newsletter on intellectual freedom

IFC ALA

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opposition grows to Tucson book removals and ethnic studies ban

Hundreds of students walked out of their Tucson schools January 23 in a coordinated protest against the banishment of the district's acclaimed Mexican American Studies program and the removal from classrooms of seven books previously used in the program.

Pouring into the downtown Tucson area from Pueblo, Cholla and Tucson high schools, among other institutions, the students brought their march to the offices of Tucson Unified School District (TUSD) administrators. Administrators and board members had issued a series of conflicting and inaccurate statements and carried out the extreme actions of confiscating books in front of children. The previous week, a recently hired assistant superintendent from Texas made a troubling call for the deeply rooted Tucson students—many of whom trace their ancestors to the town founders—to "go to Mexico" to study their history.

Supporters of the Ethnic Studies/Mexican American Studies program, which was terminated indefinitely on January 10 by the school board, launched walkouts and vowed to step up their actions for a large-scale walkout, teach-in and launch of a "School of Ethnic Studies."

In a district with over sixty percent of the students coming from Mexican-American backgrounds, the school board "dismantled its Mexican-American Studies program, packed away its offending books, shuttled its students into other classes," according to an editorial in the *New York Times,* because "it was blackmailed into doing so." The *Times* referred to measures taken by Arizona state Superintendent of Public Instruction John Huppenthal, who threatened to withhold millions of dollars if TUSD didn't terminate the nationally acclaimed program immediately.

Huppenthal has spent years crusading against ethnic-studies programs that he claims are "brainwashing" children into thinking that Latinos have been victims of white oppression. As a state legislator, he co-wrote a law cracking down on ethnic studies, and as Superintendent he decided that Tucson's district was violating it. School officials in Tucson and elsewhere strenuously disagreed, saying he misunderstood and mischaracterized a program that brought much-needed attention to a neglected part of America's history and culture. They say it engaged students, pushed them to excel, and led to better grades and attendance.

But their interpretation collided with that of Huppenthal, whose law prohibits programs that "promote the overthrow of the United States government," "promote resentment toward a race or class of people" and "advocate ethnic solidarity instead of the treatment of pupils as individuals."

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Published by the ALA Intellectual Freedom Committee, Martin Garnar, Chair

in this issue

targets of the censor

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Hence, facing a multimillion-dollar penalty in state funds, on January 10 the governing board of Tucson's largest school district officially ended the thirteen-year-old program. Unless two students win a federal lawsuit arguing that the loss of the program violates their First Amendment rights, Tucson school officials and students are going to have to enrich their curriculum another way.

As part of the termination, the District released an initial list of books to be banned from its schools. According to district spokesperson Cara Rene, the books were "cleared from all classrooms, boxed up and sent to the Textbook Depository for storage." Later other representatives said copies of the books would remain in school libraries.

The books removed were: *Critical Race Theory*, by Richard Delgado; *500 Years of Chicano History in Pictures*, edited by Elizabeth Martinez; *Message to Aztlan*, by Rodolfo Corky Gonzales; *Chicano! The History of the Mexican Civil Rights Movement*, by Arturo Rosales; *Pedagogy of the Oppressed*, by Paulo Freire; *Rethinking Columbus: The Next 500 Years*, edited by Bill Bigelow and Bob Peterson; and *Occupied America: A History of Chicanos*, by Rodolfo Acuña.

As students and faculty protested the end of Mexican-American studies and removal of the books, some members of Congress sought an investigation into the ethnic studies ban. The Congressional Hispanic Caucus sent a letter to the U.S. Department of Education's Civil Rights Office asking it to investigate the language of the law banning ethnic studies and its specific application against Tucson's Mexican-American studies program.

On January 24, the American Library Association passed a resolution condemning the suspension of Tucson's ethnic studies programs and the removal of materials associated with them. It also urges Arizona's legislature to repeal the law that bans ethnic studies in school curriculum. The resolution "1) Condemns the suppression of open inquiry and free expression caused by closure of ethnic and cultural studies programs on the basis of partisan or doctrinal disapproval. 2) Condemns the restriction of access to educational materials associated with ethnic and cultural studies programs. 3) Urges the Arizona legislature to pass HB 2654, "An Act Repealing Sections 15-111 and 15-112, Arizona Revised Statutes; Relating to School Curriculum." (For the full text of the resoution see page 85).

On January 30, the American Association of University Professors, the American Booksellers Foundation for Free Expression, the American Civil Liberties Union of Arizona, the Association of American Publishers, the Association of American University Presses, the Authors Guild, the Center for Experience of Language and Thinking, the Comic Book Legal Defense Fund, the Freedom to Read Foundation, the International Reading Association, the National Coalition Against Censorship, the National Council for the Social Studies, the National Council of Teachers of English, the National Youth Rights Association, PEN American Center, PEN Center USA, People for the American Way, Reading is Fundamental, Inc., the Society of Children's Book Writers and Illustrators, the Student Press Law Center, the Teachers of English to Speakers of Other Languages (TESOL) International Association and several book publishers and regional publishing groups issued the following statement:

"The undersigned organizations are committed to protecting free speech and intellectual freedom. We write to express our deep concern about the removal of books used in the Mexican-American Studies Program in the Tucson Unified School District. This occurred in response to a determination by Arizona Superintendent of Public Instruction John Huppenthal that the program "contained content promoting resentment toward a race or class of people" and that "materials repeatedly reference white people as being 'oppressors….' in violation of state law." The books have been boxed up and put in storage; their fate and that of the program remain in limbo.

"The First Amendment is grounded on the fundamental rule that government officials, including public school administrators, may not suppress 'an idea simply because society finds the idea itself offensive or disagreeable.' School officials have a great deal of authority and discretion to determine the curriculum, the subject of courses, and even methods of instruction. They are restrained only by the constitutional obligation to base their decisions on sound educational grounds, and not on ideology or political or other personal beliefs. Thus, school officials are free to debate the merits of any educational program, but that debate does not justify the wholesale removal of books, especially when the avowed purpose is to suppress unwelcome information and viewpoints.

"School officials have insisted that the books haven't been banned, because they are still available in school libraries. It is irrelevant that the books are available in the library—or at the local bookstore. School officials have removed materials from the curriculum, effectively banning them from certain classes, solely because of their content and the messages they contain. The effort to 'prescribe what shall be orthodox in politics, nationalism, [or] religion' is the essence of censorship, whether the impact results in removal of all the books in a classroom, seven books, or only one.

"Students deserve an education that provides exposure to a wide range of topics and perspectives, including those that are controversial. Their education has already suffered from this political and ideological donnybrook, which has caused massive disruption in their classes and will wreak more havoc as teachers struggle to fill the educational vacuum that has been created.

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IFC report to ALA Council

The following is the text of the ALA Intellectual Freedom Committee's report to ALA Council, delivered at the ALA Midwinter Meeting in Dallas, Texas, on January 24 by IFC Chair Pat Scales.

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

INFORMATION

OIF Webcasts/Webinars

ALA's Office for Intellectual Freedom (OIF) is pleased to announce the availability of eight recorded webcasts on vital topics in intellectual freedom today.

"Intellectual Freedom Summer School" offered a series of five online learning programs for public, academic and school librarians in August 2011. Each hour-long session was recorded and is now available for purchase and viewing. In November 2011, OIF and the IFLA Committee for Freedom of Access to Information and Freedom of Expression (FAIFE) co-sponsored "Intellectual Freedom across the Globe," a series of three webinars on international issues related to free speech, censorship and access to information. These hour-long sessions are also now available as recorded webcasts. Recorded webcasts may be downloaded and viewed at any time, making them a flexible and convenient option for professional development.

To register, visit *http://bit.ly/wHVlGP* and click on the "Register" link to the right of the webcast you wish to purchase. For more information on these and other OIF online learning offerings, please visit ala.org/onlinelearning/unit/oif.

Challenge Database

Since 1990, OIF has maintained a confidential database on challenged materials, which documents formal requests for library materials to be removed or restricted. OIF collects entries from both media reports and reports submitted by individuals, which are then manually entered into the database. Numerous other organizations, including the ACLU and state library associations, also make efforts to capture challenges to library materials, but OIF's database is unique and widely recognized as the most comprehensive source of such information.

In more than twenty years since its inception, the challenge database has remained in a simple Microsoft Access format. The Access database has served OIF's limited purposes but a more sophisticated database product would free staff time and resources, enabling more advanced applications and presentation of information about banned and challenged books—one of the cornerstones of OIF's services to members and the public alike. OIF therefore sought and received ALA capital funds to upgrade its challenge database and support innovative uses of challenge data.

OIF is now finalizing contract and confidentiality agreements with the University of Illinois at Urbana-Champaign's Graduate School of Library and Information Science (UIUC-GSLIS) to consult on software selection, category development and refinement, and user interface development. Our goal is to work with UIUC-GSLIS to have an upgraded challenge database in place by fall 2012.

Challenge Reporting Campaign

OIF collaborated with librarian and library activist Andy Woodworth to create a new awareness campaign to encourage the reporting of challenges to library materials. The campaign—"Defend the Freedom to Read: It's Everybody's Job"— is inspired by the artwork and public safety notices of World War II. The artwork is freely available for digital download as a poster, web banner, and more at *www.ala.org/challengereporting*. OIF encourages librarians to use the images as computer wallpaper, hang them in a staff lounge, print them out as bookmarks, post them as a blog, or even use one as your icon on your favorite social media website.

Challenges reported to ALA by individuals are kept confidential and used only for statistical purposes. Challenges or removals can be reported either online or by paper form. For more information, please visit our "Reporting a Challenge" page online at *www.ala.org/challengereporting.*

Updated Libraries & the Internet Toolkit Now Available

The Intellectual Freedom Committee approved the final draft of the revised and updated "Libraries and Internet Toolkit: Tips and Guidance for Managing and Communicating about the Internet." The toolkit is now available online as a downloadable publication at *www.ifmanual.org/litoolkit*.

The new toolkit is intended to be a practical guide to managing Internet services in libraries of all types. It includes up-to-date information on filtering, the requirements of the Children's Internet Protection Act, the use of and access to social media in libraries, guidelines on developing Internet policies, and practical advice on handling messaging and communications concerning library Internet services.

Our deepest thanks are due to 2010 ALA Emerging Leaders Eileen Bosch, Toni Dean, Amanda Robillard, Mara Degnan-Rojeski, and Yen Tran, who worked for over a year to write the new toolkit.

Updated Privacy Q & A Supplements Privacy Policy Documents

The Intellectual Freedom Committee also approved revisions to its document, "Questions and Answers on Privacy and Confidentiality," which supplements "Privacy: An Interpretation of the Library Bill of Rights" and other ALA policies addressing user privacy in libraries.

The revised Q & A retains its review of basic privacy concepts, and adds or expands on several new topics,

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FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered January 24 at the ALA Midwinter Meeting in Dallas, Texas, by FTRF President Kent Oliver.

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2011 Annual Conference:

STRATEGIC PLAN: SECURING THE FUTURE, RENEWING OUR COMMITMENT

In October 2010, the Freedom to Read Foundation's Board of Trustees met in Chicago to examine the Foundation's strengths and weaknesses and envision the Foundation's future achievements. The result of this process was a year-long effort to develop a strategic plan for FTRF that would allow FTRF to grow its membership and enlarge its role as a national leader in the defense of the freedom to read, speak, and publish. I am pleased to report that the Board concluded that process here in Dallas, adopting a plan that we believe will secure the Foundation's future and assure that FTRF will remain the premier legal advocate for intellectual freedom in libraries.

The strategic plan addresses five critical action areas: awareness, litigation, education, engagement, and capacity building. Specific objectives include strategies to increase FTRF's membership both within and without the library world; to develop a more proactive legal strategy that will see FTRF taking the lead as the plaintiff in critical lawsuits intended to protect and preserve First Amendment rights; to expand FTRF's educational mission; and to raise up the next generation of intellectual freedom leaders. It is our hope that this plan will soon yield tangible results, including an improved website, new membership materials, and educational programs for attorneys, librarians, and library students; and most importantly, a more comprehensive litigation strategy aimed at vindicating the right to speak freely and read freely.

As a first step in implementing this process, FTRF has already begun a broad membership initiative with several aspects, including renewed outreach to ALA chapters, American Association of School Librarians (AASL), ASL affiliates, academic libraries, and several other targeted groups. Additionally, FTRF hired former ALA Membership Director John Chrastka and his new firm, AssociaDirect, to survey its members and reach out to the general public to better learn what messages resonate with the public and to deliver recommendations for achieving our goals.

ALA's support for FTRF is crucial to this process, and much appreciated. Keith Michael Fiels was particularly helpful in completing the strategic plan. Your individual membership—and the organizational membership of your institutions—is a key part of our important work of defending the freedom to speak and the freedom to read; it also supports a growing slate of educational programs that foster the next generation of intellectual freedom advocates. To join or renew your membership, please send a check ($35 minimum dues for personal members, $100 for organizations) to: Freedom to Read Foundation, 50 E. Huron Street, Chicago, IL 60611. Alternatively, you can call (800) 545-2433, ext. 4226 or visit *www.ftrf.org/joinftrf*.

ENGAGING IN LITIGATION: DEFENDING THE FREEDOM TO SPEAK

As a legal advocate for First Amendment rights, FTRF often finds itself defending free speech in difficult circumstances. Sometimes the speaker is notorious, or the message itself is offensive or shocking—yet FTRF steps in to defend the speaker or the right to hear the message, believing that any erosion of fundamental First Amendment rights and freedoms will impact everyone's right to read and hear without interference.

Two such "hard cases" came to FTRF in the last few months. The first, *People of the State of Michigan v. Kwame Kilpatrick*, challenges the Michigan "Son of Sam" law, which bars any person convicted of a crime from collecting any profits from the sale of his or her memories of the crime until court-ordered restitution is paid in full. Both the Supreme Court and the highest courts of other states have uniformly struck down such laws as a violation of the First Amendment. A Michigan county prosecutor is attempting to enforce the law against former Detroit Mayor Kwame Kilpatrick, who wrote and published a memoir titled, *Surrender: The Rise, Fall & Revelation of Kwame Kilpatrick*, following his conviction for obstruction of justice.

Both the trial and appellate courts summarily rejected Kilpatrick's First Amendment arguments, and Kilpatrick now is seeking review by the Michigan Supreme Court.

On November 1, FTRF joined with the Association of American Publishers, the American Booksellers Foundation for Free Expression and the PEN American Center to file an amicus curiae brief in support of Kilpatrick's First Amendment rights. The brief asks the Michigan Supreme Court to review the lower courts' decisions, on the grounds that the Michigan law is a content-based speech restriction on speech of public concern.

The second lawsuit, *United States v. Alvarez*, presented another difficult issue: should the government be allowed to punish non-defamatory, non-fraudulent false speech? This is the issue at the heart of this lawsuit that challenges the constitutionality of the Stolen Valor Act, a law that makes it a crime to lie about having received military honors. Alvarez, the defendant, was charged with violating the Act after he falsely told the audience at a meeting that he had been awarded the Congressional Medal of Honor. The case is now before the Supreme Court, which granted certiorari

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protest at UCSD leads to expanded library hours

The University of California at San Diego has agreed to expand library hours—including 24/7 hours in the main library during finals week—following student protests that involved taking over a closed library. University administrators responded to the building take-over in part by removing police officers from the scene, hoping to avoid confrontations that have been so controversial at the University of California's Berkeley and Davis campuses. Students, while they were arguably occupying a space, tried to differentiate themselves from the Occupy movement. The students said they were focused on their need for room to study, and they said that they were "reclaiming," not "occupying" the library.

"We asked (the police) to leave so we wouldn't have any interactions," said Gary Matthews, the vice chancellor who oversees campus officers. "I think since the events at UC Davis, UC Berkeley, Penn State and Syracuse, everyone is reassessing responses, and the need to respond, and our duty to protect property and make sure everyone is safe."

Students stressed that they, too, wanted to avoid confrontation. Nonetheless, they set an 11 a.m. deadline for the administration to respond to their demand that they be allowed into the former Center for Library & Instructional Computing Services, commonly called CLICS. The library was one of three the university closed over the summer in response to steep cuts in state funding. It had traditionally been open 24 hours a day during finals week.

Shortly after 11 a.m., a group of perhaps fifty students were holding a vote in front of the library's main entrance on whether they should force their way in. As they counted hands, other students, who had forced open a separate entrance, pushed open the front doors and students streamed inside.

"This library was always a 24-hour library during finals," said Samer Naji, vice president of external affairs for the Associated Students. "It's two stories with a ton of study space. Students took it upon ourselves that we were going to reclaim the space. We're paying tuition through the roof and (administrators) blow money all over the place."

Eden White, a sophomore biochemistry major, was one of those who arrived early in the cold morning to sit outside the library in hopes of persuading officials to reopen it.

"I'm here to help reclaim CLICS," she said, working on a laptop with a blanket wrapped around her jacketed shoulders. "I think we're trying to get away from 'occupy.' It's got kind of a negative connotation."

Several of UCSD's top administrators arrived just moments after the students entered the building. Suresh Subramani, senior vice chancellor for academic affairs, said

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SOPA and PIPA withdrawn after massive Internet protest

Senate Majority Leader Harry Reid (D-NV) on January 20 delayed indefinitely a vote on the Protect IP Act, the proposed anti-piracy legislation that drew a widespread Internet revolt two days earlier.

"In light of recent events, I have decided to postpone Tuesday's vote on the Protect IP Act," the senator said in a statement.

Reid urged Sen. Patrick Leahy (D-VT), the chief sponsor of PIPA, to "continue engaging with all stakeholders to forge a balance between protecting Americans' intellectual property, and maintaining openness and innovation on the Internet."

PIPA was scheduled for a procedural vote on the Senate floor on January 24, the first step toward breaking a rarely used hold on the measure imposed by Sen. Ron Wyden (D-OR).

Reid's announcement means that, for the moment, there is no action scheduled on either the Senate version of the anti-piracy legislation or the House version, the Stop Online Piracy Act. The move came a day after rumblings that President Barack Obama was losing financial support from Hollywood, a major backer of the House and Senate measures, because of his opposition.

Meanwhile, Rep. Lamar Smith (R-TX) the chair of the House Judiciary Committee and lead sponsor of SOPA, quickly followed Reid's move, despite having tentatively set a "February" vote date to consider watered down versions of the original measure he floated late last year. "It is clear we need to revisit the approach on how best to address the problem of foreign thieves that steal and sell American inventions and products," he said in a statement.

The measures face an uncertain future given widespread legislative opposition to the proposals in their current form. On January 18, as thousands of websites blacked themselves out or altered their appearance in protest, Republican and Democratic lawmakers in both the Senate and House began distancing themselves from the non-partisan bills they had once supported.

A key provision Smith and Leahy have agreed to remove is one that had mandated DNS redirecting of websites deemed dedicated to infringing activity. That provision would have required ISPs to prevent Americans from visiting blacklisted sites by altering the system known as DNS that turns site names like Google.com into IP addresses such as 174.35.23.56.

Opposition to the proposals had exploded as tens of millions of Americans, and millions more overseas, had their normal Internet routine disrupted January 18 when some of the Web's most popular sites, including Google, Wikipedia,

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2011: when intellectual property trumped civil liberties

Online civil liberties groups were thrilled in May when Sen. Patrick Leahy (D-VT), the head of the powerful Judiciary Committee, announced legislation requiring the government, for the first time, to get a probable-cause warrant to obtain Americans' e-mail and other content stored in the cloud.

But, despite the backing of a coalition of powerful tech companies, the bill to amend the Electronic Communications Privacy Act was dead on arrival, never even getting a hearing before the committee Leahy heads.

In contrast, another proposal sailed through Leahy's committee, less than two weeks after Leahy and others floated it at about the same time as his ECPA reform measure. That bill, known as the Protect IP Act, was anti-piracy legislation long sought by Hollywood that dramatically increased the government's legal power to disrupt and shutter websites "dedicated to infringing activities."

This dichotomy played itself out over and over again in 2011, as lawmakers—Democrats and Republicans alike—turned a blind eye to important civil liberties issues, including USA PATRIOT Act reform, and instead paid heed to the content industry's desires to stop piracy.

"Any civil liberties agenda was a complete non-starter with Congress and the Obama administration," said Cindy Cohn, the Electronic Frontier Foundation's legal director. "They had no interest in finding any balance in civil liberties."

It wasn't just on the federal level, either.

In California, for example, Gov. Jerry Brown vetoed legislation that would have demanded the police obtain a court warrant before searching the mobile phone of anybody arrested. But Brown, a Democrat, signed legislation authorizing the authorities to search, without a warrant, CD-stamping plants that dot Southern California's landscape.

Underscoring that civil liberties would take a back seat in 2011 was the debate, or lack thereof, concerning the USA PATRIOT Act. The House and Senate punted in May on revising the controversial spy act adopted in the wake of 9/11. Congress extended three expiring USA PATRIOT Act spy provisions for four years, without any debate.

The three provisions extended included:

- The "roving wiretap" provision allows the FBI to obtain wiretaps from a secret intelligence court, known as the FISA court (under the Foreign Intelligence Surveillance Act), without identifying the target or what method of communication is to be tapped.

- The "lone wolf" measure allows FISA court warrants for the electronic monitoring of a person for any reason—even without showing that the suspect is an agent of a foreign power or a terrorist. The government has said it has never invoked that provision, but the Obama administration said it wanted to retain the authority to do so.

- The "business records" provision allows FISA court warrants for any type of record, from banking to library to medical, without the government having to declare that the information sought is connected to a terrorism or espionage investigation.

While the Obama administration was lobbying against tinkering with the USA PATRIOT Act, and telling the courts that Americans have no privacy in their public movements, the White House was quietly working with the recording and motion picture industries to help broker a deal by which Internet companies would block Internet access to repeat online infringers.

E-mails obtained via the Freedom of Information Act showed just how cozy the administration was with the content industry: The nation's copyright czar, Victoria Espinel, used her personal e-mail account with industry officials to help mediate the plan.

The administration said that Espinel was undertaking "precisely the work outlined in the administration's 2010 Joint Strategic Plan on Intellectual Property Enforcement."

By the same token, the Privacy and Civil Liberties Oversight Board remained dormant again for another year. It was chartered by statute in 2004 and given more power in 2007 to "analyze and review actions the executive branch takes to protect the nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties" and to "ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the nation against terrorism."

The board has remained without members since January 2008, a year before Obama's inauguration. Its website at *privacyboard.gov* doesn't resolve. In December, President Barack Obama finally filled out the five-member board, but his nominees still have to be confirmed by the Senate.

"Had the board been functional, it might have been a valuable participant in current deliberations over military detention authority, for example," said Steven Aftergood, who directs the Federation of American Scientists Project on Government Secrecy. "It might also have conducted investigative oversight into any number of other counter-terrorism policies, as mandated by law."

All the while, Espinel and the Immigration and Customs Enforcement office spent the year seizing online domains of websites allegedly hawking counterfeit and copyrighted goods. All told, the government has seized more than 350

domains taken as part of a forfeiture program known as "Operation in Our Sites" that began a little more than a year ago. The authorities were using the same asset-forfeiture laws used to seize cars and houses belonging to suspected drug dealers.

A hip-hop music site's domain name was seized for a year and given back in December, without ever affording the site's New York owner a chance to challenge the taking. The legal case surrounding the takedown, which centered on MP3s posted by the site, is sealed from public view at the request of ICE. The site's lawyer says the MP3s listed in the seizure order had been sent to the site by the labels themselves, seeking publicity.

