

newsletter  
on  
**intellectual**  
**freedom**



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## **ALA denounces library destruction at Occupy Wall Street**

The American Library Association has denounced the destruction of books at a library established by Occupy Wall Street demonstrators when New York police raided a park where protesters were staying.

The People's Library, a library constructed by the New York Occupy Wall Street movement, was seized in the early morning hours of November 15 by the New York Police Department during a planned raid to evict Occupy Wall Street protesters from Zuccotti Park. The library held a collection of more than 5,000 items and provided free access to books, magazines, newspapers and other materials. According to ALA members who visited the site, the library reflected many of ALA's core intellectual freedom values and best practices—a balanced, cataloged collection, representing diverse points of view, that included children's books and reference service often provided by professional librarians

"The dissolution of a library is unacceptable," said a statement by ALA President Molly Raphael. "Libraries serve as the cornerstone of our democracy and must be safeguarded."

During what the New York Police Department described as a temporary cleaning of Zuccotti Park, the library was torn down in the dark of night and its books, laptops, archives, and support materials were thrown into dumpsters by armed police and city sanitation workers. Numerous library staff were arrested, and, in one case, a librarian strapped the notebooks of original poetry from the library's poetry readings to her body before lending aid to others who had been pepper-sprayed.

The library had reached new levels of growth with laptops, a Wi-Fi hub, and a tent donated by author and rock legend Patti Smith and dubbed "Fort Patti." The library also had thousands of circulating volumes. Library staff prided themselves on their collection, the entirety of which was donated by private citizens and corporations for the general public good. The collection included the holy books of every faith, books reflecting the entire political spectrum, and works for all ages on a huge range of topics. These were thrown into dumpsters amidst tents, tables, blankets, and anything else on the Zuccotti Park site.

Hours later, the Mayor's Office announced that the property taken from Zuccotti, including the library, was safely stored at a Sanitation Garage in Manhattan and could be picked up the following day. But when the librarians visited the storage facility, they said it was a sorry sight. Only 1,273 books - a third of the stock - were returned to them, they

*(continued on page 36)*

# in this issue

ALA denounces library destruction at Occupy Wall Street ..... 1

California campuses embroiled in free speech controversies ..... 3

ACLU pressures districts to ease Internet filtering ..... 5

when school web filtering comes home ..... 5

ALA calls for Penguin group to restore e-book access to library patrons ..... 6

Kansas governor apologizes to tweeting teen..... 6

Texas history education standards receive dismal reviews. 6

banned books in prisons ..... 7

defend the freedom to read: it's everybody's job ..... 8

censorship dateline: libraries, schools, publishing, colleges and universities, foreign..... 9

from the bench: U.S. Supreme Court, university, broadcasting ..... 21

is it legal?: libraries, university, USA PATRIOT Act, prepublication review, Internet ..... 25

success stories: library, schools, university ..... 35

## targets of the censor

### books

*The Absolutely True Diary of a Part Time Indian* ..... 9, 13

*The Bluest Eye* ..... 11

*Collected Essays (of A.K. Ramanujan)*..... 20

*Hold Still*..... 9

*The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture*..... 30

*In Cold Blood*..... 35

*Montana 1948* ..... 35

*Operation Dark Heart* ..... 30

*The Princess and the Penis*..... 13

*Slavery By Another Name*..... 7

*Tintin in the Congo* [Belgium]..... 17

*The Wars* [Canada]..... 36

### theater

*Cat on a Hot Tin Roof*..... 10

*Zanna, Don't!*..... 12

### scientific report

*The State of the Bay*..... 16

### essay

“Three Hundred Ramayanas” [India & England] ..... 19

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## California campuses embroiled in free speech controversies

The University of California, at whose flagship Berkeley campus the 1964 Free Speech Movement effectively established the right of American college students at public universities to freely organize and protest, is once again embroiled in controversy over nonviolent student dissent.

On November 9, Berkeley students and faculty, gathered to nonviolently defend a student “Occupy” encampment, were attacked by police with batons and several were arrested. One faculty member was thrown to the ground by her hair before being arrested. Another professor suffered a broken rib. Then, on November 18, in an incident that riveted the nation, at the Davis campus, nonviolent students defending a similar encampment were calmly and repeatedly pepper sprayed by police while sitting peacefully on the ground.

YouTube videos of the incidents quickly “went viral,” prompting widespread indignation throughout the university system and nationwide. By late November more than 2.3 million viewers had viewed the most watched video of the Davis incident. The Berkeley footage had garnered over a million views. Portions of the videos were also rebroadcast on national news shows. Stephen Colbert featured the Berkeley video on his show, commenting “Look at these vicious students attacking these billy clubs with their soft, jab-able bellies!”

At Berkeley, police in riot gear tore down tents and arrested at least seven people who had established an Occupy Cal camp. The violent clash was in stark contrast to peaceful speeches about protecting higher education from budget cuts and a short march that started the demonstration on the Mario Savio Steps in front of Sproul Hall at noon. By 3:30 p.m., protesters linking arms were facing down lines of police officers as the Occupy group tried to protect a handful of tents that had been erected on a lawn in front of the building.

After warning protesters that camping at the university is illegal, officers moved in and shoved demonstrators out of the way as they pushed toward the camp. Six UC Berkeley students and an associate professor were arrested; charges included resisting officers and failing to disperse.

“Stop beating students,” the crowd chanted as officers subdued several people.

“He’s breaking my wrists,” a man shouted before the police officer arresting him cut off his cries with a chokehold.

Chancellor Robert Birgeneau had warned students in an email that camping would not be tolerated. A police spokesman said overnight camping is illegal on any California campus.

“In these challenging times,” Birgeneau wrote, “we simply cannot afford to spend our precious resources and, in

particular, student tuition on costly and avoidable expenses associated with violence or vandalism.”

Vice Chancellor Harry LeGrande told demonstrators that they could stay on the site 24 hours a day if they did not use tents or cooking gear. “We hope you will work with one another and with us to follow our guidelines,” he said.

Those arrested were English professor Celeste Langan and UC Berkeley students Sonja Diaz, Zahide Atli, Ramon Quintero, Ricardo Gomez, Timothy Fiskens and Zakary Habash.

That evening crowds regrouped and there were further arrests. Campus police, aided by Alameda County sheriff’s deputies, had arrested 40 people by the next afternoon, including 32 students, one professor and seven people not affiliated with the campus. Most were arrested November 9, but one man was detained the next morning after setting up a tent on the steps in front of Sproul Hall.

The demonstrations were on the site Mario Savio and other Free Speech Movement leaders used for their protests in the mid-1960s.

Students and professors reacted angrily to the police response, saying officers used too much force against non-violent protesters, who joined arms and blocked access to the encampment. But police and campus officials said they had given demonstrators ample time to remove their tents, and they said the resistance to police orders could not be considered nonviolent protest.

“The campus is not a campground and we will do our best to enforce the rules and regulations,” said UC Police Chief Mitch Celaya. “When people are chain-linked together and are not complying, they make it hard on the officers.”

“Any use of force on this campus is inappropriate,” said Peter Glazer, a professor and chair of the theater, dance and performance studies department. “Is a tent encampment in front of Sproul more important than violence perpetrated on students?”

Glazer, joined by Julia Bryan-Wilson and Gregory Levine, Associate Professors of the History of Art, on November 11 issued an online petition, which quickly gathered signatures from Berkeley faculty, graduate students, and others.

“We will not tolerate this assault on the historic legacy of free speech on this campus,” the petition declared. “We strenuously object to the charge that protesters—by linking arms and refusing to disperse—engaged in a form of “violence” directed at law enforcement. The protests did not justify the overwhelming use of force and severe bodily assault by heavily armed officers and deputies.”

“We call on the Berkeley administration to immediately put an end to these grotesquely out-scale police responses to peaceful protest. We insist that the administration abandon the premise that the rigid, armed enforcement of a campus regulation, in circumstances lacking any immediate threat to

safety, justifies the precipitous use of force.”

Within days the petition attracted over 2,000 signatures.

Former U.S. Poet Laureate and Berkeley Professor Robert Hass described his experience in a widely-read op-ed piece in the New York Times:

“I wanted to see what was going to happen and how the police behaved, and how the students behaved. If there was trouble, we wanted to be there to do what we could to protect the students.

“Once the cordon formed, the deputy sheriffs pointed their truncheons toward the crowd. It looked like the oldest of military maneuvers, a phalanx out of the Trojan War, but with billy clubs instead of spears. The students were wearing scarves for the first time that year, their cheeks rosy with the first bite of real cold after the long Californian Indian summer. The billy clubs were about the size of a boy’s Little League baseball bat. My wife was speaking to the young deputies about the importance of nonviolence and explaining why they should be at home reading to their children, when one of the deputies reached out, shoved my wife in the chest and knocked her down. . . .

“My wife bounced nimbly to her feet. I tripped and almost fell over her trying to help her up, and at that moment the deputies in the cordon surged forward and, using their clubs as battering rams, began to hammer at the bodies of the line of students. It was stunning to see. They swung hard into their chests and bellies. Particularly shocking to me — it must be a generational reaction — was that they assaulted both the young men and the young women with the same indiscriminate force. If the students turned away, they pounded their ribs. If they turned further away to escape, they hit them on their spines.

“NONE of the police officers invited us to disperse or gave any warning. We couldn’t have dispersed if we’d wanted to because the crowd behind us was pushing forward to see what was going on. The descriptor for what I tried to do is ‘remonstrate.’ I screamed at the deputy who had knocked down my wife, ‘You just knocked down my wife, for Christ’s sake!’ A couple of students had pushed forward in the excitement and the deputies grabbed them, pulled them to the ground and cudgeled them, raising the clubs above their heads and swinging. The line surged. I got whacked hard in the ribs twice and once across the forearm. Some of the deputies used their truncheons as bars and seemed to be trying to use minimum force to get people to move. And then, suddenly, they stopped, on some signal, and reformed their line. Apparently a group of deputies had beaten their way to the Occupy tents and taken them down. They stood, again immobile, clubs held across their chests, eyes carefully meeting no one’s eyes, faces impassive. I imagined that their adrenaline was surging as much as mine.”

Berkeley Chancellor Robert Birgeneau, traveling in Shanghai at the time, initially defended the police action. In a November 10 message to faculty, he wrote: “It is unfortunate that some protesters chose to obstruct the police by linking arms,” he wrote. “This is not non-violent civil disobedience.”

In response to the chancellor’s statement, students covered the campus with pictures of Martin Luther King linking arms with other civil rights leaders at the 1963 March on Washington. Birgeneau later claimed that he had not yet seen the videos when he wrote that message.

On November 22, in the wake of the escalating outrage intensified by the events at Davis, Birgeneau offered the campus an apology: “I sincerely apologize for the events of November 9 at UC Berkeley and express my sympathies to any of you who suffered an injury during these protests. As chancellor, I take full responsibility for these events and will do my very best to ensure that this does not happen again.”

But some wondered what “full responsibility” might mean. “No one in his administration or the highly paid police has been fired or really sanctioned,” said Professor of Anthropology Paul Rabinow. “Nothing has changed in the administration. This is like Wall Street—protesters are arrested, but no one else. . . . Of course the core problem is the lack of budget support from the state. But strong leadership from the administration. . . not press releases and e-mail letters—would be appreciated.”

On November 16, as many as 10,000 students and Occupy activists overflowed UC Berkeley’s Sproul Plaza following a daylong classroom walkout and established a small camp in defiance of the university’s edict that no tents be erected, setting up a potentially tense standoff with authorities.

There were so many people in the plaza that it was hard to move through it, and dozens of police officers stayed on the periphery as the tents went up around 9:30 p.m.

Chancellor Birgeneau issued orders that no tents be allowed past a symbolic few in the name of political expression. But the result of a vote by protesters - said to be 88.5 percent in favor of tents - was in clear opposition to those orders.

The vote came just before UC Berkeley professor and former U.S. Secretary of Labor Robert Reich delivered the annual Mario Savio Memorial Lecture in which he blasted economic inequity. Immediately after the hour-long address, the tents sprang up.

Police estimated the strike crowd as peaking at about 5,000, but organizers and observers put it closer to 10,000. All around the stone walking spaces and grassy areas, groups waved signs, gathered for discussions or clustered to conduct classes with a somewhat festive tone of civility.

On November 28, the Berkeley Academic Senate, which consists of the entire full-time faculty, delivered a stunning rebuke to Birgeneau. A packed gathering of faculty members voted to “condemn” Chancellor Birgeneau for his administration’s “authorization of violent responses to nonviolent protests over the past two years,” culminating in the police attack on nonviolent Occupy Cal demonstrators on November 9.

The faculty also declared that it “opposes all violent police responses to non-violent protest, whether that protest is lawful

*(continued on page 38)*

## ACLU pressures districts to ease Internet filtering

For most of last school year, Nowmee Shehab never thought twice about using school computers to pull up websites of the Trevor Project, the It Gets Better Project, or the Gay-Straight Alliance, as she searched for resources for her high school's own GSA club.

Then one day, the sites were blocked.

"It was surprising," said Shehab, who at the time was a senior and the first-ever GSA president at Brookwood High School, part of the 161,000-student Gwinnett County, Georgia, school system. "The school had been really supportive, so that was really a little shocking to me, and it just happened out of the blue."

But despite that initial support for Shehab—now a freshman at Smith College in Northampton, Massachusetts—and despite assurances from the district that it had no intention of infringing on student rights, the school district's decision to activate a filter that blocks educational, nonsexual websites with a pro-lesbian, gay, bisexual, and transgender viewpoint while keeping open sites with an opposing view could put the district in a legal battle with the American Civil Liberties Union.

In a controversy that spotlights the subject of student rights in the digital age, Gwinnett County could potentially join the 4,100-student Camdenton, Missouri, school system as the second district to face legal action from the New York City-based ACLU in its "Don't Filter Me" campaign.

The nation's best-known advocacy group on civil liberties acknowledges that none of the districts contacted in the twenty-four states where it has investigated school filtering practices appears to be maliciously targeting LGBT or allied students. "We haven't yet encountered a school district who wants to filter out websites like It Gets Better and the GSA network," said Joshua A. Block, a staff attorney for the ACLU's National LGBT Project. "The most friction we've run into so far has been school districts that are sort of reluctant to disable the filter. I don't always know what the motivations of those filters are. Whether it's a lack of understanding or fear, I'm not sure."

Still, the ACLU argues filters that prevent access to information on only one side of an issue—in this case, matters of sexual orientation—based on the ideas and not the educational relevance of the content breaches a student's First Amendment rights, as well as the rights of GSA groups to access school resources under the federal Equal Access Act.

Many districts contacted by the ACLU have already disabled "LGBT," "alternative lifestyle," or "education lifestyle" filtering categories that were actually created with the intention of separating educational LGBT content from

*(continued on page 41)*

## when school web filtering comes home

Schools that receive discounts for Internet access through the federal E-rate funding are required to implement a number of measures, like creating an Internet safety policy and filtering and blocking access to certain types of online content. To that end, The Children's Internet Protection Act, CIPA, addresses concerns about the type of online materials that children can access at school.

But as more schools begin to implement one-to-one computer programs, providing each student with a laptop or a net-book or even an iPad, there are new wrinkles in thinking about CIPA. After all, these devices are meant to be used at school and at home. Are schools actually required to install filtering on computing devices that head home?

Currently most schools filter their network. There are a number of ways in which they do this, and a number of companies that they turn to for the technology to do so. But if schools are just filtering the Internet on the premises, what happens when students take their computers home? How do schools monitor or block access to Web sites when students are using their school-provided laptops on their family's home networks? And are they even required to do so?

Some schools with one-to-one programs have installed filtering software onto the devices they send home. Such is the case beginning this year for the laptops that are distributed to students in Casper, Wyoming's Natrona County School District. The school district has had a one-to-one program for a number of years. In the past, the permission slips that went home with the devices at the beginning of the school year made certain that parents were aware that the devices had no filtering software installed. Parents had to sign that they "accept full responsibility for supervision when my child's Internet use is not in a school setting."

However, the school district opted this year to expand its filtering efforts by adding social networking sites to the list of blocked sites, and by installing filtering software directly onto every Apple laptop that each 6th- through 12th-grader receives. That means that when those district-owned computers are at home, the filtering is still in place.

According to Mark Antrim, Associate Superintendent for Facilities and Technology, the change in the way in which Natrona County School District handles its filtering was largely a response to parents' concerns about what their children were doing on the Internet at home.

Are schools actually required to install filtering on computing devices that head home? While CIPA does make it clear about the requirements to filter the Internet at schools and at libraries, it's not clear if this applies to the computers themselves. If schools are paying for 3G connectivity

*(continued on page 43)*

## **ALA calls for Penguin group to restore e-book access to library patrons**

On November 21, the Penguin Group (USA), announced it was discontinuing the lending of new e-book titles to library patrons. In addition, library patrons with the Amazon Kindle e-reader will no longer be able to check-out any Penguin titles from libraries.

American Library Association (ALA) President-elect Maureen Sullivan released the following statement regarding the abrupt change in e-book access:

“Penguin Group’s recent action to limit access to new e-book titles to libraries has serious ramifications. The issue for library patrons is loss of access to books, period. Once again, readers are the losers.

“If Penguin has an issue with Amazon, we ask that they deal with Amazon directly and not hold libraries hostage to a conflict of business models.

“This situation is one more log thrown onto the fire of libraries’ abilities to provide access to books – in this case titles they’ve already purchased. Penguin should restore access for library patrons now.” □

## **Kansas governor apologizes to tweeting teen**

Gov. Sam Brownback of Kansas issued a public apology November 28 to a high school student who was disciplined for posting a disparaging Twitter message about him while she was attending a youth program at the state Capitol.

“My staff overreacted to this tweet, and for that I apologize,” said Governor Brownback, a Republican, in a statement posted on his Facebook page. “Freedom of speech is among our most treasured freedoms. I enjoyed speaking to the more than 100 students who participated in the Youth in Government Program at the Kansas Capitol. They are our future. I also want to thank the thousands of Kansas educators who remind us daily of our liberties, as well as the values of civility and decorum. Again, I apologize for our over-reaction.”

Sullivan, a senior at Shawnee Mission East High School in Kansas, was on a field trip to the state capitol last week and listened to a speech by Brownback. During Brownback’s remarks, the teen tweeted, “Just made mean comments at gov brownback and told him he sucked, in person #heblowsalot.”

Brownback’s office flagged the tweet and forwarded the information to the Youth in Government program and her school. Although Sullivan later admitted she didn’t actually make the direct comment to the governor, her school principal Karl R. Krawitz demanded that she submit to Brownback a letter of apology. The governor also

subsequently received hundreds of upset comments on his Thanksgiving Facebook message.

Although the teen initially agreed to write the letter to “get it out of the way” and not have more to handle amid her college applications, as word of the governor’s reaction and her punishment spread on Twitter she changed her mind and refused to submit the note, saying she “would do it again.”

“I’ve decided not to write the letter but I hope this opens the door for average citizens to voice their opinion & to be heard!” Sullivan tweeted.

Sullivan, whose Twitter stream also contains messages about Justin Bieber’s new Christmas album and the new “Twilight” film, saw the number of her followers grow to more than 10,000 from 61 three days earlier. That’s more than Brownback’s Twitter account, which has about 3,200 followers.

Sullivan also does not have to worry about repercussions from school officials about her decision not to send the letter of apology, according to officials from Shawnee Mission East High School, who issued a statement:

“Whether and to whom any apologies are issued will be left to the individuals involved,” the statement said. “The issue has resulted in many teachable moments concerning the use of social media. The district does not intend to take any further action on this matter.” Reported in: New York Times, November 28; huffingtonpost.com, November 28. □

## **Texas history education standards receive dismal reviews**

A recent report says Texas K-12 standards in history are inadequate, ineffective and “fail to meet the state’s college readiness standards,” and the report’s authors point the finger at Gov. Rick Perry’s State Board of Education.

In the report, the Texas Higher Education Coordinating Board and the Social Studies Faculty Collaborative say that Texas’ K-12 system is “founded upon an inadequate set of standards.” Keith Erikson, the author and history professor at the University of Texas at El Paso, analyzes in the report the entire process of Texas’ history standards — from board approval to the curriculum itself.

The report notes that the Fordham Institute gave the state’s history standards a grade of “D,” calling it a “politicized distortion of history,” that is “both unwieldy and troubling” while “offering misrepresentations at every turn.”

These misrepresentations, Erikson writes, include excluding Native Americans from the standards curriculum until recently and citing states’ rights as a cause of the Civil War when Texas did not cite it in their historical “Declaration of Causes.”

The Texas State Board of Education last May adopted its most recent social studies and history curriculum that revises its teachings of the rationale for the separation of

church and state, among hundreds of other topics. The curriculum underwent a contentious months-long revision process, and will be used in Texas for the next ten years.

Erekson's report comes after a separate report by the Southern Poverty Law Center in September called education about the civil rights movement in the U.S. "dismal." Just 2 percent of the 12,000 12th graders who took the 2010 National Assessment of Educational Progress U.S. History Exam were able to correctly identify two basic points about the historic *Brown v. Board of Education* case to earn a score of "complete."

The NAEP also released a report in June that showed dismal history test scores in what U.S. Secretary of Education called an impending "slow-motion train wreck": just 9 percent of 4th graders could identify a photograph of Abraham Lincoln and state two reasons for his importance.

"People tend to think that history is only memorizing facts," Linda Salvucci, vice chair of the National Council for History Education, said. "More importantly, it's a way of thinking and organizing the world."

Texas's failures, as well as the poor national performance, contribute to a low level of college readiness among the state's high school students, to the extent that Erekson's report says college readiness was almost completely ignored in Texas' revised history standards, "Texas Essential Knowledge and Skills" — presenting history as a series of factual memorization and one-sided analysis.

"These examples are not meant to say that the TEKS do not contain any bright spots," Erekson writes. "The examples are meant to illustrate a widespread pattern of neglect of college readiness skills. No student will succeed in college or the workplace if he confuses writings with speeches, conducts a one-sided analysis, or simply spits back a string of memorized information. No Texas parent would desire this for her child and no profit-minded Texas business leader would hire a graduate who had attained only these abysmal standards."

The report also notes that in 2006, when the College Readiness Standards were created, 40 percent of Texas college students weren't prepared. Last year, 48 percent of those entering community college and 14 percent of incoming college freshmen needed remedial courses in at least one subject, and the gap is only widening.

To remedy the standards and curriculum, Erekson offers a series of recommendations, including analytical thinking through making connections, evaluating historical arguments, engaging in modern debates and drawing global comparisons, pointing to and utilizing primary sources as well as even directly challenging the TEKS by pointing out their controversies and omissions.

National figures released in August echo the Texas readiness report: just 25 percent of ACT test-takers met college preparedness standards for English, math, reading and science, whereas nearly one-third didn't meet any of those

standards. And now, parents and students are looking to new and alternative ways of college remediation.

New York's High School Progress Reports released in October revealed that just a quarter of students graduating from New York City high schools this year were prepared for college coursework, and fewer than half of all students enrolled in college four years after entering high school. Reported in: [huffingtonpost.com](http://huffingtonpost.com), November 11. □

## banned books in prisons

When Mark Melvin asked his friend to order him a Pulitzer Prize-winning history book, he didn't expect to have to file a lawsuit in order to read it. But Melvin is currently in jail, and the book in question, *Slavery By Another Name*, by Douglas A Blackmon, was returned to its sender by officials at the Kilby Correctional Facility near Montgomery, Alabama, who allegedly claimed it to be "a security threat."

