when she learned that I had changed the direction of my research from the history of Russian bibliography to the history of censorship in imperial Russia. I recall our conversation so clearly: it took place, as all serious conversations did in those days, outdoors in a lovely garden, where we wouldn’t be overheard. “Censorship! Why? I won’t be able to help you; no one will! The topic is absolutely verboten. It doesn’t matter that you’ll work on imperial Russia. They don’t want comparisons with Soviet censorship, so they won’t let you see anything, even about the situation before the Revolution. Too dangerous!”

Her daughter, also a librarian, worked in one of the great old libraries of Leningrad. When I asked her to describe the *spetskhran* in her institution she shook her head. “I’ve never been there—I don’t know where it is, and I don’t want to know. It’s not a good idea to know. The library is huge.

Somewhere, along some corridor, there’s an unmarked door. The people who work there know where it is. They aren’t like me. They’re KGB [secret police] employees. I stay away from people like that.”

Later, while trying to learn about censorship in the Soviet Union, I read a research paper by Boris Korsch, a librarian who emigrated to Israel from the Soviet Union, called “The Permanent Purge of Soviet Libraries,” published in 1983 by The Hebrew University of Jerusalem. Korsch describes in great detail, and with many examples, the practices the Soviet state implemented to remove “dangerous” publications from library shelves.

What was deemed “dangerous” depended on the specific period, Stalin’s reign being the most brutal, as it was in so many other spheres of Soviet life. In all periods, works by Communists who had fallen from favor, as well as publications of foreign writers deemed unsuitable for Soviet readers, were removed. The shelves were cleansed continually. No one knows precisely how many items were purged, but clearly the number is a very large one indeed. There were something on the order of 380,000 libraries in the Soviet Union, ranging from huge scholarly and scientific institutions and federal-level public libraries to tiny rural libraries. All of their collections were purged continuously.

What happened to all these discarded publications? Many were scrapped, pulped, burned. Others were transferred to the *spetskhrany* that had been established in large libraries throughout the country, primarily academic and research institutions. There they remained for decades, guarded by trusted staff members who reported to, or were themselves, members of the state security apparatus. A few individuals were permitted to enter a *spetskhran* to examine a specific item that he or she could demonstrate was necessary for research—the completion of a doctoral dissertation, for example. But for most Soviet citizens these publications, from works by non-persons to *The New York Times*, were buried on the authority of the State, like many of their authors.

At the behest of Mikhail Gorbachev, who ushered in the age of glasnost, these gulags for books were acknowledged and opened quite suddenly. I remember being in Moscow, St. Petersburg, and other cities in the late 1980s when every library had an exhibit called “From the *Spetskhran*” or something similar. Librarian colleagues with whom I had never dared to talk about my research told me that of course the library owned my 1985 book on imperial Russian censorship: it had been in the *spetskhran*. In 1991, when I began what became a lifelong partnership with Ekaterina (Katya) Genieva, director of the Library for Foreign Literature, Katya and her staff gleefully took me to a room in the library that had been the *spetskhran* and had been converted to a very pleasant reading room for children!

Beginning in 1992, in the new Russia, I began working with Katya on a historic exhibition on the censorship of foreign works in imperial Russia and the

Soviet Union. Now the doors to archives and the buried treasures of the *spetskhrany* were open to us—even to me, an American! These were heady days for me. I even had a chance to enter the *spetschast*’ (special section) in Katya’s library, a tiny, cramped room in the basement, unmarked, dimly lit, where the *Talmud* was housed. The *Talmud*! Not the sacred book of my Jewish ancestors, giving us detailed instructions on how to live, but, rather, detailed instructions prepared by the Soviet authorities to keep all published works in line with Soviet thinking. Just as the imperial Russian censors liked to joke about the black ink they used to blot out objectionable passages, calling it “caviar,” their Soviet counterparts joked too, hence the *Talmud*.

Such treasures my Russian colleagues and I found in the *spetschast*’ and the archives for our exhibition! Documents ordering the removal of this or that book from the library shelves: the tool of Boris Korsch’s “permanent purge.” Volumes, hundreds of them, of Western books, specially translated into Russian and published by a major publishing house in a secret series available only to approved officials. And the *Talmud*, of course. Volumes of short reviews of Western books about Russia, evaluating their danger level for the general population. (It was a unique pleasure to read the review of one of my own books!)

The *spetskhrany* are gone now. The books have been shelved in general library stacks, the rooms converted to more innocent uses. Many of the card catalogs remain, though, dusty monuments to the Soviet past. □

from the bench...from page 66)

happen once the ordinance takes effect, said the plaintiffs’ lawyer, Christina DiEduardo.

The suit was filed by a group of activists, including George Davis, who got several hundred votes as the “naked candidate” for mayor in 2007, and Mitch Hightower, organizer of regular “nude-ins” in the Castro district that prompted Supervisor Scott Wiener to sponsor the ban.

Chen noted that the U.S. Supreme Court has ruled that nude dancing and other artistic expression is entitled to some constitutional protection but nudity itself is not a statement of anything.