That prompted Sen. Ron Wyden (D-OR) to demand that the Justice Department divulge how many other domains are caught in a legal black hole.

Lawmakers' drive to bolster intellectual property rights of some of the country's biggest political donors began in earnest in May when Leahy introduced the Protect IP Act, and two weeks later it sailed through his Judiciary Committee.

The Stop Online Piracy Act, or SOPA, is nearly an exact copy. Both are offshoots of the Combating Online Infringement and Counterfeits Act introduced last year. After widespread protests and a blackout of numerous Internet sites, however, the bills were withdrawn for recasting (see page 54).

Under the old COICA draft, the government was authorized to obtain court orders to seize so-called generic top-level domains ending in .com, .org and .net. The new legislation, with the same sponsors, would narrow that somewhat.

Instead of allowing for the seizure of domain names, it allows the Justice Department to obtain court orders demanding American ISPs block citizens from reaching a site by modifying the net's Domain Name System. DNS works as the net's phone book, turning domain names like Wired.com into IP addresses such as 165.193.220.20, which browsers use to actually get to the site.

On May 26, the day the Protect IP Act passed the Senate Judiciary Committee, Wyden exercised a rarely used Senate procedure and held the measure from going to the Senate floor for a vote, where it would likely pass. Wyden has promised to wage a one-man filibuster if necessary.

"By ceding control of the Internet to corporations through a private right of action, and to government agencies that do not sufficiently understand and value the Internet, PIPA represents a threat to our economic future and to our international objectives," Wyden said.

DNS experts Steve Crocker, David Dagon, Dan Kaminsky, Danny McPherson and Paul Vixie wrote in a white paper that the Protect IP Act "would promote the development of techniques and software that circumvent

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Dorothy Broderick, 1929-2011

Author, librarian, and noted library educator Dorothy M. Broderick died on Saturday, December 17, at the Brookhaven Health Facility in Patchogue, NY, from complications of heart trouble, osteoporosis, and COPD. She was 82 and had been an invalid for several years.

As a librarian, Dorothy worked prior to her MLS from Columbia at the Milford Public Library in her Connecticut hometown, and subsequently at the Hicksville Public Library on Long Island. She was later the New York State Children's Consultant for the State Library.

Upon receiving her DLS, also from Columbia, with Frances Henne as her dissertation director, she worked at Case Western Reserve and the University of Wisconsin library schools before moving to Canada to work at Dalhousie University with Norman Horrocks. While at Dalhousie, she did an exchange semester at C. W. Post on Long Island and met Mary K. Chelton at a professional development workshop at the Westchester Library System. She subsequently left fulltime academia to join Chelton in the U.S. where they started Voice of Youth Advocates, after observing a battle at American Library Association between Children's Services Division and Young Adult Services Division over content in their shared journal, *Top of the News*. Dorothy felt that YA services could not survive without its own voice.

Dorothy subsequently worked at the University of Alabama library school and moved with Chelton to Virginia Beach, VA, where she edited VOYA fulltime there and through several other moves, winding up on Long Island. During this period, VOYA became part of Scarecrow Press and Scholastic, and then part of University Press of America. Dorothy was forced by heart trouble to retire in 1997, when Cathi MacRae was appointed successor editor.

Dorothy is known for being a co-founder of VOYA, but also for her ground-breaking book, *The Image of the Black in Children's Books*, as well as *Library Work with Children*, and professional articles almost too numerous

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censorship dateline

libraries

Meeker, Colorado

An official with School District 6 said they have removed a cartoon video from the Meeker Elementary school library featuring a naked boy swimming in a glass of milk. The video, *In the Night Kitchen* was based on the book of the same name by Maurice Sendak, author of *Where the Wild Things Are.* The video shows a young boy, Mickey, who dreams he is in a kitchen where the cooks are baking a cake.

As Mickey leaves his bed in a dream state he is completely naked, showing his rear end. He falls naked into a giant mixing pot with the batter for the cake. Later in the seven minute video, the boy is shown swimming in a glass of milk. When he leaves the glass, Mickey's private parts are shown.

Because of the nudity and other innuendos in the book it proved controversial upon its release in 1970 and continues to be so.

Roger Fiedler, communications director for the District, said that showing the video was a mistake. The video shown to the second grade students at Meeker was a compilation of four video cartoons of the following children's books. *Owl Moon*, by Jane Yolen; *Make Way for Ducklings*, by Robert McCloskey; *In the Night Kitchen*, by Maurice Sendak, and *Strega Nona*, by Tomie dePaola.

The video, by Scholastic, simply said, "Owl Moon" on the label. The video was shown to the students after they had read *Owl Moon* and *Strega Nona* as part of a lesson where they would compare and contrast the differences between the books and video.

Fiedler said the teacher was unfamiliar with *In the Night Kitchen* and began to show the video. The first two cartoons, "Owl Moon" and "Make Way for Ducklings" were without incident. When the first scene involving Mickey falling through the air began, the teacher immediately turned off the video and the activity was ended. At no time did the students see the frontal nudity featured later in the cartoon.

Fiedler said the district is unaware of how Meeker obtained the video, however, for the time being it has been removed from the library.

Cathy Nelson, principal of the school, met with all of the second grade teachers and reviewed the district's policy of showing of films in schools to ensure similar incidents can be avoided in the future. Reported in: *Greeley Gazette*, November 18.

Dixfield, Maine

The RSU 10 school board voted overwhelmingly to allow a controversial book to remain in the libraries of middle schools in Dixfield, Mexico and Buckfield. However, although the book will remain in the libraries, it will be placed in the library's professional collection, which means the book may be taken out by a student only if parental permission is granted.

Stuck in the Middle: 17 Comics from an Unpleasant Age, by Ariel Schrag, was challenged late last year by Becky Patterson who believes that the sexual and language references are objectionable. Her son attends Buckfield Junior-Senior High School, where the book is available.

The board agreed with a recommendation made by a special school committee that suggested the book be made available only with parental permission.

Board members Maida Demers-Dobson of Buckfield, Betty Barrett of Mexico and Marcia Chaisson of Rumford voted against the motion for very different reasons. Demers-Dobson and Chaisson believe the restriction is a form of censorship. Barrett believes the book is inappropriate for middle school-age children, but could be placed in the high school libraries.

Board member Cynthia Bissell of Canton argued that the book does not fulfill the function of what she believes is the purpose of school. "I read it cover to cover. I was appalled," she said. "This book does nothing to elevate students. It implies that everyone speaks and acts that way."

She said schools banned the sale of candy and soda, but that doesn't mean children can't eat them out of school. As another example, she said guns are not allowed in school, but people have the right to bear arms away from schools. "We need to regulate what is offered to the mind and find healthy alternatives," she said.

Demers-Dobson objected to censorship. "Of all the books available, let's ban Shakespeare, particularly *Romeo and Juliet*," she said of attempts to ban *Stuck in the Middle.*

Chaisson said the book is poorly written and questioned whether a child dealing with bullying or anything else could gain any insight or sense of not feeling alone with a particular problem by reading it. "But I agree with Maida. It's

censorship," she said.

Dixfield board member Bruce Ross, who made the motion to support the special committee's recommendation, said he was concerned that the publicity surrounding the book may boost the number of students who want to take it out. The book has been taken out rarely, according to librarians.

He also said students could get similar information, language and attitudes from the Internet, and could check the book out of public libraries, which is where Bissell said it belonged.

Student board representative from Mountain Valley High School, Alex Parent, said students see worse on television and in movies. Superintendent Tom Ward said this was the first time in his eight years as leader of a school district that a book was challenged. Reported in: *sunjournal.com*, January 10.

Salem, Missouri

The American Civil Liberties Union (ACLU) of Eastern Missouri sued a local public library January 2 for allegedly blocking websites related to Wicca, a modern pagan religion.

Anaka Hunter of Salem, Missouri, said she tried to access websites about Wicca, Native American religions and astrology for her own research, but the library's filtering software blocked the sites. According to the ACLU, the software labeled the sites as "occult" and "criminal."

Hunter said she talked to Salem Library Director Glenda Wofford, who unblocked portions of the sites, but much of the material remained censored. According to the lawsuit, Wofford said she would only unblock the sites for patrons who had a legitimate reason to view them and said she had an obligation to report people who accessed the sites to the police.

"It's unbelievable that I should have to justify why I want to access completely harmless websites on the Internet simply because they discuss a minority viewpoint," Hunter said in the ACLU's news release. "It's wrong and demeaning to deny access to this kind of information."

Wofford said she would have been happy to unblock the websites but Hunter refused to specify which sites she wanted to access, saying it would be a breach of privacy. "It's not our intent to prohibit reasonable use of the Internet for research or any other legitimate reason," Wofford said. "All they have to do is ask, and we'll unblock the sites."

Federal law requires libraries to block explicit or pornographic websites, but the ACLU argues the library violated the First Amendment's protections for freedom of speech and religion by blocking the spiritual websites.

"The library has no business blocking these websites as 'occult' or 'criminal' in the first place and certainly shouldn't be making arbitrary follow-up decisions based on the personal predilections of library staff," said Daniel Mach, director of the ACLU Program on Freedom of Religion and Belief, in the group's news release. "Public libraries should be facilitating access to educational information, not blocking it."

The University of Missouri provided the Salem library with the filtering software, according to Wofford. Reported in: *The Hill*, January 3.

Rockingham, North Carolina

A book signing scheduled for January 9 at a Rockingham library, featuring a book of poetry written by author Joanna Catherine Scott, in collaboration with a convicted murderer, stirred up an emotional outcry from the community.

Complaints from the community to the Leath Memorial Library, which had agreed to host Scott, letters to the editor of a local newspaper, and outraged reader comments on the newspaper's website seemed to unite many in the county with the same thought - Scott is not welcome to promote her book there.

In the end, the library postponed the author's visit.

She was set to promote her new book *An Innocent in the House of the Dead*, a collaboration with former death-row inmate John Lee Conaway. Conaway was charged in 1991 with first-degree murder, first-degree kidnapping, robbery with a dangerous weapon and larceny. The jury returned verdicts finding Conaway guilty of two counts of first-degree murder for the shooting deaths of Paul DeWitt Callahan and Thomas Amos Weatherford, according to court records.

"My son was just 21 years old, and left behind a baby when his life was taken," said Gabriel Helms, Weatherford's mother. "All (Scott) is trying to do is sell a book, and she has no right to do that here."

Conaway spent sixteen years on death row, before a federal court granted him a writ of habeas corpus, and he is seeking a new lawyer who will help him "prove his innocence," according to Scott, who lives in Chapel Hill. Scott claims to have befriended, and legally adopted the inmate, after visiting him in prison. On her website, she states that "(Conaway's) story has opened my eyes to the plight of the poor black man entangled on our so-called justice system."

Upon learning of the author's intentions to promote her book in Rockingham, family, friends and community members joined to halt the event. Some claimed to be seeking permits to demonstrate, while others made calls to the newspaper and Leath Memorial Library voicing concerns.

The library issued a statement that the book signing had been postponed because, "While the author did disclose the topic of her poetry was a man on death row, the author did not say that the victims of the subject of her poetry were from Richmond County. We want to be respectful of the interest of all Richmond County citizens."

Scott could not be reached for comment, but posted this statement on her website, all in red capital letters: "THIS READING WAS CANCELLED. RICHMOND COUNTY SHUT ME DOWN. THE LOCAL PAPER PRINTED HATE MAIL AND I GOT THE FIRST HATE MAIL I HAVE EVER HAD. THE BLACK COMMUNITY IS UPSET TO SAY THE LEAST. I'VE NEVER CAUSED A RIOT BEFORE, ESPECIALLY ABOUT POETRY. SO MUCH FOR FREE SPEECH IN DOWN HOME USA." Reported in: *Richmond County Daily Journal*, January 8.

schools

Murietta, California

Parents upset about a book voiced their concerns before the Murrieta Valley Unified School District November 17. The book in question is *To The Wedding*, by John Berger. It was assigned to juniors in the International Baccalaureate program at Murrieta Valley High School.

Literature and curriculum in the rigorous IB program is intended to give students international exposure to other cultures and world-wide issues. *To The Wedding* is set in Europe. A young French couple engaged to be married learns that the woman, Ninon, contracted AIDS from a prior one-night stand. The story follows them as they decide whether to still go through with the marriage.

But some parents say students shouldn't be exposed to the mature content, which includes, on at least three occasions, the use of the f-word to describe sexual relations that take place.

Parent Wayne Fontes said he did not want the book to be banned, he just did not want it to be required reading for his daughter. "Mature reading does not have to consist of foul words," Fontes said. "Understand that this is being read by 15- and 16-year-olds. If this book is so loved, put it in the school library."

Fontes said about half of the kids are opting out of the book by reading the alternative: *The Scarlet Letter*. He complained it was not the level of book they enrolled their daughter in IB for. The program allows students to linger on each book more than other classes do, which is what Fontes said he, his wife and daughter liked about the program. By opting out, he said the kids miss that class time because, according to school board policy, they are required to study the alternate book independently.

"Why was there not an equal book as an option?" Fontes asked the school board. He was also concerned that his daughter would not be able to answer questions about the book on the final exam, which he said could affect her college applications.

Another parent, Bo Bowditch, said he disapproved of the book for his child based on their Judeo-Christian values. "I hope you can make a good, common sense decision to eliminate the book," Bowditch said.

Ernie Walton, a law clerk speaking on behalf of Advocates For Faith & Freedom, a Murrieta-based non-profit law firm that fights to protect religious liberties, said the book did not represent the community. He proceeded to read aloud three passages in which the f-word was used.

"It is not our intent to threaten litigation," Walton said. "But is *To The Wedding* the type of book you want in your curriculum? School curriculum should reflect the values of the community. The school district is in a position of authority...this could raise a vulgar view of sex."

The school board thanked the parents for bringing their concerns forward, but said they could not take action or speak on the issue because it was not on the meeting's agenda.

District Spokesperson Karen Parris said the book was not approved by the board, but by the IB Program, which is run by an outside agency. The program is in its second year at Murrieta Valley, and it is the only high school in the district to offer it. According to Parris, the book, however, has prompted measures to be taken.

A parent meeting was held on October 14, which was attended by ten parents, Murrieta Valley Principal Renate Jefferson, the school librarian and IB and Advanced Placement instructors. Then on October 25, Parris said a site committee met and decided to take additional measures where the book and other IB reading materials are concerned.

First, teachers will seek to expand the IB reading list, and will rotate the curriculum. Second, parents will be given notification that IB English is a college-level course in which students will be reading mature literature and themes. Third, *To The Wedding* will remain on the reading list as teacher's option, but timely notification will be sent to parents, advising them of the language and content of the book.

Lastly, for the teacher who chooses to include the book, it will be taught near the end of students' senior year. Reported in: *Murietta Patch*, November 18.

Salem, Michigan

Some Salem High students and their parents were surprised when the novel *Waterland* was pulled from an advanced-placement English class in December. Jeremy Hughes, Plymouth-Canton Schools' interim superintendent, said he made the decision without following district rules, because he was "personally shocked and offended" by the book. He said one parent complained and he thought the novel, by celebrated English author Graham Swift, would upset others.

Debbie Piotrowski, said when she heard this happened to her daughter's class, she felt sad, frustrated and disgusted—and emailed the district to say so. Piotrowski said the move is a form of censorship.

"I completely disagree with how this was handled," she said. "There are rules and protocol that should be followed and in an AP class, college-level reading should be expected."

Waterland, a classic 1983 novel, is the story of a history teacher facing a crisis after his wife kidnaps a baby. The teacher decides to tell students the story of his life, the history of his hometown—and its most prominent family—and the complex relationships among them all. The book is used throughout schools in Britain. *Waterland* depicts one sexually explicit scene and some sexual metaphors but is essentially the story of how the past is intertwined with the present, said Gretchen Miller, the Salem High teacher whose students were affected.

Plymouth-Canton Educational Park teachers have used *Waterland* for at least eight years as an example of "post-modern narrative structure, new historicism (a field of literary criticism) and the theme of trauma," Miller said.

Swift's work is described as poetic and lyrical by scholars from France to the United States; *Waterland* was a finalist for the Booker Prize, which was awarded to Swift for the next novel he wrote. In 1992, *Waterland* was turned into a feature film, starring Jeremy Irons.

Hughes responded to Piotrowski's email with a note that said, in part, "Yes, there IS a process by which parents can file a formal complaint about a book or piece of instructional material. I admit that I jumped over this process in asking that the book be removed from the curriculum. That process will be honored for any similar circumstances that arise."

The district does inform parents whose students are taking advanced-placement classes that they will be encountering mature material. Parents and students can ask to opt out of study areas if they are uncomfortable.

Miller has used *Waterland* for two years as part of a year-long English class which results in college credits for most students. She said she first learned about the book being pulled from her class when her boss instructed her to remove them.

Miller said the parent who complained did not approach her until after the book had been removed. She said students were about one-third into the novel and she has since been substituting excerpts of other books to help illustrate the literary principles the course is designed to teach.

Laura Flack said her daughter is a Canton High School junior and in the class. "Although I haven't read *Waterland*, I don't agree with banning books," Flack wrote, adding that she signed a petition asking the district to stop banning books. "What is the criteria for banning a book? Who gets to make that decision? Is it one person's opinion? Everyone sees things differently; where will it stop?"

Flack said her daughter and other students were upset about the decision and "if a student decides to take AP English, they should be prepared to read more adult material."

Plymouth-Canton Community Schools has a policy supporting the teaching of controversial subjects but gives parents and students the opportunity to ask for alternatives. The school district's policy defines a controversial issue as one which has opposing points of view that are "likely to arouse both support and opposition in the community" but states the board of education believes that the consideration of such issues "has a legitimate place in the instructional program of the schools."

District guidelines allow for the teaching of controversial material as a way of teaching students critical thinking skills. But those guidelines also indicate students should be mature, the material relevant to the course of study and that adequate time is allowed "to examine the issue fairly." The district policy states that teachers who express personal opinions about controversial issues must be clear that their opinions are their own and cannot tell students what to think about a subject, or demean a student who disagrees.

"I strongly feel that rules are put in place so that the opinion, morals and/or religious beliefs of one are not allowed to speak for all," Piotrowski wrote. "For (Hughes) to assume that because one parent came forward and he also didn't like what he read that an 'overwhelming number of parents' would come forward is presumptuous. It is also wrong for one to use one's position to flagrantly disregard protocol."

Hughes said he was comfortable with his choice and did not expect the book to be returned to the classroom or reviewed again by the district. Reported in: *Canton Patch*, December 22.

periodicals

Washington, D.C.

For the first time ever, a government advisory board is asking scientific journals not to publish details of certain biomedical experiments, for fear that the information could be used by terrorists to create deadly viruses and touch off epidemics.

In the experiments, conducted in the United States and the Netherlands, scientists created a highly transmissible form of a deadly flu virus that does not normally spread from person to person. It was an ominous step, because easy transmission can lead the virus to spread all over the world. The work was done in ferrets, which are considered a good model for predicting what flu viruses will do in people.

The virus, A(H5N1), causes bird flu, which rarely infects people but has an extraordinarily high death rate when it does. Since the virus was first detected in 1997, about 600 people have contracted it, and more than half have died. Nearly all have caught it from birds, and most cases have been in Asia. Scientists have watched the virus,

worrying that if it developed the ability to spread easily from person to person, it could create one of the deadliest pandemics ever.

A government advisory panel, the National Science Advisory Board for Biosecurity, overseen by the National Institutes of Health, has asked two journals, *Science* and *Nature*, to keep certain details out of reports that they intend to publish on the research. The panel said conclusions should be published, but not "experimental details and mutation data that would enable replication of the experiments."

The panel cannot force the journals to censor their articles, but the editor of *Science*, Bruce Alberts, said the journal was taking the recommendations seriously and would probably withhold some information—but only if the government creates a system to provide the missing information to legitimate scientists worldwide who need it.

The journals, the panel, researchers and government officials have been grappling with the findings for several months. The Dutch researchers presented their work at a virology conference in Malta in September.

Scientists and journal editors are generally adamant about protecting the free flow of ideas and information, and ready to fight anything that hints at censorship.

"I wouldn't call this censorship," Dr. Alberts said. "This is trying to avoid inappropriate censorship. It's the scientific community trying to step out front and be responsible." He said there was legitimate cause for the concern about the researchers' techniques falling into the wrong hands.

"This finding shows it's much easier to evolve this virus to an extremely dangerous state where it can be transmitted in aerosols than anybody had recognized," he said. Transmission by aerosols means the virus can be spread through the air via coughing or sneezing.

Ever since the tightening of security after the terrorist attacks on September 11, 2001, scientists have worried that a scientific development would pit the need for safety against the need to share information. Now, it seems, that day has come. "It's a precedent-setting moment, and we need to be careful about the precedent we set," Dr. Alberts said.

Both studies of the virus—one at the Erasmus Medical Center in Rotterdam, in the Netherlands, and the other at the University of Wisconsin-Madison—were paid for by the National Institutes of Health. The idea behind the research was to try to find out what genetic changes might make the virus easier to transmit. That way, scientists would know how to identify changes in the naturally occurring virus that might be warning signals that it was developing pandemic potential. It was also hoped that the research might lead to better treatments.

Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases, said the research addressed important public health questions, but added, "I'm sure there will be some people who say these experiments never should have been done."

Dr. Fauci said staff members at the institutes followed the results of the research and flagged it as something that the biosecurity panel should evaluate.

David R. Franz, a biologist who formerly headed the Army defensive biological lab at Fort Detrick, Maryland, is on the board and said its decision to intervene, made in the fall, was quite reasonable. "My concern is that we don't give amateurs—or terrorists—information that might let them do something that could really cause a lot a harm," he said in an interview.

"It's a wake-up call," Dr. Franz added. "We need to make sure that our best and most responsible scientists have the information they need to prepare us for whatever we might face."

Amy Patterson, director of the office of biotechnology activities at the National Institutes of Health, in Bethesda, Maryland, said the recommendations were a first. "The board in the past has reviewed manuscripts but never before concluded that communications should be restricted in any way," she said in a telephone interview. "These two bodies of work stress the importance of public health preparedness to monitor this virus."

Ronald M. Atlas, a microbiologist at the University of Louisville and past president of the American Society for Microbiology, who has advised the federal government on issues of germ terrorism, said the hard part of the recommendations would be creating a way to move forward in the research with a restricted set of responsible scientists. He said that if researchers had a better understanding of how the virus works, they could develop better ways to treat and prevent illness. "That's why the research is done," he said.

The government, Dr. Atlas added, "is going to struggle with how to get the information out to the right people and still have a barrier" to wide sharing and inadvertently aiding a terrorist. "That's going to be hard."

Given that some of the information has already been presented openly at scientific meetings, and that articles about it have been sent out to other researchers for review, experts acknowledged that it may not be possible to keep a lid on the potentially dangerous details.

"But I think there will be a culture of responsibility here," Dr. Fauci said. "At least I hope there will."

The establishment of the board grew out of widespread fears stemming from the 2001 terrorist attacks on the United States and the ensuing strikes with deadly anthrax germs that killed or sickened 22 Americans. The Bush administration called for wide controls on biological information that could potentially help terrorists. And the scientific community firmly resisted, arguing that the best defenses came with the open flow of information.

In 2002, Dr. Atlas, then the president-elect of the American Society for Microbiology, objected publicly to

"anything that smacked of censorship."

The federal board was established in 2004 as a compromise and is strictly advisory. It has 25 voting members appointed by the secretary of health and human services, and has 18 ex officio members from other federal agencies.