His case highlights the arbitrary censorship faced every day by America's prisoners at the hands of over-zealous officials, who deprive prisoners of access to thousands of books, magazines and newspapers.

The Federal Bureau of Prisons regulations state that publications can only be rejected if they are found to be "detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity." That description is generally understood to include content such as explanations on how to make explosives, martial arts training manuals and books containing maps of the prison and its surrounding area.

Yet according to a list compiled by the Prison Books Program, correctional institutions censor materials far beyond these guidelines. Central Mississippi Correctional, for example, is stated as refusing to allow any books whose content includes anything legal, medical or contains violence, while Staunton Correctional in Virginia is claimed only to allow its inmates access to "non-fiction educational or spiritual books."

The Prison Books Program, a volunteer-run organization that has been sending books to prisoners across the country since 1972, claims that other institutions sometimes refuse to allow prisoners to receive any books at all.

In separate rulings in the 1980s, the US Supreme Court stated that "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution," and that "a warden may not reject a publication 'solely because its content is religious, philosophical, political, social or sexual, or because its content is unpopular or repugnant.'"

However, a 2011 report by the Texas Civil Rights Project found that the prison system had made "arbitrary, unreasonable, and astonishing decisions, as well as regular inconsistencies, largely because material is twisted entirely out of context."

"Prisoners do not shed all their constitutional rights at the prison gates," continued the report. "Rather than unlawfully

cancel books, [The Texas Department of Criminal Justice] should encourage prisoners to read.”

In most states, the decision to ban a book is usually taken by the mailroom staff within each institution. The Texas Department of Criminal Justice is unique in that it maintains a statewide database of banned books, to which titles are continuously being added by mailroom staff in prisons across the state. Among more than 12,000 titles currently banned from Texas prisons are works by George Orwell, William Shakespeare, Norman Mailer, John Grisham and James Patterson, as well as books by two winners of the Nobel Prize for Literature.

Elsewhere, similar restrictions have been reported by prisoner support groups. Although appeal processes do exist, they often rely on the prisoner being able to form an intelligent defense of a book that he has not been allowed to see. More than 85% of appeals in Texas are denied.

“As long as prison has been here, they’ve always insisted on the power of censorship,” said Wilbert Rideau. Rideau is a former death-row inmate whose book *In the Place of Justice: A Story of Punishment and Deliverance* recently won the Dayton Literary Peace Prize for Non Fiction.

In 1970, Rideau sued the sheriff and warden of a prison

in Louisiana for refusing to give him access to books and educational materials. During a court recess, the sheriff and warden put him on a plane and sent him to a jail across the state. The sheriff there then granted him uncensored access to printed material.

“I don’t believe there’s any need to censor anything short of a publication that teaches a guy how to make an explosive, or how to put a weapon together,” says Rideau today.

“What they’ve done to Melvin, they have done throughout history. Authorities exercise censorship to prevent inmates from having access to certain things they think are inflammatory or they just simply don’t like.”

Mark Melvin’s lawsuit is currently making its way through the Alabama court system. Unless it and others can ensure that federal guidelines are more closely adhered to, reading material in prisons will continue to exist only at the whim of those who wish to restrict it.

The arbitrary nature of such decisions can, according to the Texas Civil Rights Project, “discourage inmates from picking up any book... If there is any activity prisons should encourage during incarceration, it is reading.” Reported in: [huffingtonpost.com](http://huffingtonpost.com), October 3. □

## defend the freedom to read: it’s everybody’s job

On the heels of Banned Books Week, the ALA Office for Intellectual Freedom has kicked off a new awareness campaign to encourage the reporting of challenges to library materials.

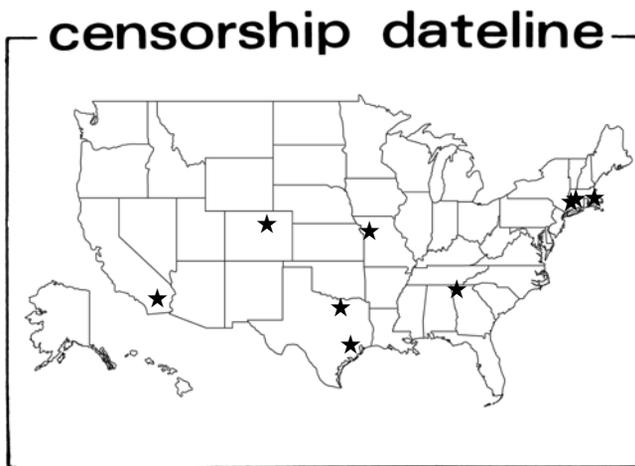
“We estimate that only 20 to 25 percent of challenges – formal requests that library materials be removed or restricted – are ever reported,” said Barbara Jones, OIF Director. “As libraries across the country and the world conclude their Banned Books Week celebrations, we’re reaching out to encourage anyone to contact our office when censorship efforts occur.”

Defend the Freedom to Read: It’s Everybody’s Job is an awareness campaign conceived by librarian and library activist Andy Woodworth. OIF has collaborated with Woodworth and commissioned the creation of original art to help spread the word. Inspired by the artwork and public safety notices of World War II, these images are freely available as digital downloads and come in all different sizes for a variety of uses. To download the artwork go to <http://www.ala.org/ala/issuesadvocacy/banned/challengeslibrarymaterials/challengereporting/index.cfm>. 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 banner, or even use one as

your icon on your favorite social media website.

“This is a request to the library community for something that all librarians can understand: we need more information!” exclaimed Jones. “With increased reporting, OIF will be able to better track challenges and removal patterns so as to advise members of the profession. In the same way that libraries collect circulation numbers to track usage, our office seeks to improve how we track instances of books that are currently being challenged and those that are being removed. Reporting a challenge or removal can be done by name or anonymously. The important thing is that people take the time to submit a report. This campaign will help raise awareness that OIF records challenges, provides support to those facing them, and encourages anyone to contact our office about these issues.”

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 the ALA’s “Reporting a Challenge” page online at [www.ala.org/challengereporting](http://www.ala.org/challengereporting). For assistance with current or anticipated challenges to library materials, services, and programs, contact Angela Maycock at 800-545-2433, ext. 4221, or [amaycock@ala.org](mailto:amaycock@ala.org). □



Tobin said that, in the future, required-reading books would be reviewed by the media center committee. If they are deemed to contain potentially offensive material, teachers will be required to provide an alternative book for students whose parents object.

Dade County is not the first place to ban the Alexie book. The novel was No. 2 on the American Library Association’s list of most frequently challenged books in 2010. The book was banned in Stockton, Missouri, in 2010 and Richland, Washington, in June. Officials in Richland changed their votes after reading the book.

Pat Scales, chair of the American Library Association’s Intellectual Freedom Committee, said the book was “fabulous” and offers a window into the tough life on the reservation. “Yes, it’s raw in places, but it’s raw because the life was. We have our heads in the sand if we don’t realize there are people who have to live this way,” Scales said. “Every book we read is not going to reflect our own value systems.” Reported in: Chattanooga Times-Free Press, November 13.

## libraries

### Dade County, Georgia

Dade County school officials have pulled a book from library shelves and the required high school reading list because of complaints from parents. Dade County High students had been required to read *The Absolutely True Diary of a Part Time Indian*, by Sherman Alexie, but after numerous complaints about vulgarity, racism and anti-Christian content, Superintendent Shawn Tobin decided to remove the book until it could be reviewed by a media center committee.

“Some people thought it was the greatest book ever, and some people thought it was the most perverted book ever,” Tobin said.

*The Absolutely True Diary* follows Junior, a misfit teenager growing up on a Washington Indian reservation, as he goes through a year of high school. The National Book Award-winning novel is based more or less on author Sherman Alexie’s life. Tobin said most of the complaints centered on profanity, as well as a depiction of Jesus Christ breaking wind.

“Numerous parents were calling,” he said.

Trenton resident Mechele Berry told the Dade County Sentinel she was shocked by the content in the book her son was required to read. “It was just disgusting,” she told the paper. “You know, perversion.”

But Tobin said he’s very cautious about banning books because many classics, such as *To Kill a Mockingbird* and *Huckleberry Finn*, have some adult themes and word choices. “There’s profanity in it; there’s profanity in a lot of books,” he said. “My intent is not to start removing books left and right. The idea was to make sure that a child always has an option.”

## schools

### Blue Springs, Missouri

For decades, parents and school districts have debated what books are appropriate for a school library collection and what books should be banned. The issue is coming up again in the Blue Springs School District in the wake of some parents objecting to their child reading a book they say is riddled with obscenities. The book was pulled from a school library in October as the district reconsiders whether it is appropriate for student reading. But the ACLU is threatening to get involved if the school district caves in to pressure from parents.

The controversy began when Stephen and Christina Brown learned their 14-year-old daughter had just finished reading the novel, *Hold Still*, which is about a young girl coping with the suicide of her best friend. The book, according to the parents, was read as part of an extra credit assignment in a freshman English class.

Christina Brown said the book is riddled with “F yours.” She said the book is “extremely inappropriate” for public school because it describes explicit sexual relationships. “The first word was the ‘F word,’ right there in front of me, and I about lost my breath. I couldn’t believe it, I really couldn’t,” her husband Stephen Brown said. “I just didn’t expect it in a book from the school library.”

The upset parents complained to the principal at the Blue Springs Freshman Center about the book being vulgar and obscene. They asked for the book to be banned from district reading lists. “I felt like we did the right thing by going to the principal first and not overreacting. But I haven’t heard back since. But you know, I don’t know what that means,” Stephen Brown said.

The district said that *Hold Still* “has been removed from the library and classrooms” pending a review by a group of teachers and instructional staff members.

In addition to the Browns, the ACLU is also closely following the school’s reaction. “You clearly can’t remove a book because you disagree with the ideas in them,” said Doug Bonney, chief counsel and legal director for the local chapter of the ACLU. “Clearly, I’m concerned when a school removes a book that was chosen by the professional library staff for inclusion in the collection and then on the complaint of one family decides to remove the book while it’s being reviewed.”

The problem is where do you stop, Bonney said. He fears removing the book violates the students’ First Amendment rights. “Once you start to remove books because some group disagrees with the ideas, then there’s no stopping,” Bonney explained.

The Blue Springs School District’s official policy is that parents can object to curriculum materials and file a formal written request for the removal of books or other items. *Hold Still* was removed despite the Browns only making a verbal complaint.

“I am concerned that the district seems to have not followed its own internal policy,” Bonney said. “If in fact, the school is trying to sweep this under the rug, that’s a mistake.”

Refusing to wait and see what the school district does, the Browns decided to consult their pastor, Hylton Lawrence, at Lighthouse Independent Baptist Church in Independence. “I’m not for banning, going to the library and say, ‘Let’s ban every book there.’ I’m saying we need to have oversight. These are young people, they are not adults. They are children, and so we need some oversight,” Lawrence said.

The Browns and their pastor have reviewed the fifteen books on the extra credit reading list and think at least nine are inappropriate and should be pulled.

“Are you aware of the vulgarity? Are you aware of the acts of sex, incest and homosexuality? All of these. Are you aware of these?” Lawrence said. Lawrence said he believes it is “my job to be a watchdog and help” determine what are appropriate and inappropriate books.

But Bonney says that is not acceptable for three people to pressure a school district in such a manner. “That’s not right. It’s inappropriate. Censorship is contrary to the First Amendment,” Bonney said.

But the Browns and Lawrence say this is about a public school system providing a good education and teaching moral stands, explaining that certain language and ideas are not suitable for the classroom. “I’m afraid some of the things in those books is taking away from that,” the pastor said.

“I’m all for free speech until it impedes on my right as a parent,” Stephen Brown said. “And I have to step in and say, ‘Time out,’ that doesn’t work.”

While parents have the right to guide their child’s education, Bonney and the ACLU contend that parents don’t have the right to impose their views on everyone else in the community. Reported in: [kctv5.com](http://kctv5.com), November 8, 22.

### **Palm Desert, California**

The curtain has fallen on Palm Desert High School’s production of *Cat on a Hot Tin Roof*. The play was canceled, two weeks after the production was suspended over concerns with the script. Tennessee Williams’ Pulitzer Prize-winning play was under scrutiny for references to sex, homosexuality, alcohol and mild curse words. Our Town was selected by theater teacher John Hadley as the replacement.

Administrators took no issue with the Thornton Wilder play, a story told through the everyday lives of citizens living in an “average” town in the early 1920s. “There’s no play in existence that’s more plain vanilla than *Our Town*,” Hadley said.

Theater students expressed frustration and disappointment with the original play’s cancellation. “I read this play in middle school, and I fell in love with it,” said Kelsey Kimmes, a junior at Palm Desert high who was cast as Mae, one of the lead characters. “It’s upsetting to put in all that work,” she said. “We’re still kind of unsure of the reason the play was closed down.”

The reasons are different, depending on the source. In the beginning, administrators highlighted areas of concern in the script, such as the word “crap.” Principal Bob Hicks said there’s censorship for every high school play because the audience of a high school play — parents, grandparents, younger siblings and other students — has to be considered.

Copyright laws prohibit any changes to a play without the author’s approval, even for a high school, publishing companies say. Despite these laws, it’s not uncommon for high schools to tweak some plays to make them more high-school appropriate. Hadley and Hicks had been discussing minor edits.

However, it became clear that so much would have to be cut out, the story would be compromised and the school might not be able to acquire the rights, Hadley said. But Hicks wrote that the production was ultimately canceled because “the rights to change/edit/ purchase the play had not been paid.”

The cost to purchase the rights — \$450, which included \$100 a night for a three-night run and scripts — was approved August 30, Hadley said. He added there was still time to pay the fee. It was just a matter of faxing the purchase order. “The play’s not being done because of the highlighting,” Hadley said.

Hicks wrote in an email that Hadley did not bring up the fee or time. “He simply agreed it was the best choice,” he wrote. Reported in: *Desert Sun*, October 15.

## Brookfield, Connecticut

One week after Banned Books Week, some Brookfield residents told the Board of Education a novel should be taken out of the Brookfield High School curriculum. The book is the *The Bluest Eye*, by Toni Morrison, a Nobel and Pulitzer prize-winning author.

"I read two sentences and my jaw dropped," Pamela Kurtz said. Kurtz, a member of the A Brookfield Party, was running for a seat on the Board of Education in the November election. Kurtz said she did not read the book in its entirety, but saw excerpts from the novel printed on a sheet of paper and distributed throughout the community. The sheet included three sex scenes and profanity. One of the sex scenes was notated as "Rape of his daughter." Kurtz said she is concerned about the age appropriateness of the book.

School board member Jane Miller said she is reading *The Bluest Eye*, and that three excerpts of a 197-page book do not give a broad view of the novel. "That is not the way to discuss this issue," Miller said. The book is being discussed for political gain, she said. Although Miller is a Republican, she said she does not agree with the way the Republican candidates are discussing their issues with the book.

"I'm a Republican," she said, "but I'm not a tea party Republican." She said that is the direction in which the Republican Town Committee is going.

Superintendent Anthony Bivona said *The Bluest Eye* is for Brookfield High School juniors taking an honors English course. Miller said students in this class are bright and should be asked their opinions on the book. If a student or parent is uncomfortable with a book, students are not forced to read it, both Miller and Bivona said. After notifying their teacher, students can receive another book to read.

About 75 students are reading the book, and he has heard from four of their parents, Bivona said. He said he has been contacted by three parents whose children are in the district but are not reading *The Bluest Eye*. One community member who contacted him does not have any children in the district, Bivona said.

Kurtz does not have any children in the school system. But she said parents asked her to speak on their behalf during the public participation segment of the Board of Education meeting October 5.

Chris Delia, another Republican candidate for the Board of Education, has four children in the district, but none are reading *The Bluest Eye*, he said. Delia said he has not read the book — he has read the *CliffsNotes* and the excerpts sheet that has been distributed.

"This is pornography, pure and simple," Delia said. "I don't know why this book is in the high school."

Students in the high school have been reading Morrison's book since 1995, said Bivona, who is reading the novel. "The book is quality literature," he said. Students are

reading the book as part of a theme about American dreams, Bivona said. Sometimes racism and violence can interfere with people's dreams, he said.

Harry Shaker, a Republican school board member who is running for re-election, emphasized that he was not against books about racism or African-American topics. Morrison is black. "This complaint is not specifying one type of book," he said. Shaker said parents are complaining about other books, but he declined to name them. The complaints are about the process in which books are approved in the district, Shaker said.

Two weeks later, Zoe Miller was among students and parents who took a stand in favor of *The Bluest Eye* in front of the school board.

"Why should we ban these books from a high school with students old enough to drive, see R-rated movies legally and buy cigarettes?" Miller, a senior, asked during the public participation portion of the board's meeting. Miller, the daughter of school board member Jane Miller, said Brookfield High School students are mature enough to decide what they will read.

Alexandra Willey, a senior, said she was disappointed to learn residents were asking for *The Bluest Eye* to be removed from high school classes. Willey said controversial books provide thought-provoking discussions and they have literary value, which is important to growing writers. "We should be encouraged to read all types of literature," Willey said, even if the books don't have happy endings.

Clara Willey, Alexandra's mother, said she would rather have her children reading controversial literature than to have them watching television with no structured discussion.

It was decided the policy subcommittee of the Board of Education will research the reading curriculum policies of other school districts throughout the state before amending its own. It initially planned to discuss them at the policy subcommittee meeting in November, but the discussion was postponed.

For now, Morrison's book will be kept in the high school under the current policy, which allows students to choose not to read books they are uncomfortable with. They are then given an alternate book to read, officials said.

Board of Education Chair Ray DiStephan said the class syllabus is given out during open house in the beginning of school and is available to parents throughout the year. District policy does not require books that will be read in class to come before the education board, so the policy has not been violated, he said.

Eleven of 75 students taking the junior honors English course had chosen not to read *The Bluest Eye* this year, DiStephan said at the October 19 board meeting.

Board of Education candidate Pamela Kurtz asked the board to make a motion to immediately remove the book from the curriculum and establish an opt-in policy for

parents to decide if their children will study books with controversial content. Kurtz said she and board candidate Chris Delia have been “unfairly vilified” by the press for saying the book was inappropriate for high school students.

“We have been labeled as book banners who have not read the book,” Kurtz said. “Neither one of us has asked for this book to be banned. Both Kurtz and Delia said an opt-in letter should be sent home to parents if their children are going to be reading graphic books. “Let the parents know what’s going on,” Delia said.

This is an issue about parents’ rights, and the board is attempting to silence and bully parents who have concerns, Delia said. Board member Rob Gianazza said if parents are OK about their children reading a book with graphic content, they can buy the book for them. Reported in: Danbury News-Times, October 6, 20.

### **Hartford, Connecticut**

Before the afternoon ended, a parent had stormed into the Hartford Public High School main office with a Bible, pointing out sections that condemn homosexuality as a sin. A couple of others had taken their teenage children out of school early. Adam Johnson, principal of Hartford High’s Law and Government Academy, said his office phone was ringing. A lot.

The commotion started in the school auditorium sometime after 1 p.m. Friday, October 14. For a second, several hundred students saw two guys kiss.

The peck on the lips was shared between actors in a musical called “*Zanna, Don’t!*” about a reverse world in which straight people are outcasts and the most popular boy in school is the flamboyant star of the chess team. Preceding the shrieks, the chess player admits to liking the lowly football captain, who turns out to be a closet heterosexual.

Members of Leadership Greater Hartford’s Quest, a program for professionals that develops leadership skills, put forth “*Zanna*” as an anti-bullying community service project that helps lesbian, gay, bisexual, transgender and questioning youth. In a partnership with the nonprofit True Colors, one Quest team raised \$10,000 to show the musical three times at Hartford High. The Knox Foundation and the Samuel Roskin Trust at the Hartford Foundation for Public Giving gave sponsorship money. Students from area high schools and Trinity College were the actors.

“It’s not an easy subject to approach, so we’re trying to make it easy for school administrators, local nonprofits, community groups,” said Louise Provenzano, a marketing and strategy consultant in the Quest program. The message for the Hartford teenagers is “diversity, inclusiveness, compassion.”

The October 14 opening performance was reserved

for students in the law and government and nursing academies. Many settled into their seats and tried to listen to the musical’s dialogue and glittery songs, despite competing chatter in the back. “I like that scarf!” one boy shouted at the chess king.

Then the actors kissed and a piercing clamor rang through the auditorium. There were screams and loud voices and a bit of feigned or real disgust. Dozens of students, mostly male and a few in their Owls football jerseys, hurried out of their rows and walked out. A few jumped over seats to leave.

Oneida Fernandez watched them head toward the exit. “To me, people are people,” said Fernandez, a 17-year-old law and government student. “We’re human beings. ... I don’t discriminate.” As for her classmates, she said, “They don’t understand men kissing men.”

Johnson and David Chambers, principal of the nursing academy, said the students had heard ahead of time that there might be same-sex affection in the play. Some asked to be excused. Chambers considered sending an opt-out letter to parents but decided against it.

In health care, said Chambers, they will have to treat people who are different from them. They will need a sense of empathy toward gays and lesbians, or at least exposure to that which makes them uncomfortable. “Our kids are not there yet,” Chambers said.

Teachers, administrators and a football coach had to keep the teens who walked out from leaving the school building. A few students chose to return to the auditorium to finish watching the musical. No one was forced.

“Even though it’s kind of chaotic, kind of wild and crazy, I see it as very successful,” Chambers said. “Our kids never deal with this, they keep it inside, and that’s that nervous energy. That’s why they walked out.”

Johnson expected there to be debate among students who stayed to watch the entire musical and those who refused. Already, he said, there is “tension” at the school over LGBT tolerance. Students jokingly refer to his academy as the “lesbian and gay academy” because of the active Gay-Straight Alliance.

“This is as important of a topic to discuss as anything in math, anything in social studies,” Johnson said. “I’m completely glad that we did it.”

So were Dineily Vargas and Angel Ayala, both 17, 11th-graders in the law and government academy and members of the alliance. The gay characters on stage drew cheers from the scores of students who stayed until the end. Vargas said she noticed classmates who previously expressed homophobic remarks suddenly proclaiming that gay people should be accepted.

“I think it opened a lot of people’s eyes. ... This school never really had anything like this happen,” Vargas said. “I’m still happy. It was wonderful.”

“The only part I hated,” Ayala said, “was when some people left.” Reported in: Hartford Courant, October 16.

## Mattapoissett, Massachusetts

The classic debate over what's appropriate for school children to read and when has a new local chapter — at Old Rochester Regional Junior High School and in the pages of *The Absolutely True Diary of a Part-Time Indian*.

A few parents were scheduled to meet with staff and School Committee members October 27 about their concerns over the book's assignment, for the second year, in eighth-grade English. Penned by Sherman Alexie, the novel is a New York Times best-seller, a National Book Award winner and, according to the American Library Association, was one of the top ten banned or challenged books of 2010.

"I'm a Constitution guy. ... But the First Amendment doesn't say (that) freedom of speech means that a teacher can bring in whatever they want and assign it," said James Babineau, an eighth-grade parent who helped sound the alarm after reading the book and said that when he first approached administrators about it, they hadn't read it.