He also rejected the plaintiffs’ claim that the law is discriminatory because it doesn’t apply to children under 5 or to events with city permits, like the Bay to Breakers and the Folsom Street Fair. Parents sometimes have to change their kids’ diapers in public, Chen observed. He also said San Franciscans have “come to expect public nudity” at events like the Bay to Breakers, and thus are not “unwillingly or unexpectedly exposed” to sights they’d rather not see. Reported in: *San Francisco Chronicle*, January 29.

is it legal?...from page 78)

“It was a failure to connect and integrate and understand the intelligence we had.”

As result, President Obama demanded a watchlist overhaul. Agencies were ordered to send all their leads to NCTC, and NCTC was ordered to “pursue thoroughly and exhaustively terrorism threat threads.” Quickly, NCTC was flooded with terror tips—each of which it was obligated to “exhaustively” pursue. By May 2010 there was a huge backlog, according a report by the Government Accountability Office.

Legal obstacles emerged. NCTC analysts were permitted to query federal-agency databases only for “terrorism data-points,” say, one specific person’s name, or the passengers on one particular flight. They couldn’t look through the databases trolling for general “patterns.” And, if they wanted to copy entire data sets, they were required to remove information about innocent U.S. people “upon discovery.”

But they didn’t always know who was innocent. A person might seem innocent today, until new details emerge tomorrow.

“What we learned from Christmas Day”—from the failed underwear bomb—was that some information “might seem more relevant later,” said Joel, the national intelligence agency’s civil liberties officer. “We realized we needed it to be retained longer.”

Late last year, for instance, NCTC obtained an entire database from Homeland Security for analysis, according to a person familiar with the transaction. Homeland Security provided the disks on the condition that NCTC would remove all innocent U.S. person data after thirty days.

After thirty days, a Homeland Security team visited and found that the data hadn’t yet been removed. In fact, NCTC hadn’t even finished uploading the files to its own computers, that person said. It can take weeks simply to upload and organize the mammoth data sets.

Homeland Security granted a thirty-day extension. That deadline was missed, too. So Homeland Security revoked NCTC’s access to the data.

To fix problems like these that had cropped up since the Abdulmutallab incident, NCTC proposed the major expansion of its powers that would ultimately get debated at the March meeting in the White House. It moved to ditch the requirement that it discard the innocent-person data. And it asked for broader authority to troll for patterns in the data.

As early as February 2011, NCTC’s proposal was raising concerns at the privacy offices of both Homeland Security and the Department of Justice, according to emails reviewed by the *Wall Street Journal*.

At the Department of Justice, Chief Privacy Officer Nancy Libin raised concerns about whether the guidelines could unfairly target innocent people, these people said.

Some research suggests that, statistically speaking, there are too few terror attacks for predictive patterns to emerge. The risk, then, is that innocent behavior gets misunderstood—say, a man buying chemicals (for a child’s science fair) and a timer (for the sprinkler) sets off false alarms.

An August government report indicates that, as of last year, NCTC wasn’t doing predictive pattern-matching.

The internal debate was more heated at Homeland Security. Callahan and colleague Margo Schlanger, who headed the 100-person Homeland Security office for civil rights and civil liberties, were concerned about the implications of turning over vast troves of data to the counterterrorism center, these people said.

They and Libin at the Justice Department argued that the failure to catch Abdulmutallab wasn’t caused by the lack of a suspect—he had already been flagged—but by a failure to investigate him fully. So amassing more data about innocent people wasn’t necessarily the right solution.

The most sensitive Homeland Security data trove at stake was the Advanced Passenger Information System. It contains the name, gender, birth date and travel information for every airline passenger entering the U.S. Previously, Homeland Security had pledged to keep passenger data only for twelve months. But NCTC was proposing to copy and keep it for up to five years. Callahan argued this would break promises the agency had made to the public about its use of personal data, these people said.

Discussions sometimes got testy, according to emails reviewed by the *Journal*. In one case, Callahan sent an email complaining that “examples” provided to her by an unnamed intelligence official were “complete non-sequiturs” and “non-responsive.”

In May 2011, Callahan and Schlanger raised their concerns with the chief of their agency, Janet Napolitano. They fired off a memo under the longwinded title, “How Best to Express the Department’s Privacy and Civil Liberties Concerns over Draft Guidelines Proposed by the Office of the Director of National Intelligence and the National Counterterrorism Center,” according to an email obtained through the Freedom of Information Act. The contents of the memo, which appears to run several pages, were redacted.

The two also kept pushing the NCTC officials to justify why they couldn’t search for terrorism clues less invasively, these people said. “I’m not sure I’m totally prepared with the firestorm we’re about to create,” Schlanger emailed Callahan in November, referring to the fact that the two

wanted more privacy protections. Schlanger returned to her faculty position at the University of Michigan Law School soon after but remains an adviser to Homeland Security.

To resolve the issue, Homeland Security’s deputy secretary, Jane Holl Lute, requested the March meeting at the White House. The second in command from Homeland Security, the Justice Department, the FBI, NCTC and the office of the director of national intelligence sat at the small conference table. Normal protocol for such meeting is for staffers such as Callahan to sit against the walls of the room and keep silent.