Federal officials said that the board has discussed information controls on only three or four occasions. The first centered on the genetic sequencing of the H1N1 virus that caused the 1918 flu pandemic, in which up to 100 million people died, making it one of the deadliest natural disasters in human history.

"We chose to recommend publication without any modifications," Dr. Franz, the former head of the Army lab, recalled. "The more our good scientists know about problems, the better prepared they are to fix them."

This fall, federal officials said, the board wrestled with the content of H5N1 papers to *Science* and *Nature*, and in late November contacted the journals about its recommendation to restrict information on the methods that the scientists used to modify the deadly virus.

"The ability of this virus to cross species lines in this manner has not previously been appreciated," said Dr. Patterson of the National Institutes of Health. "Everyone involved in this matter wants to do the proper thing." Reported in: *New York Times*, December 20.

Internet

San Francisco, California

Internet scorn for San Francisco-based Twitter's January 26 announcement that it would censor tweets was swift and unforgiving. But even free-speech and other experts were divided on the service's move that it might censor tweets if required by law in "countries that have different ideas about the contours of freedom of expression."

Like Yahoo and Google before it—and for the same reason, becoming a global powerhouse—Twitter has confronted an inconvenient truth: Freedom of expression is sacrosanct and protected by the Constitution in the United States, but in other parts of the world, not so much.

The Electronic Frontier Foundation, which typically has no patience with any sort of censorship, saw Twitter's announcement as little more than stating the obvious. "I'm a little puzzled by the kind of freak out that kind of appears to be happening. Companies have to abide by the law where they are," said Cindy Cohn, the legal director of the digital rights group.

The ACLU wasn't as forgiving. "The countries that engage in censorship are precisely the ones in which open and neutral social media platforms are most critical," said Aden Fine, an ACLU staff attorney. "We hope Twitter will think carefully before acceding to any specific requests by those governments to censor content simply because they want to interfere with their citizens' access to information and ideas."

And the Twitterverse was beside itself. "When you become the agent of the censor, there are problems there," said Twitter power user and media consultant/critic Jeff Jarvis.

It isn't clear why Twitter chose this moment to articulate this policy, and the company isn't saying exactly where and when it might begin censoring. In the United States, Twitter abides by countless takedown notices from Hollywood and the recording industry. Obviously, silencing those tweets containing copyrighted material isn't the same as blacking out calls for government protest or upheaval, but it's akin to censorship nevertheless.

It's easy to suggest that Twitter—whose service was instrumental in the Arab uprisings last year—should never censor and instead subject their employees to arrest or just simply go dark in countries that demand it. Bit it's a tough call. Google struggled with China's requirement to suppress certain searches—like for the Tiananmen Square crackdown—and after a confusing period where it seemed to suggest it would abandon the huge and potentially massive market settled on a contorted solution in which Google simply redirects all Google.cn users to an unfiltered search site in Hong Kong.

In the public's eye, the nuance of abiding by local laws—which may seem abhorrent—versus leaving such a market and ceding it to less-scrupulous competitors, is sometimes lost.

"I don't think this means Twitter is going to be in a conspiracy with repressive governments," said Jeff Neuburger, co-chair of the technology, media and communication law practice at the Proskauer firm. "I think a lot depends on how Twitter uses this technology."

Following the backlash, Twitter said that it will not filter tweets, but instead will be "reactive only, that is we will withhold specific content only when required to do so in response to what we believe to be a valid and applicable legal request." If Twitter users are in a country where a tweet has been disappeared, an alert box will show saying "Tweet withheld." The tweet will be visible in countries where it was not censored.

Cohn said Twitter was at least being transparent. Facebook, for example, also regularly removes content for a variety of reasons to comport with local laws, too. She added that Twitter's announcement underscores the need for anti-censoring technologies like Tor, which reroutes IP addresses as a workaround to a country's censorship tactics.

"I think Twitter is telling us some unfortunate truths," Cohn said. "Rather than shoot the messenger, we need to put focus on how to make sure we have really robust anti-censorship technologies people can use." Reported in: *wired.com*, January 27.

foreign

Dhaka, Bangladesh

Police have arrested the head teacher at a college in southern Bangladesh after a book considered blasphemous by some Muslims was found in the school's library. Police officer Abdul Malek said S.M. Yunus Ali was arrested for possessing the novel *Lajja*, or *Shame*, by exiled writer Taslima Nasrin.

Malek said Ali, head teacher at the K.C. Technical and Business Management College, could face up to three years in jail if he is found guilty of authorizing the book's inclusion in the library. The Prothom Alo newspaper said that Ali denied having the book and said he was the victim of a conspiracy.

Police corruption and misuse of police investigations by politicians are widespread in Bangladesh.

The novel was banned a year after its publication in 1993 and Nasrin was forced to flee Bangladesh to escape death threats from radical Muslims who considered it blasphemous for advocating secularism. She has been living in India and Europe since then. Reported in: *Winnipeg Free Press*, January 4.

Minsk, Belarus

News that Belarus has cut itself off from the rest of the Internet, with headlines like, "It is now illegal to access any foreign website in the Republic of Belarus," may be exaggerated and the situation is more complex than such headlines imply.

The new law on Internet access recently adopted has two main parts. It seems to say that all online businesses providing "services" on the Internet must be either located in Belarus, or registered there, which might be a problem for Amazon, say. Presumably the company could get around this if it set up a subsidiary in Belarus, and then sold goods from the site amazon.by—except for the slight problem that this domain has already been taken by a water company. However, Amazon might well decide that it is not worth the effort, and simply block all connections from Belarus.

One issue is what exactly "services" include. If, as some have suggested, this means companies offering email, it might stop people using Gmail, unless Google also sets up an arm in the country—wisely, Google has already registered its domain in Belarus, google.by. Clearly, much depends on how the law is interpreted.

As for non-commercial sites like Wikipedia, say, the paragraph doesn't seem to apply at all, since it only concerns businesses. However, they may well be caught by other parts of the law. These sections deal with Internet cafes and even "home networks"—connections shared among households. They require users to be registered, the sites they visit recorded, and the usual censorship of pornographic and "extremist" materials. It's easy to imagine even sites like Wikipedia being branded as such (after all, it happened in the UK), and thus being on the blacklist.

So while it is by no means true that Belarus has made accessing all sites outside the country illegal, it has certainly made it risky, if not impossible, to make purchases from external sites. Worse, it confirms that Internet users must be spied upon, and "forbidden" sites must be blocked; taken together, these new measures allow the government of Belarus to exert extremely tight control over Internet users in the country.

Moreover, with these systems in place, severing Belarus from the Internet for real would be relatively easy, if its government decided to take that extreme step. Reported in: *techdirt.com*, January 3.

New Delhi, India

Google India has removed web pages deemed offensive to Indian political and religious leaders to comply with a court case that has raised censorship fears in the world's largest democracy, media reported February 6. The action followed weeks of intense government pressure for 22 Internet giants to remove photographs, videos or text considered "anti-religious" or "anti-social."

A New Delhi court gave Facebook, Google, YouTube and Blogspot and the other sites two weeks to present further plans for policing their networks, according to the Press Trust of India.

The case highlights the difficulty India faces in balancing conservative religious and political sentiments with its hope that freewheeling Internet discourse and technology will help spur the economy and boost living standards for its 1.2 billion people.

Google India did not say which sites were removed but had said it would be willing to go after anything that violated local law or its own standards. Indian officials have been incensed by material insulting to Prime Minister Manmohan Singh, ruling Congress party leader Sonia Gandhi and religious groups, including illustrations showing Singh and Gandhi in compromising positions and pigs running through Mecca, Islam's holiest city.

"There is no question of any censorship," Communications Minister Sachin Pilot said in Bangalore. "They all have to operate within the laws of the country. ... There must be responsible behavior on both sides."

Anyone hurt by online content should be able to seek legal redress, he said. The government has warned it has evidence to prosecute 21 sites for offenses of "promoting enmity between classes and causing prejudice to national integration."

The government has asked the sites to set a voluntary framework to keep offensive material off the Internet. Facebook India submitted a compliance report to the court February 6, but it also joined Yahoo and Microsoft

in questioning its inclusion in the case, saying no specific complaints had been presented against them.

Prosecutors, who sued on behalf of a Muslim religious leader who accused companies of hosting pages that disparage Islam, said they would provide the companies with all relevant documents. The court gave the companies fifteen more days to report back.

India is Facebook's third-fastest growing market, after the U.S. and Indonesia. The California-based company, with $3.7 billion in revenues last year, has seen its hoped-for launch in China held back by rules requiring censorship of material seen by the Chinese government as objectionable or obscene.

The issue of country-specific censorship sparked global outcry in recent weeks, after Twitter said it would allow tweets to be deleted in countries where the content breaks local law (see page 62). Twitter insisted the new policy would help freedom of expression and transparency by preventing the entire site from being blocked. But dissidents and activists who have embraced Twitter in their campaigns accused the site of betraying free speech. Reported in: *Washington Post*, February 6.

Jakarta, Indonesia

After surviving an attack from an angry mob, an Indonesian atheist is facing jail time for posting the phrase "God doesn't exist" on his Facebook page.

The man, who is being identified only as Alexander, posted the message on the social networking site and was later reported to authorities by the Indonesian Council of Ulema, an Islamic religious authority.

Alexander arrived for work at a government office January 18 where he was met and attacked by a mob of people upset by his beliefs. He was arrested two days later and charged with blasphemy against Islam, a crime punishable by up to five years in jail. Officials allegedly were upset because they "believed Mr. Alexander had defiled Islam by using passages from the Koran to denounce God."

An Indonesian law prohibits people from speaking out against any of the country's six recognized religions.

In addition to legal trouble, Alexander's post may also cost him his job.

Alexander grew up Muslim, but questioned the existence of God, angels and heaven, the *Jakarta Post* reports. He learned about atheism while attending college in Bandung, West Java. According to a local police chief, Alexander said he's not going down without a fight.

"He said he realized what he had said and was prepared to lose his job to defend his beliefs," Police chief Adjutant Senior Commander Chairul Azis said. In addition to questioning God on his own page, Alexander managed a Facebook group about atheism that had more than 1,200 followers. Reported in: huffingtonpost.com, January 20.

Tehran, Iran

Iran is clamping down heavily on web users before parliamentary elections in March, with draconian rules on cybercafes and preparations to launch a national Internet.

Tests for a countrywide network aimed at substituting services run through the world wide web have been carried out by Iran's ministry of information and communication technology, according to a newspaper report. The move has prompted fears among its online community that Iran intends to withdraw from the global Internet.

The police in January imposed tighter regulations on Internet cafes. Cafe owners were given a two-week ultimatum to adopt rules requiring them to check the identity cards of their customers before providing services.

"Internet cafes are required to write down the forename, surname, name of the father, national identification number, postcode and telephone number of each customer," said an Iranian police statement, according to the news website Tabnak.

"Besides the personal information, they must maintain other information of the customer such as the date and the time of using the Internet and the IP address, and the addresses of the websites visited. They should keep these informations for each individuals for at least six months."

Recently, users in Iran have complained of a significant reduction in Internet speed, reported the reformist newspaper, *Roozegar*, which has recently resumed publication after months of closure. The newspaper said it appeared to be the result of testing the national Internet.

"According to some of the people in charge of the communication industry, attempts to launch a national Internet network are the cause of disruption in Internet and its speed reduction in recent weeks," *Roozegar* reported.

Some government websites, however, cited other reasons for the drop in speed. "If the national Internet comes into effect, the Internet in the country will act like an internal network and therefore visiting the websites needs permission from the people in charge. Users outside Iran also need permission to visit websites running from inside the country," *Roozegar*'s report said.

Speaking on condition of anonymity, an Iranian IT expert with close knowledge of the national Internet project, which he described as a corporate-style intranet, said: "Despite what others think, intranet is not primarily aimed at curbing the global Internet but Iran is creating it to secure its own military, banking and sensitive data from the outside world.

"Iran has fears of an outside cyber-attack like that of the Stuxnet, and is trying to protect its sensitive data from being accessible on the world wide web."

Stuxnet, a computer worm designed to sabotage Iran's uranium enrichment project, hit the country's nuclear facilities in 2010. Iranian authorities initially played down the impact of the Stuxnet but eventually admitted the nuclear program had been damaged by the malware.

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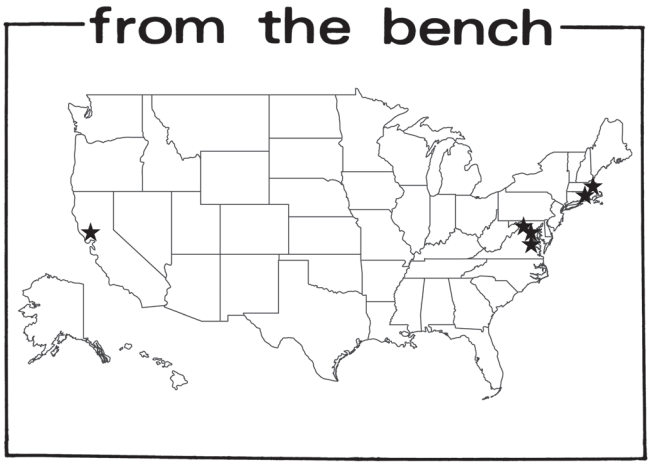

U.S. Supreme Court

In what may be its most significant religious liberty decision in two decades, the Supreme Court on January 11 for the first time recognized a "ministerial exception" to employment discrimination laws, saying that churches and other religious groups must be free to choose and dismiss their leaders without government interference.

"The interest of society in the enforcement of employment discrimination statutes is undoubtedly important," Chief Justice John G. Roberts Jr. wrote in a unanimous decision that was surprising in both its sweep and its unanimity. "But so, too, is the interest of religious groups in choosing who will preach their beliefs, teach their faith and carry out their mission."

The decision gave only limited guidance about how courts should decide who counts as a minister, saying the court was "reluctant to adopt a rigid formula." Two concurring opinions offered contrasting proposals.

The decision clearly states that the Supreme Court does not consider the exemption to be limited to members of the clergy. But the decision does not spell out specific rules for determining who may be covered by the exemption. The Supreme Court "does not adopt a rigid formula" for such determinations, the decision said.

Whatever its precise scope, the ruling will have concrete consequences for countless people employed by religious groups to perform religious work. In addition to ministers, priests, rabbis and other religious leaders, the decision appears to encompass, for instance, at least those teachers in religious schools with formal religious training who are charged with instructing students about religious matters.

Douglas Laycock, a law professor at the University of Virginia who argued the case on behalf of the defendant, a Lutheran school, said the upshot of the ruling was likely to be that "substantial religious instruction is going to be enough."

Asked about professors at Catholic universities like Notre Dame, Professor Laycock said: "If he teaches theology, he's covered. If he teaches English or physics or some clearly secular subjects, he is clearly not covered."

The case, *Hosanna-Tabor Church v. Equal Employment Opportunity Commission,* was brought by Cheryl Perich, who had been a teacher at a school in Redford, Michigan, that was part of the Lutheran Church-Missouri Synod, the second-largest Lutheran denomination in the United States. Perich said she was fired for pursuing an employment discrimination claim based on a disability, narcolepsy.

Perich had taught mostly secular subjects but also taught religion classes and attended chapel with her class. "It is true that her religious duties consumed only 45 minutes of each workday," Chief Justice Roberts wrote, "and that the rest of her day was devoted to teaching secular subjects. The issue before us, however, is not one that can be resolved with a stopwatch."

Instead, the court looked to several factors. Perich was a "called" teacher who had completed religious training and whom the school considered a minister. She was fired, the school said, for violating religious doctrine by pursuing litigation rather than trying to resolve her dispute within the church.

The Rev. Barry W. Lynn, executive director of Americans United for Separation of Church and State, said the decision could have pernicious consequences, by, for instance, barring suits from pastors who are sexually harassed.

"Blatant discrimination is a social evil we have worked hard to eradicate in the United States," he said in a statement. "I'm afraid the court's ruling today will make it harder to combat."

Bishop William E. Lori, chairman of the United States Conference of Catholic Bishops' ad hoc committee for religious liberty, called the ruling "a great day for the First Amendment."

"This decision," he said in a statement, "makes resoundingly clear the historical and constitutional importance of keeping internal church affairs off limits to the government—because whoever chooses the minister chooses the message."

Chief Justice Roberts devoted several pages of his opinion to a history of religious freedom in Britain and the United States, concluding that an animating principle behind the First Amendment's religious liberty clauses was to prohibit government interference in the internal affairs of religious groups generally and in their selection of their leaders in particular.

"The Establishment Clause prevents the government

from appointing ministers," he wrote, "and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own."

The decision was a major victory for a broad range of national religious denominations that had warned that the case was a threat to their First Amendment rights and their autonomy to decide whom to hire and fire. Some religious leaders had said they considered it the most important religious freedom case to go to the Supreme Court in decades.

Many religious groups were outraged when the Obama administration argued in support of Perich, saying this was evidence that the administration was hostile to historically protected religious liberties.

The administration had told the justices that their analysis of Perich's case should be essentially the same whether she had been employed by a church, a labor union, a social club or any other group with free-association rights under the First Amendment. That position received withering criticism when the case was argued in October, and it was soundly rejected in the decision.

"That result is hard to square with the text of the First Amendment itself, which gives special solicitude to the rights of religious organizations," Chief Justice Roberts wrote. "We cannot accept the remarkable view that the religion clauses have nothing to say about a religious organization's freedom to select its own ministers."

Requiring Perich to be reinstated "would have plainly violated the church's freedom," Chief Justice Roberts wrote. And so would awarding her and her lawyers money, he went on, as that "would operate as a penalty on the church for terminating an unwanted minister."

In a concurrence, Justice Clarence Thomas wrote that the courts should get out of the business of trying to decide who qualifies for the ministerial exception, leaving the determination to religious groups.

"The question whether an employee is a minister is itself religious in nature, and the answer will vary widely," he wrote. "Judicial attempts to fashion a civil definition of 'minister' through a bright-line test or multifactor analysis risk disadvantaging those religious groups whose beliefs, practices and membership are outside of the 'mainstream' or unpalatable to some."

In a second concurrence, Justice Samuel A. Alito Jr., joined by Justice Elena Kagan, wrote that it would be a mistake to focus on ministers, a title he said was generally used by Protestant denominations and "rarely if ever" by Roman Catholics, Jews, Muslims, Hindus or Buddhists. Nor, Justice Alito added, should the concept of ordination be at the center of the analysis.

Rather, he wrote, the exception "should apply to any 'employee' who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith."

At the argument in October, some justices expressed concern that a sweeping ruling would protect religious groups from lawsuits by workers who said they were retaliated against for, say, reporting sexual abuse.

Chief Justice Roberts wrote that the court's decision left the possibility of criminal prosecution and other protections in place. "There will be time enough to address the applicability of the exception to other circumstances," he wrote, "if and when they arise."

Periodically, issues involving the ministerial exception have come up in higher education. In 2006, a federal appeals court surprised many legal observers by ruling that religious colleges could be sued for employment actions against a chaplain if those actions weren't based on "faith, doctrine, or internal regulation." That decision could have opened the way for more suits against religious colleges, but it was reversed by the same court a few months later.

A case under appeal in Kentucky focuses on whether the ministerial exception covers all faculty members at a seminary.

Michael A. Olivas, an expert on higher education law at the University of Houston Law Center, said he thought the high court's decision was "dreadful" in limiting the rights of people who work in largely secular duties at religious institutions. He noted that groups such as the American Association of University Professors that fight for faculty rights give considerable leeway to religious colleges.

He said that there is "a very slippery slope" in granting religious institutions more and more freedom from any questioning of employment actions.

The decision was cheered by the Council for Christian Colleges and Universities, which had submitted an amicus curiae brief urging the justices not to open the door to federal-court involvement in determining which employees of such institutions should be classified as ministerial.

"We argued in our brief, and we believe on our campuses, that our faculty are essential to carrying out the religious mission" of religious colleges, said Shapri D. LoMaglio, director of government relations and executive programs for the council.

Anthony R. Picarello Jr., general counsel for the U.S. Conference of Catholic Bishops, issued a statement that said the "decision affirms the common-sense proposition that religious schools must be free to choose religion teachers based on religion, without interference from the state."

On the other side of the issue, more than sixty professors of law and religion at American higher-education institutions had submitted an amicus brief arguing that the recognition of a ministerial exception "has breathtaking implications for denying the civil rights of employees of religious schools and institutions," including the nation's roughly 900 religiously affiliated colleges and universities.

Caroline Mala Corbin, an associate professor of law at the University of Miami who is a co-author of that brief, issued a statement that said, "It is a shame that in its zeal

to protect the rights of religious institutions, the Supreme Court ignored the rights of the religious individuals who work at those institutions."

The decision, Corbin said, gives religious colleges "carte blanche to discriminate and retaliate" against any faculty member who is deemed a ministerial employee. "It does not matter if the discrimination or retaliation is religiously required," she said. "Either way, the professor has no legal recourse."

Several professors and scholars of antitrust law had submitted an amicus brief cautioning the court not to define the ministerial exception in ways that would enable religious associations to cite it in imposing cartel-like restraints on their labor market.

Barak D. Richman, a professor of law and business administration at Duke University who was one of that brief's authors, said the fears expressed in it were not realized because the decision narrowly focused on employer-employee relationships within individual institutions, and not any efforts by associations to influence their member organizations' personnel decisions. Reported in: *New York Times*, January 11; *insidehighered.com*, January 12; *Chronicle of Higher Education* online, January 12.

A professor lost his long legal fight to keep thousands of foreign musical scores, books, and other copyrighted works in the public domain when the U.S. Supreme Court ruled against him January 18 in a case that will affect scholars and artists around the country.

The scholar is Lawrence Golan, a music professor and conductor at the University of Denver. He argued that the U.S. Congress did not have the legal authority to remove works from the public domain. It did so in 1994, when the Congress changed U.S. copyright law to conform with an international copyright agreement. The new law reapplied copyright to millions of works that had long been free for anyone to use without permission.

The Supreme Court heard the case, *Golan v. Holder*, last October, and in a 6-to-2 ruling on January 18, the justices upheld the changes in U.S. copyright law.

"Neither the Copyright and Patent Clause nor the First Amendment, we hold, makes the public domain, in any and all cases, a territory that works may never exit," declared the majority opinion, which was written by Justice Ruth Bader Ginsburg.

In a dissenting opinion, Justice Stephen G. Breyer, writing for himself and Justice Samuel A. Alito Jr., faulted the Congressional action. "The fact that, by withdrawing material from the public domain, the statute inhibits an important pre-existing flow of information is sufficient, when combined with the other features of the statute that I have discussed, to convince me that the Copyright Clause, interpreted in the light of the First Amendment, does not authorize Congress to enact this statute," he wrote.

Golan's lawyer criticized the ruling. "Obviously this is disappointing," said the lawyer, Anthony Falzone, in an interview. He said the decision would greatly increase the number of symphonies that the professor, and artists around the country, "are now for all intents and purposes unable to perform and record because the [permissions] fee makes it infeasible."

how favorable to free speech is the Roberts court?

The Supreme Court led by Chief Justice John G. Roberts Jr., the conventional wisdom goes, is exceptionally supportive of free speech. Leading scholars and practitioners have called the Roberts court the most pro-First Amendment court in American history.

A recent study challenges that conclusion. It says that a comprehensive look at data from 1953 to 2011 tells a different story, one showing that the court is hearing fewer First Amendment cases and is ruling in favor of free speech at a lower rate than any of the courts led by the three previous chief justices.