"I don't want it pulled out of the library. I just didn't think that it was eighth-grade appropriate," Babineau said.

Through the journey of a young Spokane Indian named Junior, *The Absolutely True Diary* explores themes of triumph, racism and loss, the influence of one's environment and the power to reach beyond expectations. It's also narrated in the voice of a teenage boy, whose "sex life" is what one might expect — a lot of talk and not much action. Topics include masturbation and erections, and words include sexual and racial slurs and curses. The book also drops the "N" word, in one of many pages Babineau flagged in a letter to the editor in the October 13 issue of *The Wanderer*, a local newspaper.

The scene is an instance of harassment by a white classmate, prompting Junior to call it the "most racist thing I'd ever heard in my life." But Alexie also sprinkles in pearls of wisdom, such as Junior's observation when watching his mother mourn the loss of her mother: "... all of us are always five years old in the presence and absence of our parents."

"We should not hide ourselves from the literature," said Thomas Shire Jr., who represents Marion on ORR's School Committee. "That includes bad language and bad things and people doing bad things to other people." Although noting that certain material should be shielded from elementary-age readers, Shire said racism in literature helps inform people to recognize it in real life.

And when asked whether he would draw a distinction between removing a middle school reading assignment versus taking it out of a library, he said, "I do not want censorship of any kind, or restriction of any kind, no more than I would prohibit the reading of Mark Twain's books."

"I don't want to dumb our reading ... and say that 'Oh well, this is how they talk in the hallway, so this is the type of book we're going to give them,'" Babineau retorted.

As part of ORR's curriculum review process, a standards committee consisting of School Committee members will hear parents' concerns along with feedback about the book's merits and learning value, according to Elise Frangos, ORR's director of curriculum and instruction, who said she, the assigning teacher and a librarian will be in attendance. She said even before people raised a concern, a letter about the book was slated to be sent home to parents and, regardless, "another choice was going to be offered if the parent's philosophical, religious or cultural belief did not make for a comfortable use of this book."

At ORR, "A basic belief system is respect for all and sensitivity for all," said Frangos, who said she expects the standards committee to make a decision today. "Because we embrace that model, we really believe that we need a thoughtful, sensitive process with regard to curriculum adoption and then curriculum challenges."

ORR is hardly the first school district to confront these issues, or even grapple with them over this particular book. After *The Absolutely True Diary* was assigned as summer reading to incoming eighth-graders at Fairhaven's Hastings Middle School, parental concerns and the lack of a warning or other option led to a quick swap, according to Principal Wayne Miller, who noted that "some of the language is not what I would want my children to be reading at this level."

In July, Alexie responded to the swell of criticism his and other young adult books had generated in a blog for the *Wall Street Journal*. "I write books for teenagers because I vividly remember what it felt like to be a teen facing everyday and epic dangers. I don't write to protect them. It's far too late for that," he wrote. "I write to give them weapons — in the form of words and ideas — that will help them fight their monsters. I write in blood because I remember what it felt like to bleed." Reported in: southcoasttoday.com, October 27.

## publishing

### Allen, Texas

An Allen woman says she wants a major book retailer to remove adult selections from its free e-books section. Carole Hayes said she noticed this summer that the Free Nook Books section on Barnes & Noble's website includes erotica such as *The Princess and the Penis*.

"Barnes & Noble ought to be a safe place to be to let my kids shop," she said. "It's not Hustler. It's not Playboy."

Hayes, the mother of three children, ages 11, 10 and 4, went on the site to look for selections for her youngest child. Hayes said she was going to let her children download free books for themselves until she saw the titles included when she clicked "see all."

“On page one, scrolling down I saw a little cartoon for a book. I clicked on the book, and when I opened it up, [it] was *The Princess and the Penis*,” she said. That e-book has since been taken down from the the website. Barnes & Noble has buttons on its main Free Nook Books page that allow customers to browse by section. Hayes said she wants the bookseller to add children’s books as one of the options.

Choosing “see all” in the Free Nook Books section mixes children’s books such as *Life with Max* and *Puppy Dog Tales* with all of the other offerings, including erotica. “There’s Erotic Short Stories, *Ride a Cock Horse* and a whole series called ‘Naughty Nooners,’” Hayes said.

Customers can narrow their search to show only children’s books by choosing “Kids” in the menu on the left on the “see all” page. But Hayes said either the children’s selections or the erotica books should not appear when selecting “see all” because the two should not be mixed.

“They can give away anything they want,” she said. “I don’t care how hardcore, as long as they segregate it from the rest.”

In a statement, Barnes & Noble said: “When viewing books on Barnes & Noble.com, there are a number of factors that go into how they are merchandised. These include sales rank, author and publisher popularity, quality of reviews and other details. When viewing ‘See All’ in a broad category such as ‘FREE,’ this will take all books across all categories available for free and rank them according to these factors. We take our mission very seriously — to be a valuable resource to our customers, bringing books and ideas to the public. Our guiding principle is to offer every book in print and allow our customers to decide what to buy and read and let each person decide what is appropriate for his or her children. In addition, please note that our products and services available online at [www.bn.com](http://www.bn.com) are marketed for and directed towards purchase by adults 18 years or older.”

Hayes posted about it on a Dallas discussion board for mothers and emailed Barnes & Noble. The bookseller sent her a response that said: “Customer feedback is critical to the success of our business, and we rely on suggestions such as yours to determine what our customers value most.” Barnes & Noble told Hayes it would forward her suggestion for possible implementation.

Hayes, who does boudoir photography, said she knows the lines between what’s appropriate for adults versus children. “The point is, I take these kinds of pictures, but I don’t show them to my kids,” she said.

Hayes said she supervises her children on the Internet. Her children sign in with their own accounts, which have parental controls. “But I would never block Barnes & Noble,” she said. “It’s a bookstore.”

Barnes & Noble has made some adjustments to where the Free Nook Books page is located on the website. It is now several clicks into the site, but Hayes said the change does not address her concerns. Reported in: [nbcdfw.com](http://nbcdfw.com), October 4.

## colleges and universities

### Denver, Colorado

The University of Denver’s provost has upheld a dean’s decision to discipline a professor for making sexual references in classroom lectures. In doing so, he rejected a faculty panel’s conclusion that the dean had erred in failing to consider the academic relevance of the professor’s statements and instead letting human-resources and diversity-office administrators decide they amounted to sexual harassment.

In a letter to Arthur N. Gilbert, the tenured associate professor of international studies who had delivered the lectures last March, Gregg Kvistad, the provost, said the actions taken by the dean were “substantially correct.” The dean based his decisions on the findings of administrators who handled two anonymous graduate students’ complaints about the professor’s classroom statements.

“It is crucial that you understand your obligations to treat all students enrolled in your classes with dignity, decency, and respect,” Kvistad wrote in the letter, which was dated October 20.

Christopher R. Hill, dean of the university’s Josef Korbel School of International Studies, had barred Gilbert, who is 75, from contact with undergraduates, placed him on paid leave, banned him from campus, and prohibited him from discussing his case with other faculty members while human-resource administrators processed the students’ complaints.

In his letter, the provost said that Gilbert’s removal from the classroom during the investigation was “entirely consistent with university practice.” Kvistad upheld the dean’s response to Gilbert with one modification. Instead of requiring sensitivity training for Gilbert, as the dean had ordered, the provost asked the professor to meet with the director of the university’s Office of Diversity and Equal Opportunity to “discuss what creating a sexual harassment hostile environment entails and how you must avoid that.”

Gilbert, who was allowed to return to campus to teach graduate students in September, after 101 days on administrative leave, said that he believes his situation “illustrates the gap between academic values, including academic freedom, and administrators.”

Dean J. Saitta, a professor of anthropology, president of the University of Denver chapter of the American Association of University Professors, and member of the faculty review committee that handled a grievance filed by Gilbert, agreed with Gilbert that “there’s certainly an academic-freedom dimension to this case.”

“The final decision sends a rather chilling message that if your classroom speech offends even a single student and that student complains, you are subject to removal from the classroom, suspension from campus, and an investigation that knows no limits,” Saitta said. “Given how Professor Gilbert was treated, I’m not inclined to teach

my course on human evolved psychology and sexuality—a course whose subject matter significantly overlaps with that taught by Gilbert and whose academic content inevitably creates student discomfort—until the institution establishes better policies respecting academic freedom and due process. The risk to professional career and reputation, in my opinion, is too great.”

In his letter, Kvistad said that “the issue here is not academic freedom.” Instead, the provost said, “it is the university taking seriously its commitment to ‘create and maintain a community in which people are treated with dignity, decency, and respect’ (University of Denver Equal Opportunity/Sexual Harassment Policy). That includes people with the least power in any university community—students enrolled in our classes.”

The provost’s decision was at odds with the recommendations of a faculty review committee that considered the grievance filed by Gilbert to challenge the disciplinary steps taken against him. In a report issued on October 4, and approved by its members by a 9-to-1 vote, the review committee concluded that administrators appeared to have violated Gilbert’s academic freedom by passing judgment on his teaching methods without consulting other faculty members or referring to standards of teaching developed outside the university.

“To summarily remove a member of the faculty from the classroom and ban that person from campus and from contacting colleagues and students because of something that was said in the classroom and reported anonymously, without full consideration, is outrageous and in variance with time-honored tradition in academe.” the faculty committee’s report said. “This violates academic freedom and overall concepts of fairness.”

The faculty review committee’s report said broader concerns had been raised by the university’s treatment of Gilbert, who has been on the university’s faculty for fifty years and remains popular with students. Among them, it said, the case showed how the university lacked clear rules and processes governing when and how faculty members can be placed on administrative leave and barred from contact with colleagues and students, an action that can result in irreparable damage to career and reputation. It faulted the university’s grievance policy for allowing faculty members to challenge such disciplinary measures only after they have been taken, when “the damage may already be done.”

The faculty review committee’s report also said Gilbert’s case had shed light on ambiguity surrounding the proper role of the university’s human-resources office in handling student complaints about faculty members. “We believe concerns about teaching method and faculty classroom behavior, along with other matters related to teaching, should be addressed by the faculty, not an administrative unit,” it said.

The report called a finding by the university’s Office of Diversity and Equal Opportunity that Gilbert had

committed sexual harassment “equivocal at best.” It noted that the diversity office had qualified its finding by saying that the professor’s statements are considered harassment, “absent an academic justification,” and had made no reference to applying accepted legal or academic standards in reaching its conclusion.

Among its recommendations, the report said that Hill, a former U.S. ambassador to Iraq and career member of the foreign service who had no experience in academe before he became the school’s dean last year, would benefit from guidance on “the mores and values of higher education and the role of faculty” and from “consulting other deans and members of the faculty when questions related to teaching arise.”

In his letter, the provost said that the dean did consult with human-resources officials and faculty members in deciding how to respond and “did so in accordance with best practices as an academic dean.” Nothing in the faculty review, Kvistad added, “indicates anything about Dean Hill’s professional record or his familiarity with academe.”

The provost also wrote that it is not the role of the university’s diversity office to determine the nature of academic appropriateness and that the office’s phrasing was meant to acknowledge its limited role. The faculty committee, Kvistad added, “might have weighed in on the nature of an ‘academic justification,’ but it chose not to do so.”

The two students who had filed anonymous complaints about Gilbert had objected to statements about masturbation that he made in March, in teaching a class titled, “The Domestic and International Consequences of the Drug War.”

The university has not released their complaint, but Gilbert says he makes reference to changing public attitudes toward masturbation in discussing connections between efforts in the early 1900s to restrict drug use and that period’s taboos against various sexual behaviors widely regarded as sinful.

In early April, Hill sent Gilbert a letter telling him the university had been informed that Gilbert had made statements during class “that are not related to course content” and that appeared to violate university policies, “including but not limited to the policy prohibiting sexual harassment.” At that point, he placed Gilbert on administrative leave.

Gilbert’s notes from his meetings with Hill and other administrators beginning in April said he was told his file contained other accusations of improper behavior from anonymous sources. Among them, he was accused of using obscenities in class, which he admitted, and of placing his hands on the shoulders and backs of female students, gestures which he explained as platonic displays of support.

His notes say he was told of a complaint that he brought a vibrator to class, and he explained that he brings in an old, art-deco vibrator in lecturing students on

gender-related differences in attitudes toward masturbation and masculine self-control in the late 19th century.

He was also asked if he had tried to play the role of “matchmaker” with his students, which he admitted, and was accused of handing a freshman student two condoms and wishing her luck on a date, which he denied, saying he had not purchased a condom since he was 16. Gilbert’s notes say he protested during such meetings that he had never been confronted with such allegations before.

In a July 14 letter to Gilbert, Hill said the university’s Office of Diversity and Equal Opportunity had completed its investigation and determined that he had violated university policy “by creating a sexual-harassment hostile environment” in his class.

“Such actions are not tolerated at the Korb School of International Studies or anywhere else at the university, and you must cease this behavior immediately,” the letter said. It warned Gilbert that any further violation of the sexual-harassment policy “will result in severe disciplinary action.”

The faculty review committee that handled Gilbert’s grievance challenged the dean’s decision to require the professor to undergo sensitivity training, but it did not let Gilbert completely off the hook for inappropriate behavior. Its report said Gilbert “would benefit from careful reflection and peer consultation concerning the concerns that were raised by some students about the sexualized content and personal disclosure in some of his classroom presentations.” Reported in: Chronicle of Higher Education online, October 24.

## science

### Houston, Texas

A long-awaited report on Galveston Bay is being delayed by accusations that Texas’ environmental agency deleted references from a scientific article to climate change, people’s impact on the environment and sea-level rise.

John Anderson, the Maurice Ewing professor of oceanography at Rice University and author of the article, accused the Texas Commission on Environmental Quality (TCEQ) of basing its decision to delete certain references on politics rather than science.

“I don’t think there is any question but that their motive is to tone this thing down as it relates to global (climate) change,” Anderson said. “It’s not about the science. It’s all politics.”

The article has several references to climate change but does not say it is caused by humans. However, other references to the impact people have had on the environment were deleted by TCEQ. TCEQ spokeswoman Andrea Morrow gave no reason for the deletions, saying only that the agency disagreed with information in the article. “It would be irresponsible to take whatever is sent to us and publish it,” she said.

Anderson said TCEQ prevented the article—written for a report by the agency’s Galveston Bay Estuary Program—from being published without the deletions. That, and Anderson’s refusal to accept the changes, have held up publication of *The State of the Bay*.

TCEQ contracted with the Houston Advanced Research Center to produce the report two years ago; the research center asked Anderson to write an article on sea-level rise in Galveston Bay. The research center received the final edited version of his article about three months ago, Anderson said.

Jim Lester, vice president of the research center and editor of the publication, said he, co-editor Lisa Gonzalez and Anderson have advised TCEQ officials that they do not want their names associated with the edited version. “We feel it would impact our credibility as scientists on something where the data on sea-level rise has been censored,” Lester said. He said the report would have been published a year ago, if not for the disagreement.

Anderson wrote to TCEQ Commissioner Buddy Garcia August 30 complaining about the censorship, including as an example the deletion of a section saying the ocean level in Galveston Bay is rising by 3 millimeters a year, compared with the long-term average of 0.5 millimeters. “The sea level rates presented in this chapter are scientific fact, not speculation,” he wrote to Garcia.

“Preventing me from publishing this chapter in its current form is a clear case of censorship, which we academicians take very seriously. I would hope that you will intervene at this point and assure that publication of *The State of the Bay* is no longer delayed.”

Anderson said he has not heard from Garcia, although TCEQ’s spokeswoman said someone from Garcia’s office had tried to reach him. Anderson said the article is a synopsis of a 10-year study he and other scientists conducted, published by the Geological Society of America. The study was peer-reviewed, meaning it was critically reviewed by other scientists.

He said TCEQ never offered an explanation for the deletions. “They just went through the document and deleted, deleted, deleted,” he said.

Lester said TCEQ officials made it clear the agency is uncomfortable with any references to human-caused climate change. “We stayed away from human-induced climate change, but we felt like we had to talk about sea-level rise,” he said. “After all, it’s been happening for 12,000 years. We were surprised the data on sea-level rise became a contentious issue.”

TCEQ also deleted any references to human-caused change in other contexts, including a reference to human activity being responsible for wetlands destruction.

“I think that we’re seeing an expression of the ideology of the TCEQ leadership,” Lester said. “I can’t think of any other reason why these would be contentious issues.” Reported in: Houston Chronicle, October 10.

## foreign

### Bahrain

Two reports released in late November sharply condemn Bahrain for attacks on academic freedom, including the dismissals of professors and students for participating in political demonstrations last spring.

Human-rights activists say that the reports need to be followed by action, and that one of the reports does not go far enough in its conclusions. In particular, they say, the report by the more politically powerful panel, the Bahrain Independent Commission of Inquiry, which was established by the king of Bahrain, appears to ignore the plight of many professors entirely and offers only weak recommendations about the students who were expelled. Many students and professors who were dismissed for political activity have not gotten their jobs or their student status back despite the commission's investigation.

The government-established panel's recommendations were "incredibly toothless," said Laurie A. Brand, a professor of international relations at the University of Southern California and chair of the Middle East Studies Association's Committee on Academic Freedom. She said she believed the report, in essence, tells those in power in the Bahraini government who committed numerous "gross violations" of civil and academic rights that they should let go of those they charged unfairly. She asks how those in power who have violated human rights in the past can be expected to do better in the future, despite the difficulty they seem to have had in even defining the freedoms they are protecting.

The second report, "Bahrain: The Human Price for Freedom and Justice," was issued by several Bahrain-based human-rights groups. Its authors wrote, "We believe that the Bahraini government is only interested in plastering over the cracks in its international reputation and not in addressing the longstanding systemic problems which led to the violations witnessed during 2011."

The Commission of Inquiry's report found that the University of Bahrain and Bahrain Polytechnic took "indiscriminate disciplinary action against students based on their involvement in the February/March 2011 demonstrations" and "infringed on their right to free expression, assembly, and association." The report called for the reinstatement of all students who were not charged with criminal violations.

A member of the Bahrain Center for Human Rights said that there are still 38 students at the University of Bahrain who have not been reinstated, and 31 in the same situation at Bahrain Polytechnic. She and others say that the government sets up checkpoints where current students are questioned and humiliated, that two students were recently kidnapped by security forces, and that loyalty pledges that students have to sign to attend the public universities forbid them from engaging in any political activities, both on and off campus. "Freedom of expression is out of the question," she said.

A previous Human Rights Watch report found that the Bahraini government suspended or expelled 500 students, that security forces detained and questioned at least 15 professors from three universities, and that the University of Bahrain alone fired 100 professors after the Pearl Roundabout protests. In October, six university students were sentenced to 15-year jail terms and a military court sentenced another student to an 18-year term.

One student at Bahrain Polytechnic who was expelled in June for participating in off-campus political protests says she was told by the Commission of Inquiry just before the semester started in September that all expelled and suspended students would be allowed to return. But she did not get back her student-identification card, which had been taken away from her when she was expelled, and was not allowed to return to campus.

She went back to the commission with her empty identification-card holder and an empty backpack, and told it she had not been reinstated. "Why is there no card inside my card holder and why are there no books in my backpack?" she asked. She returned, day after day, to visit the commission, waiting for the chance to argue for the complete reinstatement of all students.

Eventually Bahrain Polytechnic said it would take her back for the second semester of the year, in about three months. She has not backed off from her original desire for democratization in Bahrain: "We need to elect our own regime. That is why we went to the Pearl Roundabout." Reported in: *Chronicle of Higher Education* online, November 27.

### Brussels, Belgium

A Congolese-born campaigner called September 30 for a Tintin book to be banned, arguing before a Belgian court that its cartoons of Africans were racist. Campaigner Mbutu Mondondo Bienvenu launched a legal bid in 2007 against the book *Tintin in the Congo* but was able to start arguing his case in court only in late September after months of legal argument.

"What poses a problem today is not (author) Herge, it's the commercialization of a cartoon book which manifestly diffuses ideas based on racial superiority," lawyer Ahmed L'Hedim told the court. Lawyers expect a ruling in around two months.

The complainant initially brought criminal charges over the book written by Belgian Georges Remi, better known under his pen name Herge. However, after lengthy delays, his legal team started a civil case last year. That case has been bogged down by a dispute over which court was empowered to hear proceedings.

The book was published in 1931 and Bienvenu is taking action against a modern version of the original. Racist language was removed in subsequent editions. The English language version carries a warning to readers that its

contents could be offensive and that it should be seen in the context of its time.

If the court decides against an outright ban, the complainant wants a similar warning placed on the editions in French and Dutch sold in Belgium.

Moulinsart, the foundation which holds the Tintin copyright, has refused to attach a warning. It says there are many works that could be accused of discrimination.

Alain Berenboom, a lawyer representing the publishers told reporters outside the courtroom: "Asking a tribunal to make a warning is a form of censorship." Reported in: reuters.com, September 30.

### Beijing, China

Political censorship in China has long been heavy-handed. But for years, the Communist Party has tolerated a creeping liberalization in popular culture, tacitly allowing everything from popular knockoffs of "American Idol"-style talent shows to freewheeling microblogs that let media groups prosper and let people blow off steam. Now, the party appears to be saying "enough."

Whether spooked by popular uprisings worldwide, a coming leadership transition at home or their own citizens' increasingly provocative tastes, Communist leaders are proposing new limits on media and Internet freedoms that include some of the most restrictive measures in years.

The most striking instance occurred October 25 when the State Administration of Radio, Film and Television ordered 34 major satellite television stations to limit themselves to no more than two 90-minute entertainment shows each per week, and collectively ten nationwide. They were also ordered to broadcast two hours of state-approved news every evening and to disregard audience ratings in their programming decisions. The ministry said the measures, to go into effect on January 1, were aimed at rooting out "excessive entertainment and vulgar tendencies."

The restrictions arrived as party leaders signaled new curbs on China's short-message, Twitter-like microblogs, an Internet sensation that has mushroomed in less than two years into a major — and difficult to control — source of whistle-blowing. Microbloggers, some of whom have attracted millions of followers, have been exposing scandals and official malfeasance, including an attempted cover-up of a recent high-speed rail accident, with astonishing speed and popularity.

On October 26, the Communist Party's Central Committee called in a report on its annual meeting for an "Internet management system" that would strictly regulate social network and instant-message systems, and punish those who spread "harmful information." The focus of the meeting was on culture and ideology.

Analysts and employees inside the private companies

that manage the microblogs say party officials are pressing for increasingly strict and swift censorship of unapproved opinions. Perhaps most telling, the authorities are discussing requiring microbloggers to register accounts with their real names and identification numbers instead of the anonymous handles now in wide use.

Although China's most famous bloggers tend to use their own names, requiring everyone to do so would make online whistle-blowing and criticism of officialdom — two public services not easily duplicated elsewhere — considerably riskier. It would "definitely be harmful to free speech," said one microblog editor who refused to be named for fear of reprisal.

This newly buttoned-down approach coincides with a planned shift in the top leadership of the ruling party and government, an intricate process that will last for the next year. During such a period, tolerance for outspokenness outside official channels tends to shrink, and bureaucrats eager for promotion show their conservative stripes.

The crackdown also follows popular uprisings across the Middle East that appear to have given China's leaders pause regarding their own hold on absolute power. In the view of some, it also tracks the influence in China's ruling hierarchy of hard-liners like Zhou Yongkang, the public security chief who helped preside over the suppression of riots by ethnic Uighurs in western China's Xinjiang region.