By this point, Libin’s concern that innocent people could be inadvertently targeted had been largely overruled at the Department of Justice, these people said. Colleagues there were more concerned about missing the next terrorist threat.

That left Callahan as the most prominent opponent of the proposed changes. In an unusual move, Lute asked Callahan to speak about Homeland Security’s privacy concerns. Callahan argued that the rules would constitute a “sea change” because, whenever citizens interact with the government, the first question asked will be, are they a terrorist?

Brennan considered the arguments. And within a few days, the attorney general, Eric Holder, had signed the new guidelines. The Justice Department declined to comment about the debate over the guidelines.

Under the new rules, every federal agency must negotiate terms under which it would hand over databases to NCTC. This year, Callahan left Homeland Security for private practice, and Libin left the Justice Department to join a private firm.

Homeland Security is currently working out the details to give the NCTC three data sets—the airline-passenger database known as APIS; another airline-passenger database containing information about non-U.S. citizen visitors to the U.S.; and a database about people seeking refugee asylum. It previously agreed to share databases containing information about foreign-exchange students and visa applications.

Once the terms are set, Homeland Security is likely to post a notice in the Federal Register. The public can submit comments to the Federal Register about proposed changes, although Homeland Security isn’t required to make changes based on the comments. Reported in: *Wall Street Journal*, December 12. □

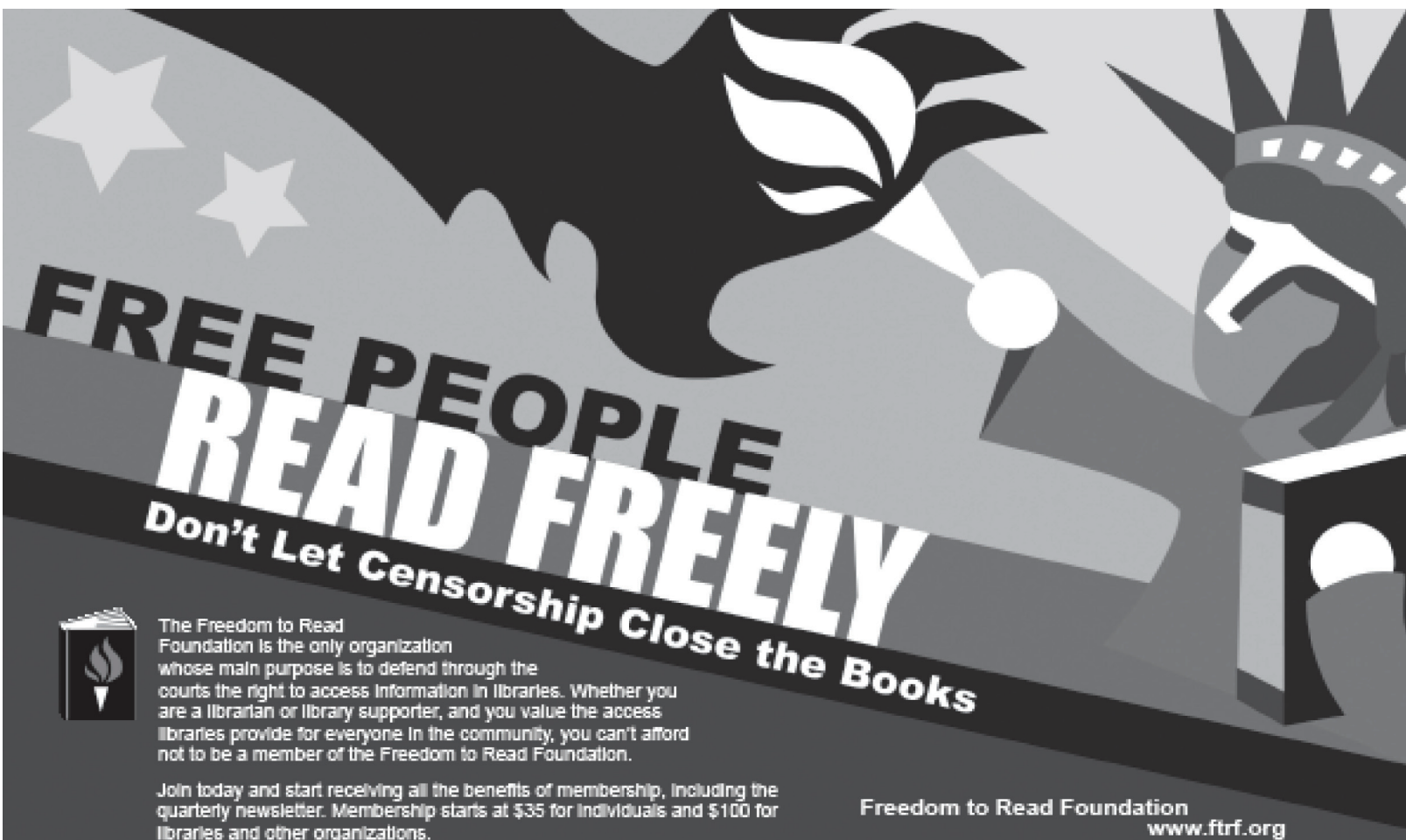
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