The study arrived as the Supreme Court prepares to consider two major First Amendment cases. On January 10 the court heard arguments in *Federal Communications Commission v. Fox Television Stations*, which asks whether the First Amendment allows the government to regulate vulgarity in broadcast programming. The court will soon consider *United States v. Alvarez*, which asks whether the government can make it a crime to lie about receiving military decorations.

In neither case is a ruling in favor of the free speech argument assured. Indeed, how the court decides the cases will help determine whether the court's reputation as a fierce protector of the First Amendment is deserved.

The studies acknowledge that the Roberts court has ruled for free speech rights in a handful of cases that have captured the public imagination, including ones protecting funeral protesters, the makers of violent video games and the distributors of materials showing the torture of animals.

"These free speech slam-dunks, with their colorful facts, were among the Roberts court's cases that have attracted the most press attention, but they are hardly indicative of a conservative majority with an expansive

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Golan had argued that taking works back out of the public domain would hinder creativity by making artists more cautious about remixing or otherwise using works, fearing their status could change in the future in a way that required payment to copyright holders. More broadly, academics have expressed concern that upholding the 1994 law would make it much more difficult to write books or assemble course readings without having to deal with a host of legal hurdles—or just prohibitively expensive fees—to avoid violating copyrights.

In the majority opinion, the justices noted that the restrictions of copyright law can sometimes help creativity, though, by devising a system that allows authors to collect payment when their work is used. "Congress had reason to believe that a well-functioning international copyright system would encourage the dissemination of existing and future works," Justice Ginsburg wrote.

This marks the end of Golan's fight, according to his lawyer, as the only remedy now would be a change in U.S. law.

"It would be highly unlikely," said Falzone, "that Congress would amend the statute in a way that would vindicate the interests of my client and the public."

But the ruling could open the door for Congress to craft further changes in copyright law that scholars might consider even more restrictive, said Kenneth D. Crews, director of the copyright-advisory office at the Columbia University Libraries.

"It is a grant of sweeping authority to Congress to shape copyright law in almost any way that it chooses," he said of the decision. "This should raise a red flag to be watchful about other developments in congress like SOPA," he added, referring to the Stop Online Piracy Act.

That bill, which is under consideration in the U.S. House of Representatives, and a related measure in the Senate sparked an online protest in January. Several major sources of free information, including Wikipedia, blocked access to their content temporarily and put up pages asking users to help fight against the legislation. The all-black home page on Wikipedia started with the headline "Imagine a world without free knowledge" (see page 54).

Copyright holders and other owners of content, meanwhile, applauded the ruling. The Motion Picture Association of America, for instance, issued a statement saying that it is "pleased that the Supreme Court has again ruled that strong copyright protection is the 'engine of free expression' and fully consistent with the First Amendment." Reported in: *Chronicle of Higher Education* online, January 18.

The Supreme Court ruled unanimously January 23 that the police violated the Constitution when they placed a Global Positioning System tracking device on a suspect's car and monitored its movements for 28 days.

A set of overlapping opinions in the case collectively suggested that a majority of the justices are prepared to apply broad privacy principles to bring the Fourth Amendment's ban on unreasonable searches into the digital age, when law enforcement officials can gather extensive information without ever entering an individual's home or vehicle.

Walter Dellinger, a lawyer for the defendant in the case and a former acting United States solicitor general, said the decision was "a signal event in Fourth Amendment history."

"Law enforcement is now on notice," Dellinger said, "that almost any use of GPS electronic surveillance of a citizen's movement will be legally questionable unless a warrant is obtained in advance."

An overlapping array of justices were divided on the rationale for the decision, with the majority saying the problem was the placement of the device on private property. But five justices also discussed their discomfort with the government's use of or access to various modern technologies, including video surveillance in public places, automatic toll collection systems on highways, devices that allow motorists to signal for roadside assistance, location data from cellphone towers and records kept by online merchants.

The case concerned Antoine Jones, who was the owner of a Washington nightclub when the police came to suspect him of being part of a cocaine-selling operation. They placed a tracking device on his Jeep Grand Cherokee without a valid warrant, tracked his movements for a month and used the evidence they gathered to convict him of conspiring to sell cocaine. He was sentenced to life in prison.

The United States Court of Appeals for the District of Columbia Circuit overturned his conviction, saying the sheer amount of information that had been collected violated the Fourth Amendment, which bars unreasonable searches. "Repeated visits to a church, a gym, a bar or a bookie tell a story not told by any single visit, as does one's not visiting any of those places in the course of a month," Judge Douglas H. Ginsburg wrote for the appeals court panel.

The Supreme Court affirmed that decision, but on a different ground. "We hold that the government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search,' " Justice Antonin Scalia wrote for the majority. Chief Justice John G. Roberts Jr. and Justices Anthony M. Kennedy, Clarence Thomas and Sonia Sotomayor joined the majority opinion.

"It is important to be clear about what occurred in this case," Justice Scalia went on. "The government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted."

When the case was argued in November, a lawyer for the federal government said the number of times the federal

authorities used GPS devices to track suspects was "in the low thousands annually."

Vernon Herron, a former Maryland state trooper now on the staff of the University of Maryland's Center for Health and Homeland Security, said state and local law enforcement officials used GPS and similar devices "all the time," adding that "this type of technology is very useful for narcotics and terrorism investigations."

The decision thus places a significant burden on widely used law enforcement surveillance techniques, though the authorities remain free to seek warrants from judges authorizing the surveillance.

In a concurrence for four justices, Justice Samuel A. Alito Jr. faulted the majority for trying to apply eighteenth-century legal concepts to twenty-first-century technologies. What should matter, he said, is the contemporary reasonable expectation of privacy.

"The use of longer-term GPS monitoring in investigations of most offenses," Justice Alito wrote, "impinges on expectations of privacy." Justices Ruth Bader Ginsburg, Stephen G. Breyer and Elena Kagan joined the concurrence.

"We need not identify with precision the point at which the tracking of this vehicle became a search, for the line was surely crossed before the four-week mark," Justice Alito wrote. "Other cases may present more difficult questions."

Justice Scalia said the majority did not mean to suggest that its property-rights theory of the Fourth Amendment displaced the one focused on expectations of privacy. "It may be that achieving the same result through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy, but the present case does not require us to answer that question," he wrote.

Justice Sotomayor joined the majority opinion, agreeing that many questions could be left for another day "because the government's physical intrusion on Jones's Jeep supplies a narrower basis for decision." But she left little doubt that she would have joined Justice Alito's analysis had the issue he addressed been the exclusive one presented in the case.

"Physical intrusion is now unnecessary to many forms of surveillance," Justice Sotomayor wrote. She added that "it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties."

"People disclose the phone numbers that they dial or text to their cellular providers; the URLs that they visit and the e-mail addresses with which they correspond to their Internet service providers; and the books, groceries and medications they purchase to online retailers," she wrote. "I, for one, doubt that people would accept without complaint the warrantless disclosure to the government of a list of every Web site they had visited in the last week, or month, or year."

Justice Alito listed other "new devices that permit the monitoring of a person's movements" that fit uneasily with traditional Fourth Amendment privacy analysis. "In some locales," he wrote, "closed-circuit television video monitoring is becoming ubiquitous. On toll roads, automatic toll collection systems create a precise record of the movements of motorists who choose to make use of that convenience. Many motorists purchase cars that are equipped with devices that permit a central station to ascertain the car's location at any time so that roadside assistance may be provided if needed and the car may be found if it is stolen." Reported in: *New York Times*, January 23.

In refusing to take two cases January 17, the U.S. Supreme Court left many unanswered questions in the digital-age issue involving students who were punished for their off-campus, online postings.

The justices avoided the opportunity to clarify when school officials may punish students for online expression they create away from school, refusing to review cases out of Pennsylvania and West Virginia: *Blue Mountain School District v. J.S. and Kowalski v. Berkeley County Schools*.

The Blue Mountain petition actually dealt with two separate cases out of Pennsylvania—one involving middle school students (including student J.S.) and another concerning a former high school student named Justin Layshock, who faced punishment for online comments about his principal in the Hermitage School District. In both Pennsylvania cases, the full U.S. Court of Appeals for the Third Circuit had ruled in the students' favor—by a sharply divided 8-6 vote in Blue Mountain and unanimously in Layshock. With the high court's refusal to hear an appeal, those rulings stand for now as good news for student expression online in the Third Circuit, which includes Pennsylvania, New Jersey and Delaware.

The Fourth Circuit, however, ruled against former student Kara Kowalski, who created a MySpace discussion page that included highly offensive statements that another student was a slut who had herpes. So that ruling stands in West Virginia and the states of that circuit, Virginia, Maryland, North Carolina and South Carolina.

Last year, the high court also refused to hear a similar case out of the Second Circuit. A common reason that the Court grants review is to resolve circuit splits. For some reason the justices decided to leave the split as is.

That means important questions remain:

- Do school officials even have jurisdiction over purely off-campus expression?
- What is enough of a connection between an off-campus, online posting and school activities to trigger school jurisdiction?
- When does online, off-campus student speech create a reasonable forecast of substantial disruption of school activities?

- Can school officials discipline off-campus, online student speech because it invades the rights of other students?

- Can school officials discipline students for off-campus, online speech simply because it contains vulgar and lewd language?

Until the Supreme Court decides to step into these matters, we simply don't know.

Frank LoMonte, director of the Student Press Law Center, said it may have been a good thing that the Court didn't review the cases. "It has been very, very difficult for courts to set aside their revulsion over the specific speech in front of them and see beyond that to the larger constitutional issue," he said.

"Just as the Court made an ill-considered First Amendment ruling in the Morse [*Morse v. Frederick* (2007)] case out of sympathy for the particular school administrator, I think the temptation would have been irresistible to do violence to the First Amendment so that the students in these cases didn't escape unpunished. The speech by these students was in no way representative of the creative and substantive ways in which student bloggers, journalists and artists are using the Web every day, but those students' rights could have suffered real and permanent damage had the Court taken up these cases."

Nancy Willard, director of the Center for Safe and Responsible Internet Use, said she would have welcomed clarification from the high court. "Unfortunately, due to a lack of clarity on these issues, school administrators feel as if they are in a 'damned if you do, damned if you don't' situation when dealing with off-campus hurtful student speech," Willard said. "Guidance … would have been helpful.

"However, I do not see a conflict between these Third and Fourth Circuit cases. These decisions are all based on the application of the substantial disruption standard to the facts. The critical aspect to look at is who was targeted by the off-campus speech." Reported in: firstamendmentcenter.org, January 17.

In a Supreme Court argument that was equal parts cultural criticism and First Amendment doctrine, the justices on January 10 considered whether the government still had good reason to regulate cursing and nudity on broadcast television.

The legal bottom line was not easy to discern, though there seemed to be little sentiment for a sweeping overhaul of the current system, which subjects broadcasters to fines for showing vulgar programming that is constitutionally protected when presented on cable television or the Internet.

Justice Samuel A. Alito Jr. suggested that the court should not rush to resolve a question concerning a technology on its last legs. "Broadcast TV is living on borrowed time," he said. "It is not going to be long before it goes the way of vinyl records and eight-track tapes."

In the meantime, though, a majority of the justices seemed content to leave in place the broad outlines of a regulatory structure built on rationales that have been undermined.

In 1978, in *Federal Communications Commission v. Pacifica Foundation*, the court said the government could restrict George Carlin's famous "seven dirty words" monologue, which had been broadcast on the radio in the afternoon. The court relied on what it called the uniquely pervasive nature of broadcast media and its unique accessibility to children.

Neither point still holds, lawyers for two networks told the justices. The case, *Federal Communications Commission v. Fox Television Stations*, arose from the broadcast of fleeting expletives by celebrities on awards shows on Fox and partial nudity on the police drama "NYPD Blue" on ABC.

Justice Antonin Scalia, who in other settings has been hostile to government regulation of speech, said there was value in holding the line here. "This has a symbolic value," he said, "just as we require a certain modicum of dress for the people that attend this court."

"These are public airwaves," Justice Scalia went on, adding: "I'm not sure it even has to relate to juveniles, to tell you the truth."

Chief Justice John G. Roberts Jr., the only justice with small children, seemed to stumble in describing what was at stake. "All we are asking for —— , " he said, and then he corrected himself. "What the government is asking for is a few channels where you can say they are not going to hear the S-word, the F-word. They are not going to see nudity."

"So the proliferation of other media, it seems to me, cuts against you," the chief justice told Carter G. Phillips, a lawyer for Fox.

A majority of the court may thus be open to continued government regulation of indecent programming on broadcast television. But there was significant dissatisfaction with how the Federal Communications Commission has been using its authority.

"One cannot tell what's indecent and what isn't," Justice Ruth Bader Ginsburg said, referring to the agency as "the censor." The commission has, for instance, said that swearing in Saving Private Ryan, the Steven Spielberg war movie, was not indecent, while swearing by blues masters in a music documentary produced by Martin Scorsese was indecent. Nudity in Schindler's List, another Spielberg movie, was allowed, but a few seconds of partial nudity in "NYPD Blue" was not.

Justice Elena Kagan offered a summary of the state of federal regulation in this area. "The way that this policy seems to work," she said, "it's like nobody can use dirty words or nudity except for Steven Spielberg."

Donald B. Verrilli Jr., the United States solicitor general, said "we would concede that there is not perfect clarity" in the commission's approach. But he said the agency heeded

context and used its powers sparingly. Verrilli also said that broadcasters undertook "enforceable public obligations" in exchange for their licenses, among them an agreement to comply with restrictions on indecent programming.

Justice Kagan responded that "this contract notion of yours can only go so far" because the government could not impose unlimited conditions in exchange for a benefit.

Justice Ginsburg wondered whether restricting swearing made sense in a society in which "expletives are in common parlance."

Verrilli said yes. "It's one thing when your 13-year-old brother is saying it to you, or some bully in the schoolyard's saying it to you," he said. "It's another when it's presented to you in this medium as an appropriate means of communication."

Justice Anthony Kennedy suggested and then rejected the idea that parents could use technology like a V-chip instead of relying on the government for protection. "There's the chip that's available," he said. "And of course, you ask your 15-year-old, or your 10-year-old, how to turn off the chip. They're the only ones that know how to do it."

Justice Alito asked Phillips what viewers would see on Fox in the absence of regulation. "Are they going to be seeing a lot of people parading around in the nude and a stream of expletives?"

Phillips said broadcasters were free to show what they like after 10 p.m. and nonetheless voluntarily followed fairly restrictive internal standards.

A lawyer for ABC, Seth P. Waxman, said the vagueness of the commission's standards continued to cause problems, mentioning a pending complaint about coverage of the opening ceremonies of the Olympics, "which included a statue very much like some of the statues that are here in this courtroom, that had bare breasts and buttocks."

"There's a bare buttock there, and there's a bare buttock here," Waxman said, gesturing around the courtroom and perhaps supplying the justices with another argument against television coverage of the Supreme Court. Reported in: *New York Times*, January 10.

Stating that "the integrity of the military award system relies more on a free press than on the threat of prosecution," media organizations, includilng the Freedom to Read Foundation, writers and performers urged the Supreme Court to hold that a federal law which makes it a crime to lie about having received a military medal violates the free speech protections of the First Amendment.

The federal government has asked the Supreme Court to reverse a court of appeals decision which held the statute unconstitutional. In so doing, the government is seeking to strip First Amendment protection from and criminalize factually false speech even when the speaker does not defame or defraud anyone, whenever the government says there is a strong governmental interest in the "truth." In their amicus curiae brief, the media groups argue that while defamation and fraud are recognized historic exceptions to the First Amendment, there has never been an exception for false speech.

The media groups point out that briefs in support of the law filed by veterans groups had credited "investigative journalists" and other media with exposing false claims of having received military medals, "resulting in humiliation, shame, exhumation from Arlington National Cemetery, censure, and loss of employment," demonstrating that the truth is best established through a free press, not criminal prosecution.

The amicus brief was filed on behalf of American Booksellers Foundation for Free Expression, American Federation of Television and Radio Artists, Association of American Publishers, Inc., Comic Book Legal Defense Fund, Entertainment Merchants Association, Freedom to Read Foundation, PEN American Center, Village Voice Media Holdings, LLC, and Writers Guild of America, West, Inc. The brief was coordinated by Media Coalition, Inc, a trade association defending the First Amendment since 1973.

"It is dangerous to suggest that the government can punish false speech as long as there is a strong governmental interest," David Horowitz, executive director of Media Coalition, said. "There are many areas where there is a strong governmental interest—such as whether there were weapons of mass destruction in Iraq in 2002 and the causes of climate change—where vigorous public dialogue should be encouraged, not chilled by criminal penalties."

The amicus curiae brief also points out that the title of the federal law, the Stolen Valor Act, is misleading. "The Act actually covers not only valor awards but also any decoration or medal" awarded to members of the military, the brief said. There are over 200 such medals and decorations and tens of millions of recipients. While the case before the Supreme Court involves a false boast of having received the Congressional Medal of Honor, the amicus brief stated, "This Court should not sustain Alvarez's conviction unless it also would be prepared to sustain the conviction of a veteran who falsely told a grandchild of having won the Navy Expert Rifleman Medal with a motive no more malicious than to interest the child in riflery."

The case will be argued before the Supreme Court on February 22, 2012. Reported in: *Media Coalition Press Release*, January 26.

school

Cranston, Rhode Island

She is 16, the daughter of a firefighter and a nurse, a self-proclaimed nerd who loves Harry Potter and Facebook. But Jessica Ahlquist is also an outspoken atheist who has incensed this heavily Roman Catholic city with a successful

lawsuit to get a prayer removed from the wall of her high school auditorium, where it has hung for 49 years.

A federal judge ruled in January that the prayer's presence at Cranston High School West was unconstitutional, concluding that it violated the principle of government neutrality in religion. In the weeks since, residents have crowded school board meetings to demand an appeal, Jessica has received online threats and the police have escorted her at school, and Cranston, a dense city of 80,000 just south of Providence, has throbbed with raw emotion.

State Representative Peter G. Palumbo, a Democrat from Cranston, called Jessica "an evil little thing" on a popular talk radio show. Three separate florists refused to deliver her roses sent from a national atheist group. The group, the Freedom From Religion Foundation, has filed a complaint with the Rhode Island Commission for Human Rights.

"I was amazed," said Annie Laurie Gaylor, co-president of the foundation, which is based in Wisconsin and has given Jessica $13,000 from support and scholarship funds. "We haven't seen a case like this in a long time, with this level of revilement and ostracism and stigmatizing."

The prayer, eight feet tall, is papered onto the wall in the Cranston West auditorium, near the stage. It has hung there since 1963, when a seventh grader wrote it as a sort of moral guide and that year's graduating class presented it as a gift. It was a year after a landmark Supreme Court ruling barring organized prayer in public schools.

"Our Heavenly Father," the prayer begins, "grant us each day the desire to do our best, to grow mentally and morally as well as physically, to be kind and helpful." It goes on for a few more lines before concluding with "Amen."

For Jessica, who was baptized in the Catholic Church but said she stopped believing in God at age 10, the prayer was an affront. "It seemed like it was saying, every time I saw it, 'You don't belong here,' " she said.

Since the ruling, the prayer has been covered with a tarp. The school board has indicated it will announce a decision on an appeal in February.

A friend brought the prayer to Jessica's attention in 2010, when she was a high school freshman. She said nothing at first, but before long someone else—a parent who remained anonymous—filed a complaint with the American Civil Liberties Union. That led the Cranston school board to hold hearings on whether to remove the prayer, and Jessica spoke at all of them. She also started a Facebook page calling for the prayer's removal (it now has almost 4,000 members) and began researching Roger Williams, who founded Rhode Island as a haven for religious freedom.

Last March, at a rancorous meeting that Judge Ronald R. Lagueux of United States District Court in Providence described in his ruling as resembling "a religious revival," the school board voted 4-3 to keep the prayer. Some members said it was an important piece of the school's history; others said it reflected secular values they held dear.

The Rhode Island chapter of the ACLU then asked Jessica if she would serve as a plaintiff in a lawsuit; it was filed the next month.

New England is not the sort of place where battles over the division of church and state tend to crop up. It is the least religious region of the country, according to the Pew Forum on Religion and Public Life. But Rhode Island is an exception: it is the nation's most Catholic state, and dust-ups over religion are not infrequent. In December, several hundred people protested at the Statehouse after Gov. Lincoln Chafee, an independent, lighted what he called a "holiday tree."

In Cranston, the police said they would investigate some of the threatening comments posted on Twitter against Jessica, some of which came from students at the high school. Pat McAssey, a senior who is president of the student council, said the threats were "completely inexcusable" but added that Jessica had upset some of her classmates by mocking religion online. "Their frustration kind of came from that," he said.

Many alumni said they did not remember the prayer from their high school days but felt an attachment to it nonetheless. "I am more of a constitutionalist but find myself strangely on the other side of this," said Donald Fox, a 1985 graduate of Cranston West. "The prayer banner espouses nothing more than those values which we all hope for our children, no matter what school they attend or which religious background they hail from."

Brittany Lanni, who graduated from Cranston West in 2009, said that no one had ever been forced to recite the prayer and called Jessica "an idiot."

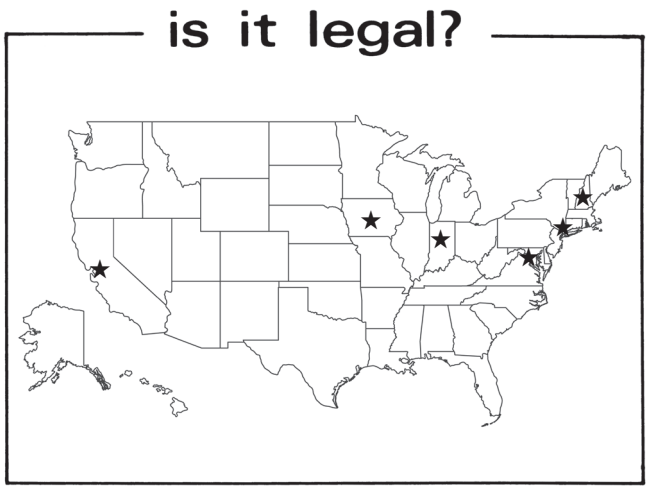
"If you don't believe in that," she said, "take all the money out of your pocket, because every dollar bill says, 'In God We Trust.' "

Raymond Santilli, whose family owns one of the flower shops that refused to deliver to Jessica, said he declined for safety reasons, knowing the controversy around the case. People from around the world have called to support or attack his decision, which he said he stood by. But of Jessica, he said, "I've got a daughter, and I hope my daughter is as strong as she is, O.K.?"

Jessica said she had stopped believing in God when she was in elementary school and her mother fell ill for a time. "I had always been told that if you pray, God will always be there when you need him," she said. "And it didn't happen for me, and I doubted it had happened for anybody else. So yeah, I think that was just like the last step, and after that I just really didn't believe any of it."

Does she empathize in any way with members of her community who want the prayer to stay? "I've never been asked this before," she said. A pause, and then: "It's almost like making a child get a shot even though they don't want

(continued on page 90)



libraries

Washington, D.C.

A coalition of ten library and open-access advocacy groups has sent a letter to Congress opposing HR 3699, the controversial Research Works Act. The American Library Association, the Association of Research Libraries, the Association of College and Research Libraries, Creative Commons, the Public Library of Science, and the Scholarly Publishing and Academic Resources Coalition, or SPARC, are among those who signed the letter.