On October 25, Xinhua, the state news agency, reported that Zhou was urging authorities "to solve problems regarding social integrity, morality and Internet management" and that he had called for "the early introduction of laws and regulations on the management of the Internet," among other things.

Nobody outside China's closeted leadership knows the true reason for the maneuvers, beyond a general and intangible sense of uneasiness over the degree to which freer speech is taking root. The microblogs, or weibos, are perhaps the prime example. In the last year, weibos have become the forum of choice for Chinese to pass on news and gossip about scandals involving government and the elite. The two largest, run by the privately held Sina Corporation and Tencent Holdings, each count more than 200 million registered users.

In the face of official censorship, their weibos are filled with salacious tales of official malfeasance, such as a July frenzy — photographs included — over a Yunnan Province city official's sex orgy. Industry insiders say the principal weibo (pronounced way-bwah) regulators, based in Beijing and the Shenzhen Communist Party Internet offices, have been assailed by government leaders elsewhere for allowing the scandals to spread online unchecked.

In fact, the government could easily shut down microblogs. Officials disconnected the entire Internet in Xinjiang for 10 months after the ethnic riots there in

2009. But their growing popularity makes that highly unlikely. The number of users has quadrupled in a single year.

Song Jianwu, dean of the school of journalism and communication at China University of Political Science and Law, said Chinese leaders accepted the need for such outlets for expression. But in the case of weibos, he added, “they are also concerned that this safety valve could turn into an explosive device.”

He said the government might gradually require more and more users to register under their real names, while demanding that operators monitor posts more closely. “I think they will do it in a step-by-step fashion,” he said. “We hope and we have suggested that they will do it in manner that is not antagonistic.”

Some changes are already evident. Besides the in-house monitors who already scan posts for forbidden topics, operators in recent months have bolstered “rumor refutation” departments, staffed by editors, to investigate and knock down information deemed false.

Top officials, including Liu Qi, the party secretary of Beijing, have held publicized visits to microblog companies, sometimes accompanied by popular microbloggers, in which he urged people to uphold social order and the proper ideology — and implying that their own status in official eyes would depend on their cooperation.

State restrictions on television are murkier. The rules ostensibly apply to CCTV-1, the general programming channel of Central China Television, but not to CCTV-3, which specializes in arts and entertainment, according to a report in the English-language edition of *Global Times*, an official newspaper.

Many people in the industry have interpreted the decree and earlier measures by central officials as attempts to bolster the ratings of CCTV against the onslaught of entertainment shows produced by satellite stations, which have been wildly successful. Last year, officials told producers of “If You Are the One,” a popular dating show on Jiangsu Satellite Television, to tone down the program. Last month, the authorities suspended a talent show on Hunan Satellite Television, “Super Girl,” for exceeding a broadcast time limit.

Many industry observers said the show may have been offensive for other reasons, including prompting home viewers to show support for their favorite contestants through cellphone texting, an action akin to voting. The shutdown of “Super Girl” was taken as a warning throughout the television industry and presaged the new rules.

Bill Bishop, a business consultant and media industry analyst in Beijing, wrote on his blog, DigiCha, that the new limits could drive television viewers to look for entertainment on the Internet. On the other hand, he added, officials might be preparing restrictions for online video content. “The trend in China appears to be towards more, not less, regulation,” he wrote. “Investors may

want to consider factoring in greater regulatory risk.” Reported in: New York Times, October 26.

### **New Delhi, India; Oxford, England**

More than 450 scholars from around the world sent a joint letter to Oxford University Press November 28 blasting it for failing to defend an essay it had published, when some right-wing Indian nationalists were offended by the work.

The essay — “Three Hundred Ramayanas” — was written by the late A.K. Ramanujan, who during a career largely spent at the University of Chicago was considered one of the most influential scholars of Indian cultures and literatures. The Ramayana is a Sanskrit epic revered by many Hindus. Fights about sacred texts in India (with academics among the combatants) are nothing new. But the fight over this essay — which offended with some references to Rama, a Hindu god, in ways that were not consistent with right-wing Hindu beliefs — has become intense in India and beyond.

In October, Delhi University agreed to stop teaching the essay — a move that Salman Rushdie said amounted to “academic censorship.” That decision, in turn, led to scrutiny of Oxford University Press, which has distributed the essay in books in India. (The Oxford press has a large operation in India, just as it does in the United States and in other countries.) To many scholars, the actions of the press, which publishes their work and sells them texts, was far more distressing than the criticism of the essay by some in India.

The Oxford University Press was sued in India over distribution of the essay and—according to court documents cited in the letter sent to the press and to Indian press reports—apologized for having distributed the essay. Oxford press officials were quoted as telling the court hearing the suit: “Our client further wish to assure your client that as publishers of long standing and repute, it has been their conscious endeavour to respect the plurality of Indian culture in all publishing activities which they undertake and very much regret that the essay in question has inadvertently caused your client distress and concern.”

Further, two books containing the essay — previously available through Oxford in India — appear to have been withdrawn, and no longer turn up in web searches of the press’s offerings.

Oxford released a letter from the chief executive of the press, Nigel Portwood, to the scholars who organized the joint letter. In the letter, Portwood denied that the press has taken any books off of its list due to political pressure. “The two Ramanujan books at the centre of the current debate ... have not been removed from the market in India through acts of censorship. Prior to 2008 both works had been showing minimal sales triggering the decision not to reprint either title. As I am sure you appreciate, commercial considerations are one of several factors in publishing

decisions,” Portwood wrote. He said that the determination not to reprint was made prior to the controversy breaking out over the essay.

“We at the press take matters of scholarly freedom and integrity extremely seriously and welcome communications from anyone who fears that these important principles are being undermined,” he added. The letter from Portwood does not reference the court apology for having published the essay in the first place.

Those scholars involved in the letter to Oxford (or signing it) include many prominent scholars worldwide who study India. Among them are Sheldon Pollock, Ransford Professor of Sanskrit and Indian Studies at Columbia University; Vinay Dharwadkar, a professor of languages and cultures of Asia at the University of Wisconsin at Madison; Paula Richman, William H. Danforth Professor of South Asian Religions at Oberlin College; Wendy Doniger, the Mircea Eliade Distinguished Service Professor of the History of Religions at the University of Chicago; and David Shulman, the Renee Lang Professor of Humanistic Studies at Hebrew University of Jerusalem.

The letter says that the signatories “learned with shock and dismay that Oxford University Press India has formally apologized to the individual who brought suit against OUP for publishing A. K. Ramanujan’s ‘Three Hundred Ramayanas.’ “ Oxford’s handling of the situation, the letter says, played into the hands of those trying to prevent the work from being taught at Delhi University by making it more difficult to obtain copies of it.

In language that is unusually harsh for communication with one of the world’s most prominent scholarly publishers, the letter says: “The 453 scholars who have signed this letter to you, many of us former colleagues or students of Ramanujan, but also authors who have published with OUP Oxford, New York, or Delhi, want to express our deep consternation at OUP India’s self-abasement in court. We are also fully aware that the Ramanujan case is only the most recent in a series of shocking acts on the part of OUP India — including the suppressing or pre-censoring of scholarly books — that are inimical to the open exchange of ideas, the lifeblood of scholarship. This situation cannot go unchallenged.”

The scholars ask Oxford to withdraw its court apology and to reprint Ramanujan’s *Collected Essays* (one of the books apparently no longer being published in India). The letter goes on to say: “If you are unwilling to do these things, and thereby effectively attempt to bury Ramanujan’s book, we demand that you publicly relinquish all rights to his work and return them to the original copyright holders, so that this scholarship can be published by another press that understands the importance of freedom of expression, to say nothing of courage in the face of fanaticism.”

The protest has also spread to the University of Oxford itself, where members of the Oxford Indian Society are circulating a petition stating that the university’s publishing

arm in India has “a dark history of crumbling in the face of unreasonable demands by easily offended groups.” Reported in: [insidehighered.com](http://insidehighered.com), November 29.

### Islamabad, Pakistan

Pakistani citizens will find it more difficult to send dirty texts after regulators banned 1,600 words it deems obscene. The Pakistan Telecommunication Authority gave carriers a list of the words to ban, with a mandate telling them they have only seven days to block the words or face legal action, which could be very strict.

The words on the list are often innocent-sounding, like “idiot” or “barf,” but mainly are terms not used in polite conversation. The list has caused a great deal of controversy and commentary on Twitter and other websites. However, the ban is being taken seriously in Pakistan, and may be difficult for carriers to follow and the government to enforce without a fight.

“There are more than 1,600 words in the list including indecent language, expletives, swear words, slang, etc., which have to be filtered,” one of the cellular providers commented. “The filtering is not good for the system and may degrade the quality of network services — plus it would be a great inconvenience to our subscribers if their SMS was not delivered due to the wrong choice of words.”

The ban does not yet appear to have taken effect. As of November 27 texts including the banned words were still being sent, and the technology blocking the texts may not be completely effective, so it could take the Pakistani carriers some time to block questionable texts.

Free speech protections would likely bar an outright ban of offensive words in the U.S., but frequently teens and young adults send photos or texts to one another are finding themselves on the wrong side of the law. For example, in New Jersey, legislators this summer considered a measure that creates an educational program for sexting teens, rather than charge them as being a sex offender. However, the law doesn’t specify the language that may be used — just the actions (and photos) the teens take.

Pakistan’s constitution also guarantees freedom of speech, but the PTA told carriers they could restrict the texts under court rulings and that telecommunications companies are responsible for stopping “obnoxious communication.”

The PTA said it will require mobile companies to report monthly about enforcing the ban, so the ban may continue for some time. The words and phrases banned include 1,109 English words and another 568 in Pakistan’s national Urdu language, so Pakistanis wishing to send dirty texts will likely need to figure out some new words — or maybe learn some creative phrases in another, uncensored language. Reported in: [forbes.com](http://forbes.com), November 28.

## from the bench



### U.S. Supreme Court

A number of Supreme Court justices invoked the specter of Big Brother while hearing arguments November 8 over whether the police may secretly attach GPS devices on Americans' cars without getting a probable-cause warrant. While many justices said the concept was unsettling, the high court gave no clear indication on how it will rule in what is arguably one of the biggest Fourth Amendment cases in the computer age, with significant resonance for First Amendment and privacy concerns.

The case, *United States v. Jones*, has generated an enormous amount of attention, unusual for a criminal case that doesn't involve the death penalty or terrorism. The search terms "GPS" with "Supreme Court" produced 100 screens of responses on Google. Although the justices will decide the case in formal doctrinal terms, there is no getting away from the deeper issue: what, if any, are the permissible limits of government watchfulness over our daily lives.

As veteran Supreme Court reporter Linda Greenhouse wrote, "Supreme Court cases occasionally come along that tell us as much about ourselves as about legal doctrine or the court itself, and this is one of them."

The Obama administration maintains that Americans have no privacy rights when it comes to their movements in public. During argument, Justice Stephen Breyer told Deputy Solicitor General Michael Dreeben that, "If you win this case, there is nothing to prevent the police or government from monitoring 24 hours a day every citizen of the United States." Breyer said that "sounds like 1984."

Over the years, the courts have concluded that the police can tail a suspect in public without a warrant, can take his trash and search it once he puts it out on the curb and can use cameras to catch him running red lights or doing other illegal things in public spaces. But they need a warrant to

search his home, listen in on his phone calls (except in a wide variety of circumscribed situations) or monitor him doing other things where Americans would have a reasonable expectation of privacy.

It very quickly became clear at the hearing that several of the justices in the center of the court thought the positions argued by both sides were extreme. The idea that the police could never track a car with GPS when they could tail it seemed not to make sense to Justice Kennedy, who asked if it would be unconstitutional for the police to collect the same information produced by the GPS by placing 30 deputies along Jones' driving route.

But to Justices Roberts, Kagan and Breyer, there seemed to be a real difference in the amount of information the GPS could produce. Said Kagan: "[If] you think about a little robotic device following you around 24 hours a day anyplace you go that's not your home, reporting in all your movements to the police, to investigative authorities, the notion that we don't have an expectation of privacy in that, the notion that we don't think that our privacy interests would be violated by this robotic device, I'm — I'm not sure how one can say that."

The intriguing idea Kagan and other justices seemed to be settling on, is that there's a qualitative difference between the reasonableness of a search that produces a limited amount of data and a search that produces a huge amount, so much that an entirely different picture of a person begins to emerge. "You're talking about the difference between seeing the little tile and seeing a mosaic," Chief Justice John Roberts said, "The one gives you information, the other doesn't."

Roberts wondered aloud whether the government's position was that it may secretly attach GPS devices to the cars of the nine members of the Supreme Court without a warrant.

"You think they are entitled to do that?" Roberts asked.

"The justices of the Supreme Court?" Dreeben replied. "Under our theory and under this court's cases, the justices of this court, when driving on public roadways, have no greater expectation..."

"So your answer is, 'yes,' you could tomorrow decide that you put a GPS device on every one of our cars, follow us for a month; no problem under the Constitution?" the chief justice interjected.

"Well, equally, Mr. Chief Justice, if the FBI wanted to it could put its team of surveillance agents around the clock on any individual and follow that individual's movements as they went around on the public streets ..., Dreeben replied.

"The heart of the problem that's presented by this case," Justice Alito then declared, "is that in the pre-computer, pre-Internet age, much of the privacy — I would say most of the privacy — that people enjoyed was not the result of legal protections or constitutional protections. It was the result simply of the difficulty of traveling around and gathering up information."

“But with computers, it’s now so simple to amass an enormous amount of information about people that consists of things that could have been observed on the streets, information that was made available to the public,” he continued. “So, how do we deal with this? Do we just say, well, nothing is changed, so that all the information that people expose to the public is fair game? There is no search or seizure when that is obtained, because there isn’t a reasonable expectation of privacy? But isn’t there a real change in this regard?”

Alito, a former federal prosecutor and probably the court’s most pro-prosecution justice, put his finger on the issue. “Reasonable expectation of privacy” is a phrase at the heart of the modern Fourth Amendment. By its text, the amendment only guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

But the Supreme Court decades ago took a broader view, ruling in a landmark case concerning the placement of an electronic listening device on the outside of a public telephone booth that a search could be unreasonable even without a physical intrusion into a private place. “Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures,” Justice Potter Stewart wrote for the court in *Katz v. United States* in 1967.

Justice John M. Harlan’s concurring opinion provided the two-part definition of Fourth Amendment freedom that remains operative today: “First, that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as ‘reasonable.’”

Justice Sonia Sotomayor suggested the government’s position went too far, especially in the age of “smart phones” that contain GPS tracking devices. “It would be OK to put a computer chip and put it on somebody’s overcoat?” she asked. Dreeben said Sotomayor was off base because her scenario would allow GPS monitoring inside a home. “That is off-limits,” he said. However, “a car parked in the garage,” he added, “does not have a reasonable expectation of privacy.”

But the justices seemed troubled on whether a warrant was always necessary, and whether they should take into account how long the monitoring continues. “Where do you draw the line?” Justice Alito asked.

One of the Obama administration’s main arguments in support of warrantless GPS tracking is the high court’s 1983 decision in *United States v. Knotts*, in which the justices said it was permissible for the government to use beepers known as “bird dogs” to track a suspect’s vehicle without a warrant. “A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another,” William H. Rehnquist, then an associate justice, wrote for the court.

Unlike beeper-assisted surveillance, which requires human “visual” surveillance, GPS tracking is a “robotic”

process wholly devoid of human observation, said Stephen Leckar, the defense attorney for a District of Columbia drug dealer appealing a life sentence. Federal authorities monitored his client’s vehicle’s movements with GPS without a court warrant for a month.

Dreeben, however, told the justices that Americans have no right to privacy outside of their homes, so warrants are not required for GPS. “Technology doesn’t make something private that was public,” he said.

In response to a question from Justice Sotomayor, Dreeben added that federal authorities employ GPS monitoring “in the low thousands annually.”

That 1983 beeper case is among the reasons why the issue is before the justices. The U.S. Court of Appeals for the District of Columbia Circuit ruled last year that Leckar’s client, Antoine Jones, had his Fourth Amendment rights violated with the warrantless use of GPS attached underneath his car. The court reversed Jones’ conviction. The appeals court said the beacon in the 1983 case tracked a person, “from one place to another,” whereas the GPS device monitored Jones’ “movements 24 hours a day for 28 days.”

The appeals court ruled the case “illustrates how the sequence of a person’s movements may reveal more than the individual movements of which it is composed.”

Justice Anthony Kennedy, however, wondered aloud whether there was a difference between GPS usage and “30 officers” tailing Leckar’s client. “The use of GPS has grave threats to privacy,” Leckar responded.

The justices agreed to hear the case to settle conflicting lower-court decisions — some of which ruled a warrant was necessary, while others found the government had unchecked GPS surveillance powers.

Justice Ruth Bader Ginsburg asked whether warrantless GPS usage is any different than the proliferation of surveillance cameras.

“GPS is like a million cameras,” Leckar said.

Justice Breyer suggested that “The real issue here is whether this is reasonable,” he said of warrantless GPS use. “It is not.”

Moments later, Justice Antonin Scalia said the police “can do a lot of stuff that is unreasonable under the Fourth Amendment.”

“Why is this an invasion of privacy?” he asked.

“It’s a computer, robotic substitute,” Leckar replied. He added that a GPS tracker is “an uninvited stranger.”

Scalia quickly replied: “So is a trail.”

Referring to *Knotts*, Chief Justice Roberts asked Dreeben: “You can see, though, can’t you, that thirty years ago if you asked people does it violate your privacy to be followed by a beeper, the police following you, you might get one answer, while today if you ask people does it violate your right to privacy to know that the police can have a record of every movement you made in the past month, they might see that differently?”

That argument works both ways, however, as Justice

Alito made clear when he commented to Leckar, “You know, I don’t know what society expects, and I think it’s changing. Technology is changing people’s expectations of privacy. Suppose we look forward ten years, and maybe ten years from now, ninety percent of the population will be using social networking sites, and they will have, on average, 500 friends, and they will have allowed their friends to monitor their location 24 hours a day, 365 days a year, through the use of their cell phones. What would the expectation of privacy be then?”

But Justice Alito also suggested the court had an escape valve, and could decide the case without answering whether GPS usage needs a warrant. Federal agents obtained a warrant granting them up to ten days to install the GPS device on Jones’ vehicle. But they did not affix it until the eleventh day. “A violation of the ten-day rule,” Alito said, “isn’t necessarily a violation of the Fourth Amendment.”

A ruling is expected before the end of the court’s current term, in June. Reported in: *wired.com*, November 8; *New York Times*, November 16; *Time*, November 16.

The U.S. Supreme Court briefly weighed how its recognition of a “ministerial exception” to federal civil-rights laws would affect colleges as it heard oral arguments October 5 in a case involving a teacher who alleged discrimination after being fired by a now-defunct religious elementary school.

In an exchange with Leandra R. Kruger, a U.S. Justice Department lawyer representing the Equal Employment Opportunity Commission, Justice Samuel A. Alito Jr. invoked a case in which a nun at a Roman Catholic university had alleged gender discrimination after being denied tenure.

Noting that the university had argued that it denied her tenure because of perceived inadequacies in her canon-law scholarship, Justice Alito asked how the courts could determine whether that reason was a false pretext without wading into questions of religious doctrine beyond the U.S. Constitution’s barrier between church and state. (Justice Alito did not specify which case he was talking about, but the U.S. Court of Appeals for the District of Columbia Circuit had blocked the EEOC’s involvement in such a tenure dispute at the Catholic University of America in a 1996 ruling.)

Kruger responded that, if such a plaintiff’s scholarship had not been criticized by the university prior to the tenure denial, the court could consider whether the denial was motivated by discrimination by considering whether university administrators had previously raised objections to women serving in certain roles.

The case argued October 5, *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, has attracted the attention of religious colleges, which have filed briefs discouraging federal intervention in their disputes with employees classified as serving religious functions, and of advocates for faculty

members who argue that precluding federal intervention in such matters would leave religious colleges free to trample their employees’ rights under federal law.

A ruling is expected by the end of the court’s current term, in June. Reported in: *Chronicle of Higher Education* online, October 5.

Chief Justice John G. Roberts Jr. invoked Jimi Hendrix. Justice Ruth Bader Ginsburg trumpeted Dmitry Shostakovich. And Justice Stephen G. Breyer plucked out Jewish music from the 1930s.

Those musicians and other long-gone creators made cameo appearances in the marble-and-velvet arena of the U.S. Supreme Court October 5, as the justices heard oral arguments in a high-stakes copyright case whose outcome will affect libraries and much of academe, dictating what materials scholars can use in books and courses without jumping through legal hoops.

At issue in the case, *Golan v. Holder*, is whether Congress can remove works from the public domain and place them back under copyright protection. It did so to align American policy with an international copyright treaty, restricting access to books by H.G. Wells, films by Alfred Hitchcock, and artwork by Pablo Picasso, to name just a few famous examples.

Hoping to convince other countries to protect American intellectual property more strictly, Congress in 1994 passed the Uruguay Round Agreements Act as part of a larger multinational trade agreement signed in Punta del Este, Uruguay. The agreement awarded copyrights to works, like the ones listed above, that were created by foreign artists and that had previously been unprotected by U.S. law. It was designed to be an implicit quid pro quo: We’ll cover your copyrights, you’ll cover ours.

More than a decade later, there’s still no widely accepted universal standard of copyright protection, leaving each country to act as it pleases. While a movie theater in London will pay American distributors for the right to screen the latest Hollywood film, for example, a cheap, pirated version of the same movie would likely be available that same day in the Idumota market in Lagos; the Nigerian authorities, zealously guarding the interests of local filmmakers against pirated versions of their own creations, would very likely pay no attention to a bootlegged copy of the latest Brad Pitt film. With no single, international body enforcing the various global copyright agreements in existence, compliance is uneven and uncommon.

Those who do comply—like the United States—find themselves tangled up in restrictions that the makers of the law never considered. American librarians who wish to offer free electronic editions of works that had been widely enjoyed for years, now must request permission; academics who want to cite extensively from works that were once freely available, now have to pay permission fees for the privilege.

A lawyer for the plaintiffs, Anthony Falzone, argued that lawmakers violated the U.S. Constitution's First Amendment and Copyright Clause by yanking away millions of works that had been public property for years. For the lead plaintiff, Lawrence Golan, a University of Denver music professor, that step limited his orchestra's ability to perform canonical pieces by composers like Shostakovich, Stravinsky, and Prokofiev. As the Chronicle of Higher Education reported last year, "When the Conductors Guild surveyed its 1,600 members, 70 percent of respondents said they were now priced out of performing pieces previously in the public domain."

The law Golan wants to overturn has also hobbled libraries' efforts to digitize and share books, films, and music. The library of the University of California, Los Angeles, for example, maintains a collection of more than 100,000 recordings of Mexican folk music, the use of which is now restricted to those able to visit the library in person. Preparing a collection of children's songs from around the world, author Kevin Cooper was forced to exclude many that were previously squarely in the public domain, settling instead on a narrower and far less diverse edition. These examples, and numerous others, appear in an *amici curiae* brief filed in support of the plaintiffs by the American Library Association, the Association of College and Research Libraries, and other interested parties.