The proposed bill would prevent federal agencies from requiring researchers to make the published results of federally supported research available to the public without publishers' consent. The coalition charged "would unfairly and unnecessarily prohibit federal agencies from conditioning research grants to ensure that all members of the public receive timely, equitable, online access to articles that report the results of federally funded research that their tax dollars directly support," the letter says. "Unfortunately, HR 3699 is designed to protect the business interests of a small subset of the publishing industry, failing to ensure that the interests of all stakeholders in the research process are adequately balanced." Some scholarly associations and researchers have also weighed in against the Research Works Act.

Opposition to the Act continues to spread. In a statement posted January 25 on its Web site, the Modern Language Association said it opposes the bill, HR 3699, which would undo public-access mandates such as the National Institute of Health's, under which federal-grant recipients must deposit copies of their papers in the PubMed Central repository within a year of publication.

"Unnecessary limits on the free flow of ideas compromise a robust exchange of information and knowledge," the MLA's president, Michael Bérubé, said in the statement. "In reviewing the language of the Research Works Act and considering the implications of its provisions, the MLA concludes that this legislation has significant negative ramifications for the future of public access to scholarly material and research." Bérubé is a professor of English at Penn State University.

The association is also a publisher, and in the statement it said that "a publisher's ability to earn revenue from the services that it provides need not be hindered by the provision of broad public access to scholarly work."

The Association of American Publishers supports the bill, although not all of its members agree with that position. The open-access advocate Peter Suber has created a running list of scholarly publishers and associations who support or oppose the bill. Other associations on the opposing side include the International Society for Computational Biology, the American Physical Society, and the Society for Cultural Anthropology.

Opposition has also taken root among researchers. Some scholars have called on colleagues to withhold scholarly labor from publishers who support the act. Meanwhile, almost 400 researchers have signed a pledge to boycott the journal publisher Elsevier over high subscription prices and its support of controversial legislation, including the Research Works Act. A separate petition against the bill has gathered close to 10,000 signatures. "Results of scholarship (particularly that which is funded by the public) is a global public good," one signer wrote. "The commercialization and commodification of scholarship is not acceptable."

At the American Library Association's midwinter meeting David Prosser, the executive director of Research Libraries U.K., described the bill as "audacious in the extreme." He said, "It just seems quite bizarre that they should attempt to appropriate the intellectual capital of researchers that has been funded by the taxpayer and then call it a private research work." Reported in: *Chronicle of Higher Education* online, January 25, 26.

schools

Washington, D.C.

In October, personal financial data—including social security numbers, loan repayment histories and bank-routing numbers—of thousands of college students was exposed on the Department of Education's (DOE) direct loan website. For seven minutes, anyone surfing the direct loan website could find personal information about students who had borrowed from the Department of Education.

In and of itself, this data security breach is quite alarming, but it is even more so considering the aggressive data gathering efforts the department is spearheading. For example, the DOE's changes to the Family Educational Rights and Privacy Act (FERPA) regulations will provide

the government with greater powers to gather and use longitudinal data about students to track their performance over time.

The new regulations define two previously undefined terms in FERPA in order to expand the sharing of student personal data. FERPA permits the access of student personal data—without consent—to "authorized representatives" of state or federal "education programs." The new regulations expand both definitions to allow a myriad of types of third parties to access student data. Under the new regulations, educational agencies can designate "representatives" quite liberally, and this threatens to allow student data to be disseminated much more widely. Indeed, this is DOE's goal—to allow for greater study of student longitudinal data.

But it comes at a great cost to privacy. DOE only has power over the schools and education agencies it funds. Researchers and other organizations designated as "authorized representatives" aren't subject to sanctions. Moreover, FERPA's enforcement is quite minimal, lacking a private right of action and having a sanction so implausible it has never been imposed in the 35+ year history of the law. The result is to allow greater sharing of information with woefully inadequate protection. A 2009 study by Fordham Law School's Center on Law and Information Policy found that "privacy protections for the longitudinal databases were lacking in the majority of states." Even more strongly, the study characterized the privacy protections as "weak."

Indeed, a recent story in The Huffington Post noted that many school districts are collecting student Social Security numbers and providing inadequate safeguards, leading to a rash of incidents of child identity theft.

The DOE's recent Gainful Employment regulation is another example of more data gathering without responsible privacy protections. Students who attend proprietary colleges and universities would be specifically at risk of this serious privacy infringement, which allows the Department to use Social Security data in calculating default rates. The Department's final rule lacks specific details on how it will collect and treat this data—permitting the department to simply inform institutions and students that they have failed to meet the 12 percent income-to-debt ratio as written in the final regulation.

Salary data for students attending proprietary colleges and universities will be available online for all to see two years from now. Although data can be de-identified, doing so is challenging and demands rigor and responsibility. There is little indication that this rigor or responsibility will be heeded. Students will be at a greater risk of their personal information being shared with the public.

The DOE's use of personal information and their recent blunder of exposing private information is extremely alarming, especially given their plans to collect more data for the future. Department officials attempted to correct their actions by notifying students of the mistake, offering credit monitoring services and shutting down the website for 48 hours. With the ED moving to collect additional personal data from students, were these steps enough?

One thing is for certain: the Department of Education's mishandling of personal student financial data in this latest data breach proves that we should be wary of how the Department will utilize this type of data in the future. Maybe it is time to reevaluate the DOE's rush to have enormous quantities of student data collected and disseminated. There are certainly problems with our educational system, and there is nothing inherently wrong with wanting to gather more data about this system. But it is irresponsible to do so when the DOE and the other entities that collect and maintain the data are ill-equipped to safeguard privacy and provide appropriate data security. The entire FERPA legal structure is inadequate. Before racing to gather so much personal data, DOE should ensure that the appropriate privacy and data security reforms are in place to protect that data. Otherwise, in its zeal to solve some problems with the educational system, the DOE might be opening up an enormous and greater problem, putting all students at serious risk. Reported in: *huffingtonpost.com*, December 19.

Indianapolis, Indiana

Indiana's public schools would be allowed to teach creationism in science classes as long as they include origin of life theories from multiple religions under a proposal approved January 31 by the state Senate.

The Senate passed the bill on a 28-22 vote even though some senators raised questions about the measure's constitutionality. It now goes to the House for consideration. The bill permits local school boards to offer classes that include origin theories from religions including Christianity, Judaism, Islam, Hinduism, Buddhism and Scientology.

Democratic Sen. Tim Skinner, of Terre Haute, a former high school teacher, said he believed few teachers would be qualified to teach a class covering multiple religions and worried about the lack of specifics on what such a class would include.

"I think you are just asking schools—and I think you're asking teachers—to do something that is going to open up a door that is probably going to result in a lawsuit which is going to be costly," Skinner said.

Critics argue that the proposal is unconstitutional because federal courts repeatedly have found teaching creationism violates church-state separation because of its reliance on the *Bible*'s book of Genesis.

The original bill simply called for allowing schools to teach creationism, but the Senate revised it to include references to multiple faiths.

Republican Sen. Dennis Kruse, of Auburn, the bill's sponsor, said the U.S. Supreme Court hasn't ruled on the teaching of creationism since the 1980s and that the court

could rule differently now than it did then. Kruse said he believed the broader religious reference in the bill would improve its chances of being ruled constitutional.

The proposal doesn't require any school district to teach creationism and allows them to continue with their current science classes, Kruse said.

"This does not do away with the teaching of evolution," he said. "This provides another alternative to evolution so our children are being exposed to more than one view, which I think is healthy for them."

Ten Republican senators joined all but one of the 13 Democratic senators in voting against the bill. Reported in: *Louisville Courier-Journal*, February 2.

Concord, New Hampshire

The New Hampshire Legislature on January 4 overrode the governor's veto to enact a new law allowing parents to object to any part of the school curriculum.

The state House voted 255-112 and Senate 17-5 to enact H.B. 542, which will allow parents to request an alternative school curriculum for any subject to which they register an objection. Gov. John Lynch (D) vetoed the measure in July, saying the bill would harm education quality and give parents control over lesson plans.

"For example, under this bill, parents could object to a teacher's plan to: teach the history of France or the history of the civil or women's rights movements," Lynch wrote in his veto message. "Under this bill, a parent could find 'objectionable' how a teacher instructs on the basics of algebra. In each of those cases, the school district would have to develop an alternative educational plan for the student. Even though the law requires the parents to pay the cost of alternative, the school district will still have to bear the burden of helping develop and approve the alternative. Classrooms will be disrupted by students coming and going, and lacking shared knowledge."

Under the terms of the bill, which was sponsored by state Rep. J.R. Hoell (R-Dunbarton), a parent could object to any curriculum or course material in the classroom. The parent and school district would then determine a new curriculum or texts for the child to meet any state educational requirements for the subject matter. The parent would be responsible for paying the cost of developing the new curriculum. The bill also allows for the parent's name and reason for objection to be sealed by the state.

Hoell stressed the new law could allow parents to address both moral and academic objections to parts of the curriculum. The lawmaker said he could imagine the provision being utilized by parents who disagree with the "whole language" approach to reading education or the Everyday Math program.

"What if a school chooses to use whole language and the parent likes phonics, which is a better long-term way to teach kids to read?" Hoell said.

The bill originally included provisions to end compulsory attendance that were taken out by fellow legislators, Hoell noted, saying he would work to address the compulsory attendance issue this year. He said he has seen research showing that non-compulsory attendance equaled better academic performance in Singapore before attendance was required. In addition he noted that it would all bring a market-based approach to education, noting that college and graduate students are not required to attend classes.

"If you can afford it, you go after it," he said.

"Instead of having a reasoned and dispassionate discussion about alternatives, when complaints were made, the parents were falsely accused of trying to ban the book," Hoell wrote. "Rather than find a solution, the parents were forced to remove their son from the public school and instruct him at home."

Hoell also said this bill would allow for parents to object to the distribution of condoms and lubricants in sex education classes. In his veto message, Lynch said that parents can have children opt out of sex education classes, which Hoell disputed in his writing, saying only parents with religious objections could opt out.

The law's passage comes as the New Hampshire legislature has taken a more conservative tone, fueled in part by the election of Tea Party-backed legislators in the 2010 election. Other issues pending before the state government include a bill to only allow legislature-approved candidates to run for the U.S. Senate, an end to the teaching of evolution in the schools, and a provision to allow the legislature to dissolve the judiciary. Other bills pushed by Hoell include a provision establishing a committee to study the impact of compulsory school attendance on families, and a measure withdrawing the state from the federal No Child Left Behind law.

State Democratic Chairman Ray Buckley released a statement calling the bill "reckless and irresponsible" and touting his agreement with the conservative-leaning *Union Leader*, which spoke against Republican lawmakers by objecting to the proposal.

"HB542 is an unprecedented attack on New Hampshire children's right to a quality education," he said. "In fact it will end education in New Hampshire as we know it, allowing children to be removed from any lessons their parents choose: algebra, English language arts, health education, American history, the civil or women's rights movement, science, absolutely anything." Reported in: *huffingtonpost.com*, January 4.

New York, New York

Faced with scandals and complaints involving teachers who misuse social media, school districts across the country are imposing strict new guidelines that ban private

conversations between teachers and their students on cellphones and online platforms like Facebook and Twitter.

The policies come as educators deal with a wide range of new problems. Some teachers have set poor examples by posting lurid comments or photographs involving sex or alcohol on social media sites. Some have had inappropriate contact with students that blur the teacher-student boundary. In extreme cases, teachers and coaches have been jailed on sexual abuse and assault charges after having relationships with students that, law enforcement officials say, began with electronic communication.

But the stricter guidelines are meeting resistance from some teachers because of the increasing importance of technology as a teaching tool and of using social media to engage with students. In Missouri, the state teachers union, citing free speech, persuaded a judge that a new law imposing a statewide ban on electronic communication between teachers and students was unconstitutional. Lawmakers revamped the bill this fall, dropping the ban but directing school boards to develop their own social media policies by March 1.

School administrators acknowledge that the vast majority of teachers use social media appropriately. But they also say they are increasingly finding compelling reasons to limit teacher-student contact. School boards in California, Florida, Georgia, Illinois, Maryland, Michigan, Missouri, New Jersey, Ohio, Pennsylvania, Texas and Virginia have updated or are revising their social media policies this fall.

"My concern is that it makes it very easy for teachers to form intimate and boundary-crossing relationships with students," said Charol Shakeshaft, chairwoman of the Department of Educational Leadership at Virginia Commonwealth University, who has studied sexual misconduct by teachers for fifteen years. "I am all for using this technology. Some school districts have tried to ban it entirely. I am against that. But I think there's a middle ground that would allow teachers to take advantage of the electronic technology and keep kids safe."

Lewis Holloway, the superintendent of schools in Statesboro, Georgia, imposed a new policy this fall prohibiting private electronic communications after learning that Facebook and text messages had helped fuel a relationship between an eighth grade English teacher and her 14-year-old male pupil. The teacher was arrested this summer on charges of aggravated child molestation and statutory rape, and remains in jail awaiting trial.

"It can start out innocent and get more and more in depth quickly," said Holloway, a school administrator for 38 years. "Our students are vulnerable through new means, and we've got to find new ways to protect them."

Holloway said he learned of other sexual misconduct cases when consulting with school administrators around the nation about social media policies. While there is no national public database of sexual misconduct by teachers, dozens of cases have made local headlines around the country this year.

In Illinois, a 56-year-old former language-arts teacher was found guilty in September on sexual abuse and assault charges involving a 17-year-old female student with whom he had exchanged more than 700 text messages. In Sacramento, a 37-year-old high school band director pleaded guilty to sexual misconduct stemming from his relationship with a 16-year-old female student; her Facebook page had more than 1,200 private messages from him, some about massages. In Pennsylvania, a 39-year-old male high school athletic director pleaded guilty in November to charges of attempted corruption of a minor; he was arrested after offering a former male student gifts in exchange for sex.

School administrators are also concerned about teachers' revealing too much information about their private lives. As part of a policy adopted last month in Muskegon, Mich., public school employees were warned they could face disciplinary charges for posting on social media sites photos of themselves using alcohol or drugs. "We wanted to have a policy that encourages interaction between our students and parents and teachers," said Jon Felske, superintendent for Muskegon's public schools. "That is how children learn today and interact. But we want to do it with the caveat: keep work work—and keep private your personal life."

New York City, the nation's largest school district, has been at work on a social media policy for months, and expects to have one in place by spring. In the meantime, controversies over social media erupt regularly, like one earlier this month over a Bronx principal whose Facebook page included a risqué picture that was then posted in the hallways of her school.

Richard J. Condon, special commissioner of investigation for New York City schools, said there had been a steady increase in the number of complaints of inappropriate communications involving Facebook alone in recent years—85 complaints from October 2010 through September 2011, compared with only eight from September 2008 through October 2009.

What worries some educators is that overly restrictive policies will remove an effective way of engaging students who regularly use social media platforms to communicate.

"I think the reason why I use social media is the same reason everyone else uses it: it works," said Jennifer Pust, head of the English department at Santa Monica High School, where a nonfraternization policy governs both online and offline relationships with students. "I am glad that it is not more restrictive. I understand we need to keep kids safe. I think that we would do more good keeping kids safe by teaching them how to use these tools and navigate this online world rather than locking it down and pretending that it is not in our realm."

Nicholas Provenzano, 32, who has been teaching English for ten years at Grosse Pointe High School in Michigan,

acknowledged that "all of us using social media in a positive way with kids have to take fifteen steps back whenever there is an incident." But he said the benefits were many and that he communicated regularly with his students in an open forum, mostly through Twitter, responding to their questions about assignments. He has even shared a photo of his 6-month-old son. On occasion, he said, he will exchange private messages about an assignment or school-related task. He said that in addition to modeling best practices on social media use, he has been able to engage some students on Twitter who would not raise their hand in class.

He also said social media networks allowed him to collaborate on projects in other parts of the country. Facebook offers guidance for teachers and recommends they communicate on a public page.

Some teachers, however, favor a sharply defined barrier. In Dayton, Ohio, where the school board imposed a social media policy this fall, limiting teachers to public exchanges on school-run networks, the leader of the teachers union welcomed the rules. "I see it as protecting teachers," said David A. Romick, president of the Dayton Education Association. "For a relationship to start with friending or texting seems to be heading down the wrong path professionally." Reported in; *New York Times*, December 17.

colleges and universities

Ames, Iowa

Everyone agrees a recently canceled Iowa State University class on the role of the *Bible* in business is a First Amendment issue. As to what that issue is, opinions vary.

Critics say the class, Application of Biblical Insight into the Management of Business/Organization, which finance professor Roger Stover planned to teach until his department chair pulled the course listing, breached the separation between church and state.

Stover wrote in his course description that the one-credit independent study would have shown how Biblical concepts can be applied in the business world. When challenged by other professors, he maintained that the pass-fail course, which was to use *How to Run Your Business by THE BOOK: A Biblical Blueprint to Bless Your Business* by Christian leadership speaker Dave Anderson as its sole textbook, was academically relevant.

The decision to stop the class prompted one student newspaper columnist to argue the material was in line with the First Amendment and should have been offered, and another columnist to cite the Constitution in opposing the class.

But that was after a trio of Iowa State professors started a faculty movement to shut down the class, first by writing a letter to administrators and then by circulating a petition. "It was obvious he was going to be teaching a Sunday school class and giving credit for it," said Warren Blumenfeld, an associate education professor who helped draft both the letter and petition. "This is a violation of the First Amendment. This is not teaching world religions or even one religion, but one concept of one religion."

Blumenfeld also took issue with the textbook, which on page 173 reads "business partnerships with nonbelievers are strongly discouraged."

Rick Dark, finance department chair, said the class was not subjected to the usual vetting process because it was an independent study. He agreed with many of the points made by the concerned professors and closed registration in the class. Stover is not appealing the decision.

Stover has been an Iowa State faculty member since 1979; his curriculum vitae lists a college award for outstanding research and dozens of articles published in finance journals about everything from debt markets to airline deregulation. The document doesn't mention an article he wrote for the Ames First Evangelical Free Church's website, which Iowa State religious studies professor Hector Avalos fears was the basis of the independent study course.

The article, "Searching God's Word: A New Approach, Case Studies of Decisions Faced by Believers," includes seven uses of "Biblical insight," echoing the title of his proposed Iowa State course and signaling to Avalos that the article for the local church could be Stover's basis for the class. The article includes a hypothetical situation in which a retiree debates between starting a small business and accepting a ministry position, and another in which a couple struggles to raise the funds necessary to become missionaries.

While no syllabus was posted online and Stover wasn't available to clarify what role, if any, the church article would play in his class, an entry in the course catalog said "the goal of this seminar is to employ the Bible for insight into handling the vital issues faced in a business."

That might be a valid course topic at a private institution, Avalos and Blumenfeld said, but not at public universities like Iowa State.

Fearing Stover's course was inappropriate, Blumenfeld, Avalos and another faculty member sent a letter to the dean of the business college in October saying the class should be canceled. Unsure of whether their advice had been heeded, Blumenfeld and Avalos circulated a petition among faculty members this month and collected 20 signatures asking that the course be called off. When Avalos learned Dark had closed the class and removed it from course listings in December, he changed the petition to encourage administrators to not reinstate it.

But the Alliance Defense Fund, which advocates for the rights of religious students and faculty members, believes Iowa State erred. After making adjustments to ensure the class was taught objectively, an ADF lawyer said, Iowa State should have allowed the class to continue. (Dark said

there simply wasn't enough time to review the course before the spring.)

"It is a shame that certain academics and groups on the left … would rather engage in educational censorship than allow true academic freedom," ADF senior counsel David Cortman wrote. "Any objections to the method of teaching the course could have been addressed without canceling the entire course." Reported in: *insidehighered.com*, January 18.

secrecy

Washington, D.C.

The FBI is using its extensive community outreach to Muslims and other groups to secretly gather intelligence in violation of federal law, the American Civil Liberties Union alleged in December.

Citing internal bureau documents, the ACLU said agents in California are attending meetings at mosques and other events and illegally recording information about the attendees' political and religious affiliations. FBI officials denied the allegations. They said that records kept from outreach sessions are not used for investigations.

The documents reveal new details of the FBI's efforts to build a more trusting relationship with Muslims and other communities—a major priority since the September 11, 2001, attacks. Federal officials have said that the effort is aimed at protecting Muslims' civil rights and smoothing lingering resentment over the law-enforcement crackdown after the attacks, along with helping the government fight terrorism.

Some of the papers describe agents speaking at career days, briefing community members on FBI programs and helping them work with police to fight drug abuse. But the files also depict agents recording Social Security numbers and other identifying information after they meet people at the events and, in at least one instance, noting their political views. It appears that the agents are conducting follow-up investigations in some instances, but heavy redactions in the documents make it impossible to determine how far any examination might have gone.

In one case, an agent wrote that he checked California motor vehicle records on someone the agent encountered at a Ramadan dinner at a San Francisco Islamic association. An attendee is described as "very progressive." Another is called "very Western in appearance and outlook."

At another Ramadan dinner in San Francisco, an agent recorded the names of Muslim groups listed on pamphlets distributed at the event—and appeared to note that several people associated with one of the groups were under investigation.

The FBI turned the heavily redacted documents over to the ACLU as part of a lawsuit filed by the civil rights group and two other organizations to uncover what the groups consider to be inappropriate or illegal FBI tactics in the fight against terrorism.

Hina Shamsi, director of the ACLU's national security project, said some of the actions depicted in the documents violate the Privacy Act, a law that bars federal agencies from maintaining information about activities protected by the First Amendment, such as freedom of speech and association. FBI officials said the law allows agencies to keep information that is considered relevant and necessary to their mission, in certain circumstances.

"It's one thing for the FBI to say to a community group, 'We're going to come and meet you to establish ties,' " Shamsi said. "But it's a very dangerous way to proceed to collect intelligence under the guise of community outreach."

FBI spokesman Michael P. Kortan said the bureau's meetings with community leaders are not designed to gather intelligence but rather "to enhance public trust in the FBI in order to enlist the cooperation of the public to fight criminal activity." He said that the practice provides "information to the public in support of crime prevention efforts, and opens lines of communication to help make the FBI more responsive to community concerns."

Kortan said FBI policy requires that an "appropriate separation be maintained between outreach and operational activities" and that although "facts surrounding an outreach meeting or event may be documented," that is only for internal purposes to ensure "that personnel time and resources are being used effectively and in compliance with applicable laws, regulations, policies and program requirements."

Some Muslim groups reacted to the documents with anger. The Council on American-Islamic Relations said the FBI's actions will have a "chilling effect" on Muslims' constitutionally protected activities.

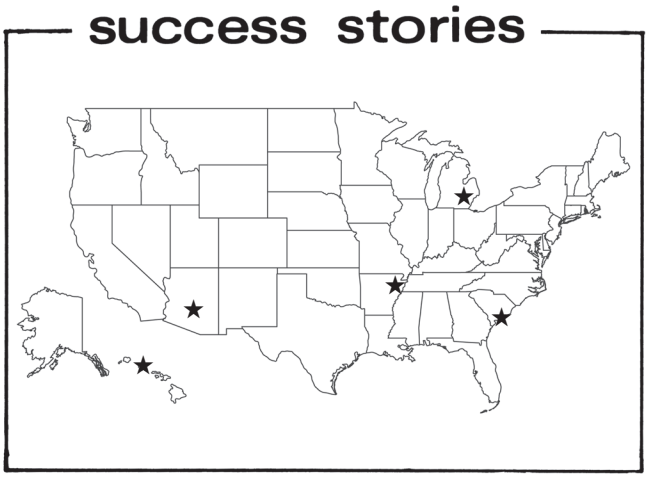
Farhana Khera, executive director of Muslim Advocates, a San Francisco-based civil rights group, said the papers "confirm the worst fears of Muslim community members."