Falzone barely managed to get out five sentences of his argument before Justice Ginsburg tore into it. In 2003, she wrote the opinion in a key predecessor to this case, *Eldred v. Ashcroft*, in which the court rejected an online book publisher's challenge to another law that had extended copyrights by twenty years. She seemed equally impatient with Falzone's challenge to the copyright restoration, which affected foreign works that had fallen into the public domain in the United States while still under copyright abroad.

Justice Ginsburg compared Shostakovich and Stravinsky to the American composer Aaron Copland, who got copyright protection: "What's wrong with giving them the same time that Aaron Copland got?"

What's wrong, among other things, Falzone said, is that the restoration was "unprecedented in American copyright law," and that it devalued the public domain because it means Congress might yank material out of it any time.

But Justice Sonia Sotomayor quibbled with Falzone's assertion that, as she summarized it, "there has never been a historical experience with Congress taking public works out of the public domain." The government, represented by Donald B. Verrilli Jr., the solicitor general, seized on that disagreement. When Congress enacted the Copyright Act of 1790, Verrilli argued, it did grant copyright protection to existing works, "including many, many, many works that were freely available."

Another of the plaintiffs' claims—that restoration violated the speech rights of people who used public-domain

works—seemed to win sympathy from Chief Justice Roberts, who cited that argument in questioning Verrilli.

"There is something, at least at an intuitive level, appealing about Mr. Falzone's First Amendment argument," the chief justice said. "One day I can perform Shostakovich; Congress does something: The next day I can't. Doesn't that present a serious First Amendment problem?"

Later, prodding Verrilli further, he drew on classic rock to sketch out a hypothetical argument. "What about Jimi Hendrix, right?" he said. "He has a distinctive rendition of the national anthem." Say the anthem is suddenly entitled to copyright protection that it lacked before. "He can't do that, right?"

Verrilli defended the restoration as "the price of admission" to the international copyright system. Otherwise, he said, the intellectual property of American creators would lack protection in foreign countries.

But several justices questioned how the restoration squares with the Copyright Clause of the Constitution, which refers to promoting "the progress of science and useful arts."

"In *Eldred*, there was a law that might, at least in principle, have elicited a new book," Justice Breyer said. "And in this case, by definition, there is no benefit given to anything at all that is not already created."

Outside the courthouse, one of Golan's supporters, Charles R. Nesson, saw a "breakthrough" in how the justices framed their questions. "They were seeing it from the public point of view and actually valuing the public domain, as opposed to so many times in the past, just seeing it from the copyright point of view," said Nesson, a professor at Harvard Law School and founder of the Berkman Center for Internet & Society. "I didn't come here optimistic. But I leave this argument optimistic."

Another expert, however, predicted that the justices would uphold the copyright restoration. "The court will find that the restoration provisions are a rational and reasonable exercise of Congressional power," Marshall Leaffer, distinguished scholar in intellectual property law at Indiana University's Maurer School of Law, said in a written statement.

There is no set time period in which the justices have to hand down a decision in the case, said Scott Markley, a court spokesman. But cases argued in a term are typically decided prior to summer recess, which begins at the end of June. Reported in: Chronicle of Higher Education online, October 5; *tnr.com*, November 1.

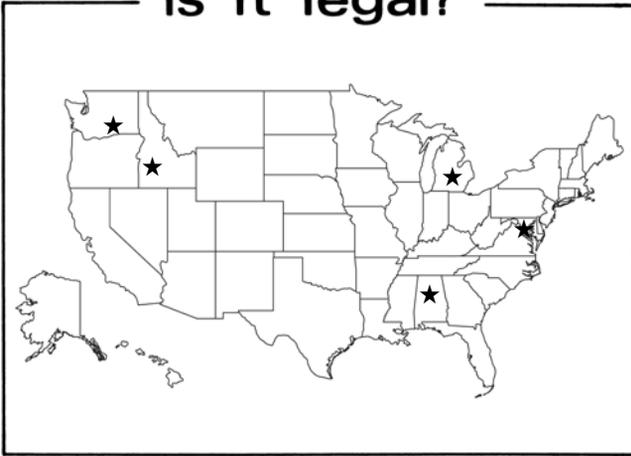
## university

### Baton Rouge, Louisiana

Ivor van Heerden, former deputy director of the now shuttered Louisiana State University (LSU) Hurricane

*(continued on page 43)*

## is it legal?



## libraries

### Birmingham, Alabama

The mission statement of the North Shelby Library indicates it serves anyone who lives and/or works in its service area, but with the passage of the state's new immigration law, that statement may need some tweaking.

Since September 1, anyone wishing to get a library card from that repository must show proof that they are legally present in the county. However, that is not what the mission statement on the library website states.

"The mission of the North Shelby Library is to serve all citizens in the North Shelby Library District by offering library services, resources, and facilities to fulfill their educational, information, cultural and recreational needs and/or interests," the statement reads. It continues, "The term 'citizens' includes all individuals and/or groups."

"We have to follow the rules that all businesses must follow," said Kay Kelley, president of the North Shelby Library board of directors. That is because the library is considered a public corporation, although it operates as a nonprofit organization. The North Shelby facility serves the North Shelby Library District, an area of Shelby County that neither has a library or a municipality to support one. The district was created in 1988 by the state Legislature. It is the only such facility in the state.

The library district includes about 60,000 people and 24,000 of those individuals are property owners who pay through ad valorem taxes. Until the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, or HB56, went into effect September 1, anyone who lived in the district could get a library card simply by showing a picture identification with proof of residency, such as a driver's

license or utility bill. People who work in Shelby County can bring in a paycheck stub, for example. Those who do not live in the county can pay a \$30 annual fee.

All of those categories are still available but now all new patrons must present proof of legal residency as well.

Kelley said a library card is considered a contract between an individual and the library. The new law requires businesses to be certain that the individual is in the United States legally, through a valid driver license or nondriver ID card, a valid passport or an unexpired visa. A valid U.S. birth certificate will also work.

"We have to be careful," Kelley said. "We are just going to go with the flow." Reported in: Birmingham News, October 24.

### Boise, Idaho

On the lower level of the Coeur d'Alene Public Library, eleven computers sit in a circle for use by children, with Internet filters blocking access to inappropriate material. "Adults can't use those," said Bette Ammon, library director.

Upstairs, kiosks offering work stations with Internet filters for adults are usually busy; a computer lab with unfiltered computers also draws patrons. "They're clearly marked, and people can choose," Ammon said. "It appears to be working really well."

But the Coeur d'Alene library, like every other library in the state, will have to change its system between now and October, under a new law enacted by the Idaho Legislature this year. Although the new law is a scaled-back version of the original proposal—which would have required libraries to filter Internet access for everyone—it's still a concern to some library officials.

Currently, every library in Idaho handles the issue its own way, with some choosing to install filters on all their Internet-accessible computers, others choosing to filter just some, and some leaving the choice to parents and adult library patrons.

That local control works well, Ammons and others say, noting that Idaho libraries don't get any state funding. Libraries are supported by local property taxes and governed by local boards.

Under the new law, Internet use by children must be filtered.

"We'll have to have some kind of sign-in or indicator, if you're under 18, you're not allowed to use those unfiltered computers," Ammon said. "This is something that my library board will have to deal with within the next few months."

She added that the Coeur d'Alene library views the new law as "an unfunded mandate" because "it was the state legislature requiring us to purchase filters, but not providing any money for that." Free filtering software is available,

she said, but it's "really clunky" when used over networks.

Seventeen other states have enacted legislation on library Internet access, but only a handful of those require filtering. Most require libraries to have policies and procedures regarding access to objectionable or obscene material. Utah's library filtering law makes filtering a precondition for state funding. No such laws apply in Washington.

Becca Stroebel, a reference librarian at the Boise Public Library and legislative co-chair for the Idaho Library Association, said: "The problem that I see with it is that filters aren't perfect, and there will still be issues with access to inappropriate images even on filtered computers. I think the best answer of all is to have local libraries in control of their Internet policies and police their own Internet access."

But when an eastern Idaho group called Citizens for Decency proposed legislation to require filters to block all objectionable Internet material at libraries — by anyone — Idaho lawmakers snapped to attention. The bill passed 63-7 in the Idaho House, with support from all but two of North Idaho's representatives. Coeur d'Alene GOP Reps. Marge Chadderdon and Kathy Sims co-sponsored the bill.

During the House debate, Rep. Linden Bateman (R-Idaho Falls) declared, "The sewers have been opened and pornography has flooded the entire country." The bill's lead sponsor, Rep. Mack Shirley (R-Rexburg) said, "My personal research has convinced me that pornography poses one of the greatest destructive forces on the youth."

The Idaho Library Association called the original bill unworkable and objectionable on First Amendment grounds, but sponsors refused to work with them on a compromise — until the bill hit the Senate. There, Senate Education Committee Chair John Goedde (R-Coeur d'Alene) brought the sides together and a compromise was negotiated, imposing the filtering requirement on children but not adults.

"I'm always leery of restricting access to information, and in my opinion, the original bill was too restrictive," said Goedde, who was named Legislator of the Year by the Idaho Library Association. "I thought the amendment was a good compromise, and it appears to be something that all parties can live with."

Ammon, the Coeur d'Alene library director, called the compromise bill "an improvement over the original bill, because it's ridiculous to hold adult use of materials to the same standard as children." But she noted that complaints about library patrons' Internet use are rare even though the library gets a thousand visitors a day.

"We have a pretty broad policy here about disturbing behavior," she said. "If somebody's bothering somebody because they're talking too loud on their cellphone, because they took off their shoes and their feet stink, if somebody complains to us, we deal with it. So we would be able to deal with any kind of complaint about Internet access the same way." Reported in: Spokane Spokesman-Review, November 26.

## **Richland, Washington**

Central Washington's library system headed back to federal court October 25 to further argue its filtering of public Internet access. The hearing in Richland before U.S. District Court Judge Edward F. Shea considered motions left dangling after the Washington Supreme Court last year upheld the North Central Regional Library (NCRL) district practice of narrowly filtering Internet pages related to pornography and gambling.

The state court's 6-3 decision sided with the district and its 28 branch libraries in a 2006 suit brought by the American Civil Liberties Union, representing three North Central Washington residents — Sarah Bradburn of Republic, Pearl Cherrington of Twisp and Charles Heinlen of Okanogan — and the Second Amendment Foundation. That gun rights lobbying group managed a magazine website, *womenandguns.com*, which was blocked by the library's filters.

Also blocked were web pages about drug and alcohol addiction, an art gallery site, health information sites, the personals section of *Craigslist.org*, the MySpace pages of presidential candidates and the Seattle Women's Jazz Orchestra page.

The case was originally filed in federal court, which handed it off to the state Supreme Court for ruling on issues relating to free speech law under the state constitution. Some federal questions remain to be decided, including the plaintiffs' claim that the state ruling abridges free speech under the U.S. Constitution.

"One would expect the First Amendment to apply with special force in public libraries," Seattle plaintiffs' attorney Duncan Manville wrote in a July 2010 brief.

The library system's response memo argued that the state ruling addressed all relevant constitutional questions, citing a 2003 case, *United States v. American Library Association*, which allowed Congress to require web filtering in many public schools and libraries.

"Nothing in ALA or other federal First Amendment law warrants a different analysis and conclusion than that reached by the Bradburn court," the libraries argued in a brief by attorney Thomas D. Adams.

In a press release library director Dean Marney said the NCRL has a responsibility to filter its online content appropriately. "Our mission is to promote reading and lifelong learning," Marney wrote. "It is crazy to think that we should be required to use tax dollars to allow open access to Internet pornography or to become illegal casinos." Reported in: *Wenatchee World*, October 6.

## **university**

### **Lansing, Michigan**

"I know it when I see it." Potter Stewart, the late Supreme Court justice, famously used that phrase in writing about

obscenity. Others might use it to describe art. Danny Guthrie, an associate professor of art at Michigan State University, is but the latest to learn that one person's art may strike others as porn.

Ever since *The State News*, the student paper at Michigan State, published an article about Guthrie's unconventional photography in November, he has been the subject of a debate at the university and elsewhere over photographs that show him with former students and colleagues, in various stages of undress, enacting sexually charged (and sometimes classical) scenes. The article said it was prompted in part by the rumors that circulate among students about the photographs and about who is asked to pose.

The university has defended the professor's right to artistic and academic freedom, and said that the photographs do not raise any issues of professional conduct. And the university has described as inaccurate news reports stating that the professor was told by Michigan State to stop taking nude photographs of his students.

There are several examples of Guthrie's photography on his website, some of which show him and others not fully dressed.

Guthrie—who has taught at Michigan State for thirteen years, and Ithaca College for twenty years before that—has had his work in numerous museum exhibits. He has stopped giving interviews, but he has posted an explanation of his philosophy about his photographs.

"Certainly subject matter such as this is politically charged. In the last couple of decades many female artists have investigated the personal landscape of their sexuality, as a means to seize control of their own representation within a culture milieu whose imaging of women has a long track record of idealization and exploitation. Taking my cue from this work, through direct and indirect references to classical painting and photography, my intent is to acknowledge these various traditions and debates, twisting and blurring the codes of classical aesthetics, contemporary rhetorically motivated art, and even erotica," he wrote.

"In particular, I want the viewer to know I am investigating a history and practice of representation where the roles of viewer and viewed, seducer and object of seduction, are examined and perturbed. In short, I hope to move beyond simplistic notions of viewer and victim, exploring the possibility of a complicated exchange of power that informs the way these pictures come about."

The people who pose with him are "current and former students, colleagues, friends and acquaintances," he wrote. "Such collaboration involves considerable risk-taking and trust. The images do not mean I have this or that fantasy about a particular individual or situation, but they do explore emotions that I — and I assume most others — have felt."

While Guthrie primarily offered artistic reasons for his work, he also wrote that it would be "evasive not to acknowledge that some of my interests are purely personal."

He explained that "I have reached a not entirely pleasant place in life one might call the fulcrum of middle age, with the balance shifting inexorably towards decrepitude. As one ages, it is with no small sense of remorse and regret, that one comes to experience the realm of desire, romance, and carnality as existing more in the past than the future."

At Michigan State, some students have asked Guthrie to stop using students in his art. Mitch Goldsmith, one student, wrote in *The State News* that many of the photographs show the female figure appearing dead or immobile as the professor's character stands over her or observes her.

"The women's bodies, pacified and disempowered through death, are juxtaposed with the professor's as he stands, sits or in some way inserts himself over the bodies of the women. He — virile, powerful and masculine — and they — disempowered, silenced and feminine. In this way, these photographs are not new but depict patriarchal sexual relations dating back millennia. The disempowerment of his female counterparts is the empowerment of himself, the triumph of masculinity over the feminine," Goldsmith wrote.

Goldsmith concluded by writing: "The supposed right for one in power (a senior male professor) to photograph someone naked with little power (his female students) is abusive and unacceptable."

Other students have come to Guthrie's defense. One column noted that there has been no evidence that any of those who posed with Guthrie were anything other than willing volunteers, and that different people use art to explore sexuality in different ways. Suggesting that female students who pose must be victims of the photographer suggests that they are "helpless" people who can't make their own decisions, wrote Jameson Joyce.

Heather C. Swain, interim vice president of university relations at Michigan State, said that the university had examined the process by which Guthrie identified models and believes that there were no problems.

"Sometimes art, and the means by which it is expressed, evokes strong responses — both for and against it. In situations where the art relates to an academic activity, MSU's main concern is to maintain the integrity of the teaching and learning environment. The chair of the Department of Art, Art History and Design has reviewed this matter and has determined that an effective protocol is in place to assure that no student feels pressured to participate in Professor Guthrie's photography," Swain wrote. "Professor Guthrie does not recruit students currently enrolled in his classes to model for photographs. All models who choose to participate, whether they are members of the MSU community or the community at large, do so on a voluntary basis. Volunteers determine the extent of their participation and approve the final photographs."

Swain said that the university has not asked Guthrie (as some press reports have suggested) to stop using nude students in his photography. "While we understand the shock

value of Professor Guthrie's art, it is not sexual harassment and does not violate university policies. Whether students, as adults, choose to model for him is not something the university can or should control," Swain said.

She added that the university has never received a complaint from anyone who posed for Guthrie. Reported in: [insidehighered.com](http://insidehighered.com), November 28.

## USA PATRIOT Act

### Washington, D.C.

Two civil liberties groups—the Electronic Frontier Foundation and the American Civil Liberties Union—have filed suit against the Department of Justice looking to get information on the use of orders under a controversial part of the USA PATRIOT Act.

In the suit both organizations are seeking all records tied to a part of the act, Section 215, that provides the Federal Bureau of Investigation the power to order anyone to turn over any “tangible thing” pertaining to an investigation. These things could include records, data or other documents.

This section of the law has come under fire from a few lawmakers who have been asking about how the U.S. government is interpreting it. These lawmakers also have been raising questions about whether U.S. intelligence agencies are tracking American citizens' locations using data from cell phone towers.

In May 2011 Sen. Ron Wyden (D-OR), a senior member of the U.S. Senate Select Committee on Intelligence, said that the executive branch was not being upfront with how it was interpreting this part of the Act. “I want to deliver a warning this afternoon: when the American people find out how their government has secretly interpreted the USA PATRIOT Act, they will be stunned and they will be angry,” he said.

Sen. Wyden and Sen. Mark Udall (D-CO), another Senate Intelligence Committee member who said during a May 2011 debate on the Senate floor that “Congress is granting powers to the executive branch that lead to abuse, and frankly shield the executive branch from accountability,” sponsored an amendment to the reauthorization of the Act that would require the Attorney General to publish the legal basis for intelligence collection activities. The amendment failed in early August.

In June Wyden introduced the Geolocation Privacy and Surveillance Act, a bill that would require law-enforcement agencies to obtain a warrant in order to track someone's location through their phone or tracking device. Over the summer both senators raised questions about whether the government was already engaged in tracking the location of American citizens through cell phones.

In July the senators asked Director of National

Intelligence James Clapper whether or not intelligence agencies “have the authority to collect the geolocation information of American citizens for intelligence purposes.” The letter generated a response from the office's director of legislative affairs who responded that the government is still defining its “view of the full contours of this authority and will get back to you.”

In their October 26 filing the Electronic Frontier Foundation, an organization that works on civil liberty issues relating to technology, said that it had originally used the Freedom of Information Act to request all documents relating to Section 215. The EFF said that the petitioned parties, including the FBI, agreed to expedite processing, but not one agency sent the requested documents. Reported in: *The Wall Street Journal*, October 26.

### Washington, D.C.

Cloud computing is a gold mine for the U.S. tech industry, but American firms are encountering resistance from an unexpected enemy overseas: the USA PATRIOT Act.

The September 11-era law was supposed to help the intelligence community gather data on suspected terrorists. But competitors overseas are using it as a way to discourage foreign countries from signing on with U.S. cloud computing providers like Google and Microsoft: Put your data on a U.S.-based cloud, they warn, and you may just put it in the hands of the U.S. government.

“The USA PATRIOT Act has come to be a kind of label for this set of concerns,” Ambassador Philip Verveer, U.S. coordinator for International Communications and Information Policy at the State Department, said. “We think, to some extent, it's taking advantage of a misperception, and we'd like to clear up that misperception.”

Reacting to concerns raised by some of the country's most influential tech firms, the Obama administration is engaging in diplomatic talks around the world to put to rest fears in foreign capitals about the controversial surveillance law's power to give the U.S. government access to international data stored by American companies.

The USA PATRIOT Act, which had key provisions extended by President Obama in May, has become a flash point in sales of cloud computing services to governments in parts of Europe, Asia and elsewhere around the globe because of fears that under the law, providers can be compelled to hand over data to U.S. authorities.

While no foreign governments have moved to block U.S. tech companies, authorities in the Netherlands as recently as September floated the idea of banning U.S.-based cloud firms from competing for government contracts. And Verveer said on a trip to Germany in October that technology firms based in that country were openly using the USA PATRIOT Act as a “marketing proposition” to raise questions about U.S. cloud firms.

It has created a high-stakes trade issue that's become a top agenda item for U.S. firms already profiting in the cloud and for those eyeing the technology for the future. It also registers high on the list of international tech priorities for the White House because of the potential negative impact such fears could have on the U.S. cloud market.

"I've heard directly from E.U. leaders, from Canadian policymakers and from companies all around the world about problems, or perceived problems, with the act," said Phil Bond, a tech lobbyist and the former CEO of TechAmerica. "There is no shortage of people who misapprehend the law. If some of these misperceptions harden or real problems [are] not addressed, it will cause companies and governments to hesitate in doing business with U.S. cloud companies."

For their part, the domestic tech industry, academics and even administration officials argue the USA PATRIOT Act is being hoisted up by foreign entities as a red herring to ban U.S. cloud firms from competing overseas. Laws in some countries allow governments to request private information from companies — and the fear is that this information could be turned over to U.S. authorities under the anti-terrorist law.

"It's not at this point, I think, entirely clear that governments are doing this. But it is clear that for competitive purposes, this sort of thing is being raised," Verveer said. "It's definitely a genuine issue."

Washington-based tech trade groups are increasingly hearing from their members that foreign governments engaging in cloud contract discussions are raising questions about data moving outside their respective borders. And the concerns are not isolated to Europe.

In the Asia-Pacific region, where cloud computing is experiencing a boom similar to the U.S., tech industry observers are also seeing the same issues pop up during government cloud contract negotiations, said Mark MacCarthy, vice president for public policy at the Software and Information Industry Association.

Obama earlier this month laid the foundation for an agreement with eight Pacific nations to drop trade barriers. That deal, which is still being negotiated, included provisions to the bar requirements for local data centers as well as cross-border data flow restrictions.

"It would be dramatically helpful for the cloud industry," MacCarthy said. "That can then become the precedent for future trade agreements, and it might be the basis for further action with the [World Trade Organization]."

The USA PATRIOT Act argument has implications that extend to any U.S. company peddling in data that travels across the world. But it's an especially acute concern for cloud firms, experts say, because the whole business model is predicated on the ability of data to travel freely. Foreign countries are now asking cloud firms to restrict data flow within their respective borders.

"There's a feeling that there's a risk we'll end up with a Tower of Babel with cloud computing," said Darrell West, founding director of the Center for Technology Innovation at the Brookings Institution. "Several nations are imposing restrictions on data sharing to prevent data from moving across their own national boundaries, and that's very short-sighted. You end up losing much of the benefit of cloud computing if you end with 192 systems."

Aside from data restrictions, foreign governments are also asking U.S. cloud firms to establish data centers in their respective countries to keep a better eye on where data is being stored, creating another potential roadblock for international cloud contracts.

The need for the Obama administration to take an international lead on the issue was highlighted in a cloud computing report this summer authored by a coalition of 71 experts from some of the largest hardware, software and Internet companies, including Microsoft, Amazon and Salesforce. Aside from reforming antiquated U.S. digital privacy laws, the report urged the Commerce Department to conduct a study of the USA PATRIOT Act and national security laws in other countries to determine a company's ability to deploy cloud computing services in the global marketplace.

"This action may provide insights into how best to address uncertainty and confusion caused by national security statutes ... that are perceived as impediments to a global marketplace for cloud services," the report said.