The FBI, under intense pressure to prevent another attack on U.S. soil, has sought to strike a balance between civil liberties and law enforcement in the decade since the Sept. 11 strikes. Civil liberties groups have long accused agents of overreacting, but FBI and Justice Department officials say they have helped safeguard the nation from another attack.

The documents released show agents in a variety of settings in Muslim and other communities. In one 2009 memo, an agent in Sacramento appears to be monitoring the Saudi Student Association at California State University through the outreach effort. The agent writes of meeting with someone at the student union building and records that person's birth date, Social Security number, telephone number and address—all in the same sentence. The person is described as giving the agent detailed information about the association.

(continued on page 94)

success stories



Norman Stafford, an American Civil Liberties Union board member and professor of English at Arkansas State University, told the panel the book is an explainer of the situation in Afghanistan. "The students need to know about Afghanistan," Stafford said. "The book is excellent, and seniors are easily capable of understanding."

Stafford said Joanne Steed is an "excellent teacher." The book is not sexually graphic, Stafford said, and it does not speak favorably of the scenes in question. He said there is more graphic discussion surrounding the sex scandal at Penn State University than exists in *The Kite Runner*.

The board's decision was in accordance with approval of a Materials Evaluation Commitee. The four-member committee read the book, reviewed the complaints and unanimously approved the use of the book as a teaching tool. Reported in: *Jonesboro Sun*, January 3: *Arkansas Times*, December 21.

schools

Jonesboro, Arkansas

The Kite Runner, by Khaled Hosseini, will continue to qualify for reading material as part of the English curriculum at Valley View High School. The Valley View School Board moved January 2 to take no action altering the curriculum of a senior AP English class. The motion was met by applause; there was no discussion or opposition.

The issue of whether to eliminate *The Kite Runner* from the curriculum arose after two patrons disapproved of AP students in Joanne Steed's senior English class reading the novel because of a scene depicting male-on-male rape, sexual innuendo and vulgar language, as well as religious content throughout the book. At least 30 people attended the board meeting.

The Kite Runner is a redemption story about a boy who betrays his servant friend, flees Afghanistan as the Soviets rise to power and returns years later as the Taliban take over to make amends to the servant's family. The servant boy is sodomized in one scene, and that and language in the book were also named as objectionable.

The complainants charged that the book "may cause some students to question the validity of our 'one nation under God' ... Is it permissible to have a book which deals with Islam and a man's journey to receive it as truth when most schools are not allowed to teach the same in relation to the *Bible*?"

Riley McKee, a student in Steed's class, said he really enjoyed *The Kite Runner* and does not support censorship. McKee said, "It's a book about redemption and also about family." He said the material in question was based on the author's memories of Afghanistan. "The author was haunted by the memory," he said, and besides, "It's nothing we haven't heard—I see worse on CNN."

Plymouth and Canton, Michigan

Supporters of Toni Morrison's book, *Beloved*, in Plymouth-Canton's advanced placement literature curriculum hailed an announcement January 20 that the review committee considering its appropriateness voted to leave the Pulitzer Prize-winning book in the syllabus.

The nine members of the review committee cast their votes anonymously the previous day. District officials would not say whether the vote was unanimous.

In a statement, district officials said the *Beloved* committee considered the appropriateness of the material for the age and maturity level of students; the accuracy of the material; the objectivity of the material; and the necessity of using the material in light of the curriculum.

Erin MacGregor, the district's director of secondary education, facilitated the committee.

"One of the common themes I heard as the facilitator was (committee members) felt the parents had the right to opt their own daughter out of the discussion, but they didn't feel as though those parents had the right to opt all the other kids out of the consideration of the book," MacGregor said. "Everyone read the book cover to cover, and what I heard was they felt the book was a tremendous read for that level of student to engage in.

"They didn't feel that resource was necessarily appropriate for all students, but for AP level students, it was a great read," MacGregor added.

The committee began the review process for *Beloved* with a January 11 hearing at which they heard from the complainants, Canton parents Matt and Barb Dame, and from teachers Gretchen Miller and Brian Read. It was Read who first introduced *Beloved* into the curriculum.

Dame brought the complaint about *Beloved* to the district's attention December 20, citing the allegedly obscene nature of some passages in the book and asking that it be

removed from the curriculum.

The Dames brought the same complaints forward about Graham Swift's 1983 book, *Waterland*, which Superintendent Dr. Jeremy Hughes immediately removed from the curriculum (see page 59). That book, which still remains out of the hands of students, is slated to be reviewed by a new committee. MacGregor said the outcome of the *Beloved* review will have no bearing on what happens with *Waterland*.

Students hailed the decision. Ben Sonnega, a Salem High School junior from Plymouth, said the book never should have been considered for removal in the first place. "It's absolutely the right decision," Sonnega said. "It's perfectly ideal for college preparation. The reasons they were (considering) taking away the book are shallow. It was selfish to (try to) take the book away because it takes away from the rest of us."

Salem junior Jessi Longe, who spoke at a recent board meeting in favor of keeping the books, agreed the committee made the right decision. "They're really good books," said Longe, a Plymouth resident. "They're probably going to be on the AP test ... the teachers pick those books for a reason."

Laurie Golden of Plymouth doesn't have any children in the AP English program. But she still thinks both *Beloved* and *Waterland* should be part of the curriculum if for no other reason than their presence on the test.

"I think the teachers did a really good job of showing how the books fit with their curriculum ... They made a very good case for the value of the books," said Golden, the communications director for the Canton Public Library. "It is so often used in the AP test ... if I had a kid in the class, and they weren't teaching that book, it would almost seem negligent not to teach it."

MacGregor said he didn't think outside pressure—such as the national attention or a letter from the ACLU criticizing the decision to take the book away in the first place—was a factor in the committee's reasoning.

"The committee felt very comfortable with the process being an anonymous process," he said. "I don't think (any outside influence) had any effect at all. I was just very impressed with the committee members and their ability to come in objectively, and with the expertise and background they brought in." Reported in: *Plymouth Observer,* January 20.

university

Tempe, Arizona

Arizona State University (ASU) has restored access to the petition website Change.org after blocking it due to dubious concerns about "spam" emails coming from the site related to a petition advocating lower tuition costs at the university. On February 3, the Foundation for Individual Rights in Education (FIRE) wrote ASU asking that it immediately restore access to Change.org and assure its students that it does not block access to websites that host content critical of the university. Responding to the national outcry, which was first launched by media reform organization Free Press, that is just what ASU did later that day.

ASU blocked access to Change.org in December 2011, shortly after an ASU student started a petition on the site calling on ASU to "Reduce The Costs Of Education For Arizona State University Students." ASU did not provide any notice or explanation of its action to students at the time, but the story rapidly began to gain notoriety, prompting the university to release a statement:

"ASU began blocking messages from the Change.org server in December after it was discovered as the source of such a spamming action. Although the individual who sent the email may not consider himself a spammer, he acquired a significant number of ASU email addresses which he used to send unsolicited, unwanted email."

However, as FIRE wrote in its letter to ASU: "While ASU may take certain content- and viewpoint-neutral measures to protect the integrity of its network, the timing of ASU's actions in this case has created the unmistakable impression that ASU has used its spam policy as a pretext to deny access to a petition because of content that is critical of the university and its administration."

The case also reveals that one person's spam is another's activism, and there is no right to be free from occasional political email.

In a somewhat similar case, Michigan State University (MSU) student government member Kara Spencer, was threatened with suspension after she emailed a carefully selected list of faculty regarding MSU's plans to shorten the school's academic calendar and freshman orientation schedule. MSU was ramming the decision through with minimal time for debate and discussion. Despite the fact that her email was timely, carefully targeted, and concerned a campus issue, Spencer was found guilty of violating MSU's "spam" policy. Under public pressure, however, MSU withdrew the charges but then passed an email usage policy that made Spencer's activism impossible.

According to FIRE, "Universities should be wary of invoking the rationale of 'spam' just because student activists are emailing other members of the campus community about important campus issues. It's embarrassing for a major research university to argue (as MSU has done) that it can't handle the traffic, and it's even worse to invoke a 'spam' policy at just the moment when people are criticizing the university." Reported in: *thefire.org*, February 6.

prison

Charleston, South Carolina

Officials at a South Carolina jail agreed January 10 to stop barring prisoners from accessing books, magazines, newspapers and other periodicals as part of an agreement to settle an American Civil Liberties Union lawsuit.

Jail officials in Berkeley County also agreed to no longer enforce a policy banning any publication bound with staples and a policy banning materials containing any level of nudity, which a jail mailroom officer said would include newspapers with lingerie advertisements or magazines containing pictures of Botticelli's "Birth of Venus."

"Systematically preventing prisoners from reading books, magazines or newspapers is unconstitutional, serves no penological purpose, and we are pleased to know the rights of prisoners will now be protected," said David Shapiro, staff attorney with the ACLU National Prison Project. "Prisoners are not stripped of foundational constitutional rights simply because they are incarcerated, and there is no justification for shutting them off from the outside world."

Filed on behalf of *Prison Legal News*, a monthly journal on prison law distributed across the nation to prisoners, attorneys, judges, law libraries and other subscribers, the ACLU's lawsuit charged that jail officials violated the rights of *Prison Legal News* under the speech, establishment and due process clauses of the First and Fourteenth Amendments to the U.S. Constitution by refusing to deliver copies of the journal and other magazines and books to detainees.

Prison Legal News, which provides information about legal issues such as court access, prison conditions, excessive force, mail censorship and prison and jail litigation, has been published since 1990 and has about 7,000 subscribers across the country. It also distributes various books aimed at fostering a better understanding of criminal justice policies and allowing prisoners to educate themselves in areas such as legal research, how to write a business letter and health care in prison.

The ACLU lawsuit charged that beginning in 2008, copies of *Prison Legal News* and other books sent to detainees at Berkeley County had been returned to sender, or simply discarded. The books rejected by the jail's officials included *Protecting Your Health and Safety*, which is designed to help prisoners not represented by an attorney, and explains the legal rights inmates have regarding health and safety—including the right to medical care and to be free from inhumane treatment.

"Providing prisoners access to books, magazines and newspapers is a critical part of aiding their successful transition back into society and limiting recidivism," said Victoria Middleton, executive director of the ACLU of South Carolina. "Unconstitutional censorship has no place in our prisons and jails." Reported in: *ACLU Press Release*, January 10.

Internet

Honolulu, Hawaii

A Hawaii politician who proposed requiring Internet providers to record every Web site their customers visit is now backing away from the controversial legislation.

Rep. Kymberly Pine, an Oahu Republican and the House minority floor leader, said that her intention was to protect "victims of crime," not compile virtual dossiers on every resident of—or visitor to—the Aloha State who uses the Internet.

"We do not want to know where everyone goes on the Internet," Pine said. "That's not our interest. We just want the ability for law enforcement to be able to capture the activities of crime."

Pine acknowledged that civil libertarians and industry representatives have leveled severe criticism of the unprecedented legislation, which even the U.S. Justice Department did not propose when calling for new data retention laws last year.

The bill, H.B. 2288, will likely now be revised, Pine said. The idea of compiling dossiers "was a little broad," said Pine, who became interested in the topic after becoming the subject of a political attack Web site last year. "And we deserved what we heard at the committee hearing."

What the House Committee on Economic Revitalization and Business heard from opponents January 26 was that the bill was anti-business and fraught with civil rights issues.

Laurie Temple, a staff attorney at the American Civil Liberties Union of Hawaii, wrote a letter calling H.B. 2288 a "direct assault on bedrock privacy principles." Instead of keeping more and more records about users, good privacy practices require deleting data that's no longer needed, the ACLU said.

NetChoice, a trade association in Washington, D.C., that counts eBay, Facebook, and Yahoo as members, sent a letter warning that H.B. 2288's data collection requirements "could be misused in lawsuits." And the U.S. Internet Service Provider Association warned in its own letter that H.B. 2288 would be incredibly expensive to comply with. "Narrower" national requirements would cost much more than $500 million in just short-term compliance costs, the letter said, and Hawaii's legislation is broader.

On the other side was the city of Honolulu. Christopher Van Marter, the city's senior deputy prosecuting attorney, wrote a letter to the committee saying H.B. 2288 was perfectly reasonable: "We recognize that some smaller service providers may not currently retain records of a customer's Internet history. However, many of the larger service providers do keep and maintain such content."

Last summer, U.S. Rep. Lamar Smith (R-TX) persuaded a divided committee in the U.S. House of Representatives to approve his data retention proposal, which doesn't go nearly as far as Hawaii's. (Smith has since become better known as the author of the controversial Stop Online Piracy Act, or SOPA.)

Within days of its introduction, H.B. 2288 was savaged by members of the Hawaiian Internet community, some of whom showed up at the hearing. "This bill represents a radical violation of privacy and opens the door to rampant Fourth Amendment violations," said Daniel Leuck, chief executive of Honolulu-based software design boutique Ikayzo, who submitted testimony opposing the bill. He added: "Even forcing telephone companies to record everyone's conversations, which is unthinkable, would be less of an intrusion."

For her part, Pine explained that H.B. 2288 wasn't primarily based on her own experience of being subjected to a political attack site. Pine was targeted by a disgruntled former contractor, Eric Ryan, who launched KymPineIsACrook.com and claims she owes him money. "It's really all the victims that have come forward after this," she said. And crimes "relating to child pedophiles and things like that."

She added that Hawaiians should not be alarmed by how broad the bill is, because there's time to fix it. "Sometimes things are drafted by our legislative drafting office, and it was brought to us, and we talk about it in committee and agree on changes." The Hawaiian phrase for it, she said, is ho'oponopono.

H.B. 2288 currently specifies no privacy protections, such as placing restrictions on what Internet providers can do with this information (like selling user profiles to advertisers) or requiring that police obtain a court order before perusing the virtual dossiers of Hawaiian citizens. Also absent are security requirements such as mandating the use of encryption. Reported in: *cnet.com*, January 26.

foreign

Tomsk, Russia

A Russian court has dismissed a call to ban an edition of the Hindu holy book *Bhagvad Gita*, in a case that triggered protests in India.

Prosecutors in the Siberian city of Tomsk wanted the edition to be ruled "extremist." That would put it in the same category as Hitler's *Mein Kampf*. The Russian foreign ministry said it was the commentary on the text, not the text itself, that was under scrutiny. The edition—*Bhagvad Gita As It Is*—is used by the Hare Krishna movement.

A lawyer representing the movement in Tomsk, Alexander Shakhov, welcomed the judge's decision, saying it "shows that Russia really is becoming a democratic society."

The controversial commentary on the text was written by A.C. Bhaktivedanta Swami Prabhupada, the founder of the movement, whose full title is the International Society for Krishna Consciousness. Hare Krishna followers in Russia saw the case as part of efforts by the Russian Orthodox Church to restrict their activities.

The trial began in June and had been due to conclude on December 19, but it was delayed until December 28 at the request of the Russian ombudsman for human rights. But neither the ombudsman Vladimir Lukin nor his Tomsk colleague Nelli Krechetova was present in court for the ruling.

India's Foreign Minister, S.M. Krishna, had complained to the Russian Ambassador to India, Alexander Kadakin, about the Tomsk prosecution. Krishna said Indians had reacted very negatively to the alleged infringement of Hindu rights in Russia.

The *Bhagvad Gita*, one of the most popular texts for Hindus, takes the form of a conversation between the god Krishna and prince Arjuna. Indian members of Parliament had demanded the government protect Hindu rights in Russia, shouting: "We will not tolerate an insult to Lord Krishna."

Ambassador Kadakin distanced himself from the Tomsk prosecutors, saying "any holy scripture, whether it is the *Koran*, *Bhagvad Gita*, the *Bible*, *Avesta* or *Torah* cannot be brought into court".

The Russian translation of the book was at risk of being placed on the Federal List of Extremist Materials, which bans more than 1,000 texts, including *Mein Kampf* and publications by the Jehovah's Witness and Scientology movements. Reported in: *BBC News*, December 28. □

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opposition grows to Tuscon book removals …from page 51)

"Book-banning and thought control are antithetical to American law, tradition and values. In Justice Louis Brandeis's famous words, the First Amendment is founded on the belief 'that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that, without free speech and assembly, discussion would be futile; … that it is hazardous to discourage thought, hope and imagination …. Believing in the power of reason as applied through public discussion, [the Framers] eschewed silence coerced by law …. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.'

"The First Amendment right to read, speak and think freely applies to all, regardless of race, ethnicity, sex, religion, or national origin. We strongly urge Arizona school officials to take this commitment seriously and to return all books to classrooms and remove all restrictions on ideas that can be addressed in class."

Among the removed books was the twenty-year-old textbook *Rethinking Columbus: The Next 500 Years*, which features an essay by Tucson author Leslie Silko. Recipient of a Native Writers' Circle of the Americas Lifetime Achievement Award and a MacArthur Foundation genius grant, Silko has been an outspoken supporter of the ethnic studies program.

"By ordering teachers to remove *Rethinking Columbus*, the Tucson school district has shown tremendous disrespect for teachers and students," said the book's editor Bill Bigelow. "This is a book that has sold over 300,000 copies and is used in school districts from Anchorage to Atlanta, and from Portland, Oregon to Portland, Maine. It offers teaching strategies and readings that teachers can use to help students think about the perspectives that are too often silenced in the traditional curriculum."

Other banned books include *Pedagogy of the Oppressed*, by famed Brazilian educator Paolo Freire, and *Occupied America: A History of Chicanos*, by Rodolfo Acuña, two books often singled out by Huppenthal, who campaigned in 2010 on the promise to "stop la raza." Huppenthal, who once lectured state educators that he based his own school principles for children on corporate management schemes of the Fortune 500, compared Mexican-American studies to Hitler Jugend indoctrination last fall.

An independent audit of Tucson's ethnic studies program commissioned by Huppenthal last summer actually praised *Occupied America: A History of Chicanos*, a forty-year-old textbook now in its seventh edition. According to the audit: "*Occupied America: A History of Chicanos* is an unbiased, factual textbook designed to accommodate the growing number of Mexican-American or Chicano History Courses. The auditing team refuted a number of allegations about the book, saying, 'quotes have been taken out of context.'"

In a school district founded by a Mexican-American in which more than sixty percent of the students come from Mexican-American backgrounds, the administration also removed every textbook dealing with Mexican-American history, including *Chicano!: The History of the Mexican Civil Rights Movement*, by Arturo Rosales, which features a biography of longtime Tucson educator Salomon Baldenegro. Other books removed from the school include *500 Years of Chicano History in Pictures*, edited by Elizabeth Martinez, and the textbook *Critical Race Theory*, by scholars Richard Delgado and Jean Stefancic.

"The only other time a book of mine was banned was in 1986, when the apartheid government in South Africa banned *Strangers in Their Own Country*, a curriculum I'd written that included a speech by then-imprisoned Nelson Mandela," said Bigelow, who serves as curriculum editor of *Rethinking Schools* magazine, and co-directs the online Zinn Education Project. "We know what the South African regime was afraid of. What is the Tucson school district afraid of?"

The school district says no books are being banned; they're still available in libraries and other areas. But teachers are being told to stay away from books and lessons that have themes on race, ethnicity and oppression. According to teacher Curtis Acosta, 2010 Tucson High Magnet School Teacher of the Year, the result of the January 10 vote is a picture of confusion further fueled by administrators unable to answer specific questions.

"We're filled with the vagueness that the law is founded upon," Acosta said. "No one knows what to tell us definitively or when we ask specific questions."

From Acosta's perspective the reach into the classroom goes beyond these specific books. He and other teachers were told they would have to change gears halfway through the year, so a Chicano-literature class becomes an English-literature class. That means the curriculum has to change, too, and, with it, so do books that may not be on this specific list—books like Luis Alberto Urrea's novel *Devil's Highway*, Rudolfo A. Anaya's *Bless Me*, *Ultima* and *Mexican White Boy*, by Matt de la Peña.

Acosta was a literature teacher at University High School before he left specifically to teach Chicano literature at Tucson High Magnet School. At UHS, he taught Shakespeare's *The Tempest* from a historical context, which includes looking at issues such as slavery, race and the big bad word that gets people like John Huppenthal and state Attorney General Tom Horne all grumpy—oppression.

In a discussion with Acosta's department head and principal, he said it was determined that it might be best to stay away from *The Tempest* and other books that have these themes. Acosta figured if this classic play is off-limits for those reasons, then works like *Huckleberry Finn* are probably off-limits, too.

Acosta said he's scrambling to put together a curriculum that will have to be approved by his supervisors. Beyond what he teaches, he wonders about his students who've been in his classes the past six months. What if they bring up the topics Acosta is not allowed to teach? That is still being discussed. He hasn't heard directly what he should do with the walls in his classroom, which may be considered in violation of the law, too. "We don't know yet what we should remove."

Acosta said he worries that he and other teachers will be written up, possibly warned once, and then fired in violation of the law. That could happen if anyone disagrees with what they are currently teaching—as long as the law remains in place. "That's why this is so high stress," Acosta said.

Yolanda Sotelo, a Pubelo High School Chicano literature teacher about to celebrate her 30th year teaching, confirmed the confusion Acosta described. From her perspective, as someone who makes it a priority that her students are prepared to go to college, this process is not good for students in the now dismantled Mexican-American studies classes.

Some of the kids watched as the books were being boxed and taken out of their classroom, she said. Many asked if they can finish projects they were in the middle of working on, because they deal with the themes that school administrators are worried could violate the law.

Sotelo said the worst part for her is having to let go of a very unique curriculum she has worked hard to develop and keep fresh—including the latest contemporary novels

written by Chicano and Chicana authors—for her senior level class, and meeting with her colleague Chicano history teacher Sally Rusk to refresh a curriculum for her junior level literature class that brings in historical perspectives.

Tucson schools Governing Board President Mark Stegeman claimed that part of the reason the seven titles were being taken from classrooms was because none of them had gone through a required district approval process. But a local Tucson blog uncovered a 2007 document that it says proves that three of the removed books had already gained district approval: *Critical Race Theory*, *Occupied America*, and *Pedagogy of the Oppressed*.

Tucson teacher Norma Gonzalez posted a petition at Change.org that called on the school board to take the books out of storage at the district book depository, where they have been stored since January 11, and place them in school libraries where students can at least access them on their own. In a stunning revelation, a review of the TUSD library catalog found that there are fewer than two or three copies of some of the banished texts in libraries serving more than 60,000 students.

"I call on the Tucson school board to immediately return these books—placing them in the libraries of the schools they were taken from," the petition reads. "Knowledge cannot be boxed off and carried away from students who want to learn!"

Gonzalez was a curriculum specialist and classroom teacher in several schools until the district's decision to disband the Mexican-American studies program. She's still employed by the school district, but said she's now uncertain of her future there.

For one seventh and eighth grade history class, Gonzalez said she was told to teach from a state-issued Arizona state history textbook, which she said erroneously implied that a certain tribe of Native Americans was extinct.

"I was asked to focus on a chapter dealing with 'the mysterious disappearance of the O'odam people'—and there are two O'odam students in my class," Gonzalez said. "That's the perspective of the district, which is not accurate. To have to read that to my students was abominable." Reported in: *salon.com*, January 13; *Tucson Weekly,* January 17; *New York Times*, January 21; *huffingtonpost.com*, January 23, 25; *cnn.com*, January 24. □

IFC to report to ALA Council …from page 52)

including minors' privacy rights, new technologies and privacy, surveillance cameras in libraries, and the use of patrons' registration information for purposes other than the provision of library services. The document will be available online at *www.ifmanual.org/privacyqa*.