If the U.S. and other countries don't simplify the complex legal environment surrounding cloud computing soon, experts are warning the environment will become riddled with uncertainty and confusion that could dampen the competitive position of U.S. firms in the future. For now, Congress is taking a back seat because "the point of the sword is in the administration," MacCarthy said, noting that agencies tasked with trade responsibilities are handling the bulk of the negotiations.

But Congress may not be a silent player in the long run. The concern over the USA PATRIOT Act also mirrors a broader worry for U.S. tech companies — that protectionist efforts here and abroad will put a damper on the international cloud market. Tech associations caution that lawmakers should avoid following suit by taking restrictive actions that harm foreign tech companies. That could backfire.

Instead, lawmakers should craft policy to ensure "trade barriers don't get adopted" that impinge on the ability of foreign cloud providers to land government contracts in the U.S., said Robert Holleyman, president and CEO of the Business Software Alliance.

"It's absolutely essential that the U.S. gets this right as a policy matter," Holleyman said. "The stakes around this are huge. If the U.S. gets this wrong, it's going to be a field day for other countries to emulate a protectionist example."

Top federal tech officials have laid out guidance for

how agencies should categorize data and what type of data should be kept within U.S. borders. Verveer, a lead official in the State Department's efforts to establish an international framework for cloud computing, said agencies are supposed to peg only "high-sensitivity" data for cross-border restrictions.

But several recent cloud contracts point in the direction of federal agencies increasingly requiring providers to maintain domestic data centers and restrict the flow of data within U.S. borders. For example, a General Services Administration solicitation for a government-wide procurement vehicle for cloud-based email contained an element to restrict where data centers could be located. The federal government's top watchdog shot down that part of the contract as part of a bid protest because the GSA could not provide a justifiable reason for the location requirement.

The Department of the Interior recently reissued a request for information for cloud computing services with several location requirements. According to procurement documents, the agency wants its cloud provider to keep software development inside the U.S. to the "maximum extent practical," and the physical data centers housing cloud data must also be located in the U.S.

"There's an important role for the federal [chief technology officer] and federal [chief information officer] to play in helping define this," Holleyman said. "When the CTO and CIO speak out on this issue, they need to know words matter. Other countries will look for signals." Reported in: politico.com, November 29.

## prepublication review

### Washington, D.C.

The Obama Administration's uncompromising approach to punishing "leaks" of classified information has been widely noted. But its handling of pre-publication review disputes with former intelligence agency employees who seek to publish their work has been no less combative.

Government prosecutors are preparing to confiscate proceeds from the unauthorized publication of *The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture*, by the pseudonymous Ishmael Jones, a former CIA officer. After Jones published the book without the permission of CIA reviewers, the government said that he was in violation of the secrecy agreement he had signed.

Jones argued that he had not published any classified information and that the CIA had breached the agreement first by failing to review his manuscript in good faith. But his efforts were unavailing, and a court concurred with the CIA.

"All discovery demands heretofore served by defendant [Jones] are quashed, and defendant is prohibited from serving other discovery demands," ruled Magistrate

Judge Thomas Rawls Jones, Jr. in favor of the CIA on November 4.

If Jones believed that the CIA was wrongly obstructing publication of his work, prosecutors said, what he should have done "was to file suit in U.S. District Court challenging the Agency's decision, in order to obtain permission to publish the book."

That sounds reasonable enough. But in another case where an author did exactly that, government attorneys are making it all but impossible for the author to present his argument to a judge.

Anthony Shaffer, author of the Afghanistan war memoir *Operation Dark Heart*, said that intelligence agencies had unlawfully violated his First Amendment rights by censoring his manuscript. But the government wants to limit his ability to present his challenge.

For one thing, Shaffer has been denied access to the original text of his own book. The text contains classified information, the government says, and he no longer holds a security clearance. So he is out of luck. Nor has the government allowed him use of a secure computer so that he could cite contested portions of the text and dispute their classification in pleadings submitted to the court.

Instead, the government argues that the Court should resolve the disagreement based on the materials provided by the government, along with any unclassified materials that may be submitted by Shaffer. Shaffer does not need his manuscript or a secure computer, since "it is improper and unnecessary for Plaintiff to submit classified information to the Court at this time."

Even unclassified materials that Shaffer may wish to submit in a declaration to the court — in order to demonstrate that the supposedly classified information in his original text is already public — may need to be sealed from public disclosure, the government said on October 28. That is because "the association of that open source information with the book's redactions may make the [author's] declaration classified."

All of this is quite absurd, said Mark S. Zaid, Shaffer's attorney, in a reply filed in November. "There is no other way for Shaffer to identify and challenge any of the specific text purported to be classified, much less present an argument to the Court, if he does not have access to the original copy of his book," Zaid wrote.

The upshot is that under current policy neither Jones, who defied the rules, nor Shaffer, who has attempted to follow them, is permitted to gain a meaningful independent review of government restrictions on the information he sought to publish.

There is an additional layer of absurdity in Shaffer's case, since the unredacted text of his book has been publicly released in limited numbers, and portions of it are even available online. Reported in: Secrecy News, November 16.

## Internet

### Washington, D.C.

A new report from Google shows a rise in government requests for user account data and content removal, including a request by one unnamed law enforcement agency to remove YouTube videos of police brutality—which the company refused.

The latest Google Transparency Report, released October 25, also shows historic traffic patterns on Google services via graphs with spikes and drops indicating outages that, in some cases, indicate attempts by governments to block access to Google or the Internet. For instance, all Google servers were inaccessible in Libya during the first six months of this year, as was YouTube in China.

But the truly interesting data are the statistics on requests made to the company by governments for either access to user data or to remove content.

Some countries had large amounts of user data requests. The United States leads that pack, with 5,950 such requests pertaining to more than 11,000 users or accounts, and to which Google complied 93 percent of the time. That's up from about 4,600 requests in the second half of last year. Other countries seeking lots of user data were India (more than 1,700 requests involving more than 2,400 accounts), France, the United Kingdom, and Germany. Google says it complied most of the time in those cases, except in France.

The actual numbers are likely larger than what is reported because Google is prohibited by law from revealing information on requests from intelligence agencies such as the National Security Agency or FBI, notes online privacy advocate Chris Soghoian, who released a report on law enforcement surveillance earlier this year.

“Google doesn't say how many of the thousands of requests they get a year are compelled (via a formal legal process) and how many are emergency requests,” which they aren't obligated to comply with, he said. “This is where Google could truly demonstrate its commitment to privacy... We know that Verizon gets 90,000 requests a year, and 25,000 are emergency requests for which there is no court order. It's likely Google is getting a similar percentage.”

But Soghoian commended Google on providing the figures on the numbers of accounts that officials are seeking information from in addition to the number of requests. “This is a useful data point because one request could be for 50 accounts,” he said. “It's great that Google is providing this.”

Also of note in the report were the attempts by governments to get Google to remove content, from YouTube videos to blogs to ads. Google said it received 29 percent more requests for user data from government sources in the U.S. during the first half of this year than during the previous six months, and 70 percent more requests to remove content in that period. The report called out the request to remove YouTube videos of police brutality and separate requests

from an unnamed different law enforcement agency to remove allegedly defamatory videos, but it said those requests were denied.

In the United States, Google said it received 92 requests to cumulatively remove 757 items, and complied fully or partially in 63 percent of the cases. That compared to 54 requests in the second half of last year. There were 24 court orders related to Web searches, and 26 police or executive requests related to YouTube.

Thailand asked Google to remove 225 videos for allegedly insulting the monarchy, and in response, Google restricted Thai users from accessing 90 percent of the videos. Google also restricted Turkish users' access to some videos but denied a majority of requests from India to remove videos of protests or videos using offensive language in reference to religious leaders. And China made three requests that Google remove a total of more than 120 items, the company removed ads in response to two of those requests.

Meanwhile, content removal requests from U.K. officials rose by more than 70 percent. User data requests were up 28 percent in Spain, 38 percent in Germany, 27 percent in France, and 36 percent in South Korea.

Google is hoping to lead by example, and Soghoian called out other companies for not releasing this information too. “There is simply no excuse for Microsoft, Yahoo, Twitter, and Facebook not to provide the same data,” he said. “These firms monetize our data, and they don't want to give us any reason or cause for concern about entrusting them with our data, but they all need to step up and follow Google's lead.”

Asked why Google releases the data, spokeswoman Christine Chen said, “We actually believe being transparent about these numbers can contribute to public discussion about how policies affect access to information on the Internet...We really believe in transparency and free flow of information.”

In a blog post on the report, Dorothy Chou, senior policy analyst at Google, suggested that the ultimate goal with the report is to encourage more user-friendly policies. “We believe that providing this level of detail highlights the need to modernize laws like the Electronic Communications Privacy Act, which regulates government access to user information and was written 25 years ago—long before the average person had ever heard of e-mail,” she wrote. “Yet at the end of the day, the information that we're disclosing offers only a limited snapshot. We hope others join us in the effort to provide more transparency, so we'll be better able to see the bigger picture of how regulatory environments affect the entire Web.”

The company participates in the OpenNet Transparency Project, an effort to provide an easy way for companies to share data on government information requests. That project is part of the OpenNet Initiative, whose goal is to

“investigate, expose, and analyze Internet filtering and surveillance practices.”

Google began releasing information about government requests for user data and content removal in early 2010, and it aims to release such data every six months. Reported in: cnet.com, October 25.

### **Washington, D.C.**

The FBI is increasingly going to court to get personal e-mail and Internet usage information as service providers balk at disclosing customer data without a judge’s orders.

Investigators once routinely used administrative subpoenas, called national security letters, seeking information about who sent and received e-mail and what Web sites individuals visited. The letters can be issued by FBI field offices on their own authority, and they obligate the recipients to keep the requests secret.

But more recently, many service providers receiving national security letters have limited the information they give to customers’ names, addresses, length of service and phone billing records.

“Beginning in late 2009, certain electronic communications service providers no longer honored” more expansive requests, FBI officials wrote in August, in response to questions from the Senate Judiciary Committee. This marked a shift from comments made last year by Obama administration officials, who asserted then that most service providers were disclosing sufficient information when presented with national security letters.

Investigators seeking more expansive information over the past two years have turned to court orders called business record requests. In the first three months of this year, more than 80 percent of all business record requests were for Internet records that would previously have been obtained through national security letters, the FBI said. The FBI made more than four times as many business records requests in 2010 than in 2009: 96 compared with 21, according to Justice Department reports.

In response to concerns expressed by administration officials, Judiciary Committee Chair Patrick J. Leahy (D-VT) introduced a measure that would establish that the FBI can use national security letters to obtain “dialing, routing, addressing and signaling information.” It would not include the content of an e-mail or other communications, the administration has said.

The administration, which last year contemplated legislation to expand the authority of national security letters, has not taken a formal position on the Leahy measure, officials said. But the FBI has told Congress that the number of business record orders will continue to grow unless a legal change gives the agency more routine access to customer data.

Civil liberties groups said Leahy’s measure, included in

a bill to modernize the Electronic Communications Privacy Act, would expand the government’s authority to obtain substantial data about the private communications of individuals without court oversight.

“Our view is data like e-mail ‘to-from’ information is so sensitive that it ought to be available only with a court order,” said Greg Nojeim, senior counsel at the Center for Democracy and Technology.

Privacy advocates said they support requiring the FBI to use court orders to seek the data. “This is an example of how the system should work,” said American Civil Liberties Union legislative counsel Michelle Richardson.

Business record requests are also known as Section 215 orders, after a provision in the USA PATRIOT Act, the law passed after the September 11, 2001, terrorist attacks. The provision allows the government to obtain “any tangible thing” if officials can show reasonable grounds that it would be relevant to an authorized terrorism or espionage investigation. Reported in: Washington Post, October 25.

### **Washington, D.C.**

Accusing Facebook of engaging in “unfair and deceptive” practices, the federal government on November 29 announced a broad settlement that requires the company to respect the privacy wishes of its users and subjects it to regular privacy audits for the next twenty years.

The order, announced by the Federal Trade Commission in Washington, stems largely from changes that Facebook made to the way it handled its users’ information in December 2009. The commission contended that Facebook, without warning its users or seeking consent, made public information that users had deemed to be private on their Facebook pages.

The order also said that Facebook, which has more than 800 million users worldwide, in some cases had allowed advertisers to glean personally identifiable information when a Facebook user clicked on an advertisement on his or her Facebook page. The company has long maintained that it does not share personal data with advertisers.

The order also said that Facebook had shared user information with outside application developers, contrary to representations made to its users. And even after a Facebook user deleted an account, according to the FTC, the company still allowed access to photos and videos.

All told, the commission listed eight complaints. It levied no fines and did not accuse Facebook of intentionally breaking the law. However, if Facebook violated the terms of the settlement in the future, it would be liable to pay a penalty of \$16,000 a day for each count, the FTC said.

Mark Zuckerberg, the chief executive of Facebook, conceded in a lengthy blog post that the company had made “a bunch of mistakes,” but said it had already fixed several of the issues cited by the commission.

“Facebook has always been committed to being transparent about the information you have stored with us — and we have led the Internet in building tools to give people the ability to see and control what they share,” he wrote. By way of example, Zuckerberg pointed to more explicit privacy controls that the company introduced over the summer.

Facebook has long wanted its users to post content — links, opinions, pictures and other data — on their Facebook pages with minimal effort, or “friction,” as company executives call it. The settlement with the FTC will undoubtedly require it to introduce more such friction.

The order requires Facebook to obtain its users’ “affirmative express consent” before it can override their own privacy settings. For example, if a user designated certain content to be visible only to “friends,” Facebook could allow that content to be shared more broadly only after obtaining the user’s permission.

There seemed to be some disagreement about what the agreement entailed. A Facebook spokesman said in response to a question that it did not require the company to obtain “opt in” data-sharing permission for new products. But David Vladeck, director of the bureau of consumer protection at the FTC, said Facebook would have to inform its users about how personal data would be shared even with new products and services that it introduces over the next two decades.

“The order is designed to protect people’s privacy, anticipating that Facebook is likely to change products and services it offers,” he said.

Ever since its public release in 2004, Facebook has drawn an ever-larger number of members, even as its sometimes aggressive approach to changes around privacy have angered some of its users.

“We’ve all known that Facebook repeatedly cuts corners when it comes to its privacy promises,” Eric Goldman, a law professor at Santa Clara University, wrote in an e-mail after the announcement. “Like most Internet companies, they thought they could get away with it. They didn’t.”

Facebook is also obliged to undergo an independent privacy audit every two years for the next twenty years, according to the terms of the settlement.

Marc Rotenberg, executive director of the Electronic Privacy Information Center, which is part of a coalition of consumer groups that filed a complaint with the FTC, commended the order but said settlements with individual companies fall short of what is needed: a federal law to protect consumer privacy.

“We hope they will establish a high bar for privacy protection,” Rotenberg said. “But we do not have in the United States a comprehensive privacy framework. There is always a risk other companies will come along and create new problems.”

Several privacy bills are pending in Congress, and Internet companies have stepped up their lobbying efforts.

The FTC, meanwhile, has ratcheted up its scrutiny of Internet companies. This year alone, it has reached settlement orders with some of the giants of Silicon Valley, including Google.

The order came amid growing speculation about Facebook’s preparations for an initial public offering, which could be valued at more than \$100 billion. The settlement with the FTC, analysts say, could potentially ease investors’ concerns about government regulation by holding the company to a clear set of privacy prescriptions.

“When you have an IPO you don’t want investors to be skeptical or jittery,” said Ryan Calo, who leads privacy research at the Center for Internet and Society at Stanford Law School. “In order for you to be as valuable as possible, you want to make sure the seas are calm. This calms the seas.”

But the FTC agreement did not settle all Facebook’s outstanding privacy concerns. Far more quietly, another debate is brewing over a different side of online privacy: what Facebook is learning about those who visit its website.

Facebook officials now acknowledge that the social media giant has been able to create a running log of the web pages that each of its 800 million or so members has visited during the previous ninety days. Facebook also keeps close track of where millions more non-members of the social network go on the Web, after they visit a Facebook web page for any reason.

To do this, the company relies on tracking cookie technologies similar to the controversial systems used by Google, Adobe, Microsoft, Yahoo and others in the online advertising industry, says Arturo Bejar, Facebook’s engineering director.

Facebook’s efforts to track the browsing habits of visitors to its site have made the company a player in the “Do Not Track” debate, which focuses on whether consumers should be able to prevent websites from tracking the consumers’ online activity. For online business and social media sites, such information can be particularly valuable in helping them tailor online ads to specific visitors. But privacy advocates worry about how else the information might be used, and whether it might be sold to third parties.

New guidelines for online privacy are being hashed out in Congress and by the World Wide Web Consortium, which sets standards for the Internet. If privacy advocates get their way, consumers soon could be empowered to stop or limit tech companies and ad networks from tracking them wherever they go online. But the online advertising industry has dug in its heels, trying to retain the current self-regulatory system.

Online tracking involves technologies that tech companies and ad networks have used for more than a decade to help advertisers deliver more relevant ads to each viewer. Until now, Facebook, which makes most of its profits from advertising, has been ambiguous in public statements about

the extent to which it collects tracking data. It contends that it does not belong in the same camp as Google, Microsoft and the rest of the online ad industry's major players.

Zuckerberg and other Facebook officials have sought to distinguish how Facebook and others use tracking data. Facebook uses such data only to boost security and improve how "Like" buttons and similar Facebook plug-ins perform, Bejar said. Plug-ins are the ubiquitous web applications that enable users to tap into Facebook services from millions of third-party web pages.

Facebook spokesman Andrew Noyes said the company has "no plans to change how we use this data." He also said the company's intentions "stand in stark contrast to the many ad networks and data brokers that deliberately and, in many cases, surreptitiously track people to create profiles of their behavior, sell that content to the highest bidder, or use that content to target ads."

Rather than appease its critics, Facebook's public explanations of how it tracks and how it uses tracking data have touched off a barrage of questions from technologists, privacy advocates, regulators and lawmakers around the world.

"Facebook could be tracking users without knowledge or permission, which could be an unfair or deceptive business practice," said Rep. Ed Markey (D-MA), co-sponsor with Rep. Joe Barton (R-TX) of a bill aimed at limiting online tracking of children.

The company "should be covered by strong privacy safeguards," Markey said. "The massive trove of personal information that Facebook accumulates about its users can have a significant impact on them — now and into the future."

Noting that "Facebook is the most popular social media website in the world," Barton added, "All websites should respect users' privacy."

After Zuckerberg appeared on the Charlie Rose TV show, Markey and Barton sent a letter to the 27-year-old CEO asking him to explain why Facebook recently applied for a U.S. patent for technology that includes a method to correlate tracking data with advertisements. They gave Zuckerberg a December 1 deadline to reply.

"We patent lots of things, and future products should not be inferred from our patent application," Facebook corporate spokesman Barry Schnitt said.

Facebook is under intense, conflicting pressures. It must prove to its global financial backers that it is worthy of the hundreds of millions of dollars they've poured into the company, financial and tech industry analysts say. Those investors include Microsoft, Goldman Sachs, the Russian investment firm Digital Sky Technologies, Hong Kong financier Sir Ka-shing Li and venture capitalist Peter Andreas Thiel.

The success of the company's initial public offering of stock, expected sometime next year, hinges in part on Facebook's ability to move beyond the bread-and-butter text ads that appear on members' home pages and emerge

as a key player in graphical display ads and corporate brand marketing campaigns, said Rebecca Lieb, advertising media analyst at the Altimeter Group.

In advertising, knowing more about consumers' preferences is key. "More data means better targeting, which means more revenue," said Marissa Gluck, managing partner of the media consulting firm Radar Research.

In recent broadcast consumer reporter Ric Romero of station KABC in Los Angeles showed how insurance companies monitor Facebook and Twitter, looking for reasons to raise premiums and deny claims. Previously, ABC News reporter Lyneka Little reported on how employers use Facebook information as part of the recruitment process.

Meanwhile, researchers at AT&T Labs and Worcester Polytechnic Institute have documented how tracking data culled from Internet searches and surfing can be meshed with personal information that Internet users disclose at websites for shopping, travel, health or jobs. Personal disclosures made on social networks, along with preference data gathered by new apps for smartphones and tablet PCs, are being tossed into this mix, too.

Privacy advocates worry that before long, corporations, government agencies and political parties could routinely purchase tracking data from data aggregators.

"Tracking data can be used to figure out your political bent, religious beliefs, sexuality preferences, health issues or the fact that you're looking for a new job," said Peter Eckersley, technology projects director at the Electronic Frontier Foundation. "There are all sorts of ways to form wrong judgments about people."

So far, it does not appear that this sort of data correlation is being done, at least not on a wide scale. But in the absence of ground rules, technologists, regulators and privacy advocates worry that companies involved in collecting tracking data could succumb to the temptation to cash in.

Facebook for the first time revealed details of how it compiles its trove of tracking data in a series of phone and e-mail interviews conducted by USA Today with Bejar, Noyes and Schnitt, as well as engineering manager Gregg Stefancik and corporate spokeswoman Jaime Schopflin. Here's what they disclosed:

- The company compiles tracking data in different ways for members who have signed in and are using their accounts, for members who are logged-off and for non-members. The tracking process begins when users initially visit a facebook.com page. If one chooses to sign up for a new account, Facebook inserts two different types of tracking cookies in the browser, a "session cookie" and a "browser cookie." Those who choose not to become a member, and move on, only get the browser cookie.

*(continued on page 44)*

## success stories



## schools

### Merrill, Wisconsin

The book *Montana 1948* will stay in Merrill High School's library and will continue to be taught as part of the school's tenth-grade English classes. The book's fate was determined at a public hearing September 29 in the Merrill High School auditorium, following a request by a group of parents that the critically acclaimed book be banned from the district's curriculum and libraries on the grounds that it includes mature themes of rape, sex and obscene language.

The majority of School Board members decided the book has educational value for high school students. They took two votes on the matter. They unanimously voted to keep the book in the high school's library. And they voted 6-2 to keep the book as part of the curriculum, with board members Loretta Baughan and Brad Geiss opposing the book's use in classes.

Parts of the book can be shocking and offensive when taken out of context, "but after reading the book, I found it to be very thought-provoking," said School Board member Meredith Prebeg. "If you don't want to read the book, there's an option to do that."

Baughan said the book's portrayal of rape, pedophilia and incestuous fantasies were inappropriate subjects for a book that's taught in an English class. "Where do we draw the line between what's acceptable and what's not?" she said. "I can't think of topics much worse than those to be discussed in school."

While students can opt to read another book to complete English requirements, Baughan said those who do then miss out on class discussions. She said the book should instead be put on an optional reading list for students.

About fifty people attended the hearing, many with strong feelings on either side of the issue.

"When is it OK to give a child or youth pornography?"

asked Mary Litschauer of Merrill. "How do you know it won't be imitated by somebody?"

Some supporters of the book, written by former University of Wisconsin-Stevens Point English professor Larry Watson, now a visiting professor at Marquette University in Milwaukee, compared efforts to ban the book from Merrill schools to the book burnings done in Nazi Germany.

"To me, this is pure censorship," said Nancy Lehman of Merrill. "If you get rid of this book, what's the next one?" Reported in: Wausau Daily Herald, September 30.

### Glendale, California

A literary brouhaha over Truman Capote's *In Cold Blood* came to a close in early October as Glendale Unified school board members voted to approve the book for advanced placement students.