Thanks are due to Doug Archer and the members of the IFC Privacy Subcommittee for their hard work revising the document.

PROJECTS

Choose Privacy Week

As part of this year's Choose Privacy Week efforts, librarians and library workers are invited to participate in a survey that will measure librarians' attitudes about privacy rights and protecting library users' privacy. The survey is available online, and takes only 15 minutes to complete. All responses are anonymous and confidential: http://tinyurl.com/ALAprivacysurvey.

The survey, which builds on an earlier 2008 survey assessing librarians' attitudes about privacy both within and outside of the library, will provide important data that will help ALA assess the state of privacy in the United States and help guide OIF's planning for "Privacy for All," ALA's ongoing campaign to engage librarians in public education and advocacy to advance privacy rights. The survey will be available until March 1, 2012.

The study is funded by a generous grant from the Open Society Institute and is managed by Dr. Michael Zimmer, an assistant professor at the University of Wisconsin-Milwaukee's School of Information Studies and co-director of its Center for Information Policy Research.

Barbara Jones, director of the Office for Intellectual Freedom, encourages all librarians and library workers to take the survey. "After three successful years working on Choose Privacy Week and related educational programs, it is essential that we test our assumptions for the remaining years of the grant," she said. "We want 'Privacy for All' to create models for programming and services that librarians can use for various constituencies and community groups. We can't do that without your opinions."

The "Privacy for All" initiative features Choose Privacy Week, an annual event that encourages libraries and librarians to engage library users in a conversation about privacy; and a website, privacyrevolution.org, that provides access to privacy-related news, information and programming resources. In 2011–2012, "Privacy for All" and Choose Privacy Week will be focused on the topic of government surveillance, with an emphasis on immigrant and refugee communities' use of libraries and youth attitudes about privacy.

The third Choose Privacy Week will take place May 1–7, 2012. Choose Privacy Week posters, bookmarks, buttons, and other resources are available for sale at the ALA Store. To stay abreast of Choose Privacy Week announcements, follow @privacyala on Twitter or become a Facebook fan. The theme for this year is "Freedom from Surveillance."

Banned Books Week

Banned Books Week 2012 will take place September 30–October 6, 2012 and marks the 30th anniversary of this annual celebration of the freedom to read. The ALA along with its cosponsors will continue to host a virtual Banned Books Week Read-Out. The Read-Out will feature YouTube

videos of authors reading from their favorite banned/challenged books or talking about the importance of the freedom to read. We strongly encourage libraries across the country to participate in this event.

BBW merchandise, including posters, bookmarks, t-shirts, and tote bags, are sold and marketed through 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/bannedbooksweek* or follow @OIF on Twitter—the hashtag is #BannedBooksWeek.

ACTION

Resolution in Support of Intellectual Freedom in Tucson Unified School District Mexican American Studies Program

The IFC believes it necessary that ALA respond with a unified voice to recent news reports highlighting the removal of educational materials in connection with the elimination of Mexican American Studies classes in the Tucson (AZ) Unified School District. REFORMA and other ethnic caucuses approached the IFC to draft a resolution addressing the threats to intellectual freedom that this restriction of access to educational materials represents. The IFC worked closely with numerous ALA committees, divisions, and round tables to develop a resolution in response. As a result, the IFC submits to Council a resolution reflecting the input of numerous ALA constituencies, affirming current ALA policy, emphasizing the value of school libraries, and reiterating our professional commitment to intellectual freedom. (The resolution was adopted on January 24; see page 51.)

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.

Resolution Opposing Restriction of Access to Materials and Open Inquiry in Ethnic and Cultural Studies Programs in Arizona

The following is the text of a resolution passed on January 24 by ALA Council and proposed by the Intellectual Freedom Committee. The resolution was supported by the ALA Committee on Diversity, ALA Committee on Legislation, American Association of School Librarians, American Indian Library Association, Asian Pacific American Librarians Association, Black Caucus of the American Library Association, Chinese American Library Association, Intellectual Freedom Round Table, REFORMA: The National Association to Promote Library & Information Services to Latinos and the Spanish Speaking, Social Responsibilities Round Table, and the Young Adult Library Services Association.

WHEREAS, The policy of the American Library Association supports "equal access to information for all persons and recognizes the ongoing need to increase awareness of and responsiveness to the diversity of the communities we serve" (ALA Policy Manual, Section 60); and

WHEREAS, "The freedom to read is essential to our democracy. It is continuously under attack. Private groups and public authorities in various parts of the country are working to remove or limit access to reading materials, to censor content in schools, to label "controversial" views, to distribute lists of "objectionable" books or authors, and to purge libraries." (Freedom to Read Statement, adopted June 25, 1953; last revised June 30, 2004); and

WHEREAS, "No society of free people can flourish that draws up lists of writers to whom it will not listen, whatever they may have to say" (Freedom to Read Statement, adopted June 25, 1953; last revised June 30, 2004); and

WHEREAS, The Tucson Unified School District (TUSD), in compliance with The State of Arizona Revised Statutes Sections 15-111 and 15-112, had to eliminate its Mexican American Studies (MAS) Program, resulting in the subsequent removal of textbooks and books on the MAS Program Reading List; and

WHEREAS, Textbooks and reading list titles written by nationally and internationally renowned authors and scholars that reflect this country's rich diverse heritage can no longer be taught or assigned by teachers in the suspended MAS Program; and

WHEREAS, Students in the TUSD MAS Program develop critical thinking skills through the study of literature written by ALA award winning authors; and students have demonstrated proven academic success, graduating from high school at the rate of 90% and entering college at a rate of 80%; and

WHEREAS, Educators rely on the collection development expertise of school librarians and access to a diverse collection to respond effectively to the individual learning needs of their students; and

WHEREAS, HB 2654 has been introduced in the State of Arizona House of Representatives, "An Act Repealing Sections 15-111 and 15-112, Arizona Revised Statutes; Relating to School Curriculum;"

now, therefore, be it

RESOLVED, That the American Library Association:

1. Condemns the suppression of open inquiry and free expression caused by closure of ethnic and cultural studies programs on the basis of partisan or doctrinal disapproval.

2. Condemns the restriction of access to educational materials associated with ethnic and cultural studies programs.

3. Urges the Arizona legislature to pass HB 2654, "An Act Repealing Sections 15-111 and 15-112, Arizona Revised Statutes; Relating to School Curriculum."

This resolution should be sent to the Tucson Unified School District, the State of Arizona Department of Education Superintendent of Public Instruction, each member of the State of Arizona Legislature, the Governor of Arizona, United States Congressman Grijalva, and the United States Secretary of Education. □

FTRF report to ALA Council …from page 53)

after the Ninth Circuit Court of Appeals reversed Alvarez' conviction.

FTRF has filed an amicus curiae brief that asks the Supreme Court to overturn the Stolen Valor Act on the grounds that the law creates a new category of unprotected speech that is contrary to long-standing legal precedents holding that the First Amendment protects non-fraudulent, nondefamatory false speech. The brief argues that there is no exception to the First Amendment for a government-imposed "test of truth," and that enforcement of such a test would chill the speech of law-abiding media and other entities that distribute information.

MONITORING LITIGATION: DEFENDING THE FREEDOM TO READ

As befits our mission, FTRF is particularly interested in defending the right to read in the library. For this reason, FTRF monitors significant lawsuits addressing the library user's right to read and access materials in the library, even when FTRF is not involved in the lawsuit as either plaintiff or amicus curiae. A trend to note is the increasing number of lawsuits brought against schools and libraries in order to vindicate library users' right to read and view constitutionally protected Internet materials on library computers without significant interference.

FTRF has been monitoring one such lawsuit, *Bradburn et al. v. North Central Regional Library District*, since 2006. As you may recall, three library users, represented by the ACLU of Washington State, filed suit in federal district court to challenge the library system's refusal to honor requests by adult patrons to temporarily disable the filter for sessions of uncensored reading and research. After many years of wrangling and a side trip to the Washington State Supreme Court, the federal district court finally heard oral arguments on the parties' motion for summary judgment this past October. The parties are now waiting for a decision from the court.

A second lawsuit, *Hunter v. City of Salem and the Board of Trustees, Salem Public Library*, charges the Salem Public Library and its board of trustees with unconstitutionally blocking access to websites discussing minority religions by using filtering software that improperly classifies the sites as "occult" or "criminal." Hunter, a resident of Salem, Missouri, alleges that the Salem Public Library director refused to unblock portions of websites discussing astrology, Native American religions, and the Wiccan religion that were blocked by the library's filter and told Hunter that the library was required to report any person who accessed such sites to the police. This lawsuit is in its early stages and FTRF will continue to monitor it.

Finally, a third lawsuit, *PFLAG, Inc. v. Camdenton R-III School District*, challenges the Internet filtering practices of a school district in Missouri. The plaintiffs allege that the school district's custom-built Internet filtering software includes a viewpoint-discriminatory category called "sexuality," which blocks all LGBT-supportive information, including many websites that are not sexually explicit in any way. The filtering software does, however, allow students to view sites that criticize homosexuality. The lawsuit argues that the district must either unblock the discriminatory "sexuality" filter or obtain other filtering software that is capable of filtering content in a viewpoint-neutral manner. Again, FTRF plans to monitor the progress of this lawsuit.

THE JUDITH F. KRUG 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 Fund, a memorial fund created by donations made by Judith's family, friends, and colleagues, funds projects and programs that assure that her life's work will continue far into the future.

The Judith F. Krug Fund continues to make grants to underwrite Banned Books Week observances conducted by diverse groups in communities and institutions across the nation. This year's recipients were the Bay County, FL Public Library; the Thomas Jefferson Center for the Protection of Free Expression in Virginia; the Springfield-Greene County, MO Library District; the North Dakota Library Association Intellectual Freedom Committee; the Thomas F. Holgate Library at Bennett College in North Carolina; and the Skokie, IL Public Library. Applications for the 2012 Judith F. Krug Fund Banned Books Week grants will be available at the FTRF website beginning this spring.

In addition to the Banned Books Week grants, the Judith F. Krug Fund is funding the development of online intellectual freedom education material for LIS students. Both Barbara Jones and Jonathan Kelley are working

with the members of ALISE to identify the best means of accomplishing this goal.

DEVELOPING ISSUES

Our Developing Issues Committee identified four emerging issues that may impact intellectual freedom in libraries and give rise to future litigation. These include the growing use and promotion of labeling and ratings systems for children's literature; threats to public employees' right to speak out publicly on matters of public concern; new immigration laws that compel libraries to verify a user's citizenship before issuing a library card; and the recent adoption of a new reader privacy law in California. FTRF Author Event

Last night, after the submission of this report, FTRF held its annual Banned Author Event at the Dallas Public Library, featuring bestselling Young Adult author John Green. Green, author of the challenged book *Looking for Alaska* and the new (and highly praised) *The Fault in Our Stars*, was to speak and then sign books for his many rabid fans. The event raised thousands of dollars for the Gordon M. Conable Fund, which provides conference scholarships to library science students and new librarians who demonstrate a commitment to intellectual freedom in the library. □

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protest at UCSD …from page 54)

the university is prepared to overlook the forced entry. "It's a moot point," he said. "We were on our way over here with the keys to open it up."

Subramani and other administrators spent more than an hour talking with student leaders after the break-in. He assured them that the university would not try to force them out and they told him and others that they have no intention of staying in the building beyond the end of finals.

Students and administrators were still working out details of security and maintenance at the building Monday evening. Students, who quickly posted rules for those planning to stay in the library, insisted that they could handle everything themselves.

Administrators insisted they are ultimately responsible and have to provide some sort of security—though not in the form of police officers—and cleaning. "This group seems cooperative enough," Subramani said. "They've agreed to ban alcohol, make sure there are no non-UCSD students involved." In the end, though, he said the university must be in charge of ensuring "safety, security and sanitation" at the library.

Even though they agreed to let the students use the building for the week, university officials made a point of telling them and the media that there is plenty of 24-hour study space in the Geisel Library, the university's main library. But students said the space is too crowded, and that it is too isolated from parts of campus.

Some students said that while they were primarily interested in having access to the study space, there are other issues at stake. "They're putting the budget cuts on the students' backs," said Caesar Feng, a managerial science major. "Why do budget cuts have to be on the libraries? Why not on the excess administration?"

Jamie Millar, a fellow managerial science student, agreed and made reference to the UC Board of Regents decision last week to give raises of 6.4 percent to 23 percent to 12 ranking administrators and lawyers, including one at UCSD.

"The cuts are unacceptable," Millar said, "but the issues are obviously bigger than the library."

Subramani, after finishing his discussion with the students, noted their larger concerns. "A good deal of their anger should be directed at the state about funding of the university," he said. Reported in: *insidehighered.com*, December 7; *San Diego Union Tribune*, December 6. □

SOPA and PIPA withdrawn …from page 54)

and Craigslist, staged protests against the two bills.

The Wikimedia Foundation said it reached 162 million people with Wikipedia's 24-hour English-language protest of the antipiracy bills. Of those, more than 8 million readers in the United States took the opportunity to look up contact information for their members of Congress through the site. Presumably, that generated tens (if not hundreds) of thousands of calls to congressional offices.

"The Wikipedia blackout is over and the public has spoken," said Sue Gardner, Wikimedia Foundation executive director. "You shut down the Congressional switchboards, and you melted their servers. Your voice was loud and strong."

Google did not black out its entire site as Wikipedia did, but it still generated at least 13 million page views to its anti-SOPA page and got 7 million people to sign its petition.

The Progressive Change Campaign Committee, a liberal advocacy group, logged 200,000 signatures on its petition. The organization also says more than 30,000 Craigslist users called Congress through the PCCC's website.

Opponents of SOPA and PIPA also staged in-person protests around the country; two of the largest were in New York City and San Francisco. Ironically, these metropolitan areas house the nation's largest high-tech communities, yet all four of their senators are PIPA cosponsors. Close to a thousand protestors descended on the Manhattan offices of Sen. Chuck Schumer (D-NY) and Kirsten Gillibrand (D-NY) to protest the senators' support for PIPA.

In the San Francisco protests, speakers ranged from Internet librarian Brewster Kahle to rapper MC Hammer. "When they say that it is to protect rights to content, that may be the surface, but as you drill down, you see all these other clauses that would put a tremendous burden upon service providers and a whole lot of other people," Hammer said. He described SOPA as a "barbaric" bill that would "give the government the ability to shut down sites without due process."

Evidence of the protest's political impact poured in. Staffers on Capitol Hill said that the volume of SOPA calls was heavy.

"This was one of the biggest outpourings of grassroots sentiment that I've ever experienced on Capitol Hill and it's begun to tip the scales against SOPA and in favor of an open Internet," Chris Fitzgerald, communications director for Rep. Jared Polis (D-CO), said. "The phones rang off the hook once people became more aware of how SOPA will endanger jobs, free speech, and the Internet itself." Polis is a longtime SOPA opponent.

At least nineteen senators declared their opposition to PIPA (including seven former co-sponsors), with Senator, Patty Murray (D-WA) expressing new reservations about the legislation. Reported in: *wired.com*, January 20; *arstechnica.com*, January 20. □

2011: when intellectual property trumped …from page 56)

use of the DNS."

"These actions," they wrote, "would threaten the DNS's ability to provide universal naming, a primary source of the Internet's value as a single, unified, global communications network."

They also argue that the proposal undermines a government-approved new DNS security measure known as DNSSEC that aims to prevent criminals from poisoning the domain-name lookup system with false information in order to "hijack" people trying to visit their sites.

Rep. Zoe Lofgren (D-California) said the measure went too far. "We never tried to filter the telephone networks to block illegal content on the telephone network," she said, "yet that is precisely what this legislation would do relative to the Internet."

October marked the 25th anniversary of the Electronic Communications Privacy Act, the law that allows the authorities to access e-mail without a court warrant. The law, known as ECPA and signed by President Ronald Reagan, came at a time when e-mail was used mostly by nerdy scientists, when phones without wires hardly worked and when the World Wide Web didn't exist. Four presidencies and hundreds of millions of personal computers later, the Electronic Communications Privacy Act has aged dramatically, providing little protection for citizens from the government's prying eyes—despite the law's language remaining much the same.

The silver anniversary of ECPA had prompted the nation's biggest tech companies and prominent civil liberties groups to again lobby for an update to what was once the nation's leading privacy legislation protecting Americans' electronic communications from warrantless searches and seizures.

In the 1980s, ECPA protected Americans' e-mail from warrantless surveillance—despite ECPA allowing the government to access e-mail without a court warrant if it was six months or older and stored on a third-party's server. The tech world now refers to these servers as "the cloud," and others just think of Hotmail, Yahoo Mail, Facebook and Gmail.

ECPA was adopted at a time when e-mail wasn't stored on servers for a long time. It just sat there briefly before recipients downloaded it to their inbox on software running on their own computer. E-mail more than six months old was assumed abandoned, and that's why the law allowed the government to get it without a warrant.

On October 20, Leahy said "this law is significantly outdated and outpaced by rapid changes in technology." He promised hearings "before the end of the calendar year" in the Judiciary Committee he heads, despite the Obama's Justice Department opposition to the change. But there was no hearing. Reported in: *wired.com*, December 29. □

Dorothy Broderick, 1929-2011 …from page 56)

to mention. She also wrote a YA novel called *Hank* and a children's nonfiction book called *Training Your Companion Dog.*

As a champion for intellectual freedom, Dorothy was involved in ALA's contentious debate over *The Speaker*, a film on the First Amendment produced by the Office for Intellectual Freedom in 1977. She received the Freedom to Read Foundation's Roll of Honor Award in 1998, and served previously as a member of the FTRF board.

Dorothy grew up in Milford, CT, with a divorced mother in a large, extended Irish family which included a grandmother she adored. Her passions included sports, public affairs, politics, and Mary K. Chelton. She said she was very happy to live long enough to see Barack Obama win the election. She is survived by several cousins in Connecticut, her partner of thirty years, Mary K. Chelton; her very good friend and neighbor, Claire Koch, and three purebred Vizslas. □

censorship dateline …from page 64)

"At the same time, Iran is working on software robots to analyse exchanging emails and chats, attempting to find more effective ways of controlling user's online activities," said the expert.

A blogger in Tehran said recent news was of significant concern to the country's online community. "I'm addicted to the Internet and can't imagine a day without the global Internet," said the blogger. "But Iranians have always found ways to bypass the regime's censorship, for example by using illegal satellite dishes to watch banned television channels, and I'm sure in the 21st century we should be able to find alternatives should they opt to pull out of the world wide web."

The authorities have said for some years that Iran should have a parallel network which would conform to Islamic values and provide "appropriate" services. In April, a senior official, Ali Agha-Mohammadi announced government plans to launch "halal Internet."

For Iranian officials, the need for such a network became more evident after the disputed presidential elections in 2009, when many protesters used social networks.

Less than two months before the parliamentary elections—Iran's first national election since 2009—the regime warned against any online efforts to organize a boycott of the vote and said they would be considered a crime. Iran's bloggers have been prohibited from publishing any satirical materials about the elections or encouraging others to participate in a boycott.

In June, the US was reported to be funding plans to facilitate Internet access and mobile phone communications in countries with tight controls on freedom of speech, such as Iran, through a project called "shadow Internet" or "Internet in a suitcase." Iran responded to the move by stepping up its online censorship by upgrading its filtering system.

Iran is suspected to have sought the support of China for its online censorship campaign but Huawei, a leading Chinese telecom company, which has been accused of supplying Iran with equipment to enable censorship, denied any wrongdoing. More than five million websites are filtered in Iran, but many Iranians access blocked addresses with help from proxy websites or virtual private network services. An Iranian official said last year that more than 17 million Iranians have Facebook accounts, although the site remains blocked in Iran. Reported in: *Guardian*, January 5.

Hanoi, Vietnam

When student Nguyen Hong Nhung saw "Killer with a Festering Head" on someone's smartphone, she wanted the banned comic book too. Though Vietnam's censors had yanked it from stores, finding a digital copy wasn't exactly hard. Nhung simply Googled the title, and with a few clicks was able to download a free bootleg copy of the book—a collection of one-panel cartoons illustrating the popular, sometimes-nonsensical rhyming phrases of Vietnamese youth slang.

Government censors had deemed some of the images violent or politically sensitive.

"The more the government tries to ban something, the more young people try to find out why," the 20-year-old said in the capital, Hanoi.

Vietnam's graying Communist Party is all about control: It censors all media, squashes protests and imprisons those who dare to speak out against its one-party system. But today, as iPhone shops rub shoulders with Buddhist pagodas, cultural authorities are finding it increasingly difficult to promote their unified sense of Vietnamese culture and identity—especially among the country's youth.

"This is a key turning point for the younger generation," said Thaveeporn Vasavakul, a Southeast Asia scholar who consults on public sector reform in Vietnam. "Despite one-party rule you see pluralism in the cultural and political thinking. And the younger generation is standing there, looking around, and seeing a lot of options to choose from."

Propaganda posters and patriotic campaigns continue to urge young and old to emulate the ascetic lifestyle of the late President Ho Chi Minh. Censors still review books, films and foreign newspapers for sensitive content while bureaucrats try to curb—with varying success—everything from online gaming to motorbike racing.

Vietnamese youth of today are largely apolitical and chances of any mass uprisings remain remote for now, says Dang Hoang Giang, a senior researcher at the nonprofit Center for Community Support Development Studies. However, the country's youth have a rich history of organizing and rising up, first to help overthrow the French colonialists and later to oust the Americans during the Vietnam War. Adding to Hanoi's jitters are last year's Arab Spring democracy movements that swept through North Africa and the Middle East, as well as growing protests among the poor in neighboring China.

Growing differences among Vietnam's generations worry its cultural authorities because "they are used to thinking that they have to be in the driver's seat," Giang said.

Although cultural bans have been watered down in recent years, the government's knee-jerk reaction is still to restrict youth behavior it perceives as a potential threat to the state's authority—even if such moves are ineffective. But a 2009 ban on late-night online gaming hasn't stopped Vietnamese teens from patronizing Internet parlors where they sometimes play in the dark to avoid detection. Fines on motorbike racing have not deterred young violators, prompting police in northern Thanh Hoa province to snag

speeders with fishing nets. Loose Facebook restrictions also do not prevent users from logging on to the popular U.S.-based social networking site.

The October ban of "Killer with a Festering Head" is another old-school censoring attempt that failed. Although a state-owned publisher recalled the book two weeks after its release, saying it broached sensitive topics, Vietnamese are still reading online or buying pirated copies on the street. A digital version is selling for US$7.99 on the U.S. website Amazon.com.

The pocket-sized book—"Sat Thu Dau Mung Mu" in Vietnamese—features 120 illustrations satirizing contemporary Vietnamese life and social issues. Author Nguyen Thanh Phong takes aim at such hot topics as wildlife trafficking and domestic violence using playful, yet edgy, humor.

His rhyming one-liners mimic a street slang that is disliked by some older Vietnamese who see it as degrading to the country's language and culture.

Phong, 25, who won a jury prize last year from the Asia-Pacific Animation and Comics Association, says he created the comic book to show that "artists can do whatever they want" and to help Vietnamese people "feel closer to contemporary issues." He shrugs off claims that it debases the language and says the decision to recall it was extreme.

"One of the things that hinders the creativeness of young artists is their invisible fear," Phong said recently while sipping a latte in Hanoi. "They don't know what could make the authorities unhappy, so they set their own limits on what they create."