The 4-0 decision capped a months-long debate during which district administrators, teachers, students and parents wrangled over whether the nonfiction book was appropriate for teenage readers. School board member Mary Boger, who had spoken out against including the book on the list of approved reading material, abstained from the vote.

"I think the board did a service to the community by talking about the importance of literature in the public school curriculum," said longtime Glendale High School English teacher Holly Ciotti. "Not only am I looking forward to assigning the book to my AP students, they are chomping at the bit to read it."

*In Cold Blood* became a point of contention last spring after Ciotti requested to add it to a list of books approved for AP language, a course that enrolls top eleventh-grade English students and focuses on rhetoric and debate. The work — first published in 1965 and widely read by high school and college students throughout the country — received unanimous approval from the district's English Curriculum Study Committee. But it raised red flags with the Secondary Education and PTA councils.

Some school board members, charged with the final decision, also expressed strong reservations, including whether the contents of the book, which details the brutal murder of a Kansas farmer and his family, are too violent for a young audience.

Boger said she chose to abstain because she could neither recommend the book nor deny anyone the opportunity to read it. "Yes, I know our AP kids are smart," Boger said. "But as the mother of several AP students, I can unequivocally state that 'smart' does not mean 'mature.' And, yes, I know the book may appear on the AP exam, however, I have yet to hear of one of our students failing an AP exam because they had not read the book."

Other board members acknowledged the weighty nature of *In Cold Blood*, but ultimately supported it. "It humanized

everybody that was involved in the whole story,” Board Vice President Christine Walters said. “The reader knows a lot about those that were victims, the reader knows a lot about those who committed the crimes. The reader knows a lot about what the reaction was in the community, the fear that was created.” Reported in: Los Angeles Times, October 6.

### **Tiverton, Ontario**

An award-winning Canadian novel one parent wanted removed from classrooms for what she called exploitive sexual references will stay on an Ontario school board’s list of approved books. Carolyn Waddell, a parent from Tiverton, wanted the Bluewater public school board to ban Timothy Findlay’s *The Wars*, which won the Governor General’s Award for fiction in 1977.

Waddell complained to trustees at a board meeting last May about the book’s explicit, detailed descriptions of often violent sexual encounters. She said *The Wars* — then a part of her daughter’s studies at Saugeen District Secondary School — is inappropriate for teenage readers and asked that trustees review the book and its content under board policy.

Bluewater’s textbook appeals committee completed that review and met with Waddell in October, the committee said in a report to the board. Earlier this week, trustees endorsed the report, which recommends keeping *The Wars* on the board’s list of approved, optional teaching materials.

“It’s an appropriate novel choice for a Grade 12 university entrance-level course,” Saugeen principal Ron Code, who sat on the review committee, said,

*The Wars* is not a compulsory book for Bluewater students, but has long been on the list of books senior-level English teachers may choose to use to meet the teaching objectives of the Ontario Grade 12 curriculum. At least three Bluewater schools are currently using *The Wars* in senior English programs, Code said. The subject matter is grim and challenging, but teachers are trained to present such material within an appropriate academic context, he said.

Saugeen Shores area trustee Kevin Larson, who also sat on the appeal committee, said he read *The Wars*, and found the subject matter “dark” but relevant and suitable for students studying English literature at the university entrance level.

Findlay’s novel also had support from a student trustee and a student senator who studied the novel last year. Both said as young adults about to leave the area to live on their own and study at university, they should not be shielded from writings that include gritty realities.

“It does deserve a place in the classroom. I think students need to understand that these (things) actually do happen,” student Janelle Taylor said when the book ban was first proposed.

Alana Murray, the board’s superintendent of secondary education, said it was the first request she recalls for a ban on any book taught in Bluewater schools. Reported in: [cnews.canoe.ca](http://cnews.canoe.ca), November 17.

## **university**

### **Stout, Wisconsin**

After coming under intense criticism from free-speech advocates, top administrators at the University of Wisconsin-Stout said they have reversed their decision to stop a theater professor from decorating his office door with posters that some there perceived as threatening. One of the posters featured a television-show character making a threatening statement; the other, hung after the first was taken down, used violent imagery to denounce fascism.

In a memorandum sent October 4 to the campus’s faculty, students, and staff, the administrators said they had not removed the posters to censor the professor, but “out of legitimate concern for the violent messages contained in each poster and the belief that the posters ran counter to our primary mission to provide a campus that is welcoming, safe, and secure.” Nevertheless, they said, in retrospect their actions had “the effect of casting doubt” on their institution’s dedication to First Amendment principles such as free speech. They said the professor would be allowed to rehang the posters, and the institution would be reviewing its procedures to avoid such situations in the future. Reported in: *Chronicle of Higher Education* online, October 4.

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### *ALA denounces library destruction ...from page 1)*

said, and around a third of those were damaged beyond repair. Only about 800 were still usable. About 2,900 books remained unaccounted for.

On November 23, People’s Librarians of Occupy Wall Street displayed the recovered books before a crowd of media, protesters and legal experts. The group gathered in a hot, tiny room in a lawyer’s office in midtown Manhattan, around a long, polished wood table piled high with ruined books. A copy of Shakespeare’s “Macbeth” was cracked, its cover torn. Several Bibles lay in the heap alongside books by Maya Angelou, Stephen King, J.K. Rowling, all marked with the People’s Library stamp along the side. A copy of the mayor’s biography, Bloomberg by Bloomberg, had been part of the original collection in Zuccotti, but it wasn’t displayed on the table — it was among the 2,900 books still unaccounted for.

Whatever problems cropped up in Zuccotti Park — assaults, drug use, arguments among protesters — the People’s Library had remained one of the occupation’s few

uncontroversial points of pride.

“There was a magic that sprung up there and now it’s gone,” said Stephen Beyer, hugging a large white binder to his chest. Beyer had lived and worked in the library for six weeks. On the night of the raid, he was only able to rescue his personal belongings and the large white binder — the Occupy Wall Street poetry anthology, comprised of hundreds of poems supporters sent in since September 17th.

The librarians and their legal allies — including Norman Siegel, the long-time former director of the New York Civil Liberties Union who is involved with a number of other OWS legal actions, Gideon Oliver of the National Lawyers Guild, and Hawa Allan, a Fellow at Columbia Law School — had three demands for the city: replace the books that were lost or destroyed, acknowledge that what happened to the library was wrong, and provide a new space for the People’s Library to reside.

“The destruction of this library was an attempt to silence and destroy our movement, but we’re not going to allow this to happen,” said Mandy Henk, an occasional weekend librarian at The People’s Library and full-time librarian at an academic library in Indiana. Henk first visited Zuccotti after reading a story online that posted a wish list for the library. One request was for a librarian.

Henk grew teary-eyed as she talked about the loss of the books — all of which had been donated, catalogued and marked with International Standard Book Numbers (ISBN). The People’s Library, she told the crowd, “was in every single possible sense a real and a true library. What kind of a people are we if we can’t create a public space in which people can come and share ideas with each other?”

Siegel, the former director of the New York Civil Liberties Union and civil rights attorney, said he was not aware of any other instance where a city or state had destroyed a library.

“History informs us that when books are burned there is almost immediately or subsequently universal condemnation of that act. Here, the Bloomberg administration lost, damaged and possibly destroyed books. That is wrong.”

Siegel called on the mayor to replace “every single book” and to provide a space for a library. He said: “Bloomberg’s administration needs to acknowledge that wrong has been committed and that should never happen again in this great city. We also want space for the People’s Library.”

“The mayor and I disagree about a lot of issues, but I can’t believe that he knows this happened,” Siegel added, gesturing towards the table of ruined books. “I can’t believe Bloomberg wants a legacy that says his administration treats books like garbage.”

Longstanding ALA policy states: “The American Library Association deplores the destruction of libraries, library collections and property, and the disruption of the educational purpose by that act, whether it be done by individuals or groups of individuals and whether it be in the

name of honest dissent, the desire to control or limit thought or ideas, or for any other purpose.”

And this is President Raphael’s full statement:

“The dissolution of a library is unacceptable. Libraries serve as the cornerstone of our democracy and must be safeguarded. An informed public constitutes the very foundation of a democracy, and libraries ensure that everyone has free access to information.

“The very existence of the People’s Library demonstrates that libraries are an organic part of all communities. Libraries serve the needs of community members and preserve the record of community history. In the case of the People’s Library, this included irreplaceable records and material related to the occupation movement and the temporary community that it represented.

“We support the librarians and volunteers of the Library Working Group as they re-establish the People’s Library.”

Protesters had occupied the park since September 17. The library was created soon after and staffed with volunteers, with a “call for librarians” going out on the library website on October 5, and with a “library ground practices” sheet created for volunteer staff. Patrons were allowed to sign out books to borrow or keep, but were encouraged to return all books. The library’s full catalog is still available on the LibraryThing website.

“The collection is fairly permeable, as people bring things, borrow things, and return them or don’t return them,” Jaime Taylor, an art librarian from Brooklyn and an Occupy Wall Street Library volunteer, said in October.

Daniel Norton, a student in library science from the University of Maine at Augusta, said the library was “the creation of a community through a conversation and sharing ideas.” He accused Bloomberg of a “crusade to destroy a conversation” where people came to engage with each other.

William Scott, a professor of English at the University of Pittsburgh, where Bloomberg studied and has a hall named after him, said: “This man threw away so many precious books. They embodied all the values that we struggle to defend in our country.”

Scott, who was spending his sabbatical with Occupy, has told of how during the raid, he watched as Stephen Boyer, a poet and OWS librarian, read poems aloud from the Occupy Wall Street poetry anthology to the riot police.

Writing in *The Nation*, Scott said: “As they pushed us away from the park with shields, fists, billy clubs and tear gas, I stood next to Stephen and watched while he yelled poetry at the top of his lungs into the oncoming army of riot police. Then, something incredible happened. Several of the police leaned in closer to hear the poetry. They lifted their helmet shields slightly to catch the words Stephen was shouting out to them, even while their fellow cops continued to stampede us.”

He recounted how the next day, an officer who had been

guarding the entrance to Zuccotti Park said he was touched by the poetry and moved at how people cared enough about books to risk arrest to defend them.

“I love libraries and everything they represent.” Scott wrote. “To see an entire collection of donated books, including many titles I would have liked to read, thoughtlessly ransacked and destroyed by the forces of law and order was one of the most disturbing experiences of my life. My students in Pittsburgh struggle to afford to buy the books they need for their courses. Our extensive collection of scholarly books and journals alone would have sufficed to provide reading materials for dozens of college classrooms. With public libraries around the country fighting to survive in the face of budget cuts, layoffs and closings, the People’s Library has served as a model of what a public library can be: operated for the people and by the people.”

Gideon Oliver, a lawyer from the New York chapter of the National Lawyers Guild, described the destruction of the library as “illegal and unconscionable” and said lawyers were looking into ways it might be addressed.

Protesters were allowed back into Zuccotti Park less than 24 hours after they were cleared out, following a variety of legal decisions. The library was immediately restarted with a half a dozen paperbacks. Within two hours the collection was up to over 100 volumes and the library was fully functioning—cataloging, lending, and providing reference services. “The library is still open” was repeated like a mantra.

“This is why I became a librarian, this is why I went to library school,” Library Working Group member Zachary Loeb said of the rebuilding. He was also quick to point out that, while he had helped to build and maintain the collection knowing full well that the park would probably be cleared eventually, the manner in which it was done hit him hard.

During the reoccupation on the evening of November 15, it started to rain so library staff put a clear plastic trash bag over the collection. Within minutes a detail of about ten police descended and demanded that the covering be removed because they deemed the garbage bag to be a tarp. Tents and tarps were banned from the park after the police action of November 15. There were a few tense minutes as staff tried to convince them otherwise, but ultimately it was removed—leaving the collection open to the elements. As the police withdrew, scores of people chanted “BOOKS ... BOOKS ... BOOKS ... BOOKS ... BOOKS ... BOOKS.” Library staff quickly set up umbrellas over the bulk of the books and began sending librarians home with bags of books to keep the collection safe in remote locations.

On November 17, New York sanitation workers confiscated the approximately 100 books that comprised the newly started library collection after police cordoned off the space in which the books were being made available. Reported in: ALA Press Release, November 17;

American Libraries online, November 16; libraryjournal.com, November 15; Washington Post, November 27; huffingtonpost.com, November 23; The Guardian, November 23; The Nation, December 12.

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*California campuses embroiled ...from page 4)*

or not.” And they demanded that the chancellor and his top staff “develop, follow and enforce university policy to respond non-violently to non-violent protests, to secure student welfare amidst these protests, and to minimize the deployment of force and foster free expression and assembly on campus.”

The resolution, co-authored by Wendy Brown, professor of political science and co-chair of the Berkeley Faculty Association, Judith Butler, professor of rhetoric and comparative literature, and Barrie Thorne, professor of sociology and of gender and women’s studies, originally had expressed “no confidence” in the chancellor, but some faculty members took that as a call for the chancellor’s resignation, which the authors did not seek. As a result, they deleted the call for “no confidence” and substituted the phrase about condemning the chancellor for the police attacks.

Before the vote, the chancellor told faculty that he had been in China when the police attack took place, but that before he left, he had met with Police Chief Mitch Celaya and “explicitly” told the chief not to use pepper spray or tear gas on students. “Unfortunately, we didn’t at the same time discuss the use of batons,” Birgeneau said, adding, “I was—possibly, probably because I’m the chancellor—more disturbed than anybody in the room” about the incident. He added that he regretted the message to the campus he issued after the protest, where he declared that “linking arms” was “not non-violent.”

Wendy Brown commented, “the chancellor offered a long narrative of planning meetings, contingency plans, plans gone awry, encampment policies and his own whereabouts in the second week of November, a narrative which never centrally addressed the matter the Senate had gathered to address: routine episodes of violent policing of non-violent protests over the past two years.”

The faculty also approved three other resolutions introduced originally as alternatives to the “no confidence” resolution. All criticized the Chancellor, but in different language. One, submitted by history professors David Hollinger and Tom Laqueur, expressed “greatly diminished confidence” in the chancellor; another, by Brian Barsky of computer sciences and Jonathan Simon of the law school, laid out guidelines for campus police use of force.

The stern language of the resolutions was nothing compared with the harshness of the speeches delivered

during the hour-and-45-minute special session. The attacks on Birgeneau were more personal and more pointed than nearly any faculty member could recall. Not a single professor spoke to defend him.

The resolutions passed by a staggering 336-34 majority.

Richard Walker, professor of geography and vice-chair of the Berkeley Faculty Association, commented afterward: "Regrettably, administrative foolishness has kept the focus on campus policing, when the students' real purpose was to call attention to the link between disinvestment by the state in public education and the Occupy Movement's denunciations of the 1%, Wall Street gone wild, and massive debt. ... With the Faculty Senate vote today, the campus has turned a corner and we can get back to work on the real problems of the state and the country—what the students want us all to do something about, and soon."

Nevertheless, the next day two dozen protesters filed suit against the University for alleged police brutality during a crackdown on protesters who tried to set up an Occupy camp on campus. The lawsuit was filed November 29 in federal court by 24 students and community members who claim they were jabbed, clubbed and pulled by their hair by baton-wielding police on November 9.

As dramatic as were the events at Berkeley, what transpired at Davis November 18 proved even more stunning. More than a dozen videos of the Davis pepper spray incident were uploaded to YouTube within hours. The most-watched video was viewed more than 200,000 times in less than a day. The videos generated broad outcry online and were rebroadcast repeatedly on television. A reference to the pepper spray use was the No. 1 trending topic on Google in the United States by the next afternoon.

In one of the videos, the officer steps over a line of seated protesters, holds the pepper spray bottle in the air, then sprays it in the protesters' faces in a coordinated fashion as eyewitnesses gasp and shout, "Shame on you." Most of the protesters remain seated; police officers then forcibly remove and arrest them.

In a video taken from another direction, two officers can be seen dousing protesters with pepper spray at the same time. Though not visible in the videos, the operator of the Facebook page for the Occupy U.C. Davis organization claimed that one police officer "shoved a pepper spray gun down a student's throat and pulled the trigger."

In the video, after the arrests, protesters and bystanders are seen asking the police to leave. "You can go," they chant. The police then appear to walk away from the quad, to applause from protesters.

Annette Spicuzza, the U.C. Davis police chief, told The Sacramento Bee that the officers used pepper spray because the police were surrounded by students. "There was no way out of that circle," she told the newspaper. "They were cutting the officers off from their support. It's a very volatile situation."

The videos, however, show officers freely moving about and show students behaving peacefully. The university reported no instances of violence by any protesters. Eleven protesters were treated at the scene after being sprayed, and two of them were then sent to the hospital. Ten protesters were arrested on misdemeanor charges of unlawful assembly and failure to disperse and were later released, according to the university.

By November 21, Davis Chancellor Linda Katehi had placed two officers and Chief Spicuzza on administrative leave, pending investigations. "The use of pepper spray as shown on the video is chilling to us all and raises many questions about how best to handle situations like this," Katehi wrote in a statement. Her statement said that she was forming a task force and asking university officials to review existing policies about encampments like the one that was erected on the campus this week.

"While the university is trying to ensure the safety and health of all members of our community, we must ensure our strategies to gain compliance are fair and reasonable and do not lead to mistreatment,"

The university reported that it had been flooded with comments, including some from alumni who pledged to stop donating. "We've been inundated with people sending messages," said Mitchel Benson, the associate vice chancellor for university communications. "It literally brought down our servers."

In her statement Katehi said: "I spoke with students this weekend, and I feel their outrage. I have also heard from an overwhelming number of students, faculty, staff and alumni from around the country. I am deeply saddened that this happened on our campus, and as chancellor, I take full responsibility for the incident. However, I pledge to take the actions needed to ensure that this does not happen again."

The President of the University of California system, Mark G. Yudof, did much the same November 20, saying in a statement that he was appalled by the images and that he would convene the system's ten chancellors to discuss "how to ensure proportional law enforcement response to nonviolent protest."

"The time has come to take strong action to recommit to the ideal of peaceful protest," he said.

In a letter that was published and widely circulated online, Nathan Brown, an assistant professor in the English department and a member of the Davis Faculty Association's board, said that Katehi was responsible for the violence and should resign immediately.

"The fact is: the administration of U.C. campuses systematically uses police brutality to terrorize students and faculty, to crush political dissent on our campuses, and to suppress free speech and peaceful assembly. Many people know this," Professor Brown wrote, referring to previous demonstrations against student fee hikes that had been met with arrests and produced allegations of police brutality.

“Many more people are learning it very quickly.”

At a massive campus rally November 21, Chancellor Katehi made a brief appearance, facing students, faculty and community members chanting slogans and pressing for her to step down.

“I’m here to apologize. I feel horrible for what happened Friday,” Katehi told the crowd. “If you think you don’t want to be students of the university we had on Friday, I’m just telling you, I don’t want to be the Chancellor of the university we had on Friday.”

Katehi said she had not authorized officers to use pepper spray and called it a “horrific incident.” She said she takes full responsibility but will not step down. “They were not supposed to use force; it was never called for,” she said. “They were not supposed to limit the students from having the rally, from congregating to express their anger and frustration.”

After speaking, Katehi walked to her car accompanied by bodyguards with hundreds of students lining her path, sitting silently on the ground in imitation of the pepper-sprayed protesters.

On November 20, the national Council of the American Association of University Professors issued a Statement in Support of Free Expression in the University of California, which read in part:

“The AAUP joins our colleagues in California, including members of those University of California Faculty Associations affiliated with AAUP, in condemning these attacks and expresses its solidarity with those who have been unjustly attacked and arrested. All universities must make space for political dissent. Students and faculty must be free to decide on the form of their dissent and, if they so decide, to engage in nonviolent civil disobedience without fear of bodily harm arising from a violent administration response. We call upon the board of regents of the University of California and the university administrations to refrain immediately from further use of police against nonviolent protesters and, instead, to defend the rights of students, faculty, and staff to peacefully demonstrate.”

Responding directly to the Association’s statement, President Yudof wrote: “Please know that The Regents and I are gravely concerned over recent events on our campuses.

“As I told the Board of Regents this week, UC students and the UC administration are on the same page with respect to peaceful demonstrations, and to First Amendment rights. I intend to do everything in my power as president of this university to protect the rights of our students, faculty, and staff to engage in non-violent protest. I’ve said many times that free speech is part of the DNA of this university. And non-violent protest has long been central to its history.”

Yudof also outlined a further response: “I have agreed to conduct a thorough review of the events and, as a first step, I have asked former Los Angeles Police Chief William J. Bratton to undertake an independent fact-finding of the pepper spray incident and report back the results to me within 30 days. Chief Bratton, who also led the New York City police

department, now heads the New York-based Kroll consulting company as Chairman. He also is a renowned expert in progressive community policing. This fact-finding will be thorough, rapid, and ultimately transparent. My intent is to provide the Chancellor and the entire University of California community with an independent, unvarnished report about what happened at Davis. Under the plan, Chief Bratton’s report also will be presented to a task force that I am forming, which former California Supreme Court Justice Cruz Reynoso will chair. The task force, whose members will be announced at a later date, will review the report and make recommendations to Chancellor Katehi and me on steps that should be taken to ensure the safety of peaceful protesters on campus. She will present her implementation plan to me.

“I have also appointed UC General Counsel Charles Robinson and UC Berkeley School of Law Dean Christopher Edley, Jr. to lead a systemwide examination of police protocols and policies as they apply to protests at all ten UC campuses. This effort will include visits to campuses for discussions with students, faculty and staff, and consultation with an array of experts. The review is expected to result in recommended best practices for policing protests across the ten UC campuses. With these actions, we are moving forward to identify what needs to be done to ensure the safety of students and others who engage in non-violent protests on UC campuses. The right to peaceful protest on all of our campuses must be protected.”

The Berkeley events and especially the Davis pepper-spraying attack galvanized protesters on other campuses. Students at the Los Angeles, Riverside and San Diego campuses said they intended to restart their encampments, in part to test whether they will be rousted or arrested in the wake of the pepper-spraying. Large demonstrations supporting the movement also rocked the other U.C. campuses.

California’s colleges and universities have been hit with massive budget cuts and steep tuition hikes in recent years. The state cut \$650 million each from the UC and California State University systems this year, and each system faces an additional \$100 million reduction in the next two months if state revenue does not meet a certain threshold. The cuts have led to class cancellations and layoffs in both systems.

“These are institutions that we call the people’s university, but all of us who are in it have just watched this thing collapse on itself being starved for resources year after year,” said Lillian Taiz, the president of the California Faculty Association, the union that represents professors in the California State University system. “What keeps happening is that we are turning the university into a place where really only the wealthy can go. The students are watching their parents fall out of the middle class and watching their own ability to move into it be sabotaged.”

Tuition at the University of California has nearly doubled over the last several years, and next year the system will collect more money from student tuition than from state revenues. And with the state budget situation worsening by the month,

the legislature seems likely to impose another \$200 million in higher education cuts next year. Just days before the Davis events, the California State University Board of Trustees approved a 9 percent tuition increase, even as it cuts courses and student services.

“For the last several years, the debate has been what are we going to cut, but we need to change the conversation to who is going to pay for public education?” said Kyle Arnone, one of the protest organizers at the University of California, Los Angeles, and a graduate student in sociology. “We are forcing people to consider the financing of education in a larger context.”

“I hear people saying, Why are these privileged kids complaining? That sickens my heart,” said Berkeley art history professor Julia Bryan-Wilson. “The students I teach are not privileged. They are immigrants, first-generation college students, struggling to make ends meet, under a tremendous student debt burden. These students have worked so hard to get here. It’s heartbreaking to see what is happening to them. After tuition jumped, Berkeley’s Latino student population went down 16 percent in one year. An 81 percent tuition increase over four years will completely change the face of that population.”

Pepper spray has become the crowd-control measure of choice by police departments from New York to Denver to Portland, Oregon, as they counter protests by the Occupy Wall Street movement.

To some, pepper spray is a mild, temporary irritant and its use has been justified as cities and universities have sought to regain control of their streets, parks and campuses. After the video at Davis went viral, Megyn Kelly on Fox News dismissed pepper spray as “a food product, essentially.”

To the American Civil Liberties Union, its use as a crowd-control device, particularly when those crowds are nonthreatening, is an excessive and unconstitutional use of force and violates the right to peaceably assemble.

Some of the Davis students are threatening civil suits against the university on these grounds. “The courts have made it very clear that these type of devices can’t be used indiscriminately and should be used only when the target poses a physical threat to someone,” said Michael Risher, staff attorney for the ACLU of Northern California.

To Kamran Loghman, who helped develop pepper spray into a weapons-grade material with the Federal Bureau of Investigation in the 1980s, the incident at Davis violated his original intent. “I have never seen such an inappropriate and improper use of chemical agents,” Loghman said.

Loghman, who also helped develop guidelines for police departments using the spray, said that use-of-force manuals generally advise that pepper spray is appropriate only if a person is physically threatening a police officer or another person.

In New York, for example, a police commander who sprayed several women in an Occupy demonstration in October faced disciplinary proceedings. The New York Police Department says pepper spray should be used chiefly for

self-defense or to control suspects who are resisting arrest. Reported in: New York Times, San Francisco Chronicle, Huffington Post, Contra Costa Times, The Nation.

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*ACLU pressures districts ...from page 5)*

more questionable sexual material.

For the time being, the Camdenton and Gwinnett County districts are allowing students and staff members to request access, on a case-by-case basis, to blocked sites that comply with district rules.

But other districts will likely join Camdenton in contesting the ACLU, which filed its first lawsuit of the campaign against the south-central Missouri district in August. Gwinnett County is still evaluating its options, according to a district spokeswoman.

Along those fault lines could emerge new norms for thinking about free speech and student rights in the digital classroom.

“We’re going to see more and more of this stuff,” commented William Koski, the founder and director of the Stanford Law School’s Youth and Education Law Project. “And it does sort of strain our old legal principles. We’re going to have to come up with new tests and rules and ways of thinking about it.”

To date, laws governing Internet filtering—principally, the Children’s Internet Protection Act, or CIPA—have been specific to online communications. Passed in 2001, CIPA has been the driving force behind most school filtering. It requires schools to filter material that is obscene, defined as child pornography, or otherwise deemed harmful to minors; devise a system for monitoring online activity; and implement a policy to enforce online safety and security measures. Schools found in violation risk losing eligibility for the federal E-rate program, which helps pay for school and library Internet connections.

The ACLU asserts that allowing access to the sites in question in the Don’t Filter Me campaign would in no way threaten compliance with CIPA. Districts like Camdenton and Gwinnett County disagree, arguing that while some sites the ACLU mentions are acceptable, others allowed with LGBT-specific filters turned off include content that would violate the federal law.

“We certainly do not want to violate students’ and staff members’ constitutional rights, but at the same time we do want to protect our students and staff from inappropriate material on the Internet,” says Tim Hadfield, the superintendent of the Camdenton R-III district. “If there are options, we certainly would look at those options, but keeping those things in mind.”

The Alliance Defense Fund, or ADF, a legal group based in Scottsdale, Arizona, that was founded, according to its website, to protect the constitutional right to religious

freedom, wrote a ten-page letter advising Gwinnett County not to alter the settings on its filtering software, licensed from Sunnyvale, California-based Blue Coat Systems Inc. The letter argued that lifting an LGBT filter would allow access to sexually inappropriate material, including sites that give explicit advice on gay, bisexual, and alternative dating and sexual relations.

The ADF also wrote that the ACLU's First Amendment and Equal Access Act arguments are both flawed because they apply U.S. Supreme Court decisions from 1982 and 1990 in which the case facts apply to control over more traditional brick-and-mortar resources and not Internet use.

The 1982 case, *Pico v. Island Trees School District*, in a highly splintered decision, ruled that school libraries were bound by the First Amendment to only remove books based on educational or age appropriateness, and not based on viewpoint, which was originally supported by advocates for after school Bible-study groups. The 1990 case said the Equal Access Act assures equity in access to benefits provided by the district to extracurricular clubs.

"A public school district's decisions regarding what Web content to make available to students are curricular decisions," the letter states, "and the case law is clear that public school districts have broad authority over curricular matters."

Block, from the ACLU, concedes those rulings came during a different era of education, but he said the same legal principles used in them apply to a contemporary classroom with digital resources.

"One of the most important First Amendment values is viewpoint neutrality," Block says. "The purpose of a school library and the purpose of school computers are to give research tools to help students explore issues on their own. And it skews that process to have a viewpoint-based filter that says you can access one set of views about this issue but not another set of views."

Meanwhile, Block said, he has been heartened by most of the responses to the Don't Filter Me campaign, which has prompted many schools to change their filtering practices, and in the process, uncover elements of filtering systems that, while far more nuanced than the early Web filters of the 1990s, still show imperfections.

One of the biggest issues has been grasping the meaning of an LGBT filter in the first place, how it differs from a filter that targets pornographic content, and who exactly has the information to make the decision. Software makers often sell their products through intermediary vendors, who may or may not thoroughly educate purchasing districts properly on the nature of a product's filtering categories. And further, deciding to allow a wide range of educational content on an organizational level doesn't necessarily mean the decision is properly executed.

"A lot of times, it's someone on the chief technology

officer's staff that is more involved" in a filtering misstep, said Steve Schick, a spokesman for Blue Coat. "Sometimes, this doesn't come up to the CTO level. ... There's kind of the difference between the policies that they make from a kind of organizational standpoint versus the way those actually get implemented in terms of technology."

Some organizations have been working to take the decision out of individual technology staff members' hands. For example, the Missouri Research and Education Network, or MOREnet, announced in August that it would disable an "alternative lifestyles" category in the filtering software created by Guelph, Ontario-based Netsweeper Inc., which the consortium distributes to more than 100 districts in the state.

Block praised all district steps to turn off LGBT-specific filters, but argues that software companies need to take such efforts further by scrapping those categories altogether.

Bakersfield, Calif.-based Lightspeed Systems has done exactly that, disposing of its "education lifestyles" category, opting instead to classify LGBT sites across the same spectrum as sites devoted to vegetarianism or environmentalism, for example. School administrators can still manually block individual sites.

"The ACLU's point was that we want these students to get information to help understand themselves and understand society, and find people to connect with," said Amy Bennett, Lightspeed Systems' marketing director. "I think this is important in a broad sense."

While LGBT issues have proved to be a lightning-rod in the filtering debate in recent months, education technology advocates note that other disputed educational content is subject to unintentional blocking. Keith Krueger, the chief executive officer of the Washington-based Consortium for School Networking, or CoSN, said websites dealing with sexual health, including those belonging to groups such as Planned Parenthood, are also among those targeted.

On a broader level, data released from Project Tomorrow, an Irvine, California-based nonprofit education research group, found restrictive Internet filtering as the top complaint of more than 300,000 students surveyed.

"There's no question from a student or teacher perspective that they continue to feel that filtering is a major impediment to effective learning, and that it's burdensome," Krueger concluded. But he added that administrators are less likely to think the same way, especially when it comes to issues that may be particularly sensitive in the community, including sexuality.

Block agreed, saying many districts contacted by the ACLU hesitated at first not because they disagreed with the ACLU's position, but because they feared negative public reaction.

Steve Dantine, the supervisor of technology for the 10,000-student Vineland, N.J., school district, said he appreciates that perspective. While Vineland eventually unblocked the LGBT filter on its Blue Coat software, Dantine says his department chose to block the category originally not to push an agenda, but to cover its bases.

“My goal, and it will always be my goal, is to err on the side of caution, for the parents, for the students, and for everyone involved,” Dantine says. “I guess I should’ve done more research into exactly what areas the LGBT category covered in the sites themselves.” Reported in: Education Week, October 19.

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*when school web filtering comes home ...from page 5)*

on these devices, then yes, CIPA applies. Otherwise “it’s a gray area,” a spokesperson from the FCC said. The agency is working on clarifying how the rules on filtering apply in these sorts of cases.

It’s going to be an increasingly important issue that the FCC tackles, particularly as one-to-one programs proliferate. As it currently stands, different schools are adopting different approaches to filtering on one-to-one devices, some opting to install software on the devices, others leaving it up to parents to monitor what kids do when they’re using the computers at home. Reported in: kqed.org, October 25.

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*from the bench ...from page 24)*

Center, announced in April 2010 that he was suing LSU for wrongful termination. The professor claimed LSU retaliated against him for making statements critical of the U.S. Army Corps of Engineers after the agency’s levee system failed in New Orleans during Katrina.

On October 20, federal Judge James Brady handed the outspoken professor a victory. In an 18-page ruling, Brady determined that Dr. van Heerden’s claim has merit, the claim that LSU retaliated against him when he exercised his whistleblower rights.

“I am quite happy,” said van Heerden. “Now we will have our day in court.” Van Heerden added that this will be the opportunity for both the jury and the public at large to know what really happened.

Van Heerden, who had been at LSU since 1992, was widely quoted after Hurricane Katrina because of his contention that the Army Corps of Engineers’ shoddy work on New Orleans’ levees caused the flooding of 80 percent of the city.

His non-tenure-track position was cut in 2009. Van Heerden has contended that he was let go because administrators feared he was hurting LSU’s chances of landing federal contracts and grants.

The ruling spelled out that some very questionable behavior by LSU was “undisputed.”

“After the storm hit, van Heerden began making public statements suggesting that the Corps failed to properly engineer and maintain New Orleans levees and was to blame for the city’s flooding. Unfortunately for van Heerden, the LSU administration and many of its faculty did not approve of his statements for fear that they might cause the University to lose federal funding.”

The ruling contained other similarly damning statements.

“In May 2006, van Heerden published ‘The Storm,’ in which he again hypothesized at length about the Corps’ role in the levee failures and exposed LSU’s attempt to silence his opinion. LSU responded by further urging van Heerden not to make public statements and stripping him of his limited teaching duties.”

The federal district court in Louisiana took special note of a U.S. Supreme Court judgment, *Garcetti v. Ceballos*, which limited the free speech rights of public employees. Although the decision recognized the special nature of academic speech, a series of court decisions had previously applied the ruling to university faculty. But Judge Brady noted that “The concerns about academic freedom raised, but not answered, in that decision are quite relevant here.”

He continued: “The Court here shares Justice Souter’s concern that wholesale application of the *Garcetti* analysis to the type of facts presented here could lead to a whittling-away of academics’ ability to delve into issues or express opinions that are unpopular, uncomfortable or unorthodox. Allowing an institution devoted to teaching and research to discipline the whole of the academy for their failure to adhere to the tenets established by university administrators will in time do much more harm than good.”

In a strongly worded and lengthy report released August 1, the American Association of University Professors (AAUP) rebuked LSU’s decision not to retain van Heerden as “largely in retaliation for his continuing dissent from the prevailing LSU position on the failed levees and the New Orleans flooding, thereby violating his academic freedom.” Even though van Heerden wasn’t protected by tenure, the report said that his right to due process was denied and that LSU violated his academic freedom by punishing him for speaking his mind.

“This ruling is important because it means there will be no more depositions, no more summary judgements and no more discoveries,” said Dr. van Heerden. “The next step is trial.” Reported in: New Orleans Times-Picayune, August 1, October 21.

## broadcasting

### New York, New York

On November 2, a federal appeals court threw out a federal agency's decision to fine CBS Corporation television stations \$550,000 for airing singer Janet Jackson's "wardrobe malfunction" during the 2004 Super Bowl broadcast.

A divided U.S. Court of Appeals for the Third Circuit in Philadelphia said that in imposing the fine, the Federal Communications Commission "arbitrarily and capriciously" departed from prior policy that exempted "fleeting" indecency from sanctions.

In a statement, the FCC said it was disappointed by the decision, but plans to use "all the authority at its disposal" to ensure that broadcasters serve the public interest when they use the public airwaves.

CBS spokeswoman Shannon Jacobs said the New York-based company was gratified by the decision, and hopes the FCC will "return to the policy of restrained indecency enforcement it followed for decades."

Jackson's right breast was briefly exposed to almost 90 million TV viewers after the singer Justin Timberlake accidentally ripped off part of her bustier during a half-time show performance. CBS was fined \$27,500 for each of the 20 stations it owned.

The Third Circuit in 2008 voided the fine, but that decision was vacated when the Supreme Court in 2009 upheld the FCC policy as rational, in an opinion involving News Corp's Fox TV stations. It did not decide whether the policy was constitutional, and returned the CBS case to the Third Circuit.

Writing for a 2-1 majority, Judge Marjorie Rendell said that the FCC had for three decades maintained a "consistent refusal" to treat fleeting nude images as indecent, and that there was no justification to change policy for CBS. She said FCC regulations governing indecency treat images and words interchangeably, and "it follows that the Commission's exception for fleeting material under that regulatory scheme likewise treated images and words alike."

Judge Anthony Scirica dissented, saying the Fox opinion "undermines" the 2008 decision in the CBS case, which he had written. He said the CBS case should be sent to the FCC so it could apply the proper standards.

The Supreme Court is expected in its current term to decide whether the FCC policy is constitutional. It is reviewing a decision by a federal appeals court in New York that voided the policy as unconstitutionally vague. That court said it was improper to fine broadcasters over expletives by the singers Bono and Cher on awards shows, or showing a woman's buttocks on "NYPD Blue." Reported in: reuters.com, November 2.

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*is it legal ...from page 34)*

- From this point on, each time a user visits a third-party webpage that has a Facebook Like button, or other Facebook plug-in, the plug-in works in conjunction with the cookie to alert Facebook of the date, time and web address of the webpage clicked to. The unique characteristics of the user's PC and browser, such as IP address, screen resolution, operating system and browser version, are also recorded.
- Facebook thus compiles a running log of all of a user's webpage visits for ninety days, continually deleting entries for the oldest day and adding the newest to this log.

If a user is logged-on to a Facebook account and surfing the Web, the session cookie conducts this logging. The session cookie additionally records name, e-mail address, friends and all data associated with the user's profile to Facebook. If the user is logged-off, or a non-member, the browser cookie conducts the logging; it additionally reports a unique alphanumeric identifier, but no personal information.

Bejar acknowledged that Facebook could learn where specific members go on the Web when they are logged off by matching the unique PC and browser characteristics logged by both the session cookie and the browser cookie. He emphasized that Facebook makes it a point not to do this. "We've said that we don't do it, and we couldn't do it without some form of consent and disclosure," Bejar said.

Bejar also acknowledged "technical similarities" in the cookie-based tracking technologies used by Facebook and the wider online advertising industry. "But we're not like ad networks at all in our stewardship of the data, in the way we use it, and the way we lay everything out," Bejar says. "We have a very clear and transparent approach to how we do advertising that I'm very proud of."

Even so, Facebook's public descriptions of its tracking systems have not satisfied some critics — particularly European privacy regulators. Ilse Aigner, Germany's minister of consumer protection, last month banned Facebook plug-ins from government websites and advised private companies to do the same.

And Thilo Weichert, data protection commissioner in the German state of Schleswig-Holstein, expressed alarm at how Facebook's technology could potentially be used to build extensive profiles of individual Web users.

"Whoever visits Facebook or uses a plug-in must expect that he or she will be tracked by the company for two years," Weichert said in a statement. "Such profiling infringes German and European data protection law."

Adding fuel to such concerns, Arnold Roosendaal, a doctoral candidate at Tilburg University in the Netherlands, and Nik Cubrilovic, an independent Australian researcher, separately documented how Web pages containing Facebook plug-ins carried out tracking more extensive than Facebook publicly admitted to.

Noyes says Germany doesn't understand how the company's tracking technologies work. And he blames "software bugs" for the indiscriminate tracking discovered by Roosendaal and Cubrilovic.

"When we were made aware that certain cookies were sending more information to us than we had intended, we fixed our cookie management system," Noyes says.

However, researcher Roosendaal says Facebook's tracking cookies retain the capacity to extensively track non-members and logged-off members alike. "They have

been confronted with the same issue now several times and every time they call it a bug. That's not really contributing to earning trust."

Some corporate security executives have become concerned about cybercriminals getting hold of tracking data relayed by Like buttons, then using that intelligence to steal intellectual property. They've asked firewall supplier Palo Alto Networks to identify and block traffic from Facebook tracking cookies, while enabling their employees to continue using other Facebook services.

"The concern is that Facebook has rich personal information, which Google doesn't have," says Nir Zuk, founder and chief technology officer for Palo Alto Networks. "Combining that personal information with Web browsing patterns could be revelatory." Reported in: New York Times, November 29; USA Today, November 16.

**READ BANNED BOOKS**

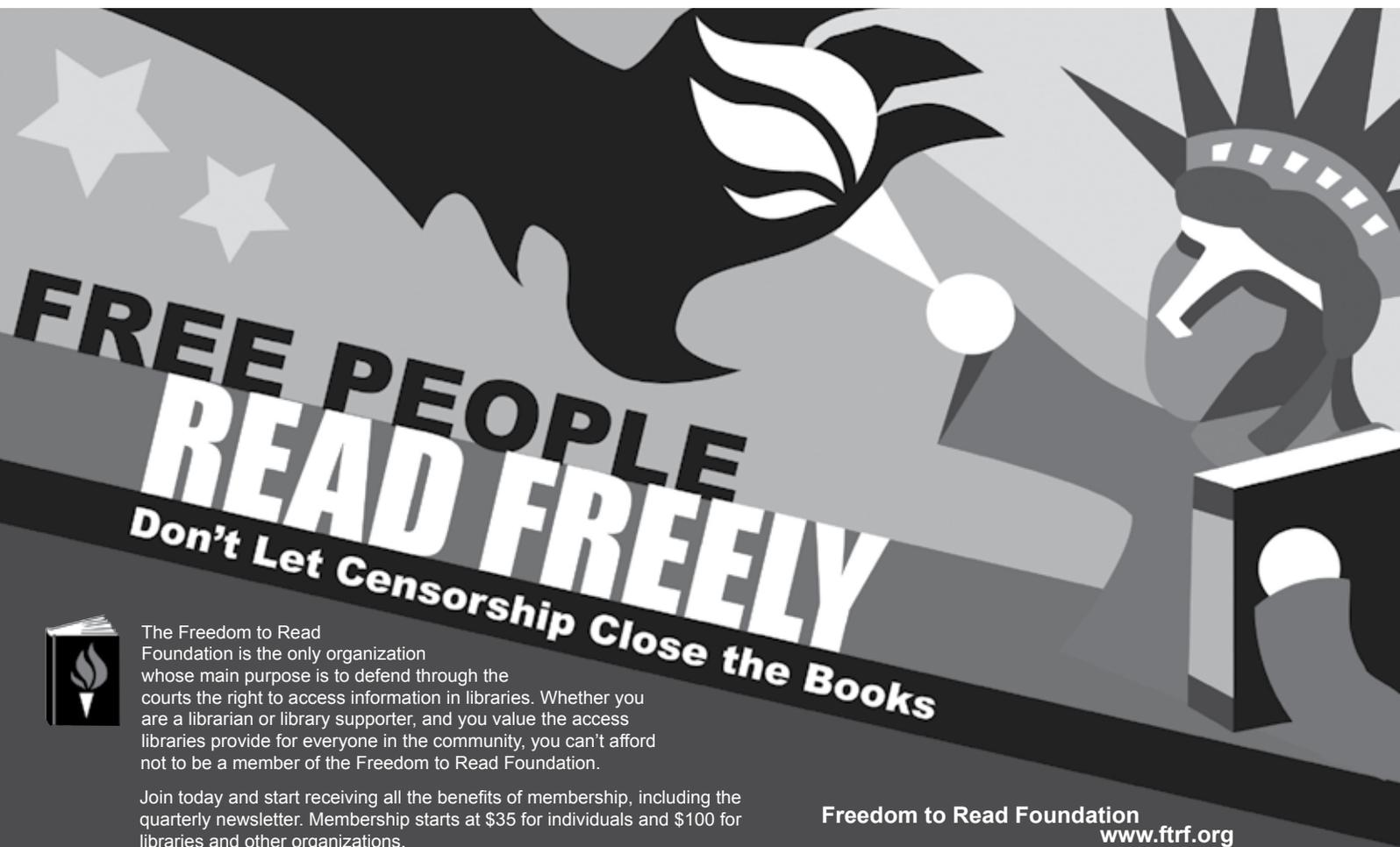
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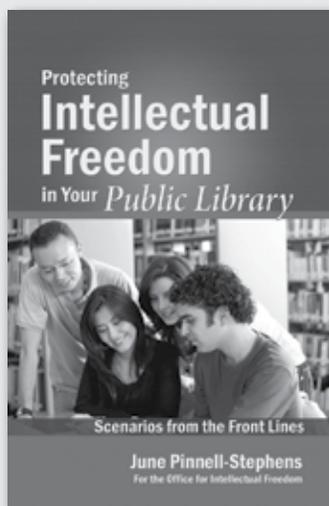
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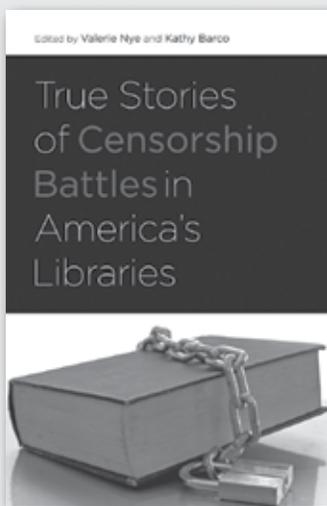


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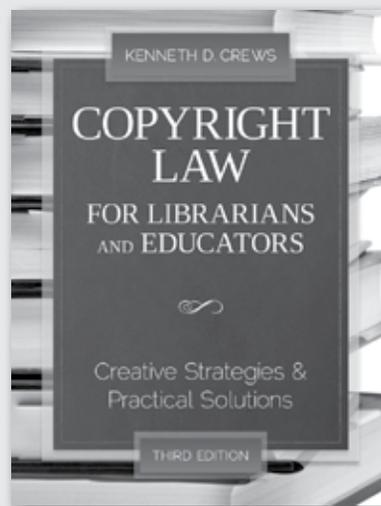


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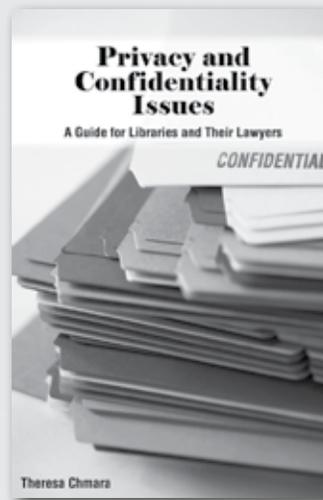


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