In one illustration deemed too brutal by censors, a frightened man gives blood that he plans to sell to finance his children's education. "Doctor, is it over yet?" the man asks. "Wait a minute," the doctor replies. "I've got only three liters so far." The exchange can be read as a critique of rising inequality in Vietnam, depicting the downside of the country's recent economic boom.

Another page takes a cheeky swipe at the military, showing two soldiers kicking a grenade, soccer ball-style, under the caption "Soldiers must show off." The military is exalted in Vietnamese society and normally is off-limits to criticism.

Dang Thi Bich Ngan, acting director of the Culture Ministry's Fine Arts Publishing House, defended the decision to recall the book after 4,000 of 5,000 first-edition copies had already sold. But she admitted that the controversy has only stoked underground sales.

College student Do Quynh Trang, 19, says the government should censor violent and sexually explicit content and that "Killer with a Festering Head"—which she read on a Vietnamese teen site—shouldn't be accessible to readers younger than 18. Still, she plans to buy a hard copy and cherish it as a keepsake of her youth. "The sentences are very funny," Trang says of the book. "Maybe when we get older, we will stop using them." Reported in: *Associated Press*, February 2. □

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from the bench…from page 72)

to. It's for their own good. I feel like they might see it as a very negative thing right now, but I'm defending their Constitution, too." Reported in: *New York Times*, January 26.

colleges and universities

Boston, Massachusetts

A federal judge on January 20 ordered Boston College to turn over to the government, to provide to British authorities, documents related to seven interview subjects in an oral history collection on the violence in Northern Ireland. An earlier order is the subject of a stay by a federal appeals court, which is currently reviewing the legal issues in the case.

The British government, citing a treaty with the United States, says that the documents could help with ongoing criminal investigations. But many historians have been alarmed by the case, saying that forcing Boston College to release the documents could discourage people from participating in oral history interviews. The interviews at Boston College, like those in many such oral history collections, were intended for release only after specified time periods, such as the death of those who spoke with researchers.

In late December, the U.S. Court of Appeals for the First Circuit issued a stay of an earlier order issued by a federal judge that the college provide records of an oral history of Dolours Price, a former member of the Provisional Irish Republican Army.

The college, which had opposed the federal prosecutors' efforts, said it would not appeal the ruling by Judge William G. Young of the federal district court in Boston. But two researchers involved in creating the oral history did appeal. They argued that disclosing the records would reopen what the Boston Globe called "politically sensitive wounds" in Northern Ireland and could even jeopardize the safety of one of them, who lives there. The appeals court said it would hold hearings to determine if disclosure would indeed threaten the researcher.

The oral history was compiled as part of the Belfast Project, an effort at the college to preserve recollections of the Troubles, a period of political and religious violence in Northern Ireland. Critics have said disclosure could violate academic freedom and hamper the work of oral historians.

Reported in: *Chronicle of Higher Education* online, January 3; *insidehighered.com*, January 23.

Internet

San Francisco, California

A federal appeals court on December 29 reinstated a closely watched lawsuit accusing the federal government of working with the nation's largest telecommunication companies to illegally funnel Americans' electronic communications to the National Security Agency without court warrants.

While the U.S. Court of Appeals for the Ninth Circuit revived the long-running case brought by the Electronic Frontier Foundation, the three-judge panel unanimously refused to rule on the merits of the case, or whether it was true the United States breached the public's Fourth Amendment rights by undertaking an ongoing dragnet surveillance program the EFF said commenced under the Bush administration following 9/11.

The San Francisco-based appeals court reversed a San Francisco federal judge who tossed the case against the government nearly three years ago. U.S. District Judge Vaughn Walker, now retired, said the lawsuit amounted to a "general grievance" from the public, and not an actionable claim.

Walker also presided over the only case that found the Bush administration illegally spied on American citizens when it unleashed the NSA on Americans' conversations, ruling that the government violated the rights of two American lawyers for al-Haramain, a now defunct Islamic charity. The government is appealing that ruling.

Writing for the majority, Judge Margaret McKeown ruled that the EFF's claims "are not abstract, generalized grievances and instead meet the constitutional standing requirement of concrete injury. Although there has been considerable debate and legislative activity surrounding the surveillance program, the claims do not raise a political question nor are they inappropriate for judicial resolution."

The EFF's allegations are based in part on internal AT&T documents, first published by *Wired*, that outline a secret room in an AT&T San Francisco office that routes Internet traffic to the NSA.

"Today, the Ninth Circuit has given us that chance, and we look forward to proving the program is an unconstitutional and illegal violation of the rights of millions of ordinary Americans," said Cindy Cohn, the EFF's legal director.

But the appeals court also dealt EFF a blow.

In a separate opinion the judges tossed the EFF's lawsuit against the United States' largest telecoms, including AT&T—which the EFF accused of cooperating with the government's warrantless surveillance program. The appeals court sided with an act of Congress from July 2008, one voted for by then-Senator Barack Obama of Illinois, and then signed by President George W. Bush. The legislation handed the telcos retroactive immunity from being sued for allegedly participating in the surveillance program.

That led Judge Walker to toss the case against AT&T and others. The EFF contended on appeal that the legislation, which grants the president the power to grant immunity to the telcos, was an unlawful abuse of power.

The appeals court disagreed.

"By passing the retroactive immunity for the telecoms' complicity in the warrantless wiretapping program, Congress abdicated its duty to the American people," EFF senior staff attorney Kurt Opsahl said. "It is disappointing that today's decision endorsed the rights of telecommunications companies over those over their customers."

That said, the Bush administration, and now the Obama administration, have neither admitted nor denied the spying allegations—though Bush did admit that the government warrantlessly listened in on some Americans' overseas phone calls, which he said was legal. But as to widespread Internet and phone dragnet surveillance of Americans, both administrations have declared the issue a state secret—one that would undermine national security if exposed.

Toward that end, the federal appeals court sent the EFF's case against the government back to the lower courts to determine whether it should be tossed on grounds that it threatens to expose state secrets. No court date has been set.

That lawsuit was filed immediately after Bush signed the immunity legislation for the telcos. The new lawsuit prompted the Obama administration to invoke the state secrets privilege—despite having announced he would limit his use of that doctrine at the beginning of his four-year term. Usually, lawsuits are dismissed when the government invokes the privilege.

Judge Walker wound up dismissing the revised lawsuit as a "general grievance" and did not rule on the state secrets claim. Walker, however, did allow the al-Haramain case to proceed despite the feds' invocation of the privilege—a rarity since courts are extremely deferential to the executive branch in matters of secrecy. The Supreme Court first fashioned the doctrine in a McCarthy-era lawsuit in a case where the government lied to the court to escape embarrassment and liability over an airplane crash. Reported in: *wired.com*, December 29.

Poolesville, Maryland

If 18th-century colonists were alive today, U.S. District Judge Roger Titus imagines that they would draw a parallel between public bulletin boards and Twitter and blogs.

Titus, of U.S. District Court for the District of Maryland, ruled in an opinion December 15 that just as the colonists drafted the First Amendment with those public bulletin boards in mind, the same protections should be afforded to Tweets and other posts online.

A federal grand jury indicted William Cassidy in February of one count of interstate stalking, a federal crime. Titus granted Cassidy's motion to dismiss the case, finding that "while Mr. Cassidy's speech may have inflicted substantial emotional distress, the Government's indictment here is directed squarely at protected speech: anonymous, uncomfortable Internet speech addressing religious matters."

According to Titus' opinion, the trouble began when Cassidy was introduced in 2007 to the regional leader of a sect of Buddhism based in Poolesville. The leader, known in court papers as A.Z., is an "enthroned tulku," according to Titus' opinion, meaning she is a leader by lineage within her community. According to the prosecutor's affidavit, Cassidy claimed to be a tulku when he first met A.Z., but in February 2008, A.Z. learned he was not a tulku and confronted him. Cassidy left and, according to prosecutors, began using Twitter and online posts to "harass" A.Z. and her place of worship.

Subpoenas linked Cassidy to Twitter accounts with thousands of Tweets about A.Z. and the place where she practiced. The Tweets were grouped into five basic categories: threats directed at A.Z.; criticism of A.Z. as a religious figure and criticism of her center; derogatory statements directed towards A.Z.; responses to A.Z. and the center; and statements that may or may not be directed towards A.Z.

A.Z. told prosecutors that the Tweets and other online posts made her fear for her safety. Cassidy pleaded not guilty to the charge in May and, represented by Lauren Case and Ebise Bayisa of the Office of the Federal Defender, moved for dismissal in July. He was supported by an amicus brief from the Electronic Frontier Foundation, an advocacy group based in San Francisco.

"This case rests on Mr. Cassidy's sometimes sophomoric, irreverent and obnoxious posts on his own Twitter feed and blog," his attorneys wrote in the motion. With some limited exceptions that don't apply, they added, "the Supreme Court has never allowed for criminal liability simply because the protected speech in question offended the listener."

The government countered that the statute was specifically intended to curb "conduct intended to torment people to the point that the victim suffers substantial emotional distress…There is no constitutionally protected right to harass or intimidate, and the First Amendment provides no shelter for such conduct." The National Center for Victims of Crime and Maryland Crime Victims' Resource Center submitted an amicus brief in support of the government.

Titus, in granting Cassidy's motion, wrote that even if A.Z. suffered emotional distress from Cassidy's Tweets and writing, the government's indictment wasn't limited to categories of speech that clearly fall outside of the First Amendment—"obscenity, fraud, defamation, true threats, incitement or speech integral to criminal conduct."

Furthermore, he wrote, A.Z. had the option of not looking at Cassidy's Tweets or online posts. "Twitter and Blogs are today's equivalent of a bulletin board that one is free to disregard, in contrast, for example, to e-mails or phone calls directed to a victim."

The U.S. attorney's office in Maryland, through a spokeswoman, declined to comment. Case said that "what was gratifying in this case was that Judge Titus saw what the case was and what it was not."

"There are existing statutes that have been around for a long time that deal with constitutionally-unprotected speech. And this case did not involve any of that," Case said. Reported in: *legaltimes.com*, December 16.

Alexandria, Virginia

Three WikiLeaks supporters have lost their bid to protect their Twitter records from U.S. investigators trying to prosecute the whistleblowing site over its publication of secret and sensitive government documents.

A U.S. District Court judge in Alexandria rejected a request by Birgitta Jonsdottir, Jacob Appelbaum and Rop Gonggrijp to block prosecutors from obtaining the data while a federal appeals court considers their challenge to the government's request for the data.

Judge Liam O'Grady wrote in his ruling that he was rejecting the request because the defendants were not likely to win their appeal, according to the court document.

The U.S. Justice Department served Twitter with a subpoena in December 2010 as part of a grand jury investigation looking at possible criminal charges against WikiLeaks. The government is seeking the records under 18 USC 2703(d), a provision of the 1994 Stored Communications Act that governs law enforcement access to non-content Internet records, such as transaction information. More powerful than a subpoena, but less so than a search warrant, a 2703(d) order is supposed to be issued when prosecutors provide a judge with "specific and articulable facts" that show the information sought is relevant and material to a criminal investigation. But the people targeted in the records demand don't have to be suspected of criminal wrongdoing themselves.

The court order sought the full contact details for the Twitter accounts (phone numbers and addresses even though Twitter doesn't collect these—only an e-mail address), account payment method if any (credit card and bank account number), IP addresses used to access the account, connection records ("records of session times and durations") and data transfer information, such as the size of data file sent to someone else and the destination IP (though this isn't technically possible in Twitter).

The Electronic Frontier Foundation and the American

Civil Liberties Union had sought to fight the Twitter order, arguing in part that it violated the account holders' First Amendment rights.

But last March, Judge Theresa Buchanan, in the Eastern District of Virginia, ruled that because the government was not seeking the content of the Twitter accounts, the subjects did not have standing to challenge the government's request for the records. The defendants are appealing this decision and asked a court to prevent the government from obtaining that information until a ruling on the appeal was made.

But prosecutors claimed that a delay in turning over the Twitter data was delaying the grand jury's criminal investigation. "Ongoing litigation has already deprived the grand jury of the requested information for more than a year," Andrew Peterson, an assistant U.S. attorney in Alexandria asserted in a court filing. "This, in turn, has prevented the grand jury from following up on investigative leads generated from the Twitter records for more than a year."

The government also used secret orders to obtain information from Google and Internet service provider Sonic.net on Appelbaum's accounts with those providers. The order to Google directed the search giant to hand over the IP address Appelbaum used to log into his Gmail account as well as the email and IP addresses of anyone he communicated with going back to Nov. 1, 2009. The order to Sonic sought the same type of information, including the email addresses of people with whom Appelbaum communicated, but did not seek the content of that correspondence. Sonic publicly revealed that it sought to fight the order but lost, and was forced to turn over the requested information. Reported in: *wired.com*, January 5. □

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view of First Amendment freedoms," Monica Youn, a lawyer with the Brennan Center for Justice at the New York University School of Law, wrote in a report titled "The Roberts Court's Free Speech Double Standard."

Floyd Abrams, the prominent First Amendment lawyer, said he was unimpressed by the new findings. "Statistics cannot tell the story of the willingness of a court to defend free expression," he said. "Cases do. It is unpopular speech, distasteful speech, that most requires First Amendment protection, and on that score, no prior Supreme Court has been as protective as this."

Youn's study was posted on the blog of the American Constitution Society, a liberal legal group. At the request of The *New York Times*, two scholars—Lee Epstein, who teaches law and political science at the University of Southern California, and Jeffrey A. Segal, a political scientist at Stony Brook University—examined the data Youn relied on and confirmed the essence of her empirical conclusions. Professors Epstein and Segal also added several refinements.

In its first six terms, from 2005 to 2011, the Roberts court issued 29 free speech decisions in argued cases, and it ruled for the free speech claim in ten of them, or 34.5 percent of the time. The three prior courts issued 506 such decisions and ruled for the free speech side 54 percent of the time. The difference is statistically significant.

But most of the difference can be explained by the decisions of the court led by Chief Justice Earl Warren, from 1953 to 1969, a famously liberal court that ruled in favor of free speech 69 percent of the time. The court led by Chief Justices Warren E. Burger, from 1969 to 1986, ruled in favor of free speech 46 percent of the time, and the one led by Chief Justice William H. Rehnquist, from 1986 to 2005, ruled that way 49 percent of the time.

By this measure, the Roberts court's commitment to free speech is also lower than that of the Burger and Rehnquist courts, but those differences, singly or in tandem, are not statistically significant.

David L. Hudson Jr., a scholar at the First Amendment Center at Vanderbilt University, said the studies lacked nuance by, for instance, treating every decision as equally important. His criticism illuminated a gap between the two disciplines used to assess the Supreme Court: political science codes and counts, while law weighs and analyzes.

Hudson said the Roberts court's record was mixed. It "has been terrible in public employee free speech claims," he said, but it "really landed the plane" in the funeral protest, animal cruelty and video games cases.

A majority of the Roberts court's pro-free-speech decisions—6 of 10—involved campaign finance laws.

"What really animates" the Roberts court, Erwin Chemerinsky wrote recently in the Arizona Law Review, "is a hostility to campaign finance laws much more than a commitment to expanding speech."

Abrams countered that it was precisely the most controversial decision of the Roberts court that illustrates its commitment to the First Amendment. "This court has been prepared to defend core First Amendment principles even when doing so would subject itself to the harshest, sometimes most frenzied, criticism," he said. "Two words—Citizens United—illustrate that proposition." That decision said that corporations and unions have a First Amendment right to spend freely to support candidates in elections. Abrams was one of the lawyers on the winning side.

Professor Chemerinsky, who is the dean of the law school at the University of California, Irvine, said it was necessary to look at a broader set of decisions to assess the Roberts court's commitment to free speech. The court, he wrote, has a "dismal record of protecting free speech in cases involving challenges to the institutional authority of the government when it is regulating the speech of its employees, its students and its prisoners, and when it is

claiming national security justifications."

In 2010, for instance, five months after the Citizens United decision, the court ruled in *Holder v. Humanitarian Law Project* that the First Amendment did not protect benign assistance in the form of speech to groups said by the government to engage in terrorism.

"The Roberts court's overall record," Professor Chemerinsky wrote, "suggests that it is not a free speech court at all."

If free speech cases are not in fact a signature project of the Roberts court, they are nonetheless of exceptional interest to Chief Justice Roberts himself. The chief justice has the power to assign the majority opinion when he is in the majority. In general, he has assigned such opinions to himself about ten percent of the time.

But in free speech cases, he has assigned the majority opinions to himself about a third of the time. When he did, he was almost twice as likely to vote in favor of the free speech claim as against it. Reported in: *New York Times*, January 7. □

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Yet some of the documents are more mundane, including a 2009 memo detailing FBI contacts with Assyrian organizations in San Jose, which notes how the Assyrian language is "very similar to ancient Aramaic."

Another memo describes a 2007 meeting hosted by the FBI in San Jose for 27 Muslim organizations that featured FBI presentations, a question-and-answer session and lunch catered by a local kabob restaurant. The writer provides a detailed "demographics" breakdown of participants, including what percentage are Sunni Muslim versus Shiite, and lists all the organizations in attendance. Reported in: *Washington Post*, December 2.

privacy

Mountain View, California

Google will soon know far more about who you are and what you do on the Web. The Web giant announced January 24 that it plans to follow the activities of users across nearly all of its ubiquitous sites, including YouTube, Gmail and its leading search engine. Google has already been collecting some of this information. But for the first time, it is combining data across its Web sites to stitch together a fuller portrait of users.

Consumers won't be able to opt out of the changes, which take effect March 1. And experts say the policy shift will invite greater scrutiny from federal regulators of the company's privacy and competitive practices.

The move will help Google better tailor its ads to people's tastes. If someone watches an NBA clip online and lives in Washington, the firm could advertise Washington Wizards tickets in that person's Gmail account. Consumers could also benefit, the company said. When someone is searching for the word "jaguar," Google would have a better idea of whether the person was interested in the animal or the car. Or the firm might suggest e-mailing contacts in New York when it learns you are planning a trip there.

But consumer advocates say the new policy might upset people who never expected their information would be shared across so many different Web sites. A user signing up for Gmail, for instance, might never have imagined that the content of his or her messages could affect the experience on seemingly unrelated Web sites such as YouTube.

"Google's new privacy announcement is frustrating and a little frightening," said Common Sense Media chief executive James Steyer. "Even if the company believes that tracking users across all platforms improves their services, consumers should still have the option to opt out—especially the kids and teens who are avid users of YouTube, Gmail and Google Search."

Google can collect information about users when they activate an Android mobile phone, sign into their accounts online or enter search terms. It can also store cookies on people's computers to see which Web sites they visit or use its popular maps program to estimate their location. However, users who have not logged on to Google or one of its other sites, such as YouTube, are not affected by the new policy.

The change to its privacy policies came as Google is facing stiff competition for the fickle attention of Web surfers. It recently disappointed investors for the first time in several quarters, failing last week to meet earnings predictions. Apple, in contrast, reported record earnings Tuesday that blew past even the most optimistic expectations.

Some analysts said Google's move is aimed squarely at Apple and Facebook—which have been successful in building unified ecosystems of products that capture people's attention. Google, in contrast, has adopted a more scattered approach, but an executive said in an interview that the company wants to create a much more seamless environment across its various offerings.

"If you're signed in, we may combine information you've provided from one service with information from other services," Alma Whitten, Google's director of privacy for product and engineering, wrote in a blog post. "In short, we'll treat you as a single user across all our products, which will mean a simpler, more intuitive Google experience," she said.

Google said it would notify its hundreds of millions of users of the change through an e-mail and a message on its Web sites. It will apply to all of its services except for Google Wallet, the Chrome browser and Google Books. The company said the change would simplify the company's privacy policy—a move that regulators encouraged.

Still, some consumer advocates and lawmakers remained skeptical. "There is no way anyone expected this," said Jeffrey Chester, executive director of the Center for Digital Democracy, a privacy advocacy group. "There is no way a user can comprehend the implication of Google collecting across platforms for information about your health, political opinions and financial concerns."

Added Rep. Edward J. Markey (D-MA), co-chair of the Congressional Privacy Caucus: "It is imperative that users will be able to decide whether they want their information shared across the spectrum of Google's offerings."

Google has increasingly been a focus of Washington regulators. The company recently settled a privacy complaint by the Federal Trade Commission after it allowed users of its now-defunct social-networking tool Google Buzz to see contacts lists from its e-mail program.

And a previous decision to use its social network data in search results has been included in a broad FTC investigation, according to a person familiar with the matter, who spoke on the condition of anonymity because the investigation is private.

Federal officials are also looking at whether Google is running afoul of antitrust rules by using its dominance in online searches to favor its other business lines. Reported in: *Washington Post*, January 24.

Washington, D.C.

Civil liberties advocates are raising concerns that the Department of Homeland Security's three-year-old practice of monitoring social media sites such as Facebook and Twitter could extend to tracking public reaction to news events and reports that "reflect adversely" on the U.S. government.

The activists, who obtained DHS documents through a Freedom of Information Act lawsuit, say one document in particular, a February 2010 analyst handbook, touts as a good example of "capturing public reaction" the monitoring of Facebook and other sites for public sentiment about the possible transfer of Guantanamo detainees to a Michigan prison.

A senior DHS official said the department does not monitor dissent or gather reports tracking citizens' views. He said such reporting would not be useful in the types of emergencies to which officials need to respond. Officials also said that the analyst handbook is no longer in use and that the current version does not include the Guantanamo detainee reaction or similar examples.

With the explosion of digital media, DHS has joined other intelligence and law enforcement agencies in monitoring blogs and social media, which is seen as a valuable tool in anticipating trends and threats that affect homeland security, such as flu pandemics or a bomb plot.

But monitoring for "positive and negative reports" on U.S. agencies falls outside the department's mission to "secure the nation," said the Electronic Privacy Information Center, which obtained a copy of a contract and related material describing DHS's social media monitoring through its FOIA suit.

According to the documents, the department's Office of Operations Coordination and Planning awarded a contract in 2010 to Fairfax-based General Dynamics' Advanced Information Systems. The company's task is to provide media and social media monitoring support to Homeland Security's National Operations Center (NOC) on a "24/7/365 basis" to enhance DHS's "situational awareness, fusion and analysis and decision support" to senior leaders.

"The language in the documents makes it quite clear that they are looking for media reports that are critical of the agency and the U.S. government more broadly," said Ginger McCall, director of EPIC's open government program. "This is entirely outside of the bounds of the agency's statutory duties, and it could have a substantial chilling effect on legitimate dissent and freedom of speech."

But John Cohen, a senior counterterrorism adviser to Homeland Security Secretary Janet Napolitano, said that in his three years on the job, during which he has received every social media summary the NOC has produced, he has never seen a report summarizing negative views of DHS or any other governmental agency. Such reports, he said, "would not be the type of reporting I would consider helpful" in forming an operational response to some event or emergency.

"What I generally get are reports regarding hazmat spills, natural disasters, suspicious packages and street closures, active shooter situations, bomb threats," Cohen said. "That is the type of information being pulled off social media."

There is one sense in which reports of "adverse" publicity might be useful, he said: for example, alerting senior officials to the arrest of an off-duty officer for discharging his weapon.

The $11.3 million General Dynamics contract began in 2010 with a four-year renewal option. It states that the firm should provide daily social network summaries, weekly data reports and a monthly status report.The work is being done for DHS's Office of Operations Coordination and Planning.

A year ago, the department released a report describing privacy guidelines on its social media monitoring program. For instance, information that can identify an individual may be collected if it "lends credibility" to the report. Officials said that would generally be provided to operational officials responding to an emergency. Reported in: *Washington Post*, January 13. □

intellectual freedom bibliography

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